

Planning Commission

Staff Report

September 3, 2015



Case No:	15DEVPLAN1088
Request:	Revised Detailed District Development Plan, Binding Elements, and Waivers for a restaurant and retail
Project Name:	Panda Express
Location:	10600 Westport Rd.
Owner:	Chop Partners II, LLC
Applicant:	CFT NV Development, LLC
Representative:	Panda Restaurant Group Grimail Crawford, Inc.
Jurisdiction:	Louisville Metro
Council District:	17 – Glen Stuckel
Case Manager:	David B. Wagner – Planner II

REQUEST

- Revised Detailed District Development Plan
- Binding Elements
- Waiver #1 of LDC 10.2 to allow easements to encroach more than 50% into the 25' LBA along the west property line
- Waiver #2 of LDC 10.2 to allow easements to encroach more than 50% into the 25' LBA along the south property line
- Waiver #3 of LDC 5.6.1 to allow the building façade to have less than 50% surface area of clear windows and doors
- Waiver #4 of LDC 10.2 to allow easements to encroach more than 50% into the 15' VUA LBA along the north property line

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing a 2,600 SF Panda Express with a drive thru and a 3,500 SF retail building on the site of the previously approved McDonald's plan. The proposal will share the Westport Road access with the Aldi grocery store to the east which also has a connection to Indian Lake Drive for cars only. Required plantings and screening will be provided along the north, south, and west property lines but has requested three Waivers of the LBA encroaching more than 50% into easements. The applicant has applied for another Waiver to not provide the required 50% clear windows and doors on the façade of the building.

Existing Zoning District: C-1, Commercial
Proposed Zoning District: N/A
Form District: Neighborhood
Existing Use: Vacant
Proposed Use: Restaurant and Retail
Minimum Parking Spaces Required: 40
Maximum Parking Spaces Allowed: 89
Parking Spaces Proposed: 64

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant	C-1	N
Proposed	Restaurant and Retail	N/A	N/A
Surrounding Properties			
North	Restaurant and Retail	C-2	RC
South	Open Space	R-4	N
East	Aldi	C-1	N
West	Vacant	R-6	N

PREVIOUS CASES ON SITE

- Docket 9-74-92/10-42-92: Re-Zoning from R-4 and R-7 to R-4, R-6, & R-7, General District Development Plan, and Preliminary Major Subdivision to create the Indian Springs Golf Community
- Case 12393: Pre-Application to re-zone the site from R-4 to C-2 expired
- Case 14627: Re-Zoning from R-4 to C-1, Variances, Revised General/Preliminary Major Subdivision, and Detailed District Development Plan to allow a grocery store and retail development
- Case 13DEVPLAN1064: Revised Detailed District Development Plan to revise the entrance on Indian Lake Drive to correspond with the proposed hotel entrance across the street
- Case 13DEVPLAN1128: Revised Detailed District Development Plan for a McDonald's
- Case 14DEVPLAN1131: Revised Detailed District Development Plan for a McDonald's

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 of LDC 10.2 to allow easements to encroach more than 50% into the 25' LBA along the west property line

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

STAFF: The waiver will not adversely affect adjacent property owners since the adjacent site is a wooded open space with a creek running through it. The next nearest buildings are commercially used.

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

STAFF: Guideline 3, policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Since the adjacent area is not used residentially, no protection is necessary and the applicant will provide the required plantings and screenings.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant will still provide the required plantings and screenings.

- (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 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 developer would not be able to build the proposed development as desired and there are no surrounding residences to protect from the commercial use.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2
of LDC 10.2 to allow easements to encroach more
than 50% into the 25' LBA along the south property line**

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

STAFF: The waiver will not adversely affect adjacent property owners since the adjacent site is a community green space without any residences nearby. The next nearest buildings are commercially used.

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

STAFF: Guideline 3, policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Since the adjacent area is not used residentially, no protection is necessary and the applicant will provide the required plantings and screenings.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant will still provide the required plantings and screenings.

