

# Development Review Committee

## Staff Report

July 16, 2014



<b>Case No:</b>	14MOD1005
<b>Project Name:</b>	8213 Shelbyville Road
<b>Location:</b>	8213 Shelbyville Road
<b>Owner:</b>	Neal Campbell
<b>Applicant:</b>	Same as owner
<b>Project Area/Size:</b>	8,973 sq. ft.
<b>Existing Zoning District:</b>	OR-1, Office/Residential
<b>Existing Form District:</b>	N, Neighborhood
<b>Jurisdiction:</b>	City of Lyndon
<b>Council District:</b>	18 – Marilyn Parker
<b>Case Manager:</b>	Matthew R. Doyle, Planner I

### REQUEST

- Amendment to Binding Element

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

The site is located in the 8200 block of Shelbyville Road between Whipps Mill Road and Holley Road. It is plan certain and the zoning was changed from R-5 to OR-1 in 2006.

The applicant is requesting to delete binding element 13 in Docket 9-57-06, which states the following:

13. The owner of 8213 Shelbyville Road shall grant a crossover access easement in a form acceptable to Planning Commission legal counsel, without requiring compensation of any kind, to the properties located at 8209, 8211, 8215, 8217, 8219, 8221, 8223, and 8225 Shelbyville Road. Such easement shall be recorded prior to transmittal of plans to the office responsible for permit issuance. The applicant further agrees to construct the access easement up to the common property lines with 8211 and 8215 Shelbyville Road within 180 days after the approval of this case by the City of Lyndon.

Similar binding elements were added to each of the properties between 8209 and 8225 Shelbyville Road when each one was granted a change in zoning. The basis of the binding elements in each case was a 1986 small area wide study prepared by the Planning Commission, which recommended that (1) each property be rezoned from residential to low impact office, not commercial; (2) maintain the character of the existing structures; and (3) limit the number of curb cuts on Shelbyville Road. Specifically, it stated that 8211-8225 Shelbyville Road properties would have a 22 foot access road in the rear of the property from either Whipps Mill Road or Holley Road.

After 9-57-06 was approved, Planning Commission staff sent a memorandum to each of the subject property owners listed in the binding element that clarified the intent of this binding element based on the discussion of the case during the Planning Commission hearing. The memo stated that each of the properties listed in the binding element were to provide and construct a rear crossover access easement agreement and limit access to and from Shelbyville Road to the existing drive and curb cut between 8211 and 8213 Shelbyville Road.

Earlier this year, DRC heard cases involving the adjacent properties at 8215-8219 Shelbyville Road. The request in those cases was to amend their respective binding elements, which required each property to close its vehicular access to Shelbyville Road once a rear easement is available off of Holley Road. Transportation

Planning wanted the subject properties to provide the cross connectivity between the sites along the rear, but that the individual driveways to Shelbyville Road could remain as long as the current structures also remain; furthermore, that access to Shelbyville Road will be unified upon redevelopment. Indeed, this was the outcome of those cases with the same binding element adopted. The binding element for 8215 Shelbyville Road is provided below for your review (the other two properties had the same language, but the addresses in their binding element were changed appropriately).

3a. The owner of 8215 Shelbyville Road shall grant a crossover access easement in a form acceptable to Planning Commission legal counsel, without requiring compensation of any kind, to the properties located at 8209, 8211, 8213, 8217, 8219, 8221, 8223, and 8225 Shelbyville Road. The applicant agrees to construct the access easement up to the common property lines with 8213 and 8217 Shelbyville Road within 180 days after the approval of this case by the City of Lyndon.

3b. A unified access system between adjoining properties shall be developed as the properties are redeveloped. The final design on the location and type of access shall be determined by Public Works and the Kentucky Transportation Cabinet as lots are redeveloped to ensure that future access complies with the Access Management Guidelines.

The applicant argues that none of the easements on any of the properties between 8209 and 8215 Shelbyville Road are necessary until all have a unified development plan and that the rear crossover access easements and ingress/egress easements can be addressed at that time.

Code Enforcement has had an open case on the subject property since September of 2013. The approved plan has never been fully implemented as the parking lots were never paved and striped and the easements were never granted and recorded.

**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>	Office	OR-1	N
<b>Proposed</b>	Office	OR-1	N
<b>Surrounding Properties</b>			
<b>North</b>	Single family residential	R-5	N
<b>South</b>	Church	R-4	N
<b>East</b>	Office	OR-1	N
<b>West</b>	Office	OR-1	N

**PREVIOUS CASES ON SITE**

9-57-06: Change in zoning from R-5 Single Family Residential to OR-1 Office/Residential and approval of a Detailed District Development Plan for an office using the existing building.

**INTERESTED PARTY COMMENTS**

Staff has not received any comments.

