

Land Development & Transportation Committee

Staff Report

July 9, 2020



Case No:	20-DDP-0026
Project Name:	The Station at Middletown Apartments
Location:	12965 Shelbyville Rd
Owner(s):	J. Layson Hagan, Middletown Partners, LLC
Applicant:	J. Layson Hagan, Middletown Partners, LLC
Jurisdiction:	Middletown
Council District:	19 – Anthony Piagentini
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUESTS:

1. **Waiver** from Land Development Code section 10.2.9 to not provide a required 6' screen within the 5' landscape buffer area between the proposed apartment parking and the existing Target parking (20-WAIVER-0048)
2. **Waiver** from Land Development Code section 10.2.4.B.1 to allow a variable height retaining wall in portions of the property perimeter buffer (20-WAIVER-0044)
3. **Revised Detailed District Development Plan**

CASE SUMMARY/BACKGROUND

The subject site is zoned C-2 Commercial in the Suburban Marketplace Corridor form district. It is located on the east side of Aiken Road, north of the intersection with Shelbyville Road. The site currently has no structures, but is partly covered by a parking lot/impervious area. The site is surrounded by other C-1 and C-2 zoned parcels to the east, south and west, and R-6 Residential Multi-family parcels to the north. The applicant is proposing to construct a 326 unit apartment community with four multi-story apartment buildings with a combination of surface parking and tuck-under parking spaces.

The most recently approved plan, 19-DDP-0024, included waivers to increase the 120 foot maximum distance between ILAs and to reduce the LBA from 15 feet to 5 feet between C-2 and C-2. The currently proposed plan switches the location of the maintenance building and the 9 spaces to the left, and rotates Building 4 slightly to move it out of the buffer area and add a retaining wall. The proposed plan slightly increases the size of each building and adds a 500 square foot pool house, resulting in an increase in total building square footage of 5,818 and a total of 101,400 square feet for the site. There is no change in the proposed number of units. The FAR changes from 0.80 to 0.81, gross floor area increases by 9.3% from 392,342 to 396,000, parking increases from 551 to 558 with ADA parking increasing from 11 to 12. Tree canopy on the site increases from 98,051 square feet to 98,095 square feet, ILA increased from 15,165 square feet to 25,718 square feet.

The currently approved plan, 19-DDP-0024, also included two variance requests to allow parking to encroach into a portion of the required side and rear setback between C-2 and C-2 (19-VARIANCE-0015) and to increase the maximum building height within a Transition Zone from 45 feet to 60 feet along Aiken Road, between the Suburban Marketplace and the Neighborhood form districts (19-VARIANCE-0016). These requests were approved by the Board of Zoning Adjustment on November 18, 2019.

Due to the addition of the retaining wall on the currently proposed plan, the applicant is requesting a waiver to allow a variable height retaining wall in portions of the property perimeter buffer area (20-WAIVER-0044). The applicant is also requesting a waiver to not provide a required 6 foot screen within the 5' landscape buffer area between the proposed apartment parking and the existing Target parking. The currently approved plan, 19-DDP-0024, included a waiver request to reduce the LBA between the subject site and the C-2 zoned Target site to the east from 15 feet to 5 feet. The applicant is requesting to not provide the 6 foot screen in this area.

Previous cases:

- 9-82-78: Change in zoning from R-4 Residential Single Family to C-2 Commercial for a commercial center
- 19-DDP-0024: Detailed District Development Plan

STAFF FINDINGS

The Detailed District Development Plan and waiver requests are adequately justified and meet the standard of review.

TECHNICAL REVIEW

Public Works and MSD have provided preliminary plan approval.

INTERESTED PARTY COMMENTS

Staff has not received any comments pertaining to this request.