- (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 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 developer would not be able to build the proposed development as desired and there are no surrounding residences to protect from the commercial use.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3
of LDC 5.6.1 to allow the building façade to have
less than 50% surface area of clear windows and doors**

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

STAFF: The waiver will not adversely affect adjacent property owners since the design requirement is an aesthetic feature only and serves no practical purpose. The façade in question faces a roadway and other commercial uses which does not affect residences.

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

STAFF: Guideline 3, policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The glass window design is nearly identical to other Panda Express restaurants within Neighborhood Form Districts and still provides interest at the street level that is comparable to other restaurants in the vicinity.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is providing similar design to commercial buildings in the area.

- (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 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 design requirement is an aesthetic concern and serves no practical purpose.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #4
of LDC 10.2 to allow easements to encroach more
than 50% into the 15' VUA LBA along the north property line**

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

STAFF: The waiver will not adversely affect adjacent property owners since the adjacent site is across a four lane highway and the required plantings and screening will be provided. The next nearest buildings are commercially used.

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

STAFF: Guideline 3, policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Since the adjacent area is not used residentially, no protection is necessary and the applicant will provide the required plantings and screenings to protect the roadway corridor.

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

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant will still provide the required plantings and screenings.

- (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 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 developer would not be able to build the proposed development as desired and there are no surrounding residences to protect from the commercial use. The roadway will still be protected by the proposed plantings and screening.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP AND 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: There does 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.

- 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.

- 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 with the current proposal. Future multi-family developments proposed on the subject site will be required to meet Land Development Code requirements.

- 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 provisions 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 plantings and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks.

- 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.

TECHNICAL REVIEW

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

STAFF CONCLUSIONS

Waivers, Revised Detailed District Development Plan, and Binding Elements

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

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Planning Commission must determine if the proposal meets the standards for granting a Waiver, RDDDP, 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 Planning Commission must **APPROVE** or **DENY** Waiver #1, Waiver #2, Waiver #3, and Waiver #4 listed in the staff report.
- Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Planning Commission must **APPROVE** or **DENY** the Revised Detailed District Development Plan and Binding Elements listed in the staff report.