**APPLICABLE PLANS AND POLICIES**

Cornerstone 2020  
Land Development Code (March 2006)

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR AMENDMENT TO 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: Natural resources on the subject site would not be affected by the proposed change to the binding elements.

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

STAFF: The intent of Guideline 7 of the Comprehensive Plan is to provide for safe and proper functioning of the street network with a coordinated hierarchy of arterial, collector and local roads; to ensure that new developments do not exceed the carrying capacity of streets; to ensure that internal and external circulation of all new development provides safe and efficient travel movement by all types of transportation; to provide improved public transportation facilities; to address congestion and air quality issues; to ensure that transportation facilities are compatible with form district goals and objectives. More specifically, policies 12, 13, and 15-17 call for standards to address driveway and curb cut spacing; require joint and cross access easements according to standards set forth in the Land Development Code, to reduce traffic on major thoroughfares and to reduce safety hazards; encourage design standards that address design issues such as the minimum and maximum length and width and the gradient of driveways to ensure that the driveway or curb cut functions properly and is safe; promote joint access and circulation systems for development sites comprised of more than one building site or lot; and prevent safety hazards caused by direct residential access to high speed roadways. The proposal does not provide for safe and efficient vehicular and pedestrian transportation both within the development and the community since the site would not provide cross access easements according to standards set forth in the Land Development Code, to reduce traffic on major thoroughfares and to reduce safety hazards.

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

STAFF: Provisions for sufficient open space would not be affected by the proposed change to the binding elements.

- 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: Provisions of adequate drainage of facilities on the subject sites would not be affected by the proposed change to the binding elements and they will remain as previously approved.

- 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 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 would not be affected by the proposed change to the binding elements.

- 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 intent of Guideline 7 of the Comprehensive Plan is to provide for safe and proper functioning of the street network with a coordinated hierarchy of arterial, collector and local roads; to ensure that new developments do not exceed the carrying capacity of streets; to ensure that internal and external circulation of all new development provides safe and efficient travel movement by all types of transportation; to provide improved public transportation facilities; to address congestion and air quality issues; to ensure that transportation facilities are compatible with form district goals and objectives. More specifically, policies 12, 13, and 15-17 call for standards to address driveway and curb cut spacing; require joint and cross access easements according to standards set forth in the Land Development Code, to reduce traffic on major thoroughfares and to reduce safety hazards; encourage design standards that address design issues such as the minimum and maximum length and width and the gradient of driveways to ensure that the driveway or curb cut functions properly and is safe; promote joint access and circulation systems for development sites comprised of more than one building site or lot; and prevent safety hazards caused by direct residential access to high speed roadways. The proposal would violate the intent and specific policies of the Comprehensive Plan since the site would not provide cross access easements according to standards set forth in the Land Development Code, to reduce traffic on major thoroughfares and to reduce safety hazards.

### **TECHNICAL REVIEW**

N/A

### **STAFF CONCLUSIONS**

The request to delete binding element 13 in Docket 9-57-06 does not meet the standard of review and staff analysis and violates the intent and specific policies of Guideline 7 of the Comprehensive Plan. The proposed changes would undermine the justifications used to rezone the subject property, including a significant 1986 small area study by the Planning Commission. Docket 9-57-06 was justified in large part on the fact that the site would provide a crossover access easement in the rear to the adjacent properties, as well as provide in conjunction with 8211 Shelbyville Road the ingress/egress easement for the adjacent properties to access Shelbyville Road.

That said, however, a decision by DRC to release the ingress/egress easement requirement would be consistent with the recent decision in the cases involving 8215-8219 Shelbyville Road since their respective access points to Shelbyville Road were allowed to remain open, as long as the crossover access easement in the rear is granted and constructed.

Staff recommends the following binding element to replace binding element 13:

- 13a. The owner of 8213 Shelbyville Road shall grant a crossover access easement in a form acceptable to Planning Commission legal counsel, without requiring compensation of any kind, to the properties located at 8209, 8211, 8215, 8217, 8219, 8221, 8223, and 8225 Shelbyville Road. The applicant agrees to construct the access easement up to the common property lines with 8211 and 8215 Shelbyville Road within 180 days after the approval of this case by the City of Lyndon.
- 13b. A unified access system between adjoining properties shall be developed as the properties are redeveloped. The final design on the location and type of access shall be determined by Public Works and the Kentucky Transportation Cabinet as lots are redeveloped to ensure that future access complies with the Access Management Guidelines.

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 the Amendment to Binding Element.

### REQUIRED ACTIONS

- **APPROVE** or **DENY** the Amendment to Binding Element.

