

Development Review Committee

Staff Report

October 19, 2022



Case No:	22-DDP-0056
Project Name:	Simple Body Shop
Location:	3703 Hopewell Road
Owner(s):	John Gutterman
Applicant:	John Thornton
Jurisdiction:	Louisville Metro
Council District:	20 – Stuart Benson
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Waivers**
 - #1: from 10.3.7.A.1 to permit encroachment into the required Gene Snyder Freeway buffer area (22-WAIVER-0074)
 - #2: from 10.2.4.B.3 to permit a required Landscape Buffer Area to overlap a utility easement by more than 50% (22-WAIVER-0077)
 - #3: from 5.9.2.A.1.a.ii to not provide a roadway connection to the undeveloped properties to the north & south (22-WAIVER-0167)
- **Revised Detailed District Development Plan** and revised Binding Elements

CASE SUMMARY

The subject site is located on Hopewell Road south of the intersection with Taylorsville Road and consists of portions of two parcels. The applicant proposes to construct a new commercial building to be utilized as auto body repair. The property is currently zoned C-2 and is located in the Neighborhood Form District. The Gene Snyder Freeway right-of-way abuts the site to the east.

The applicant made a similar proposal under docket 21-DDP-0120, which was denied by the Development Review Committee on February 16, 2022. The current proposal has somewhat expanded the width of the proposed new parcel, thereby reducing the encroachment into the Gene Snyder Freeway buffer, and has added a proposed wall and extra plantings.

This case was previously heard at the October 2, 2022 DRC and was continued to allow the applicant to adjust the plan and work on binding elements.

STAFF FINDING

Waiver #1 is not adequately justified and does not meet the standard of review. Waivers #2 and #3 are adequately justified and meet the standard of review. The RDDDP is adequately justified and meets the standard of review, provided that Waiver #1 is not granted.

TECHNICAL REVIEW

MSD and Transportation Planning have provided preliminary approval of the proposal. The site was rezoned in 1991 under docket 9-42-90 from R-4 Residential to C-2 Commercial to permit the continued use of the site as a retail nursery and permit expansion of the development. A portion of the site

nearest to Taylorsville Road was subsequently divided off from the larger parcel and developed with a small commercial center. The revised plan for the commercial center was approved on June 28, 2001. The binding elements on the parcel developed with the commercial center were subsequently amended in 2006 and again in 2019.

The applicant has suggested alternative language to staff Binding Elements 8 through 11 as follows:

8. As a condition to the granting of the Gene Snyder buffer waiver: (i) no building shall be located within the Gene Snyder buffer; and (ii) four large shrubs and two type A trees shall be planted and maintained on the side of building facing the Gene Snyder as shown on the approved development plan. Applicant shall fully comply with all signage requirements of Louisville Metro Ordinance Sections 155.30-32.
9. All vehicle painting, repair, and body work shall occur inside the building with the garage doors closed. The use of air wrenches shall be prohibited.
10. No inoperable vehicles shall be stored on site or on adjacent sites for later repair on the site. No vehicle shall be parked on the site for a time in excess of 24 hours Monday through Friday, and only parked in a designated parking space or inside the building.
11. Any auto paint repair of a vehicle shall be a partial painting with painting of entire vehicles prohibited. No fumes from paint shall be detectable from the residentially zoned properties across Hopewell Road.

INTERESTED PARTY COMMENTS

Staff received one phone call from an interested neighbor in opposition to the request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1

- a. The waiver will not adversely affect adjacent property owners; and,

STAFF: The waiver would not adversely affect adjacent property owners, as the most affected adjoining land is occupied by the Gene Snyder Freeway.

- b. The waiver will not violate the Comprehensive Plan; and,

STAFF: The waiver will not violate the Comprehensive Plan as the required plantings will be provided with extra plantings also provided.

- c. The extent of 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 not the minimum necessary to afford relief to the applicant. The parcel does not yet exist and will be created by the applicant. The tight site constraints therefore do not exist until the applicant creates them.

- d. Either: 1. 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 2. 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 not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the parcel does not exist yet and will be created for this development. The parcel could be modified so that the encroachment does not occur.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2

- a. The waiver will not adversely affect adjacent property owners; and,

STAFF: The waiver would not adversely affect adjacent property owners, as the overlap is required due to underground utilities next to the right-of-way and the required plantings will still be provided.

- b. The waiver will not violate the Comprehensive Plan; and,

STAFF: The waiver will not violate the Comprehensive Plan as the required plantings will be provided.

- c. The extent of 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 overlap is likely to occur regardless of where the applicant places the parking on the lot.

