

Development Review Committee

Staff Report

August 17, 2015



Case No:	16DEVPLAN1134
Project Name:	King Louie's Place
Location:	598 & 600 N. English Station Road
Owner:	Blind Squirrel, LLC
Applicant:	Blind Squirrel, LLC
Representative:	Land Design & Development, Inc. – Sarah Beth Sammons
Jurisdiction:	Middletown
Council District:	19 – Julie Denton
Case Manager:	Joel P. Dock, Planner I

REQUEST

- **Revised Detailed District Development Plan**
- **Landscape Buffer Area (LBA) Waiver** to allow encroachments into the required 35' LBA.

CASE SUMMARY

The applicant proposes to add a 9,000 SF natatorium with 1,500 SF ice cream shop along the South property line of an athletic and recreation complex on N English Station Road and North of Shelbyville Road. As a result of the natatorium addition revisions to the parking infrastructure will be made that increase parking spaces and pedestrian connectivity within the development. An internal concrete sidewalk will be provided from the main buildings at the front of the complex and N. English Station Road through the development to the soccer complex at the rear of the site. Changes are also requested to the amphitheater area to eliminate the originally proposed stage and increase the number of sand volleyball courts to three courts. Lastly, an addition is requested to the restaurant/main building fronting on N. English Station Road.

Due to a pocket of R-4, single-family residential zoning to the South of the site a landscape buffer area waiver is being requested to allow the proposed natatorium, ice cream shop, dumpster, and parking to encroach the 35' buffer. The property is not residentially used and is surrounded on all sides by non-residential zoning districts.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Athletic Complex	EZ-1/C-M	SW & N
Proposed	Athletic Complex	EZ-1/C-M	SW & N
Surrounding Properties			
North	Office/Warehouse Residential, large tract	M-2 & M-3 R-4	N & SW N
South	Office/Warehouse	R-4 & M-2	SW
East	Office/Warehouse	M-2	SW
West	Residential	R-4	N

PREVIOUS CASES ON SITE

- 16739: Planning Commission and Middletown approved rezoning for the subject property from mixed industrial and residential to EZ-1 and C-M. A conditional use permit was granted for the proposed outdoor amphitheater on 5/9/2013.
- 17349: The Board of Zoning Adjustment denied the appeal of the staff interpretation that an amphitheater is most similar to the use listing of sports arena.
- 14VARIANCE1029: The Board of Zoning Adjustment approved a variance to allow the building to be located 12' from the front property line.
- 14DEVPLAN1044: Development Review Committee and Planning Commission recommended approval of a revised development plan with landscape waiver and binding element amendments to the City of Middletown.
- 15DEVPLAN1067: RDDDP, amendment to binding elements, and LBA waiver (approved 6/25/15)

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
2004 Land Development Code (Middletown)

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the parcel creating the required buffer is not used residentially and is surrounded on all sides by industrial facilities.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. The waiver will not violate specific guidelines of Cornerstone 2020 as the buffer requested

to be waived is not adjacent to residential uses and enhances the functionality of the parking facility created to serve the development.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the intent of the buffer is to provide adequate screening from residential zoning district and uses. The property generating the buffer is not used residential and has not potential to be used for single-family residential uses in the foreseeable future.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the required buffering and planting would prevent the development of this site to its full potential and capacity to provide sufficient parking, circulation, and activities.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There does not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community will be provided as the site provides an internal network of walks and drives connecting all facilities within the complex. A contribution will be made to Metro Public Works toward the installation of a traffic signal at N English Station Rd and Aiken Rd.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: There are no open space requirements with this development.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The proposal integrates into the mixture of commercial, office and industrial uses along this portion of N. English Station Rd. The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening are provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks with the exception of the previously approved relief along North English Station Road.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The proposal conforms to the Comprehensive Plan and Land Development Code. The proposal integrates into the mixture of commercial, office and industrial uses along this portion of N. English Station Rd. The proposal is located adjacent to existing industrially zoned and used properties to take advantage of special infrastructure needs. The site has access from N. English Station Rd with existing commercial, office and industrial uses, and the proposed transportation facilities are compatible with and support access to surrounding lands.

TECHNICAL REVIEW

The site is located in the City of Middletown, which will take final action on the requests.