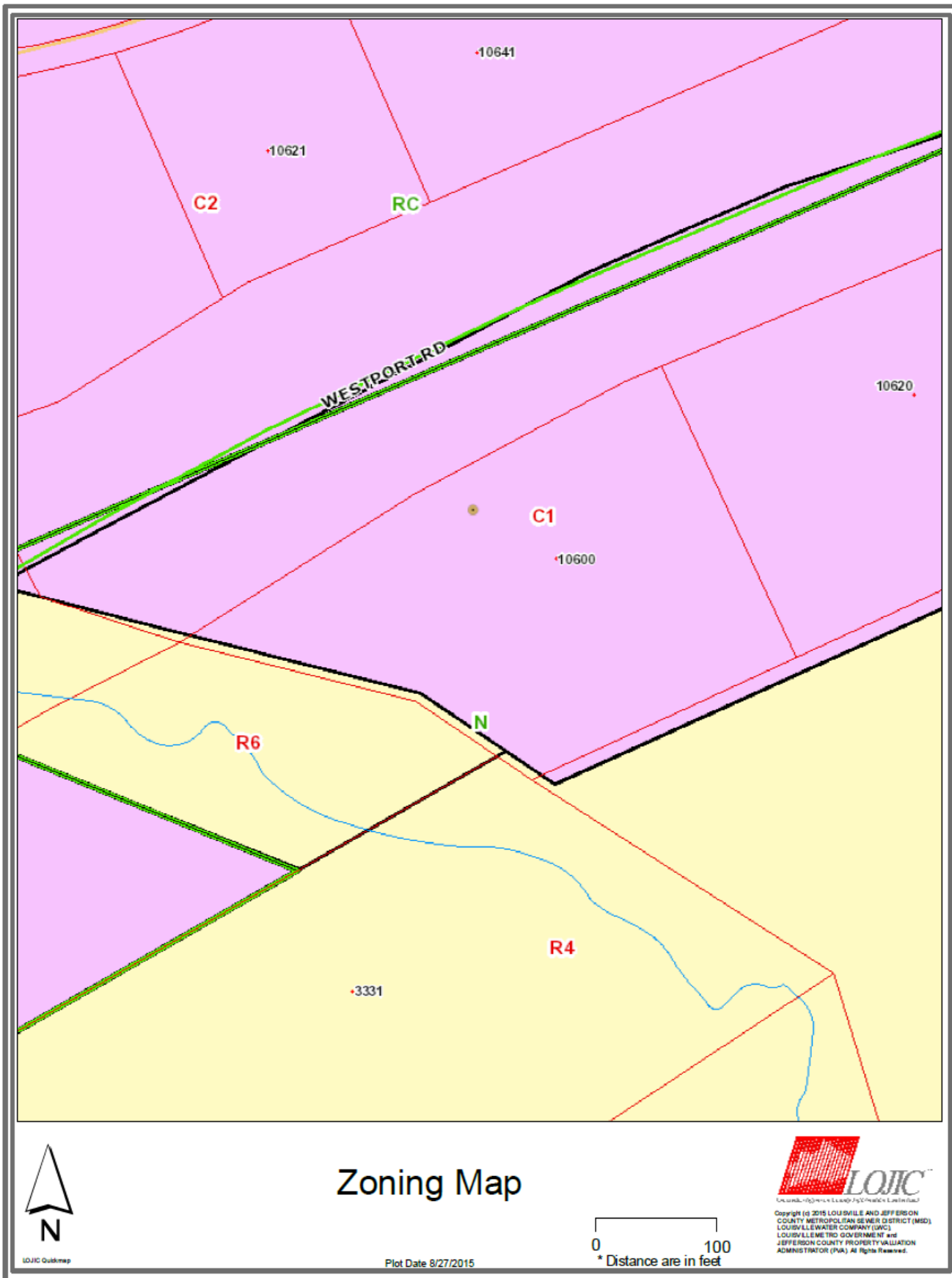
NOTIFICATION

Date	Purpose of Notice	Recipients
8/21/15	Meeting before PC	1 st tier adjoining property owners Speakers at Planning Commission public hearing Subscribers to Council District 17 Notification of Development Proposals