- d. Either: 1. 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 2. 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 overlap is necessitated by the existence of a utility easement next to the right-of-way.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #3

- a. The waiver will not adversely affect adjacent property owners; and,

STAFF: The waiver would not adversely affect adjacent property owners, as Hopewell Road provides access to both the subject site and the commercial center to the north. Connecting the two sites through a narrow parcel unlikely to redevelop in the future would not serve a useful purpose. Providing access to the property to the south is unnecessary for the same reason.

- b. The waiver will not violate the Comprehensive Plan; and,

STAFF: The waiver will not violate the Comprehensive Plan as adequate connectivity is provided by Hopewell Road.

- c. The extent of 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 connection to the north would be required to be made through a narrow, undeveloped parcel which is unlikely to redevelop in the future. This would represent an expense to the applicant which would not provide useful connectivity. The connection to the south is also unnecessary as that parcel also has direct access to Hopewell Road.

- d. Either: 1. 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 2. 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 connection would be required to be made through a narrow, undeveloped parcel which is unlikely to redevelop in the future. This would represent an expense to the applicant which would not provide useful connectivity. The connection to the south is also unnecessary as that parcel also has direct access to Hopewell Road.

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: There do not appear to be any environmental constraints or natural resources on the site. No historic assets 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 with the full required Gene Snyder Freeway buffer provided. The scale of the proposed structure is similar to the scale of adjacent structures. Without the waiver, the site would be adequately buffered from the Gene Snyder Freeway.

- 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 the requested waivers.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan** subject to removal of all Binding Elements for the development site and replacement with revised Binding Elements on the development site only

