

Planning Commission

Staff Report

April 21, 2022



Case No:	21-DDP-0125
Project Name:	Bohannon Warehouses
Location:	13915, 14201 & 15012 Bohannon Avenue
Owner(s):	LDG Land Holdings LLC
Applicant:	LDG Land Holdings LLC
Jurisdiction:	Louisville Metro
Council District:	14 – Cindi Fowler
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Modified Variance** from 4.8.4 to allow encroachment into a stream buffer beyond what was previously permitted (22-VARIANCE-0035)
- **Major Preliminary Subdivision** (21-MSUB-0027)
- **Revised Detailed District Development Plan** and revised Binding Elements

CASE SUMMARY

The subject site is located at the terminus of Lewis Lane, across Weaver Run from Riverport Phase 5, and at the terminus of Bohannon Avenue. The applicant proposes five new warehouses with associated parking on the site, with a major preliminary subdivision to subdivide the site and dedicate the extension of Lewis Lane as public right-of-way.

STAFF FINDING

The modified variance is adequately justified and meets the standard of review. The major preliminary subdivision meets the requirements of the Land Development Code. The revised detailed district development plan meets the guidelines of the Comprehensive Plan and, with the exception of the variance, the requirements of the Land Development Code.

TECHNICAL REVIEW

MSD and Transportation Planning have provided preliminary approval of the proposal. The site was rezoned in 2021 from R-4 and M-2 to EZ-1, with an associated form district change from Neighborhood to Suburban Workplace, under docket 20-ZONE-0069. The applicant at the time proposed five new warehouses with a different configuration than what is proposed now, and no subdivision or dedication of right-of-way. A variance was granted at the time to encroach into the 100' stream buffer around Weaver Run. The modified variance would increase the encroachment as shown on the development plan.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR MODIFIED VARIANCE

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect the public health, safety or welfare as the area of encroachment is already disturbed land with impervious surface, and so additional impacts to the stream will be largely avoided.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as the area of the encroachment is not pristine riparian vegetation but is already disturbed land.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the proposed encroachment is unlikely to increase run-off into the stream, as the area of encroachment is already disturbed land.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the encroachment will not disturb undisturbed land, but be on an area which is already impervious surface.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the site was partially developed in the past and the encroachment area is already disturbed impervious surface.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the encroachment is necessitated by the layout of the lot and the buildings. A partial encroachment has already been approved.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction.

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: The site is already mostly cleared. Weaver Run is located to the north-west of the site, and will be partially impacted by the development. However, the area of the encroachment is already impervious surface and so new impacts should be minimized. No other natural resources are evident on the 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 has been provided. Louisville Metro Public Works has provided preliminary approval of the plan.

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

STAFF: No open space provisions are relevant to the 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: The Metropolitan Sewer District has approved the preliminary development plan and will ensure 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.

- 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 overall site design and land uses would be compatible with the existing and future development of the area, as Riverport Phase 5 is located to the immediate north-west of the site and the proposal would extend a developing industrial subdivision.

- 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 development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code, with the exception of a requested variance.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Major Preliminary Subdivision**
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan** and new Binding Elements