WAIVER OF LAND DEVELOPMENT CODE SECTION 10.2.9 TO NOT PROVIDE A REQUIRED 6' SCREEN WITHIN THE 5' LANDSCAPE BUFFER AREA BETWEEN THE PROPOSED APARTMENT PARKING AND THE EXISTING TARGET PARKING

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

STAFF: The waiver will not adversely affect adjacent property owners since both the subject site and the Target site to the east are C-2 zoned properties, and the 5 foot landscape buffer area is located between two parking lots interior to Middletown Station. Since the proposed development on the subject site is residential and the neighboring C-2 zoned property to the east is commercially used, the less intense residential use will not adversely affect the adjacent property.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Land Use & Development Goal 1, Policy 5 says to allow a mixture of densities as long as their designs are compatible. When incompatible developments unavoidably occur adjacent to one another impacts are to be mitigated. Appropriate transitions are to be provided between uses that are substantially different in scale and intensity or density of development. Examples include vegetative buffers of variable designs, open spaces, landscaping and/or a transition of densities, site design, building heights, building design, materials and orientation that is compatible with those of nearby residences.

The applicant proposes parking along the east perimeter of the subject site, which will provide additional separation between the proposed residential structures and the commercial parcel to the east. The subject site is internal to the Middletown Station development, and is a less intense use than proposed in the originally approved plan, 9-82-78.

- (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 since both the subject site and the adjacent C-2 zoned site to the east are interior to Middletown Station. Additionally, the required 5 foot buffer and tree requirements will still be provided.

- (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 since the buffer area is internal to Middletown Station, and the 6 foot screen would only screen parked cars from other parked cars.

WAIVER OF LAND DEVELOPMENT CODE SECTION 10.2.4.B.1 TO ALLOW A VARIABLE HEIGHT RETAINING WALL IN PORTIONS OF THE PROPERTY PERIMETER BUFFER

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

STAFF: The waiver will not adversely affect adjacent property owners since the retaining wall, which varies in height from 0 feet to 10 feet, will be separated from the sidewalk by at least five feet of green space and landscaping.

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

STAFF: Land Use & Development Goal 1, Policy 4 says the proposal ensures new development and redevelopment are compatible with the scale and design of nearby existing development and with the desired pattern of development within the Form District.

The subject site is interior to Middletown Station, in the Suburban Marketplace Corridor form district. The proposed retaining walls are located along a private roadway (also interior to Middletown Station) to the south of the subject site, and partially along Aiken Road along the southwest corner of the subject site. Aside from the portion that borders Aiken Road, the retaining walls are located interior to the subject site. Though there do not appear to be other retaining walls within the general vicinity, it is not uncommon for commercial centers such as Middletown Station to feature retaining walls.

- (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 since they are not proposing to eliminate the landscape buffer, but to allow the retaining wall to encroach into portions of the buffer. The retaining wall will also provide screening, and landscaping requirements will still be met.

- (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 retaining wall is necessary due to the presence of a gas easement, which limits grading capabilities on the subject site.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR 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.

- (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. Public Works and MSD have provided preliminary approvals.

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

STAFF: There are no Outdoor Amenity Area requirements with this 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 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.

REQUIRED ACTIONS:

- **RECOMMEND APPROVAL** or **DENIAL** of the **Waivers** to Middletown
- **RECOMMEND APPROVAL** or **DENIAL** of the **Revised Development Plan** to Middletown