The proposed development plan has received preliminary approvals from Transportation Planning and the Metropolitan Sewer District.

STAFF CONCLUSIONS

The Revised Detailed District Development Plan appears to be adequately justified and meets the standard of review based on staff analysis in the staff report.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must determine if the proposal meets the standards established in the LDC for approving a Revised Detailed District Development Plan.

REQUIRED ACTIONS

- **RECOMMEND APPROVAL** or **DENIAL** of the Revised Detailed District Development Plan to the City of Middletown.

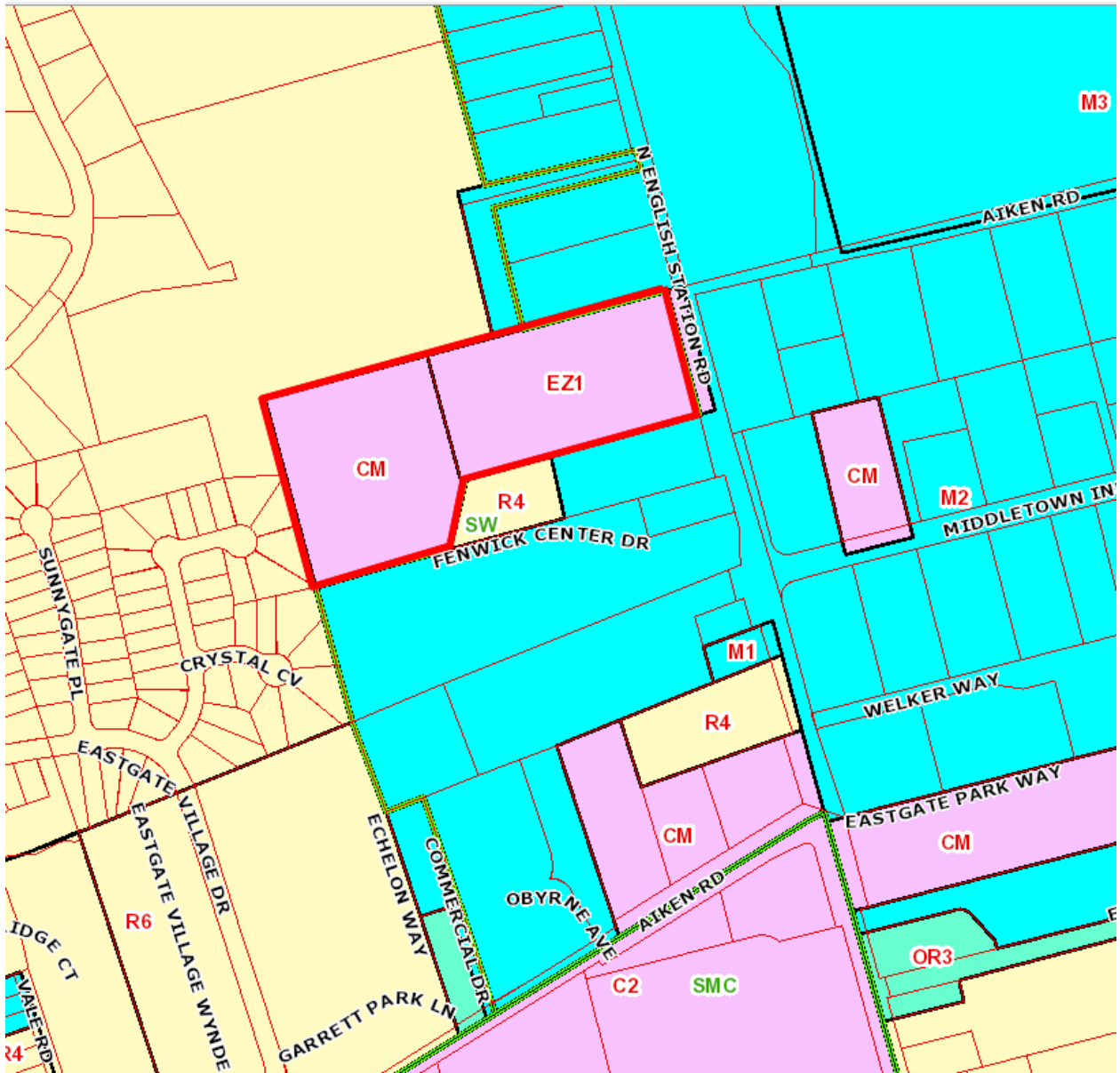
NOTIFICATION

Date	Purpose of Notice	Recipients
8/5/16	DRC	1 st tier adjoining property owners Subscribers of Council District 19 Notification of Development Proposals

