

Binding Elements Case 11641

1. The development shall be in accordance with the approved general district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 5. Each plan shall be in adequate detail and subject to additional review and binding elements. Additional review shall include but not be limited to setbacks, landscape and screening requirements, parking calculation, pedestrian connections, focal point, signage, and building design.
3. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
4. Use of the subject site shall be limited to retail, restaurants, bank and movie theater and other uses permitted in the C-2 district. There shall be no other use of the property unless prior approval is obtained from the Planning Commission or the LDC&T Committee. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The Planning Commission/D&T Committee may require a public hearing on the request to amend this binding element.
5. The development shall not exceed 363,140 square feet of gross floor area on Tract 1, and 2,500 square feet of gross floor area on Tract 2.
6. There shall be no direct vehicular access from parking lot to Wingfield Rd until an additional connection to Brentlinger Lane is provided and Wingfield Road pavement improvements are made.
7. Signs shall be in accordance with Chapter 8 of the Land Development Code.
8. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
9. Construction fencing shall be erected when off-site trees or tree canopy exists within 5' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
10. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, or alteration permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways, but only if any of the developer's improvements encroach into the state right-of-way.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A major subdivision record plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
 - e. A road closure approval for a portion of Wingfield Rd, Case # 11641, shall be approved prior to recording a record plat.
 - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
11. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless otherwise provided in these binding elements or specifically waived by the Planning Commission.
12. There shall be no outdoor music (live, piped, radio or amplified) or outdoor PA system audible beyond the boundary of the development site.
13. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors, and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

Phase 1 of the development shall consist of buildings A, B, C, D, E, and J, or equivalent square footage. Permanent certificates of occupancy for Phase 1 buildings shall not be requested until the traffic signal at the Bardston Road/SouthPointe Boulevard intersection is installed and operational. Phase 2 shall consist of the remainder of the development. Permanent certificates of occupancy shall not be requested for Phase 2 buildings until either (1) funding is appropriated for the completion of the connector road from the south property line of Bates Elementary School property to Brentlinger Lane, or (2) June 1, 2011, whichever occurs first.

26. At such time as Access Road "A" is constructed to the south property line of the Bates Elementary School property, and until a full secondary connection to Brentlinger Lane is constructed, Developer shall provide a gravel emergency access route through the rear of Cedar Creek Baptist Church or over other existing paved surfaces. Such route shall be located as exhibited on the map presented at the May 20, 2010 public hearing. The final location of this emergency access route shall be subject to the approval of the Fern Creek Fire Protection District (FCFPD), Louisville Metro Police Department, Louisville Metro EMS, and Cedar Creek Baptist Church. No building permit shall be requested until the final location of the emergency access route has been approved by all parties mentioned in this binding element.

The access route shall have an overhead clearance of all obstructions of at least 13 feet, 6 inches; shall be a hard-surface road, a minimum of 12 feet in width with 3 foot earthen shoulders, be capable of supporting a 30-ton fire apparatus, and shall be properly maintained, as determined by FCFPD. If any portion of the access route utilizes a green surface such as grass pavers or grasscrete, the route shall be appropriately marked as required by FCFPD. The emergency access shall include a gate in accordance with Louisville Metro's adopted gate standard and its location shall be determined at a future date. Furthermore, additional fire lane markings may be required for existing for existing for emergency gates.
27. Developer shall be responsible for right-of-way dedication by record plat and constructing Access Road "A" from SouthPointe Boulevard to the south property line of the Bates Elementary School property per Public Works requirements.
28. The Developer shall provide, at locations to be determined by Developer, two curb cuts (one west of and one east of Access Road "A") onto the south side of SouthPointe Boulevard (Private Portion) for a proposed future development on an assemblage of all the adjoining tracts, subject to an infrastructure and maintenance cost sharing agreement acceptable to Developer. Notwithstanding anything herein to the contrary, access from adjacent properties shall not be required to be provided to SouthPointe Boulevard until such time as there are no restrictions on the issuance of certificates of occupancy for any portion of the SouthPointe Commons development.
29. Final design of roadway layout and typical road cross-sections for both, SouthPointe Blvd and Access Road, will be determined at construction and/or detailed development plan stage, as appropriate, by Metro Public Works and coordination with Metro Bicycle/Pedestrian Coordinator. Final design of any on road bike facilities or multiuse path shall be approved by Metro Bicycle/Pedestrian Coordinator.
30. Prior to using Wingfield Rd for school traffic circulation, Wingfield Road section shall be resurfaced from SouthPointe Blvd through its intersection with Access Road "A". Developer shall install a 1 and 1/2" paving overlay per Metro Public Works requirements.
31. The Developer shall allow two access points on Access Road "A" (Private Portion) between SouthPointe Boulevard and Wingfield Road, one on the west side and one on the east side of Access Road "A", subject to an infrastructure and maintenance cost sharing agreement acceptable to Developer. Notwithstanding anything herein to the contrary, access from adjacent properties shall not be required to be provided to Access Road "A" until such time as there are no restrictions on the issuance of certificates of occupancy for any portion of the SouthPointe Commons development.
32. The Developer shall provide an access easement from SouthPointe Boulevard, directly across from the curb cut north of Building "B" on SouthPointe Boulevard, for a possible future development on the lot immediately east of SouthPointe Boulevard as shown on the General District Development Plan, subject to an infrastructure and maintenance cost sharing agreement acceptable to Developer. Notwithstanding anything herein to the contrary, this access easement shall not be required to be provided to SouthPointe Boulevard until such time as there are no restrictions on the issuance of certificates of occupancy for any portion of the SouthPointe Commons development.
33. The Developer shall not route construction traffic along Wingfield Road at any portion east of SouthPointe Blvd, except as may be required to construct improvements to Bates Elementary School, KRTA building, improvements to Wingfield Road and Access Road "A" from SouthPointe Commons to the south property line of Bates Elementary School.
34. Final design of Access Road "A" may be revised if required per Transportation and Land Use Study recommendations, provided that (1) any revisions of Access Road "A" will be reviewed and discussed with the SouthPointe Commons owner prior to finalizing the Study recommendations and will maintain the full function and use of the proposed development; (2) Developer shall not be required to provide more than thirty-four (34) feet of pavement width for Access Road "A".

