

# Development Review Committee

## Staff Report

February 4, 2015



Case No:	14DEVPLAN1145
Request:	Revised General and Detailed District Development Plan, Waivers, and Binding Element Amendments for proposed restaurant and retail uses
Project Name:	Speckman Road Strip Center
Location:	719 Speckman Rd.
Owner:	Speckman Commercial, LLC
Applicant:	Speckman Commercial, LLC
Representative:	Speckman Commercial, LLC
Jurisdiction:	City of Middletown
Council District:	20 – Stuart Benson
Case Manager:	David B. Wagner – Planner II

### REQUEST

- Waiver #1 to omit the sidewalk along Speckman Road (LDC Section 5.8.1.B)
- Waiver #2 to waive the 35' LBA, plantings, and screen along the north property line (LDC Section 10.2.4)
- Waiver #3 to waive the 35' LBA, plantings, and screen along the east property line (LDC Section 10.2.4)
- Waiver #4 to waive the 10' VUA LBA, plantings, and screen along the west property line (LDC Section 10.2.10)
- Waiver #5 to allow the easements to overlap the LBA by more than 50% (LDC Section 10.2.4)
- Revised General and Detailed District Development Plan
- Binding Element Amendments

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

This request is a joint proposal that goes along with Variance requests (#14VARIANCE1113) which were heard by the Board of Zoning Adjustment (BOZA) on February 2, 2015. The proposal is for the construction of the Speckman Road Strip Center and the creation of a drive-thru along the northern side of the building. The building will be 10,920 SF with a restaurant comprising 3,000 SF and the remainder of the building containing retail space. The site fronts on Speckman Road, a local level road maintained by the City of Middletown. Blankenbaker Parkway lies just to the west over a large median.

Existing Zoning District: C-1, Commercial  
Proposed Zoning District: N/A  
Form District: Neighborhood  
Existing Use: Vacant  
Proposed Use: Retail, Restaurant with drive-thru  
Minimum Parking Spaces Required: 56  
Maximum Parking Spaces Allowed: 113  
Parking Spaces Proposed: 56

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject Property</b>			
<b>Existing</b>	Vacant	C-1	N
<b>Proposed</b>	Retail/Restaurant with drive-thru	N/A	N/A
<b>Surrounding Properties</b>			
<b>North</b>	Single Family Residential	R-4	N
<b>South</b>	Bank	C-1	N
<b>East</b>	Multi-Family Residential	R-6	N
<b>West</b>	Agricultural	R-4	N

**PREVIOUS CASES ON SITE**

- 9-70-00: General District Development Plan for Memory Place Multi-Use Development, including the apartments, bank, and subject site.
- 17086: Detailed District Development Plan and Waivers for the bank
- 14VARIANCE1113: Variances for this same proposal

**INTERESTED PARTY COMMENTS**

- Staff has not received any inquiries from interested parties.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020  
Land Development Code

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1  
to omit the sidewalk along Speckman Road (LDC Section 5.8.1.B)**

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

STAFF: The waiver will not adversely affect adjacent property because there is already a sidewalk provided along Blankenbaker Parkway. The proposed building will provide a pedestrian connection to this sidewalk.

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

STAFF: The waiver will not violate the Comprehensive Plan because of all that is set forth in staff's analysis of the RGDDP and DDDP in regards to applicable Guidelines and Policies of Cornerstone 2020.

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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the applicant would otherwise have to construct another sidewalk when one already exists along the main thoroughfare.

- (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: Strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the adjoining property owner to the south connects to the sidewalk along the main thoroughfare and sits in a similar location to that of this proposal.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2  
to waive the 35' LBA, plantings, and screen along the north property line (LDC Section 10.2.4)**

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

STAFF: The waiver will not adversely affect adjacent property owners because the adjacent property is heavily wooded with the home being a good distance away.

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

STAFF: The waiver will not violate the Comprehensive Plan because of all that is set forth in staff's analysis of the RGDDP and DDDP in regards to applicable Guidelines and Policies of Cornerstone 2020.

- (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 because it allows the drive-thru lane as needed for the restaurant use.

- (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: 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 because the nearest homeowner to the north is buffered by wooded areas on large residential lot.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3  
to waive the 35' LBA, plantings, and screen along the east property line (LDC Section 10.2.4)**

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

STAFF: The waiver will not adversely affect adjacent property because the encroachment by the VUA is necessary to connect to the private street at the rear of the site and landscaping will be provided on the apartments lot to the east which is also owned by the owner of this lot.

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

STAFF: The waiver will not violate the Comprehensive Plan because of all that is set forth in staff's analysis of the RGDDP and DDDP in regards to applicable Guidelines and Policies of Cornerstone 2020.

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

STAFF: The extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the development requires the VUA that will encroach into this landscaping area for vehicle maneuverability on the site.