ATTACHMENTS

1. Zoning and form Map
2. Aerial Photograph
3. Existing Binding Elements

1. Zoning Map



2. Aerial Photograph



3. Existing Binding Elements (City of Middletown Municipal Order 10-08-15-C)

1. The development shall be in accordance with the approved district development plan, and the landscape plan, which shall be that certain Revised Detailed Development Plan and that certain Landscape Plan, which were approved by the City of Middletown on the 22nd day of October, 2015, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements, unless amended pursuant to the LDC. Any changes/additions/alterations of any binding element(s), or development plan revisions and all landscape plans shall be submitted to the Planning Commission or the Planning Commission's designee, and to the City of Middletown for review and approval; any changes/additions/alterations not so referred and so approved shall not be valid.
2. Before any permit (including but not limited to building, parking lot, change of use, sit disturbance, alteration or demolition) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Development Louisville Divisions of Construction Review and Transportation Planning, Metropolitan Sewer District and City of Middletown. The drainage construction plan must also be approved by the City of Middletown.
 - b. All uses shown on the Revised Detailed Development Plan must have access to public sanitary sewers.
 - c. A minor subdivision plat or legal instrument shall be recorded creating any lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services. Transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - d. The property owner/developer must obtain approval by the Planning Commission and the City of Middletown of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be consistent with the concept landscape plan shown at the May 9, 2013 Middletown City Commission meeting, shall be implemented prior to occupancy of the site and shall be maintained thereafter. There shall be no removal of the required landscaping without City Commission approval. In the event any tree or other landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be such as are deemed adequate by the City to mitigate the impact. If work is required within a utility easement causing removal or damage of required landscape materials, the property owner will be responsible for replacement of materials according to the approved landscape plan.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC and the City of Middletown shall be reviewed and approved before issuance of a building permit.
 - f. The name, address and telephone number of the construction manager for the project must be disclosed to the City of Middletown.
 - g. The City of Middletown hereby designates the City Mayor as its approval authority for plans, permits, and other approvals required by these binding elements.
3. PHASING OF USES. Developer and the City of Middletown agree as follows as to the timing of construction and use of all the improvements as set forth on the approved Revised Detailed Development Plan:
 - a. OUTDOOR ATHLETIC FIELDS. Prior to the widening of North English Station

Road to three lanes or a signal added at North English Station and Aiken Road, the outdoor athletic fields and the two volleyball courts may only be occupied and used for games, practice or any use with the following restrictions:

1. There will be no use of any outdoor athletic field (including the volleyball courts) until the City of Middletown Commission determines (after a review of a traffic study), that the traffic impact on North English Station Road have been sufficiently mitigated by the Applicant. The traffic study will be conducted by Paula Wahl with Neel-Schaffer according to the attached Scope of Work and Applicant agrees to reimburse the City for the cost of the study, up to a maximum amount of \$5,200.00. The study shall evaluate the traffic impact on North English Station Road from; (a) the indoor athletic fields/facilities, (b) use of the outdoor athletic fields during the time restrictions set out herein (with the exception that the traffic engineer may assume a reasonable pre-start arrival period for those attending events), (c) restaurant, and (d) two volleyball courts. The traffic study will evaluate any and all mitigating factors in Applicant's proposal and suggest any reasonable and appropriate further mitigating measures not in Applicant's proposal. Once the study is completed, the City of Middletown Commission will determine (on a separate basis): (a) if the use and occupancy outdoor athletic fields should be allowed, or whether the adverse traffic impacts to the unimproved English Station are so great that the use and occupancy of the outdoor athletic fields should be delayed until English Station Road is improved to three lanes or a signal added at Aiken Road and (b) if the use and occupancy of the volleyball courts should be allowed or whether the adverse traffic impacts to the unimproved English Station are so great that the use and occupancy of the volleyball courts should be delayed until English Station Road is improved to three lanes or a signal added at Aiken Road. Both fields may be constructed but not used for any purpose until the conditions and restrictions above are met, or until the widening of North English Station Road to three lanes is complete and open to traffic or a traffic signal added at Aiken Road.