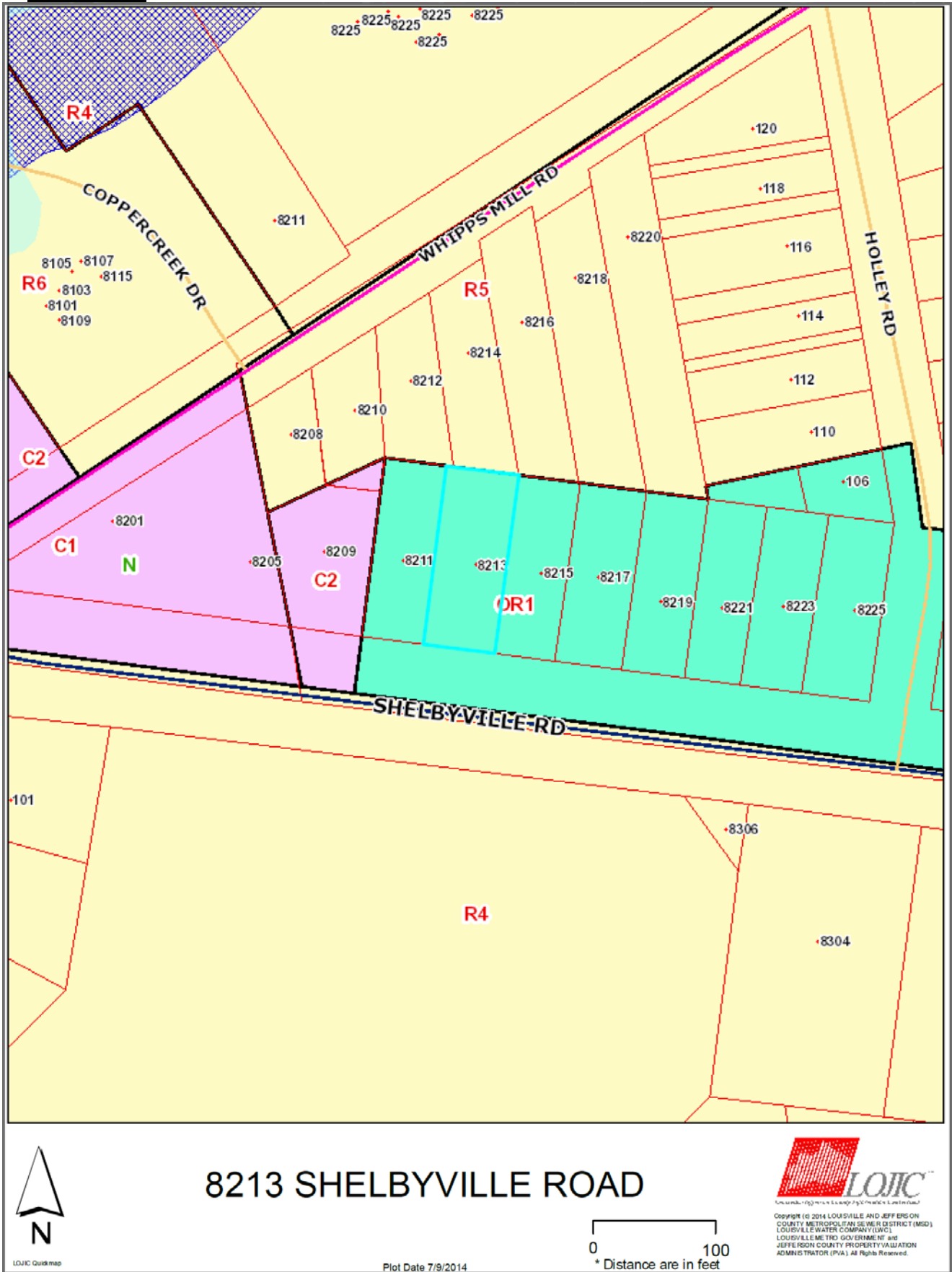
### NOTIFICATION

Date	Purpose of Notice	Recipients
6/30/14	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners Registered neighborhood groups