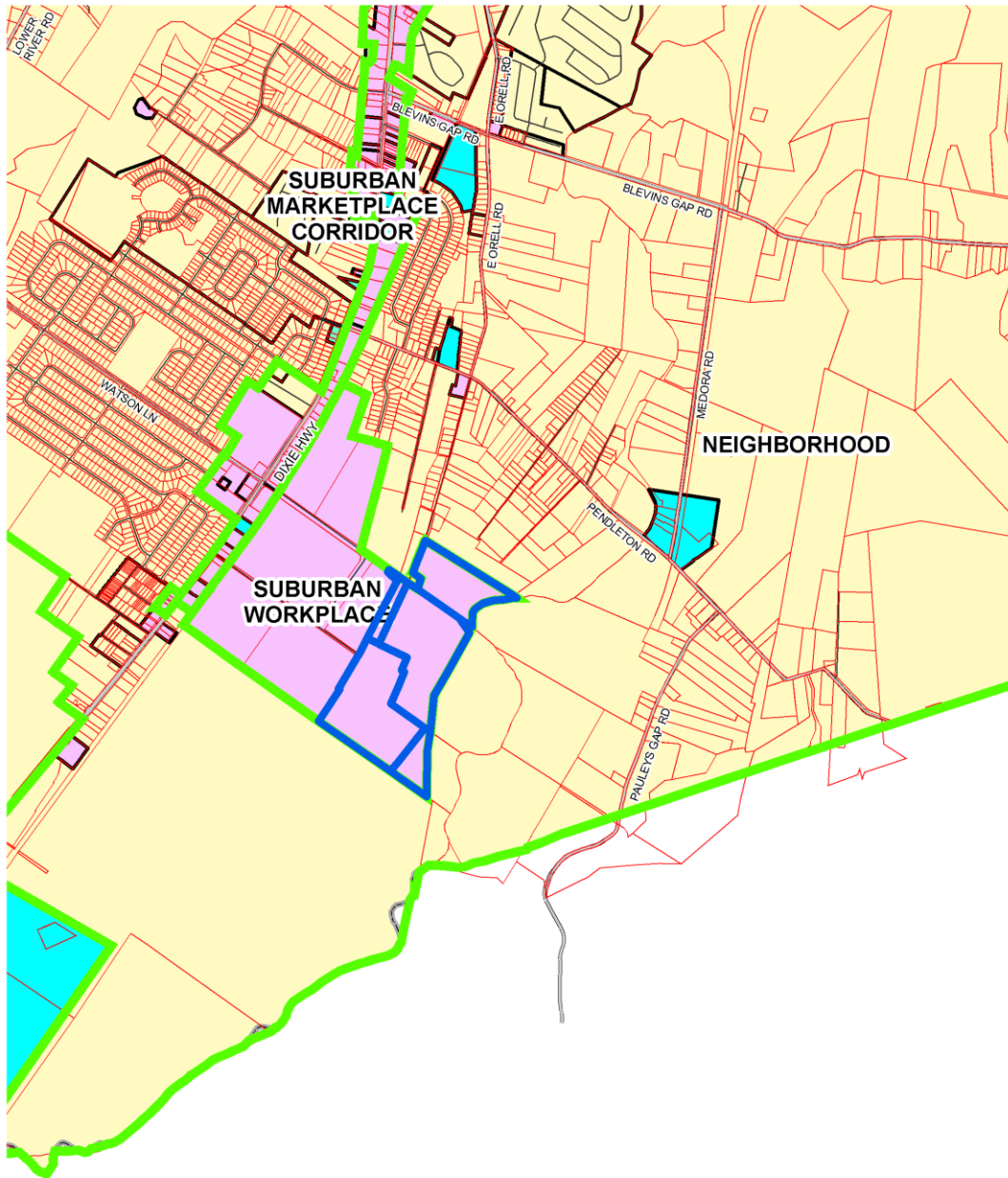
NOTIFICATION

Date	Purpose of Notice	Recipients
03/30/2022	Hearing before DRC	1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 14

ATTACHMENTS

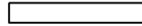
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Binding Elements