All binding elements and/or conditions of approval stated in this report are accepted in total without exception by the entity requesting approval of this (these) development item(s).

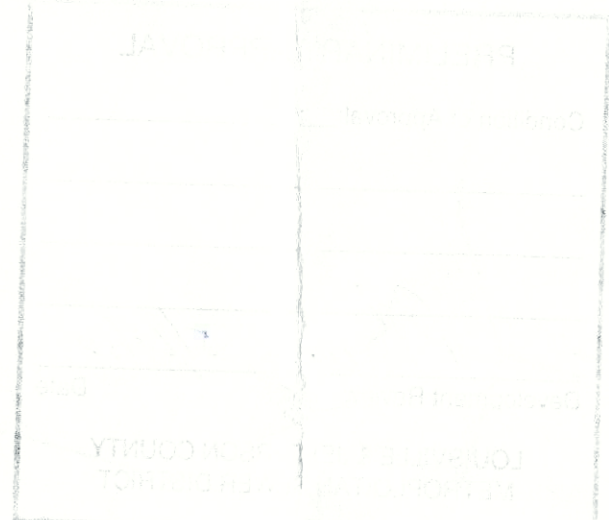
14. The materials of proposed structures shall be substantially the same as depicted in the Pattern Book as presented at the March 4, 2010 Planning Commission meeting.
15. The facade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff or DRC Committee prior to construction permit approval.
16. No overnight idling of trucks shall be permitted on-site.
17. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting plan of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
18. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
19. Hours of operation shall be discussed and determined at the detailed plan review and approval.
20. The Developer shall provide an enhanced landscape buffer on the subject property adjacent to the boundaries of the two historic resources (the Wingfield House (JF 147) at 9815 Wingfield Rd and the L. Bates House (JF 148) at 10005 Wingfield Rd), which shall contain two times the landscape plantings required by the LDC. The landscaping abutting these two properties shall be installed prior to requesting a certificate of occupancy for buildings F, G, H, I, or J.

Transportation Binding Elements

21. Prior to the construction plans approval the alignment and cross section of the proposed streets/connections to the south shown on the plan will be further reviewed and shall be revised if required per Transportation and Land Use Study recommendations and/or Metro Public Works. Any revisions will be reviewed and discussed with the developer prior to finalizing the Study recommendations and will maintain the full function and use of the proposed development.

The route of the future connector road south of the point where Access Road "A" intersects with the south boundary line of the Bates Elementary School Property may be revised if required per Transportation and Land Use Study recommendations and Metro Public Works. Any revisions will be reviewed and discussed with the SouthPointe Commons owner prior to finalizing the Study recommendations and will maintain the full function and use of the proposed development. Throughout the planning process, the Developer will continue to coordinate with Cedar Creek Baptist Church to facilitate the dedication of right of way for the connector road on those properties.
22. Developer shall be responsible for any required utility relocations, final surface overlay, signage, striping and traffic control devices (if warranted), associated with required road improvements by the developer. Construction plans, bond, and KTC permit (only if developer improvements encroach into the state right-of-way) are required by Metro Public Works prior to construction approval and issuance of MPW encroachment permit. Developer shall not request a certificate of occupancy until road improvements are complete.
23. All street signs shall be installed by the Developer and shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to occupancy of the first building in the development and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
24. An encroachment permit and bond may be required by Metro Public Works for roadway repairs on Wingfield Road due to damages caused by construction traffic activities.
25. Phase 1 of the development shall consist of buildings A, B, C, D, and E as shown on the development plan presented at the May 20, 2010 Planning Commission Public Hearing ("Development Plan"). Construction approvals for Phase 1, excluding approval for the relocation of the Teachers Association Building, identified as a 2,500 square foot office building on Tract 2 of the Development Plan (including but not limited to demolition, construction and occupancy), shall not be granted until such time as Kentucky Transportation Cabinet improvements as shown on the Development Plan have been let for construction and bonds have been secured for improvements which have been identified as being the responsibility of the applicant. Prior to requesting a Certificate of Occupancy for Phase 1, all roadway improvements as shown on the Development Plan and included in the Traffic Impact Study shall be constructed including the required traffic signal, which must be installed and operational.

Phase 2 of the development shall consist of buildings F, G, H, I and J as shown on the Development Plan, and a detailed plan for any portion of Phase 2 shall not be approved until a permanent second access point is provided to connect the development to Brentlinger Lane.



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PLANNING COMMISSION