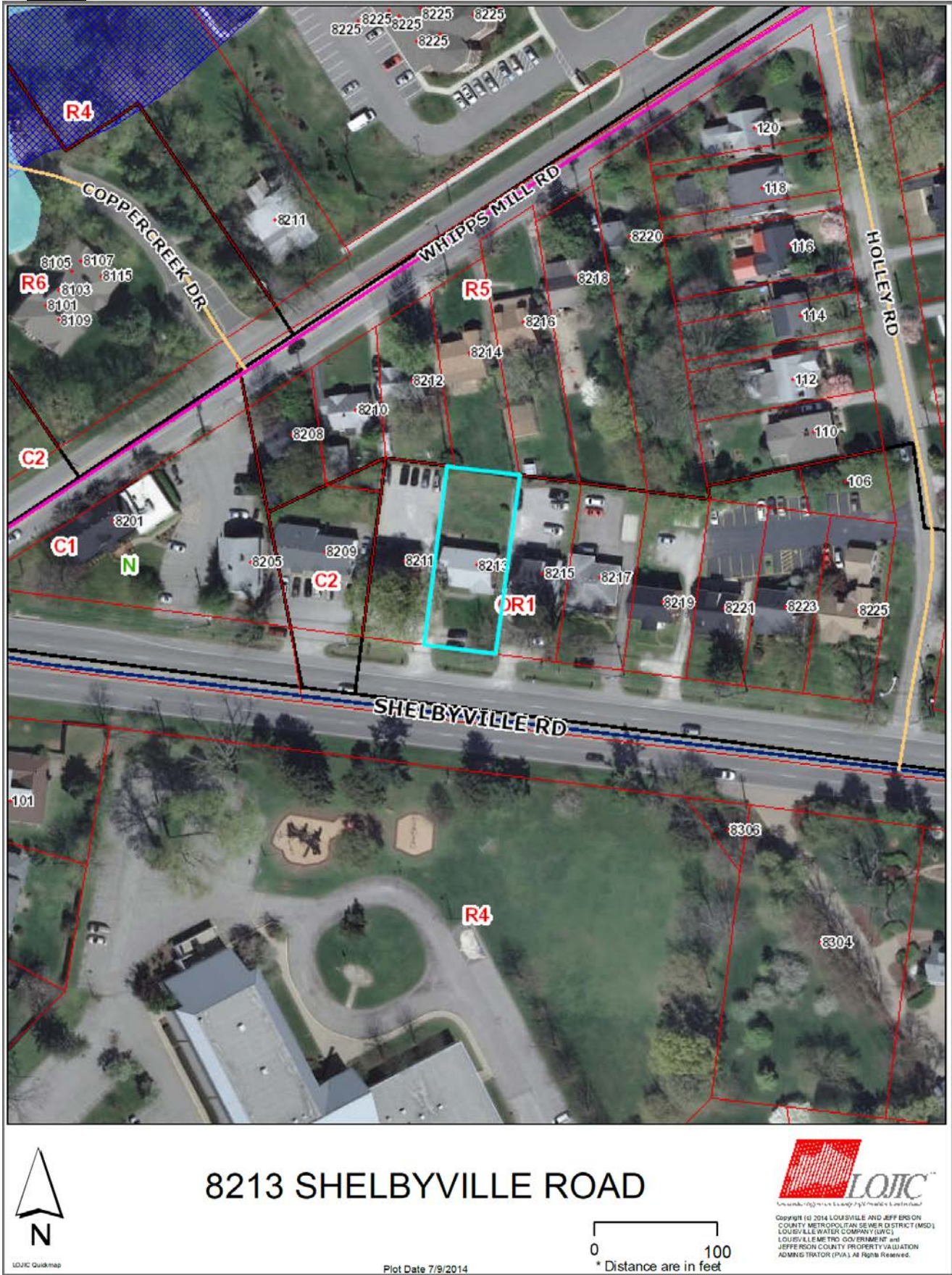
### ATTACHMENTS

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

1. Zoning Map



2. Aerial



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

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. The development shall not exceed 1,240 s.f. in size.
3. Signs shall be in accordance with Chapter 8.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. Before any permit (including but not limited to building, parking lot, change of use, or site disturbance 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. 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.
7. 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.
8. 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.
9. The residential character, as well as the materials and design of the structure shall be maintained as shown in the photos presented at the Public Hearing on March 1, 2007. Exterior additions or alterations shall require prior approval by the Planning Commission's Development Review Committee or by Planning and Design Services staff.
10. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval.



11. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
12. All street name signs, traffic control signs and pavement markings shall conform to the manual on uniform traffic control devices (MUTCD) requirements and be installed prior to construction of the first residence or building on the street and shall be in place at the time of the bond release. (The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.)
13. The owner of 8213 Shelbyville Road shall grant a crossover access easement in a form acceptable to Planning Commission legal counsel, without requiring compensation of any kind, to the properties located at 8209, 8211, 8215, 8217, 8219, 8221, 8223, and 8225 Shelbyville Road. Such easement shall be recorded prior to transmittal of plans to the office responsible for permit issuance. The applicant further agrees to construct the access easement up to the common property lines with 8211 and 8215 Shelbyville Road within 180 days after the approval of this case by the City of Lyndon.

**4. Proposed Binding Element**

- ~~13. The owner of 8213 Shelbyville Road shall grant a crossover access easement in a form acceptable to Planning Commission legal counsel, without requiring compensation of any kind, to the properties located at 8209, 8211, 8215, 8217, 8219, 8221, 8223, and 8225 Shelbyville Road. Such easement shall be recorded prior to transmittal of plans to the office responsible for permit issuance. The applicant further agrees to construct the access easement up to the common property lines with 8211 and 8215 Shelbyville Road within 180 days after the approval of this case by the City of Lyndon.~~