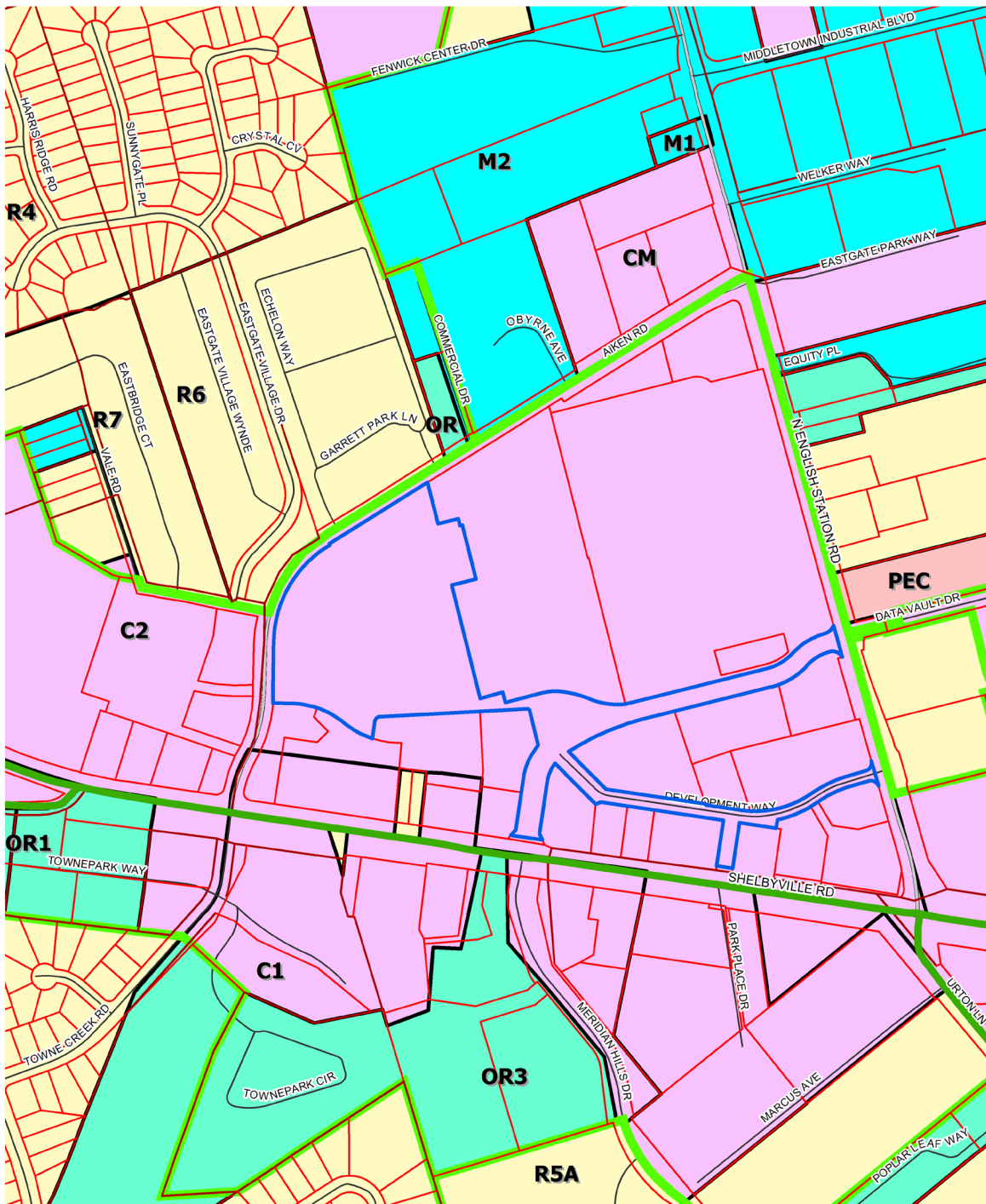
NOTIFICATION

Date	Purpose of Notice	Recipients
7-9-2020	Hearing before DRC	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 19

ATTACHMENTS

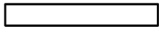
1. Zoning Map
2. Aerial Photograph
3. Existing General Plan Binding Elements
4. Proposed Site Binding Elements