2. Prior to the widening of North English Station Road to three lanes or a signal added at North English Station and Aiken Road, and, in addition to the restrictions set out in a.1 above, the following restrictions apply. No games or practice shall occur on the outdoor field before 5:30PM on weekdays. Games may take place on weekends and national holidays prior to 5:30PM. The Developer shall schedule the starting game times for the outdoor athletic fields and the indoor games a minimum of 20 minutes apart. Developer shall use best efforts to ensure that the ending times of the games and practices on the outdoor athletic fields and indoor athletic facility do not end at the same time. The volleyball courts may be used with the following restrictions: No games shall occur before 6 PM on weekdays. Games may take place on weekends and national holidays prior to 6 PM.

b. AMPHITHEATER. The amphitheater stage, overhead structures and sound system for the amphitheater shall not be constructed and there shall be no live music or entertainment events in the amphitheater area until the widening of North English Station Road to three lanes is complete and open to traffic, or a traffic signal at Aiken Road is installed and operational.

c. RESTAURANT AND ICE RINK. Occupancy and use of the restaurant/bar, indoor athletic facility, ice rink, and seating area surrounding the ice rink are not subject to the restrictions set forth in a.3 herein and said buildings may be constructed and occupied.

d. INDOOR ATHLETIC FACILITIES. Occupancy and use of the indoor athletic facilities shown on the Revised Detailed Development Plan are not subject to the restrictions set forth in a.3 herein and said buildings may be constructed and occupied.

4. The style and design of the addition to the existing building, which includes the restaurant, volleyball courts and amphitheater and ice skating rink shall be as shown on renderings which were approved by the City of Middletown at its meeting on the 22nd day of October, 2015. The style and design of the indoor athletic facility building shall be as shown on the rendering approved at the 22nd day of October, 2015 Middletown City Commission meeting.
5. All access drives and parking areas must be constructed to the standards of the Land Development Code and in accordance the approved Revised District Development Plan. All cars must be parked in marked spaces and the access drives shall be kept free from parked cars. Curbing shall be installed along each edge of the access drive leading to the rear portion of the site to prevent vehicles from parking in the grass, and "No Parking in Fire Lane" signs shall be installed, the number and placement of which shall be approved by the City of Middletown and the Middletown Fire Protection District (in accordance with the attached fire lane regulations), as part of the final signage package, or construction plans as may be appropriate. In addition, the edges either side of said access drive shall be striped as fire lanes (cf. binding element no. 3). The Owner/Developer will maintain the transit stop on an as-needed basis.
6. The capacity of the amphitheater shall not exceed 800 people. In order to avoid conflicts with peak hour traffic, no live music event, play, or other live entertainment at the amphitheater shall be scheduled to end between 5:00p.m. and 7:00p.m. on Monday through Friday.
7. Prior to installation of the traffic signal at Aiken Road, the property owner agrees to utilize traffic control personnel for events in the indoor athletic facility upon receipt of a written request by the City of Middletown. At the time the northern entrance, opposite Aiken Road, is completed, a traffic study shall be submitted to Metro Public Works or Transportation Plan Review and Planning and Design and the City of Middletown to determine if the southern entrance may remain. Such improvements shall begin within one year of submittal of the traffic study.
8. The developer shall contribute up to 12% of the cost of the signal installation at Aiken Road and N. English Station Road, not to exceed \$7,000, if the light and widening project is done by Metro Public Works or the Kentucky Transportation Cabinet. This shall be paid within 30 days of the request by the Director of Metro Public Works. The request shall be made to the developer when Metro Public Works obtains the balance of the cost of installation, no sooner than construction plan approval. The Developer has the option to get approval through Metro Public Works and KYTC to design and install the Aiken Road light as Developer's own project, upon such terms as the Developer can negotiate, in which event, the Developer shall not be required to make any monetary contribution to Metro Public Works Of KYTC.
9. For purposes of KRS 100.237, the conditional use permit for the amphitheater shall be exercised within two years after the completion of the widening of N. English Station Road to three lanes or a traffic signal at English Station and Aiken Road (temporary or permanent) is installed and operational.
10. Upon the development or redevelopment of properties on and around the N. English Station Road and Aiken Road corridors that are projected to generate additional traffic

impacts on N. English Station Road and/or Aiken Road, the City of Middletown may require a monetary contribution from the owners/developers of said properties toward the cost of the traffic signal at Aiken Road and N. English Station Road and associated road widening in rough proportionality to the projected impacts of the proposed development or redevelopment.

