

Development Review Committee

Staff Report

February 6, 2019



Case No:	18DEVPLAN1200
Project Name:	First Watch Middletown
Location:	12913 Shelbyville Road
Owner(s):	W.M. Mooney, 12913 Louisville LLC.
Applicant:	Holland Development, LLC
Jurisdiction:	Louisville Metro
Council District:	19 – Anthony Piagentini
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUESTS:

1. **Waiver** of Land Development Code section 5.8.1.B to not provide the sidewalk along Shelbyville Road
2. **Revised Detailed District Development Plan with Binding Element Amendments**

CASE SUMMARY/BACKGROUND

The applicant is proposing to build a 4,332 square foot First Watch restaurant. The site is currently an Applebee's restaurant and is located in Middletown Station at the corner of Shelbyville Road and Data Vault Drive. The subject site is zoned C-1 and C-2 and is located in the Suburban Marketplace Corridor form district. Shelbyville Road is a Major Arterial maintained by KYTC and Data Vault Drive is a private road interior to Middletown Station.

Previous cases:

- 9-82-78: Change in zoning from R-4 Residential and C-1 Commercial to C-2 Commercial.
- 9-16-88: Change in zoning from OR-3 Office/Residential and R-4 Residential Single Family to C-1 Commercial for an Applebee's restaurant.

Staff recommends removal of General Plan Binding Element #2:

- ~~1. The development shall not exceed 730,245 of gross floor area. (Tract A to have 537,981 sf retail and 1,738 non-retail; Tract B to have 36,040 sf retail; Tract B1 to have 8,450 sf restaurant; Tract B2 to have 5,450 sf restaurant/bank; and Tract D to have 17,500 sf office. The remaining square footage is taken up by outlots.) Prior to the submittal of any detailed plan for tracts A, B, and D, an updated traffic study shall be submitted at the direction of Planning and Design staff.~~

STAFF FINDINGS

Staff finds that the waiver and detailed district development plan are adequately justified and meet the standard of review.

TECHNICAL REVIEW

Public Works and MSD have provided preliminary approval.

INTERESTED PARTY COMMENTS

Staff has received no interested party comments.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER FROM CHAPTER 5.8.1.B TO NOT PROVIDE THE SIDEWALK ALONG SHELBYVILLE ROAD:

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

STAFF: The waiver will not adversely affect neighboring property owners because there are no sidewalks in place along this portion of Shelbyville Road.

- (b) The waiver does not violate the Comprehensive Plan; and

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate.

The applicant is providing sidewalks along Data Vault Drive as well as well as internal to the site.

- (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 there are currently no sidewalks in place along Shelbyville Road and there is a culvert that runs parallel to the site which could possibly create construction issues.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR (R)DDDP

- (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 do 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. The proposed plan does not substantially alter the site or its natural resources.

- (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, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan. The

exception to this is the sidewalk along Shelbyville Road, for which the applicant has submitted a waiver request.

- (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 pertinent to the current 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 are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided.

- (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.

REQUIRED ACTIONS:

- **Recommend APPROVAL or DENIAL of the Waivers to the City of Middletown**
- **Recommend APPROVAL or DENIAL the Revised Development Plan and Binding Element Amendments to the City of Middletown**

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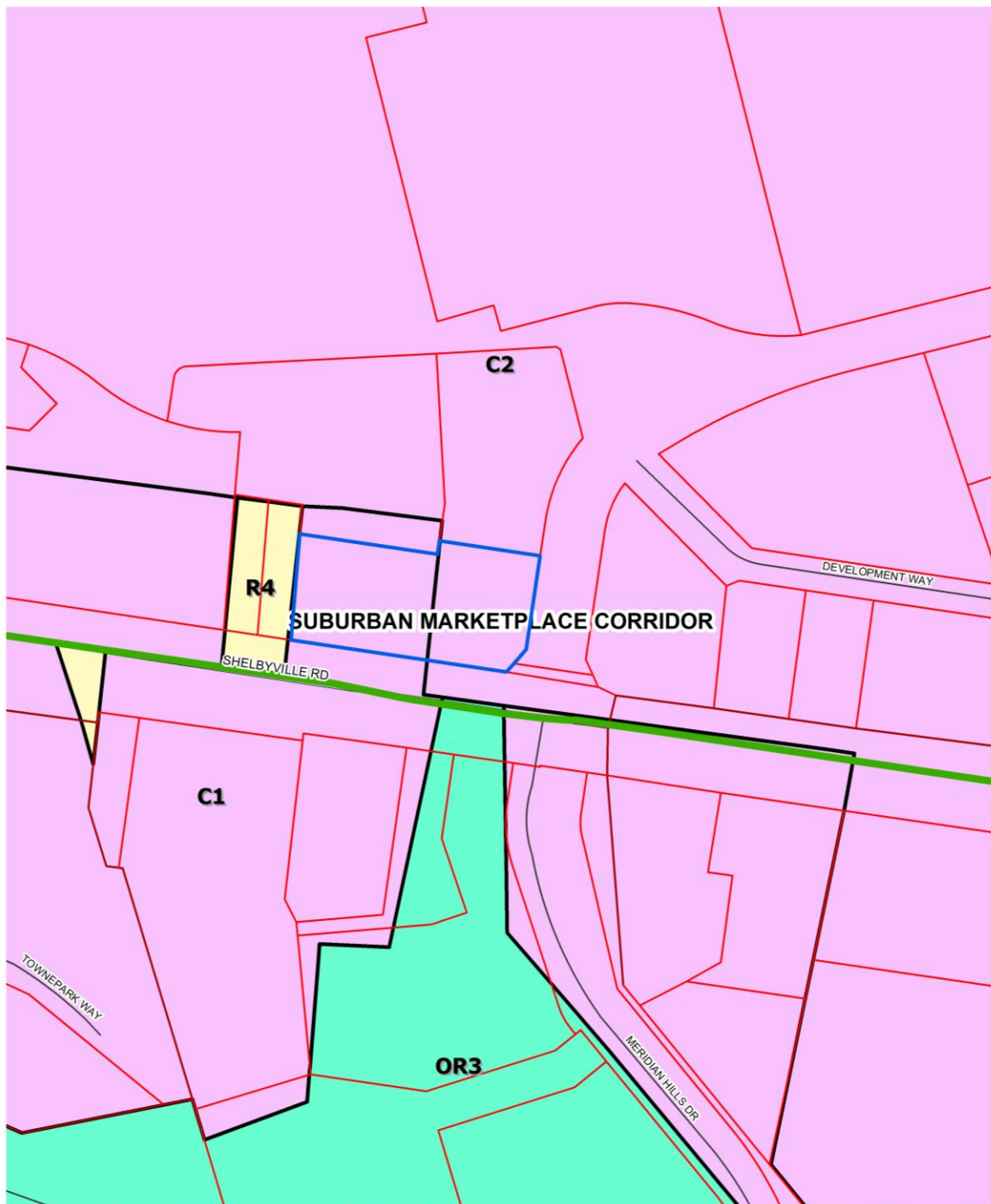
NOTIFICATION