- (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: Strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as this encroachment does not affect the adjoining property owner.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #4  
to waive the 10' VUA LBA, plantings, and screen along the west property line (LDC Section 10.2.10)**

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

STAFF: The waiver will not adversely affect adjacent property owners because the nearest adjoining property owner that would be affected is across two streets and includes a grassy median. The home across the streets is not directly across from the parking spaces and would not be affected by vehicles facing their property.

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

STAFF: The waiver will not violate the Comprehensive Plan because of all that is set forth in staff's analysis of the RGDDP and DDDP in regards to applicable Guidelines and Policies of Cornerstone 2020.

- (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 because the development requires the space at this point to allow proper vehicle maneuverability and adequate parking spaces on the site.

- (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: 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 because the adjacent property owner is across two streets and a grassy median and would not be affected by the requested Waiver.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #5  
to allow the easements to overlap the LBA by more than 50% (LDC Section 10.2.4)**

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

STAFF: The waiver will not adversely affect adjacent property owners because the adjacent property is heavily wooded with the home being a good distance away.

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

STAFF: The waiver will not violate the Comprehensive Plan because of all that is set forth in staff's analysis of the RGDDP and DDDP in regards to applicable Guidelines and Policies of Cornerstone 2020.

- (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 because the development cannot be completed without the easement being allowed to be located in this area to cover the existing utility infrastructure.

- (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: 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 because the nearest homeowner to the north is buffered by wooded areas on large residential lot.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR RGDDP, DDDP AND BINDING  
ELEMENTS**

- 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: The proposal conserves as many natural resources as possible that currently exist on the site while still allowing the development.

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

STAFF: Safe and efficient vehicular and pedestrian transportation is provided by the sidewalks and vehicular access to the public road network through the entrances provided on the site.

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

STAFF: Open space is not required for this proposal.

- 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: MSD has approved the drainage facilities for the site.

- 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 is compatible with existing commercial development in this area. The building is located to allow proper vehicle maneuverability and though several landscaping requirements are being waived, the lack of those required elements is mitigated by the distance of adjacent property owners and landscaping and screening provided on adjacent properties.

- 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: This development conforms to the intent of the Neighborhood Form District and the Comprehensive Plan as it would be in a neighborhood center and basically located along a minor arterial level street as Speckman Road acts more like a frontage road for the development. The wooded property to the north, the landscaping provided on the property to the east, and the distance of residential adjoining property owners from all sides but one mitigate the lack of landscaping and screening being provided on the site.

### TECHNICAL REVIEW

- The proposal complies with the requirements of the LDC with the exception of the Waivers.
- MSD and Transportation Review have given preliminary approval for the plan.

### STAFF CONCLUSIONS

#### Waivers, Revised General and Detailed District Development Plan and Binding Elements

Staff analysis in the standard of review section of the staff report indicates the proposed Waivers, RGDDP, DDDP and Binding Elements are justified.

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 for granting an RGDDP, DDDP and Binding Elements established in the Land Development Code.

#### Required Actions

- Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must **RECOMMEND** the City of Middletown **APPROVE** or **DENY** Waiver #1, #2, #3, #4, and #5 and the Revised General and Detailed District Development Plan and Binding Elements listed in the staff report.

