

# Development Review Committee

## Staff Report

November 5, 2014



Case No:	14DEVPLAN1094
Request:	Revised General District Development Plan, Detailed District Development Plan, Binding Element Amendments, and Waivers
Project Name:	Murphy Oil Fuel Station
Location:	175 & 185 Outer Loop
Owner:	Wal-Mart Real Estate Business Trust
Applicant:	Greenberg Farrow
Representative:	Greenberg Farrow
Jurisdiction:	Louisville Metro
Council District:	13 – Vicki Aubrey Welch
Case Manager:	David B. Wagner – Planner II

### REQUEST

- Waiver to reduce the required 10' VUA LBA along the north property line to 6' per LDC Section 10.2
- Revised General District Development Plan
- Detailed District Development Plan
- Binding Element Amendments

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing a fuel station with a 1,200 SF kiosk at this location. The fuel station will be located on a future out lot on the Wal-mart site that is currently serving as parking for the development. The site is located close to the northwest corner of Outer Loop and New Cut Road. A Waiver has been requested to decrease the required 10' VUA LBA along the northern property line to 6'. The amendments to the General Plan Binding Elements are only to update them to the standard Binding Elements.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b>Subject Property</b>			
<b>Existing</b>	Off-Street Parking	C-2	RC
<b>Proposed</b>	Fuel Station	C-2	RC
<b>Surrounding Properties</b>			
<b>North</b>	Retail	C-2	RC
<b>South</b>	Retail	C-2	RC
<b>East</b>	Retail	C-1	RC
<b>West</b>	Retail	C-2	RC

### PREVIOUS CASES ON SITE

- 9-55-03: Re-zoning from c-1 to C-2, Form District Amendment from Neighborhood to Suburban Marketplace Corridor, General District Development Plan, and Binding Elements, Variances, and Waivers for retail.
- 18415: Variances for Wal-mart signs.
- 15037: Variances for Wal-mart signs.
- 14973: Variances for Wal-mart signs.

### INTERESTED PARTY COMMENTS

- Staff has received no inquiries from interested parties.

### APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

#### STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER to reduce the required 10' VUA LBA along the north property line to 6' per LDC Section 10.2

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

STAFF: The waiver will not adversely affect adjacent property owners as the adjoining property owners are other retail developments and their associated parking lots. Plantings will still be provided and no residential areas will be affected by the proposal.

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

STAFF: The waiver will not violate Cornerstone 2020. The other required landscaping will be provided along the other property lines which are surrounded by adjacent retail uses and their associated parking lots.

- (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 proposed building and canopy cannot move to the south or east due to existing easements. The fuel delivery truck route requires fuel trucks to pass north of and adjacent to the canopy. For the trucks to safely maneuver around the north side of the building while cars are parked at the fuel pumps requires a minimum 30' drive. Granting this Waiver will allow safe access for fuel delivery trucks to 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: 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. The proposed landscape island along the south property line has been increased from the required 10' to 15' in width.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP 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 site was cleared and prepared for the existing development on site. There are no existing natural resources on the site to be preserved.

- 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 access along the abutting internal drive. A general cross over access easement provides vehicular access to the public road network.

- 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 the surrounding area as it is being used for similar uses as were previously approved by the Planning Commission. The location of the fuel station will be compatible with the surrounding commercial retail uses. The site either complies with LDC regulations or would have approved Waivers per this application if approved.

- 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 as the proposal is compatible with the surrounding area and it is being used for similar uses as were previously approved by the Planning Commission. The surrounding area has been developed for commercial uses that complement the development. The proposed development includes appropriate uses and design for the Regional Center Form District.

## TECHNICAL REVIEW

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

## STAFF CONCLUSIONS

The proposal allows the development to be developed for uses which are similar to what was previously approved by the Planning Commission. There are no residential uses nearby that would be negatively impacted by the proposal and the design of the site and the uses on site are proper for a commercial development within an existing activity center.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Development Review Committee must **APPROVE** or **DENY** the proposal for a Revised General District Development Plan, Detailed District Development Plan and Amendment to Binding Elements, and Waiver.