Date	Purpose of Notice	Recipients
2-6-19	Hearing before DRC	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 19

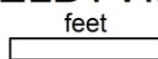
ATTACHMENTS

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

1. Zoning Map



12913 SHELBYVILLE ROAD



Map Created: 1/31/2019



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COUNTY METROPOLITAN SEWER DISTRICT (MSD),
LOUISVILLE WATER COMPANY (LWC),
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2. Aerial Photograph



12913 SHELBYVILLE ROAD

feet



190
Map Created: 1/31/2019



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3. Existing General Plan Binding Elements

1. The following uses permitted in a C-2 district will not be allowed in any phase of Middletown Station Center:
 - a. Bowling alleys
 - b. Ice storage houses
 - c. Funeral homes
 - d. Veterinary hospitals
 - e. Automobile garages and used car sales area, except as part of a new automobile sales agency
 - f. Dance halls
 - g. Kennels
 - h. Monument sales
 - i. Plumbing and heating shops
 - j. Refrigerated lockers
 - k. Sign painting
 - l. Skating rinks
 - m. Storage garages
 - n. Trade schools
 - o. Upholstery and furniture repair shops
- ~~2. The development shall not exceed 730,245 of gross floor area. (Tract A to have 537,981 sf retail and 1,738 non-retail; Tract B to have 36,040 sf retail; Tract B1 to have 8,450 sf restaurant; Tract B2 to have 5,450 sf restaurant/bank; and Tract D to have 17,500 sf office. The remaining square footage is taken up by outlots.) Prior to the submittal of any detailed plan for tracts A, B, and D, an updated traffic study shall be submitted at the direction of Planning and Design staff.~~
3. The only permitted development identification signs shall be located as shown on the approved general district development plan. The primary entrance sign shall not exceed 255 square feet in area per side and 40 feet in height. The secondary entrance signs (2) shall not exceed 71 square feet in area per side and 10 feet in height. No sign shall have more than two sides.
4. The size and location of any proposed freestanding sign must be approved by the Planning Commission and the City of Middletown. The Planning Commission or the City of Middletown may require that the signs be smaller than would otherwise be permitted by the Zoning District regulations.
5. There shall be no direct vehicular access from outlots to Shelbyville Road.
6. There shall be no further creation of outlots along Shelbyville Road. Outlots are subject to all original binding elements.
7. 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 and to the City of Middletown for review and approval; any changes/additions/alterations not so referred shall not be valid.
8. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

9. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition 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 appropriate variances shall be obtained from the Board of Zoning Adjustment to allow the development as show on the approved district development plan.
 - 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 hereafter.
 - d. 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 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.
10. 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.
11. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
12. 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 the 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.
13. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 29, 2006 Development Review Committee meeting.
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.
15. 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 accordance 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.

4. Existing Site Binding Elements

- ~~1. The development shall be in accordance with the approved district development plan, land use and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. No~~

~~further development shall occur without prior approval from the Planning Commission and the City of Middletown. All binding elements contained on the General District Development Plan shall remain in effect for the detailed plan.~~

- ~~2. The development shall not exceed 5,000 square feet of gross floor area.~~
- ~~3. Before a building or alteration permit and/or a certificate of occupancy is requested:~~
 - ~~a. The development plan must be reapproved by the Jefferson County Department of Public Works and Transportation and the Metropolitan Sewer District.~~
 - ~~b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12. A minimum level area 5 feet in width is required in the 25-foot wide landscape buffer area along Shelbyville Road. Such plan shall be implemented prior to requesting a certificate of occupancy and maintained thereafter.~~
- ~~4. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants or banners shall be permitted on the site.~~
- ~~5. The size and location of any proposed sign must be approved by the Planning Commission and City of Middletown. The Planning Commission and City of Middletown may require that the signs be smaller than would otherwise be permitted by the Zoning District Regulations.~~
- ~~6. If a building permit is not issued within one year of the date of approval of the plan, 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.~~
- ~~7. A certificate of occupancy must be received from the appropriate code enforcement officer 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.~~

5. Proposed Site 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 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 (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. 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.
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 is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - 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.
7. If a certificate of occupancy (building permit) is not issued within one (two) year(s) 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.
8. 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.
9. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line or permitted on the site.
10. 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.