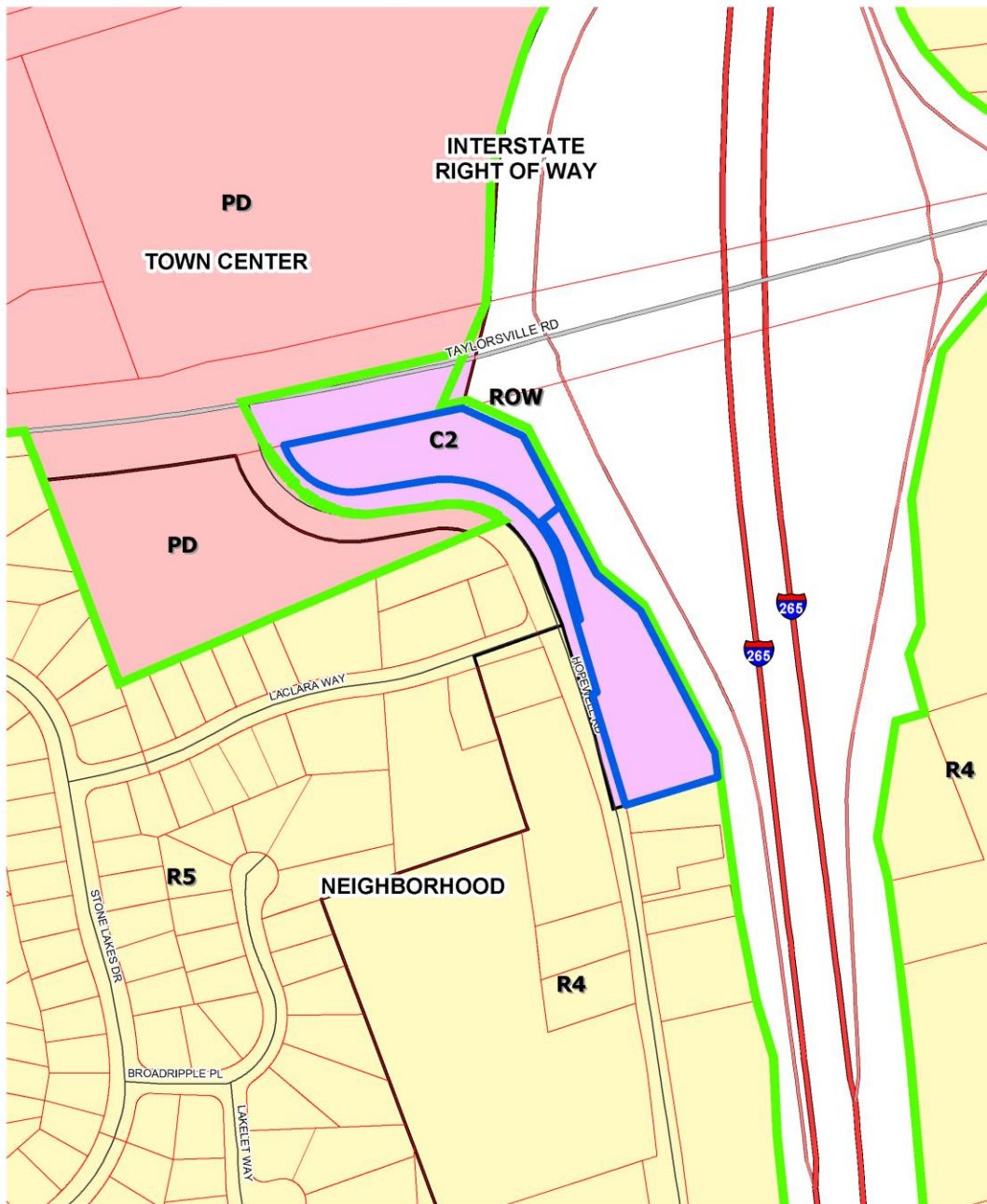
NOTIFICATION

Date	Purpose of Notice	Recipients
09/22/2022	Hearing before DRC	1 st tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 20

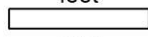
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements (to be replaced on subject site only)
4. Proposed Binding Elements (subject site only)