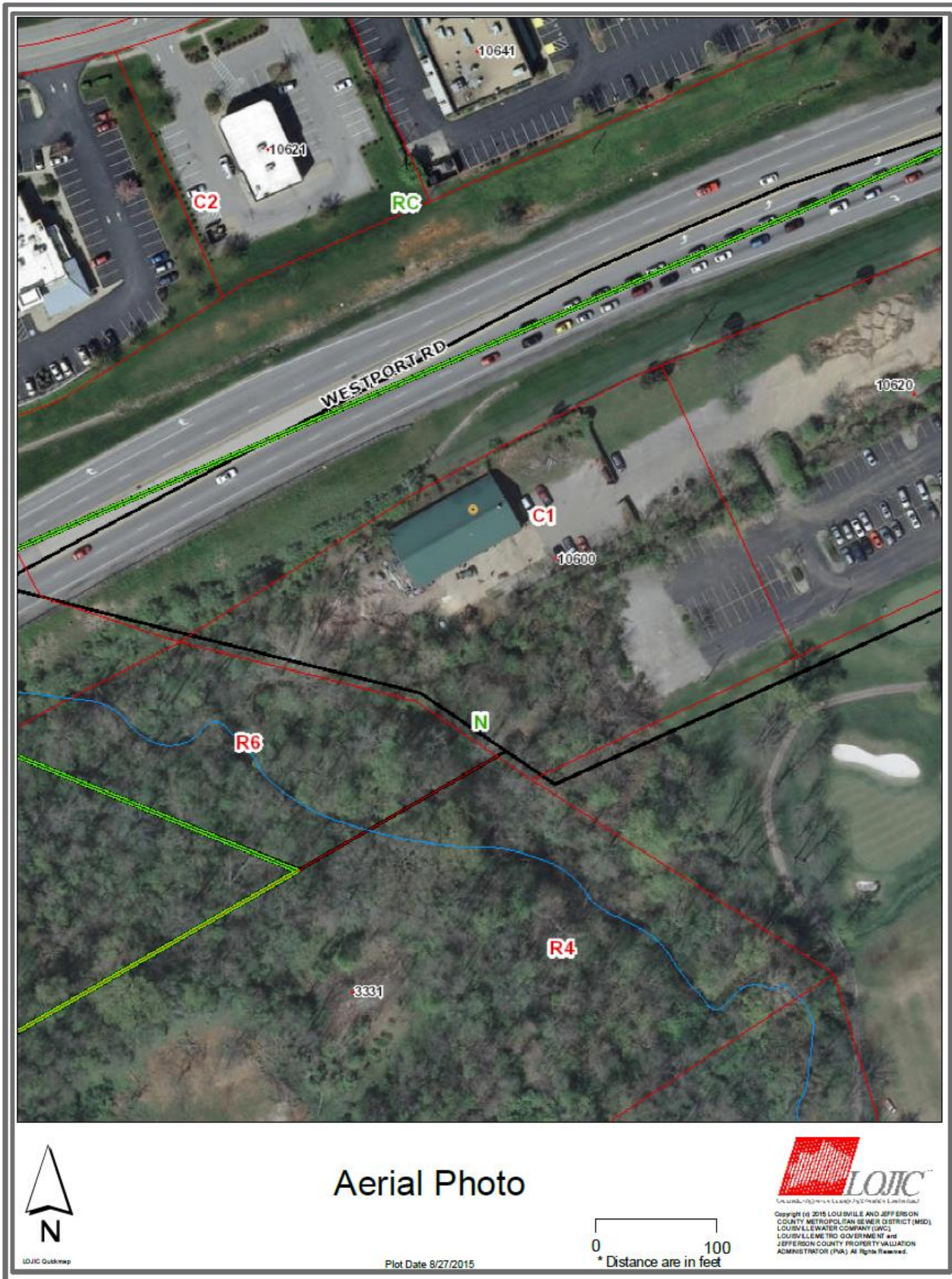
ATTACHMENTS

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

1. **Zoning Map**



2. Aerial Photograph



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. Signs shall be in accordance with Chapter 8 -business signs per lot with dimensions of **(80** square feet in area and **10** feet in height) are permitted.
3. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants, balloons, or banners shall be permitted on the site.
4. 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 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.
 - c. A reciprocal access and crossover easement agreement in a form acceptable to Planning Commission legal counsel shall be secured from the adjoining property owner and recorded prior to construction approval. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
 - d. 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.
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 materials and design of existing/proposed structures shall be substantially the same as depicted in the photos/rendering as presented at the March 20, 2014 Planning Commission public hearing.
7. The following uses shall be prohibited:
 - a. dry cleaning establishment, provided, the foregoing restriction shall not include an establishment for dry cleaning drop-off and pick-up only, with no cleaning services being performed at the subject property;
 - b. a pet store;
 - c. auto repair shop;
 - d. gasoline station;
 - e. adult book store;
 - f. bingo parlor;
 - g. a school, academy or learning center having more than twenty students at any one time;
 - h. a video game parlor or amusement arcade;
 - i. a business which would emit or produce noxious fumes or gases or loud noises;
 - j. a mortuary;

- k. an establishment selling or exhibiting pornographic materials;
- l. a nightclub, discotheque or dance hall;
- m. a lot for the sale of used motor vehicles;
- n. a pool or billiard hall (unless operated as part of a large scale family recreation or entertainment facility);
- o. a use or operation which is generally considered to be an environmental risk to any portion of the Property or surrounding properties;
- p. a store dedicated to the sale of tobacco products;
- q. Automobile rental agencies
- r. Boarding and lodging houses
- s. Bowling alleys
- t. Car washes
- u. Extended stay lodging
- v. Funeral homes
- w. Hotels and motels
- x. Retail nurseries
- y. Pawn shop
- z. Tents, air structures and other temporary structures
- aa. Establishments holding a retail malt beverage license, but that do not allow consumption on the premises;