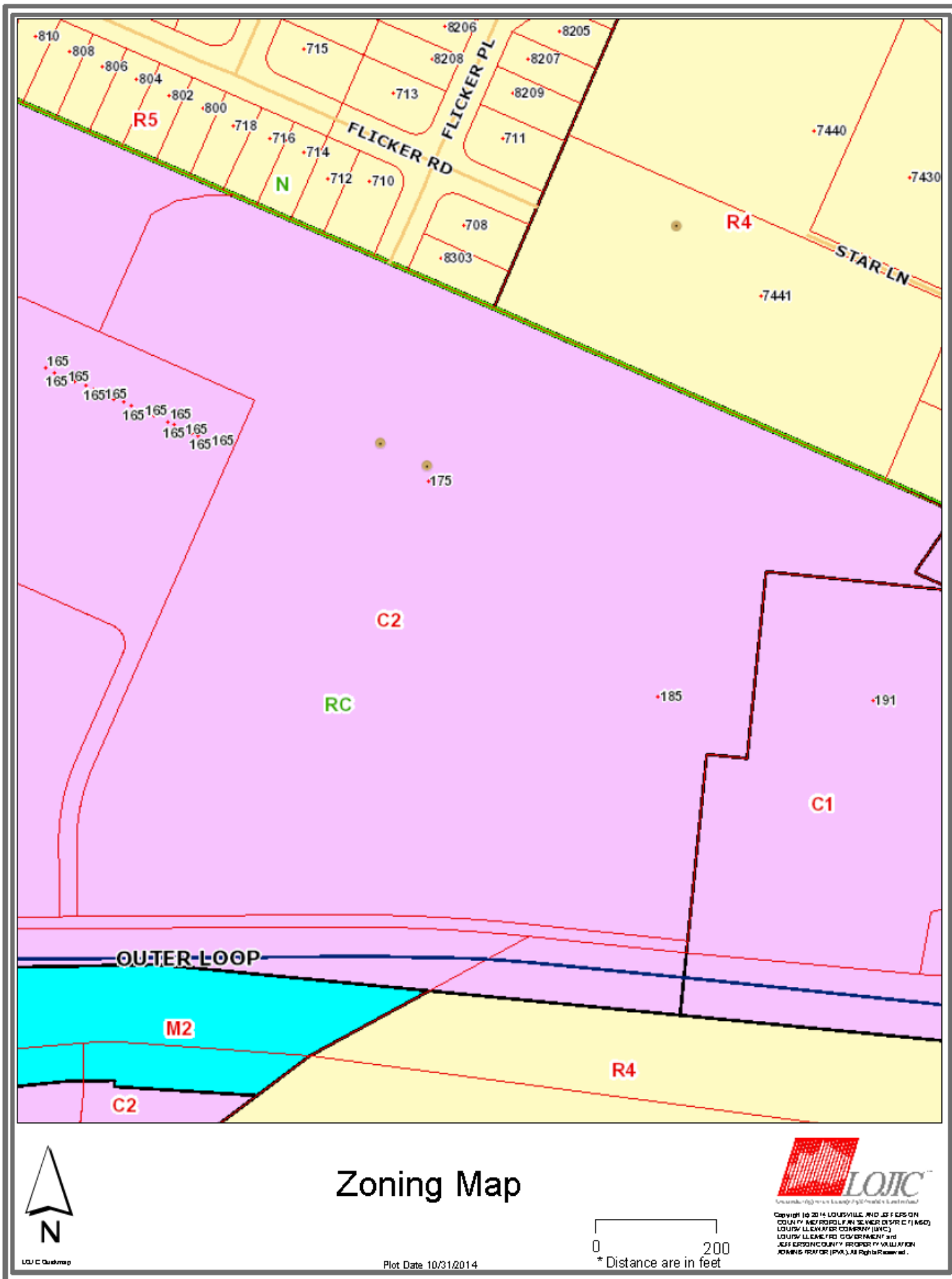
### NOTIFICATION

Date	Purpose of Notice	Recipients
10/21/14	Meeting before DRC	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Subscribers to Council District 13 Notification of Development Proposals

### ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing General Plan Binding Elements
4. Proposed Amendments to General Plan Binding Elements
5. Proposed Detailed Plan Binding Elements

1. **Zoning Map**



2. Aerial Photograph



### **3. Existing General Plan 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 for review and approval; any changes/additions/alterations not so referred shall not be valid. Fourteen (14) days prior to the submittal to the Planning Commission, a copy of any changes/additions/alterations of any binding elements or any proposed changes to any provisions of the approved detailed development plan shall be served on the designated representative of any applicable neighborhood association registered with the Planning Commission and such adjoining property owners as required by regulation.
2. The development shall not exceed 248,020 square feet of enclosed gross floor area and 24,100 square feet of fenced seasonal sales/storage area.
3. There shall be no new freestanding signs permitted on the Wal-Mart site except as allowed in the Land Development Code for the Suburban Marketplace Form District.
4. Except 30 days prior to, and 30 days after, grand opening, there shall be no temporary or permanent signs, including but not limited to outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
5. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
6. 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.
7. 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 each 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.
8. 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 the Louisville Metro Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in the Land Development Code prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
9. Except as respects the wetlands mitigation areas, if work is required within easements on the developed portion of the site causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan. The site may not be developed except in accordance with a Corps of Engineers issued Wetlands Permit.