11. Prior to requesting a certificate of occupancy for the amphitheater stage and overhead structures, the applicant shall submit to the City of Middletown a statement by an acoustic consultant certifying that the maximum noise levels produced by the sound system for the amphitheater do not exceed the average and peak ambient noise levels set forth in the Ambient Noise Level Exhibit attached hereto as Exhibit B, at the locations designated therein. A certificate of occupancy shall not be issued for the amphitheater stage and overhead structures until such statement is submitted. The City of Middletown may request periodic monitoring of noise levels to ensure compliance with this binding element. If, at any time, noise levels produced by the sound system for the amphitheater exceed the average and peak ambient noise levels set forth in Exhibit B at the locations designated therein, no events with amplified sound shall be permitted in the amphitheater until additional noise abatement measures have been implemented/installed and a statement is submitted by an acoustic consultant certifying that maximum noise levels from the amphitheater do not exceed the noise levels set forth in Exhibit B. From time to time, the City of Middletown may amend Exhibit B to update the average and peak ambient noise levels at the designated locations. This binding element shall not apply to the ice rink/volleyball courts and seating area around the ice rink/volleyball courts, which may be constructed and used without submitting a statement by an acoustic consultant. No part of the proposed development, including the amphitheater, shall be exempt from the Louisville Metro Noise Ordinance.
12. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency and the City of Middletown, from an engineer or other qualified professional stating that the lighting of the proposed development is in compliance with the Land Development Code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. A minimum of fifty percent (50%) of the parking lot lighting adjacent to the soccer field and indoor athletic building shall be turned off after 11:00 p.m.
13. No freestanding sign shall exceed 100 square feet in area per side and 10 feet in height. All illumination shall be internal. No sign shall have more than two sides. There shall be no new off-premises signs. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site, other than the existing outdoor advertising sign and the proposed and permitted freestanding/attached signage all of which must be compliant with the Middletown Sign Ordinance. The City of Middletown must approve the final signage package for the entire site prior to construction, which signage package must show the placement, size, scale and type of materials of the signs.
14. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site. The dumpsters shown on the approved plan are the only dumpsters allowed on the site and they shall be screened from view, kept secured and picked up.
15. At such time as the adjoining property to the north or the south of the subject property is redeveloped and cross access is required as part of said redevelopment, a reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel and the City of Middletown granting access in the location shown on the

approved development plan to the adjoining property being redeveloped shall be created and recorded; a copy of the recorded instrument shall be submitted to the Division of Planning and Design Services at the request of the Director of Planning and Design Services.

16. The approved construction plan for drainage and the drainage/detention structures must also be presented and approved by the City of Middletown, prior to and as a condition of any building permit application and/or for any Occupancy Permit and/or bond release. Additionally, the improvements shown on said construction plans must be fully complete prior to the application for Occupancy Permit and/or bond release. All occupancy permits must receive the prior approval of the City of Middletown. The Property Owner(s), and their heirs, successors and assigns, are liable to construct and keep maintained all the detention and drainage facilities on the development plan and construction plans, and keep them permanently maintained in a high state of functioning.
17. A certificate of occupancy must be received from the appropriate code enforcement department and the City of Middletown 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 a certificate of occupancy unless specifically waived by the Planning Commission and the City of Middletown.
18. Construction fencing shall be erected at the edge of the area of development in accordance with the tree preservation plan prior to any grading or construction to protect existing tree stands and their 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.
19. If a building permit for any portion of the development is not issued for any portion of the development within two years from the date of the City of Middletown's approval of this Revised Detailed Development Plan herein, the property shall not be used in any manner unless a revised district development plan is approved by the City of Middletown or an extension is granted by the Planning Commission and the City of Middletown.
20. 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.
21. The Applicant, its successors and assigns, hereby consents and agrees that the City of Middletown has full right and authority to take any and all appropriate direct legal action against Applicant, its successors and assigns, to enforce these binding elements and inspect the premises to determine compliance with the binding elements.