1. Zoning Map



Bohannon Warehouses

feet



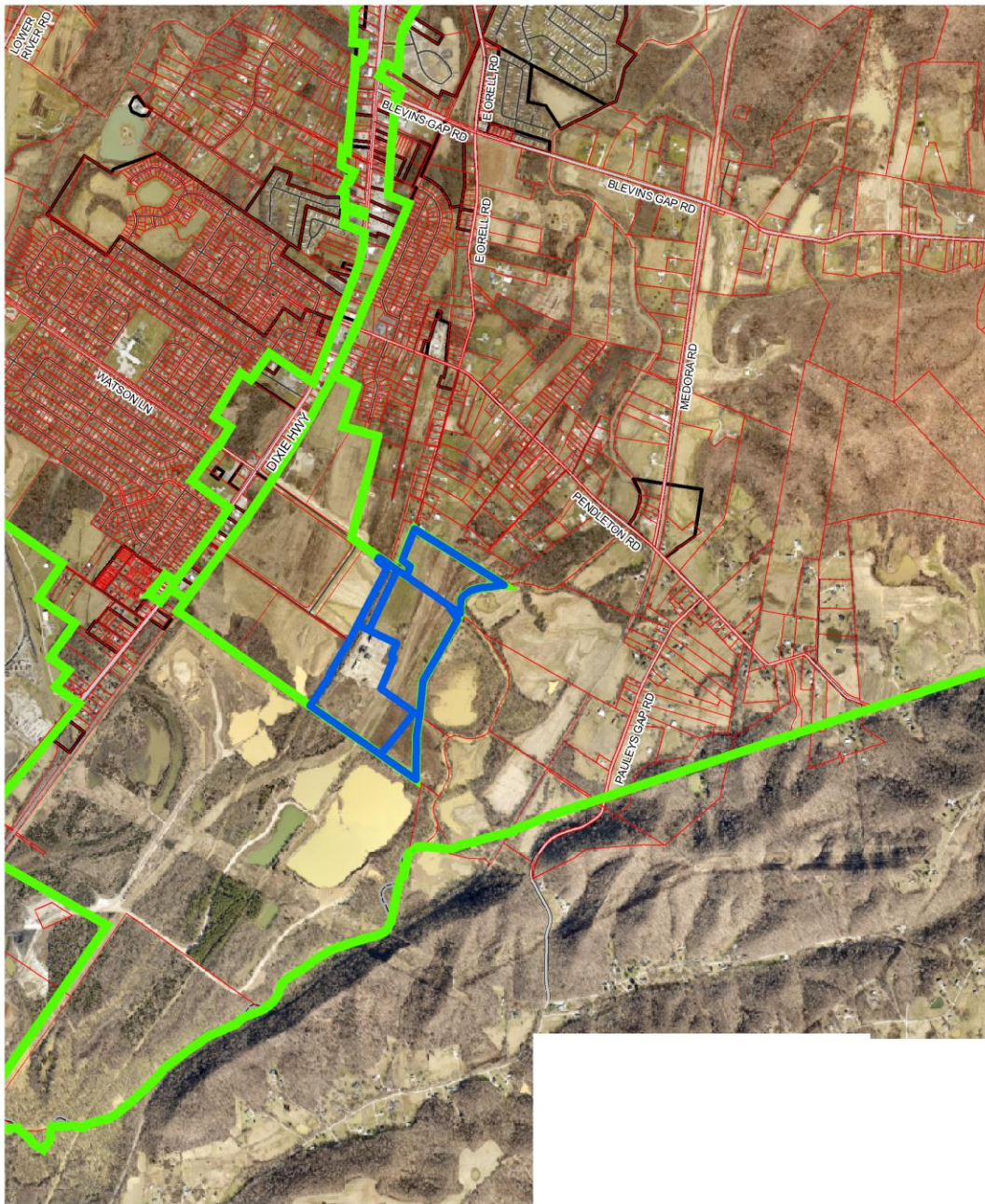
1,900

Map Created: 4/14/2022



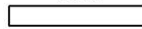
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2. Aerial Photograph



Bohannon Warehouses

feet



1,900

Map Created: 4/14/2022



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3. Existing Binding Elements

20-ZONE-0069

1. The site shall be maintained in accordance with all applicable sections of the Land Development Code (LDC) and agreed-upon binding elements unless amended pursuant to the LDC. Amendment of any binding element(s) shall be submitted to the Planning Commission or its designee for review and approval; any amendments not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons or banners shall be permitted.
3. 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.
4. Before any permit is requested, including but not limited to permits for building, parking lot, change of use, site disturbance, alteration or demolition:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District,
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways for any work within the state right-of-way.
 - ~~c. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.~~
 - 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. Portions of Bohannon Avenue shown on the approved development plan to be closed shall be reviewed by the Planning Commission and recorded prior to requesting a permit~~
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 a copy of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development and/or use of this site and shall advise all parties of their content. 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. These binding elements shall run with the land and the owner(s) and occupant(s) of the property shall at all times be responsible for compliance with them.

7. No overnight idling within 200 ft. of residential property lines.
8. No access shall be permitted to Bohannon Avenue, except for emergency vehicles and pedestrians.
9. At the time of development, the following restoration standards shall be met:
 - a. Riparian vegetation shall be planted, as necessary, to stabilize the banks of a protected waterway within a Buffer Area. Where a bank is denuded of its vegetation due to erosion, slope failure or similar occurrence, appropriate vegetation shall be planted to quickly establish a vegetative cover, and then replanted with riparian vegetation to ensure the long-term stabilization of the bank. Restoration plantings shall be selected from the MSD native species restoration specifications.
 - b. Where stream bank erosion has occurred as a result of on-site development activities, riparian vegetation shall be planted to stabilize the stream bank unless MSD determines such vegetation would be inadequate to re-stabilize the bank. In instances where the MSD determines that planting of riparian vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the MSD shall be utilized.
 - c. Stream, stream bank, and vegetation restoration projects are allowed where the goal is to restore the protected waterway, wetlands, or Buffer Area to an ecologically healthy state, as approved by MSD.
10. Tree and Vegetation Removal.
 - a. Existing, healthy trees and vegetation within the Buffer Area shall be preserved, except for those areas designated by the Limits of Disturbance on the approved district development plan. Trees and vegetation shall be restored in accordance with Binding Element #9 for all areas within the buffer that lie between impervious surfaces and the Limits of Disturbance.
 - b. This provision shall not prohibit any of the following: Removal of dead or diseased trees/vegetation (provided a live root system stays intact); removal of noxious weeds; Removal of non-native trees/vegetation that threaten native species growth or reintroduction; removal of fallen trees, tree limbs, brush and similar debris that accumulate naturally in river/stream beds and that impede river/stream flow, or removal of any other tree/vegetation that is a threat to the public health or safety; Removal of trees as part of an approved plan for stream side recreation or access (e.g. pedestrian trail) or as part of an approved utility or road construction project.
11. Before development of **Buildings Tracts #3 and #4**, or the buildings nearest the home in the northeast corner of the site, a landscape plan will be reviewed and approved by the Louisville Metro Planning Commission or a Committee thereof. This requirement for **Building Tract #3** shall be null and void should the property to the west of **Building Tract #3** cease being used as a residence.