1. Zoning Map



12965 SHELBYVILLE RD

feet



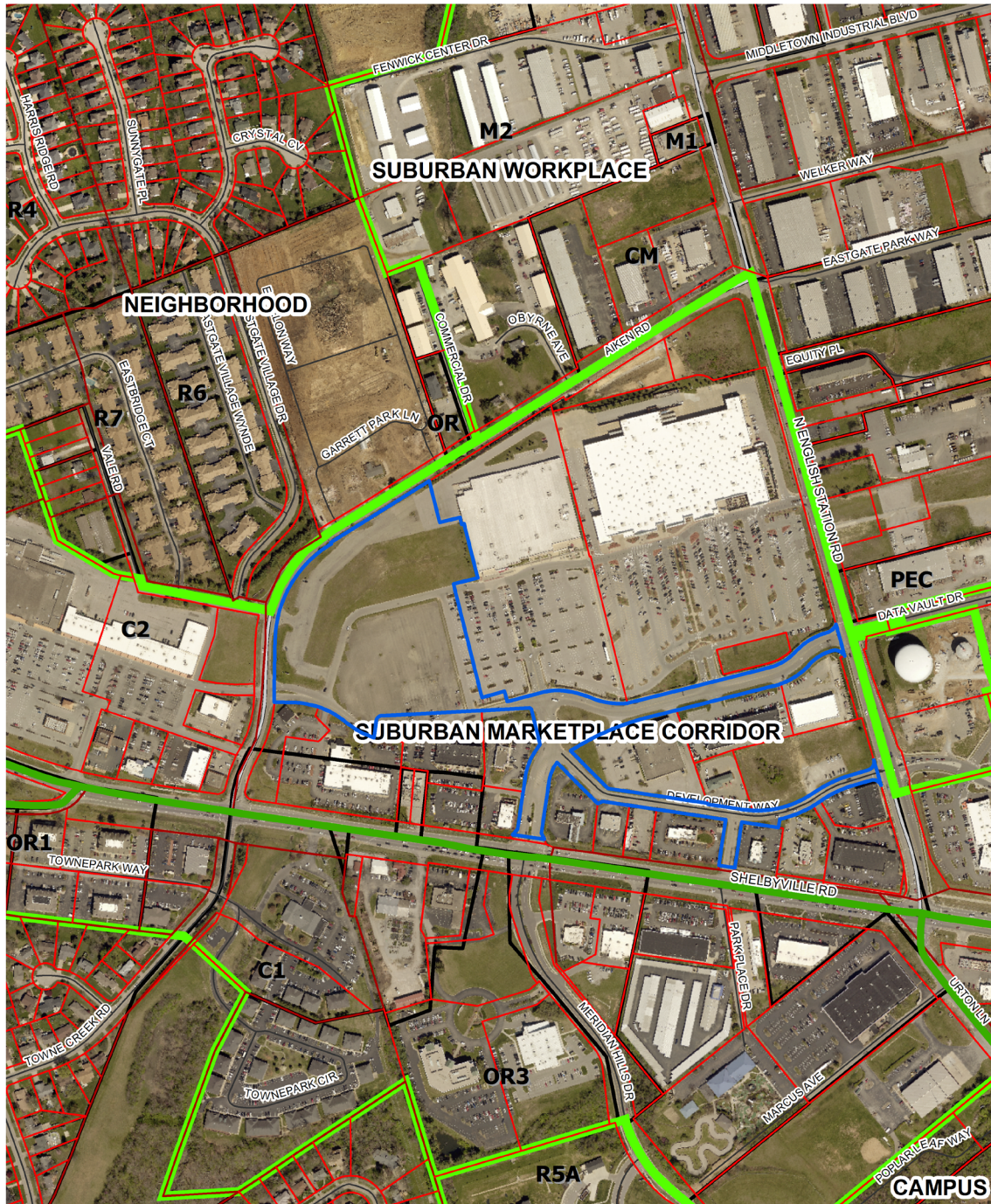
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Map Created: 7/12/2019



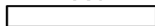
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2. Aerial Photograph



12965 SHELBYVILLE RD

feet



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Map Created: 7/12/2019



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3. 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 B to have 5,875 sf of restaurant and 16,525 sf of retail in a single 22,400 sf building, 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 shown 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 thereafter.
 - 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 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.
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 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 the proposed Wal-Mart shall be substantially the same as depicted in the rendering as presented at the November 29, 2006 Development Review Committee meeting. The materials and design of the proposed Target shall be substantially the same as depicted in the rendering as presented at the June 18, 2008 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 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.

16. The developer shall contribute up to 50% of the cost of signal installation at Aiken Rd and N. English Station Rd., not to exceed \$35,000. This shall be paid within 30 days of the request by the Director of Metro Public Works. The request shall be made to the developer when Metro Public Works obtains the balance of the cost of installation, no sooner than construction plan approval of the Target building.

4. Site Plan Binding Elements

All binding elements from the approved General Development Plan are applicable to this site, in addition to the following:

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 designee and the City of Middletown 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) is requested:
 - a. The development plan must receive full construction approval from Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor subdivision plat or legal instrument 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.
 - 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 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 prior to obtaining a building permit.
 - e. 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.
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 or designee and the City of Middletown.

6. 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.