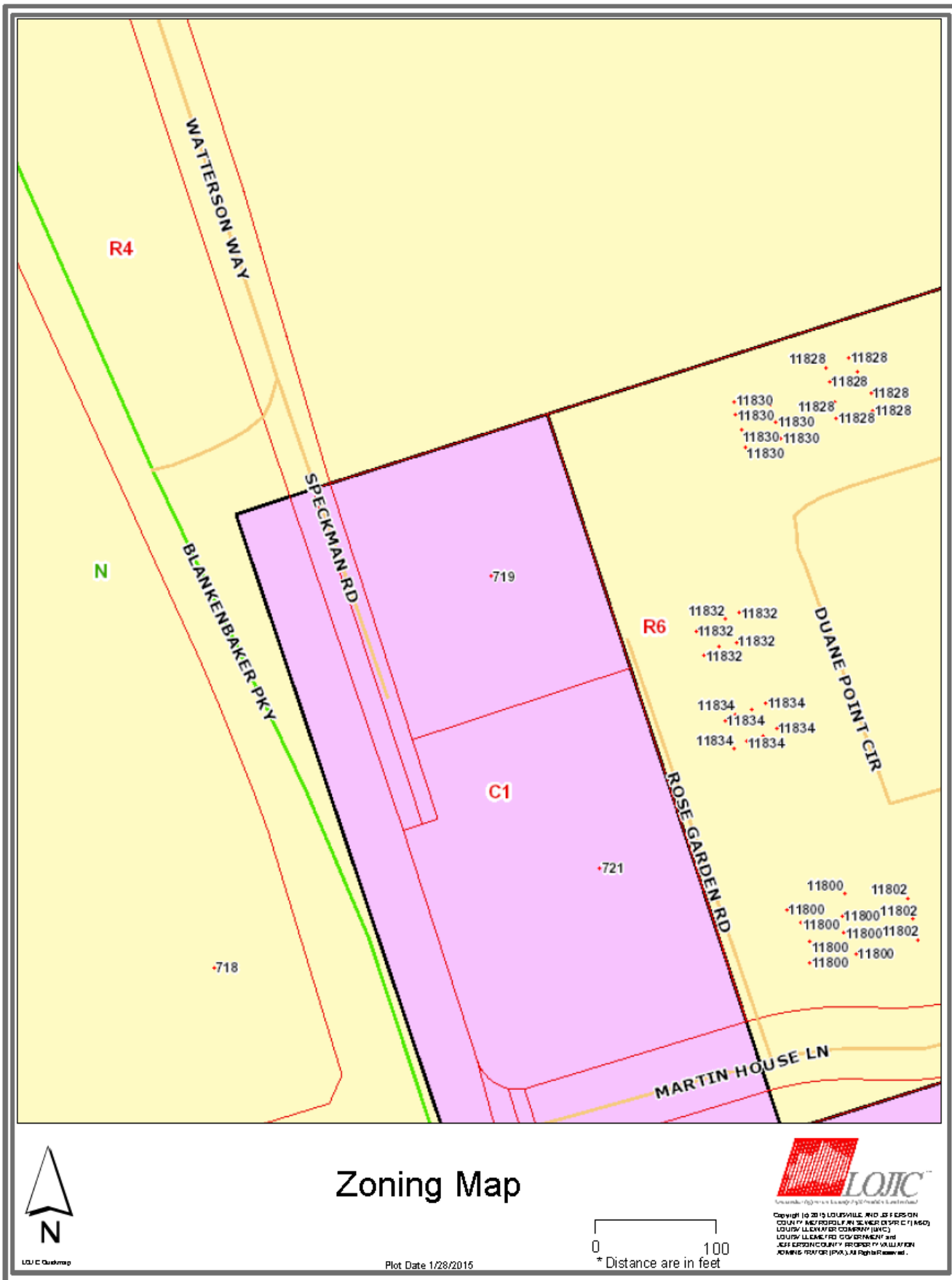
### NOTIFICATION

Date	Purpose of Notice	Recipients
1/15/15	Meeting before DRC	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers to Council District 20 Notification of Development Proposals

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

1. Zoning Map







### **3. Existing Binding Elements**

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission and to the City of Middletown for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Prior to development of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan from the Planning Commission. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
  - a. screening, buffering, landscaping, tree preservation
  - b. density, floor area, size and height of buildings
  - c. points of access and site layout with respect to on-site circulation
  - d. land uses
  - e. signage
  - f. loading berths
  - g. parking
  - h. sidewalks
  - i. site design elements relating to alternative transportation modes
  - j. outdoor lighting
  - k. minor subdivision plat approval
  - l. air pollution
  - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
  - n. dumpsters
3. The density of the development shall not exceed 15.94 dwelling units per acre (176 units on 11.04 acres).
4. The development shall not exceed 15,500 square feet of gross floor area for Tracts One and two combined.
5. There shall be no direct vehicular access to Blankenbaker Parkway.
6. The only permitted freestanding signs shall be monument style signs, located as shown on the approved detailed district development plan. Each commercial out lot is permitted one, 60 square foot and six feet tall monument sign. Except as permitted under Section 9.1 of the Development Code regarding signature entrance walks, the apartment lot is allowed one, six square foot and six feet tall monument sign. The signs shall not be closer than five feet to the front property lines. No sign shall have more than two sides.
7. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
8. There shall be no outdoor storage on the site.
9. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90 degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed two foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be

maintained on site at all times thereafter. Lighting fixtures shall be bollard style fixtures only, not to exceed four feet in height.

10. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' 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.
11. Before any permit (including but not limited to building, parking lot, change of use 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.
  - 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 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. An access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be secured from the adjoining property owner and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
12. 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 specifically waived by the Planning Commission and City of Middletown.
13. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
14. 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.
15. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
16. The dumpster shall not be emptied between the hours of 11 p.m. and 7 a.m.
17. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 4, 2012 Development Review Committee meeting. City of Middletown shall make the final determination as to conformity with structure design elements set forth in this binding element.

18. The above binding elements may be amended as provided for in the Zoning District Regulations, upon approval of the City Commission.

**4. Proposed Binding Elements**

17. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the ~~April 4, 2012~~ **February 4, 2015** Development Review Committee meeting **or as previously approved for the apartments and bank**. City of Middletown shall make the final determination as to conformity with structure design elements set forth in this binding element.