1. Zoning Map



3703 Hopewell Road
feet

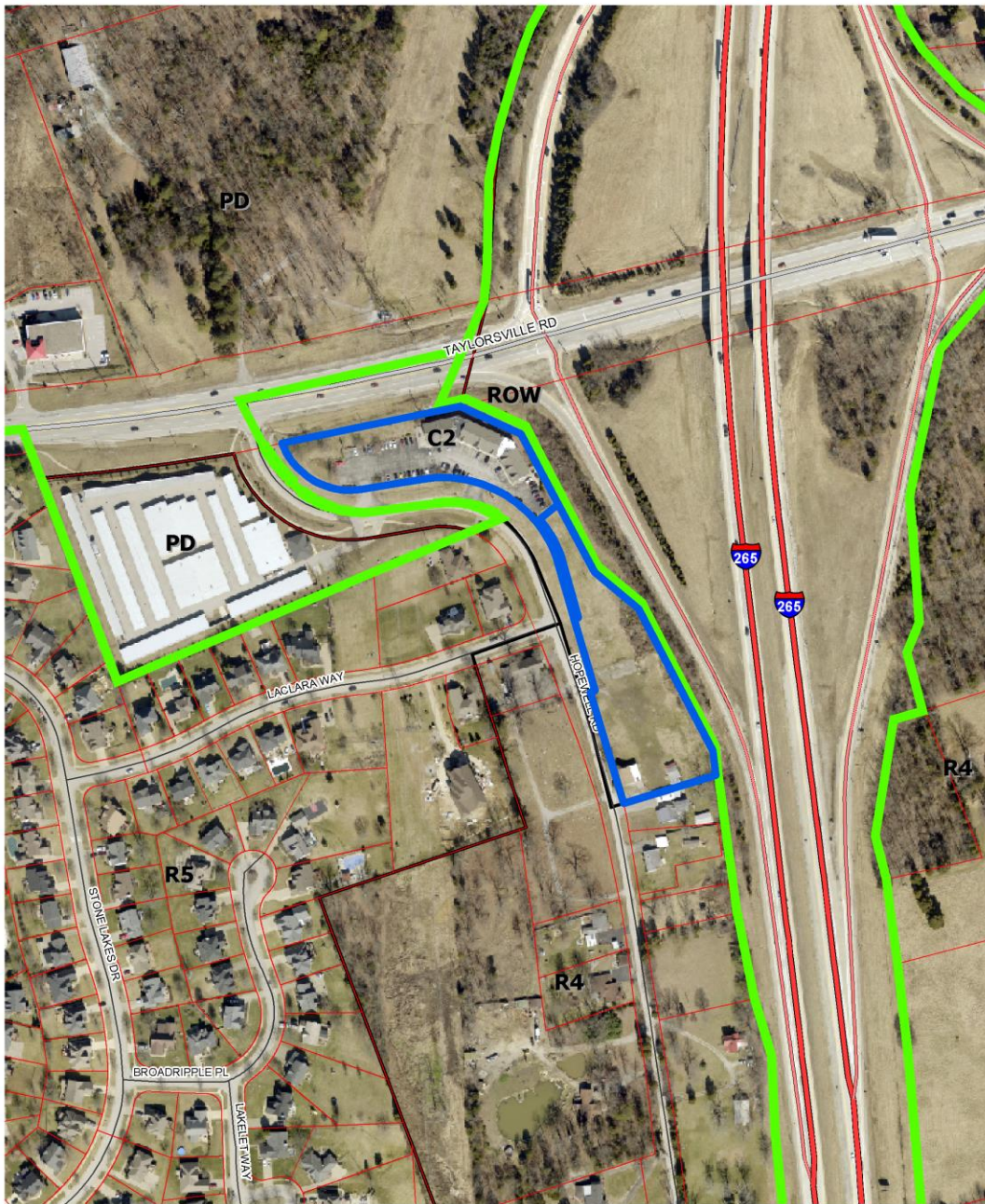


270
Map Created: 2/10/2022

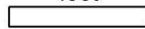


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2. Aerial Photograph



3703 Hopewell Road
feet



270

Map Created: 2/10/2022



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3. Existing Binding Elements (to be replaced on subject site only)

9-42-90 (commercial center)

- ~~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, or 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.~~
- ~~2. The development shall not exceed 11,088 square feet of gross floor area (a 2,938 square foot dental office, 4,130 square feet of retail and a 4,020 square foot restaurant).~~
- ~~3. The only permitted freestanding sign shall be a monument style sign, located as shown on the approved development plan/sign plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than five feet to front property line. The sign shall not exceed 60 square feet in area per side and six feet in height. No sign shall have more than two sides.~~
- ~~4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.~~
- ~~5. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have 90-degree cutoff and height of the light standards shall be set so that no light source is visible off-site.~~
- ~~6. Construction fencing shall be erected when off-site trees or tree canopy exists within 3 feet 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.~~
- ~~7. 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 Jefferson County 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 Article 12 and in conformance with the Parkway Policy prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.~~~~
- ~~8. 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.~~
- ~~9. A certificate of occupancy must be received from the appropriate code enforcement agency 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.~~
- ~~10. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.~~

- ~~11. 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 advised 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 the 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.~~
- ~~12. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.~~
- ~~13. The dumpster shall not be emptied between the hours of 10 PM and 8 AM.~~
- ~~14. The buildings, including 42" high entrance wall, shall be constructed using the architectural design features shown on the rendering submitted to the LD&T Committee on June 28, 2001. Building materials, including the rear façade, shall be brick and stone or masonry-type material or a combination thereof using earth-tone type colors. No backlit awnings shall be permitted.~~
- ~~15. The hours of operation shall be restricted to 6:00 a.m. to 11:00 p.m.~~
- ~~16. Landscaping along the property lines subject to the parkway policies shall contain twice the amount of trees required by parkway policies, resulting in 1 tree per 25 feet.~~
- ~~17. The only permitted uses shall be uses permitted in the C-1 District, except for the balance of the site only which is not a part of the revised district development plan considered herein, which may remain a nursery/garden center under the originally approved plan.~~

9-42-90 (balance of tract)

- ~~1. The development will be in accordance with the approved district development plan. No further development will occur without prior approval from the Planning Commission.~~
- ~~2. The development shall not exceed 5,600 square feet of gross floor area for the retail use, 6,000 square feet of gross floor area for garage/storage structures, and 1,300 square feet of office space.~~
- ~~3. The property shall not be used for any C-2 use other than that of a wholesale/retail nursery.~~
- ~~4. Before a building permit is requested:
 - ~~a. A minor subdivision plat will be recorded dedicating additional right-of-way to Hopewell Road to provide a total of 25 feet from the centerline. A copy of the recorded instrument shall be submitted to the Planning Commission.~~~~
- ~~5. No outdoor advertising signs (billboards), small freestanding (temporary) signs, pennants or banners shall be permitted on the site.~~
- ~~6. Freestanding signs shall not be permitted on the site. The attached signs shall be located as shown on the approved district development plan.~~
- ~~7. All binding elements must be implemented prior to requesting issuance of the building permit.~~

4. Proposed Binding Elements (subject site only)

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. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
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 (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 Public Works, the Metropolitan Sewer District and Construction Review.
 - 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. Landscaping shall include, at a minimum, the landscaping shown on the approved development plan.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system.
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 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. No attached or freestanding signage on the site shall be visible from the Gene Snyder Freeway.
9. No sound generated from tools utilized in auto repair or auto body work shall be audible beyond the property line.

10. No inoperable vehicles shall be stored on site or on adjacent sites for later repair on the site. No vehicle shall be parked on the site for a time in excess of 24 hours.
11. Auto paint repair shall be limited to minor painting not to exceed 25% of the surface of the vehicle. No fumes from paint shall be detectable by smell beyond the property line.