10. Any landscape screening and buffering plan required under the Land Development Code shall also include all of the details shown on the concept landscape screening and buffering plan for the rear of the building produced at the December 4, 2003 public hearing. The wall shown therein shall be a brick patterned masonry material, 8 feet in height, colored the same as the Wal-Mart building. The developer shall work with the Planning Commission to assure that the wall is topped in such a way as to discourage use by skateboarders. The wall shall connect with a chain link fence to the fence on the adjoining Cook property to help assure a secure perimeter.
11. Any dumpster shown on the development plan shall be enclosed on all four sides and shall be secured so that it is not available for use by the public other than Wal-Mart and/or gas station customers.
12. Security shall be assured in the parking lots through use of continuous feed video cameras.
13. The gas pump canopy shall be of a size no greater than shown on the approved development plan and covered with a canopy of a design and color scheme as shown on the photograph/rendering produced at the December 4, 2003 public hearing.
14. The garden center shall be fully fenced in, in accordance with the rendering/photograph shown at the December 4, 2003 public hearing. There shall be no parking lot storage or sale of product and no trailers used for storage purposes or storage units located on the property.
15. The Wal-Mart building shall be of a style, design and color scheme as shown on the elevation renderings produced at the December 4, 2003 public hearing.
16. 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.
17. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor P.A. system except the latter for emergency purposes and except for the pharmacy in which case the P.A. system shall not be audible past the point of the truck loading area.
18. Developer/property owner shall replace any trees or shrubs as required pursuant to the Land Development Code and these binding elements, as needed to assure that the landscape plan, including number and location of trees and shrubs, is maintained.
19. The only permitted C-2 uses shall be those listed in the C-I Zoning District Regulation plus building materials/home improvement and automobile and tire repair with more than 2 bays. Specifically prohibited are adult entertainment establishments as defined in the Land Development Code and stores that sell adult items and apparel that have many of the attributes of adult entertainment businesses yet may not require an adult entertainment license.
20. A sidewalk shall be installed along the length of the subject property's Outer Loop frontage and, to the extent legally possible, within existing right-of-way also along the Outer Loop to New Cut Road to the east and to Candleworth Drive to the west.
21. Dumpsters and/or trash compactors shall not be emptied, removed or delivered between 7:00 p.m. and 7:00 a.m. There shall be no overnight truck idling on the site and no truck idling within 200 feet of single family residences.



22. Rooftop HVAC units shall be screened with a 6-foot-high masonry parapet wall at the rear with a screen of lesser height on the other three sides.
23. The property owner(s) shall work with neighborhood organizations on a plan to try to discourage use of the wetlands/open space area by trespassers/intruders, especially those presently using it for all terrain vehicle and other recreational purposes.
24. The legal description to the rezoned area shall exclude the wetlands mitigation area.
25. Lighting under the gas canopy shall be recessed.
26. The applicant shall return for approval to LD&T with the canopy design.
27. Boxes and pallets shall be enclosed on three sides with a masonry wall and chain link gate.
28. No activities other than sitting, eating, visiting and walking shall be permitted in parking lot amenity areas.

**4. Proposed Amendments to General Plan Binding Elements**

2. ~~The development shall not exceed 248,020 square feet of enclosed gross floor area and 24,100 square feet of fenced seasonal sales/storage area.~~ **The development shall not exceed 248,020 square feet of enclosed gross floor area, 24,100 square feet of fenced seasonal sales/storage area, and 1,200 square feet of enclosed fuel station kiosk.**
3. There shall be no new freestanding signs permitted on the Wal-Mart site except as allowed in the Land Development Code for the ~~Suburban Marketplace~~ **Regional Center** Form District.
13. The gas pump canopy shall be of a size no greater than shown on the approved development plan and covered with a canopy of a design and color scheme as shown on the photograph/rendering produced at the ~~December 4, 2003 public hearing~~ **November 5, 2014 Development Review Committee meeting.**
- ~~26. The applicant shall return for approval to LD&T with the canopy design.~~

**5. Proposed Detailed Plan Binding Elements**

**All binding elements from the approved General Development Plan are applicable to this site, in addition to the following:**

1. The development shall be in accordance with the approved 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. 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.

3. 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 Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. A minor subdivision plat shall be recorded creating the 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 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.
  - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. 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.
  - 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.
4. Prior to any site disturbance permit being issued and prior to any clearing, grading or issuance of a site disturbance permit, a site inspection shall be conducted by PDS staff to ensure proper placement of required tree protection fencing in accordance with the approved Tree Preservation Plan.
5. 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.
6. 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.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 5, 2014 Development Review Committee meeting.