- 8. All exterior lighting shall comply with the lighting provisions as outlined in the Land Development Code.
- 9. No trash pick-up, exterior construction, deliveries, loading or parking lot cleaning (except ice or snow removal) shall occur between 10 PM and 7 AM.
- 10. No storage shall be allowed on exterior of site on ground or in containers after construction has been completed.
- 11. No trucks or delivery vehicles shall be parked overnight on the site after construction has been completed.
- 12. No truck or delivery access shall be allowed to or from Indian Lake Drive.
- 13. No signage shall be allowed at the Indian Lake Drive intersection.
- 14. No lighted attached signage shall be allowed on the south elevations of any building.
- 15. The existing four-board fence and the stone entrance walls along Indian Lake Drive and Westport Road shall be preserved.
- 16. The mature trees and vegetation at the southwest corner of Westport Road and Indian Lake Drive shall be preserved.
- 17. No construction traffic shall be allowed to use Indian Lake Drive.
- 18. No future changes to the Binding Elements shall occur without a Public Hearing before the Louisville Metro Planning Commission.

4. Proposed 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. Signs shall be in accordance with Chapter 8 -business signs per lot with dimensions of (**80** square feet in area and **10** feet in height) are permitted.
3. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants, balloons, or banners shall be permitted on the site.
4. 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 Develop Louisville, 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.
 - c. A reciprocal access and crossover easement agreement in a form acceptable to Planning Commission legal counsel shall be secured from the adjoining property owner and recorded prior to construction approval. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
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 materials and design of existing/proposed structures shall be substantially the same as depicted in the photos/rendering as presented at the September 3, 2015 Planning Commission public hearing.
7. The following uses shall be prohibited:
 - a. dry cleaning establishment, provided, the foregoing restriction shall not include an establishment for dry cleaning drop-off and pick-up only, with no cleaning services being performed at the subject property;
 - b. a pet store;
 - c. auto repair shop;
 - d. gasoline station;
 - e. adult book store;
 - f. bingo parlor;
 - g. a school, academy or learning center having more than twenty students at any one time;
 - h. a video game parlor or amusement arcade;
 - i. a business which would emit or produce noxious fumes or gases or loud noises;
 - j. a mortuary;
 - k. an establishment selling or exhibiting pornographic materials;
 - l. a nightclub, discotheque or dance hall;
 - m. a lot for the sale of used motor vehicles;
 - n. a pool or billiard hall (unless operated as part of a large scale family recreation or entertainment facility);
 - o. a use or operation which is generally considered to be an environmental risk to any portion of the Property or surrounding properties;
 - p. a store dedicated to the sale of tobacco products;
 - q. Automobile rental agencies

- r. Boarding and lodging houses
 - s. Bowling alleys
 - t. Car washes
 - u. Extended stay lodging
 - v. Funeral homes
 - w. Hotels and motels
 - x. Retail nurseries
 - y. Pawn shop
 - z. Tents, air structures and other temporary structures
 - aa. Establishments holding a retail malt beverage license, but that do not allow consumption on the premises;
8. All exterior lighting shall comply with the lighting provisions as outlined in the Land Development Code.
 9. No trash pick-up, exterior construction, deliveries, loading or parking lot cleaning (except ice or snow removal) shall occur between 10 PM and 7 AM.
 10. No storage shall be allowed on exterior of site on ground or in containers after construction has been completed.
 11. No trucks or delivery vehicles shall be parked overnight on the site after construction has been completed.
 12. No truck or delivery access shall be allowed to or from Indian Lake Drive.
 13. No signage shall be allowed at the Indian Lake Drive intersection.
 14. No lighted attached signage shall be allowed on the south elevations of any building.
 15. No construction traffic shall be allowed to use Indian Lake Drive.
 16. No future changes to the Binding Elements shall occur without a Public Hearing before the Louisville Metro Planning Commission.