4. Proposed Binding Elements

1. The site shall be maintained in accordance with all applicable sections of the Land Development Code (LDC) and agreed-upon binding elements unless amended pursuant to the LDC. Amendment of any binding element(s) shall be submitted to the Planning Commission or its designee for review and approval; any amendments not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons or banners shall be permitted.
3. 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.
4. Before any permit is requested, including but not limited to permits for building, parking lot, change of use, site disturbance, alteration or demolition:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District,
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways for any work within 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 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 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. An easement providing public access to the easement labeled on the plan as 55' Access & Utility Easement containing the Louisville Loop extension down Lewis Lane, for the purpose of providing public access to the Loop, in a form acceptable to Planning Commission legal counsel shall be created and recorded.
 - g. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 21, 2022 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
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 a copy of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development and/or use of this site and shall advise all parties of their content. 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. These binding elements shall run with the land and the owner(s) and occupant(s) of the property shall at all times be responsible for compliance with them.
7. No overnight idling within 200 ft. of residential property lines.
8. No access shall be permitted to Bohannon Avenue, except for emergency vehicles and pedestrians.
9. At the time of development, the following restoration standards shall be met:
 - a. Riparian vegetation shall be planted, as necessary, to stabilize the banks of a protected waterway within a Buffer Area. Where a bank is denuded of its vegetation due to erosion, slope failure or similar occurrence, appropriate vegetation shall be planted to quickly establish a vegetative cover, and then replanted with riparian vegetation to ensure the long-term stabilization of the bank. Restoration plantings shall be selected from the MSD native species restoration specifications.
 - b. Where stream bank erosion has occurred as a result of on-site development activities, riparian vegetation shall be planted to stabilize the stream bank unless MSD determines such vegetation would be inadequate to re-stabilize the bank. In instances where the MSD determines that planting of riparian vegetation is inadequate to stabilize the stream bank alternate methods of stabilization, approved by the MSD shall be utilized.
 - c. Stream, stream bank, and vegetation restoration projects are allowed where the goal is to restore the protected waterway, wetlands, or Buffer Area to an ecologically healthy state, as approved by MSD.
10. Tree and Vegetation Removal.
 - a. Existing, healthy trees and vegetation within the Buffer Area shall be preserved, except for those areas designated by the Limits of Disturbance on the approved district development plan. Trees and vegetation shall be restored in accordance with Binding Element #9 for all areas within the buffer that lie between impervious surfaces and the Limits of Disturbance.
 - b. This provision shall not prohibit any of the following: Removal of dead or diseased trees/vegetation (provided a live root system stays intact); removal of noxious weeds; Removal of non-native trees/vegetation that threaten native species growth or reintroduction; removal of fallen trees, tree limbs, brush and similar debris that accumulate naturally in river/stream beds and that impede river/stream flow, or removal of any other tree/vegetation that is a threat to the public health or safety; Removal of trees as part of an approved plan for stream side recreation or access (e.g. pedestrian trail) or as part of an approved utility or road construction project.
11. Before development of Tracts #3 and #4, or the buildings nearest the home in the northeast corner of the site, a landscape plan will be reviewed and approved by the Louisville Metro Planning Commission or a Committee thereof. This requirement for Tract #3 shall be null and void should the property to the west of Tract #3 cease being used as a residence.

12. 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.
13. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
14. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
15. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, 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.