

# Development Review Committee

## Staff Report

October 30, 2019



|                          |   |
|--------------------------|---|
| <b>Case No:</b>          | 19-DDP-0024                               |
| <b>Project Name:</b>     | Middletown Station                        |
| <b>Location:</b>         | 12965 Shelbyville Rd                      |
| <b>Owner(s):</b>         | J. Layson Hagan, Middletown Partners, LLC |
| <b>Applicant:</b>        | J. Layson Hagan, Middletown Partners, LLC |
| <b>Jurisdiction:</b>     | Middletown                                |
| <b>Council District:</b> | 19 – Anthony Piagentini                   |
| <b>Case Manager:</b>     | Lacey Gabbard, AICP, Planner I            |

### REQUESTS:

#### **Waivers:**

1. **Waiver** of Land Development Code section 10.2.11.B to increase the 120 foot maximum distance between ILAs (19-WAIVER-0014)
2. **Waiver** of Land Development Code section 10.2.9 to reduce the LBA from 15 feet to 5 feet between C-2 and C-2 (19-WAIVER-0013)

#### **Request:**

1. **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.

#### Previous cases:

- 9-82-78: Change in zoning from R-4 Residential Single Family to C-2 Commercial for a commercial center

There are two variance requests associated with this case which will be heard by the Board of Zoning Adjustment on November 18, 2019. The variances are 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). The Development Review Committee does not take action on these requests.

## **STAFF FINDINGS**

The Detailed District Development Plan is adequately justified and meets the standard of review. Waiver #2 is adequately justified and meets the standard of review. Staff recommends the Committee discuss with the applicant their justification for Waiver #1, which states that the increased distance between ILAs will be mitigated by additional landscaping and ILAs in other areas of the subject site, however they are only proposing to provide 1,000 additional square feet of ILA, and meet the minimum required tree canopy.

## **TECHNICAL REVIEW**

Public Works and MSD have provided preliminary plan approval.

## **INTERESTED PARTY COMMENTS**

Staff has received one oppositional email from an interested party concerning this request, which is included in the case file.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER SECTION 10.2.11.B TO INCREASE THE 120 FOOT MAXIMUM DISTANCE BETWEEN ILAs**

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

STAFF: The waiver will not adversely affect adjacent property owners since the neighboring properties are interior to Middletown Station, or are located on the opposite side of Aiken Road. The parking spaces will be primarily used by residents of the proposed development. Additionally, the proposed VUA is about 340,000 square feet less than the existing VUA, and the applicant is proposing to provide about 1,000 square feet more ILA than is required.

- (b) The waiver will not violate specific guidelines of Plan 2040; 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 parking spaces will be primarily used by residents of the proposed development. The maximum allowed parking for the proposed development is 963 spaces and the minimum is 482. At 551 spaces, the proposed development is closer to the minimum parking spaces allowed than the maximum. Additionally, the proposed VUA is about 340,000 square feet less than the existing VUA, and the applicant is proposing to provide about 1,000 square feet more ILA than is required by the Land Development Code. Staff recommends the Committee discuss with the applicant the additional landscaping proposed as justification for the increased distance between ILAs.

- (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 closer to the minimum amount of parking required for a multi-family

residential development. Staff recommends the Committee discuss with the applicant the mitigation of the distance between ILAs through additional plantings.

- (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 applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance by providing an additional 1,000 square feet of ILA in excess of what is required by the Land Development Code. Staff recommends the Committee discuss with the applicant additional landscaping to mitigate the waiver request, as indicated in the applicant's justification statement.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.9 TO REDUCE THE LBA FROM 15 FEET TO 5 FEET BETWEEN C-2 AND C-2 ZONED PROPERTIES**

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

STAFF: The waiver will not adversely affect adjacent property owners since the line between the two C-2 zoned properties 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 previously approved plan.

- (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 the landscape buffer will still be provided. Additionally, both the subject site and the adjacent C-2 zoned site to the east are interior to Middletown Station.

- (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 they are proposing to reduce, not eliminate, the LBA along the property perimeter and buffering will still be provided.

### **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

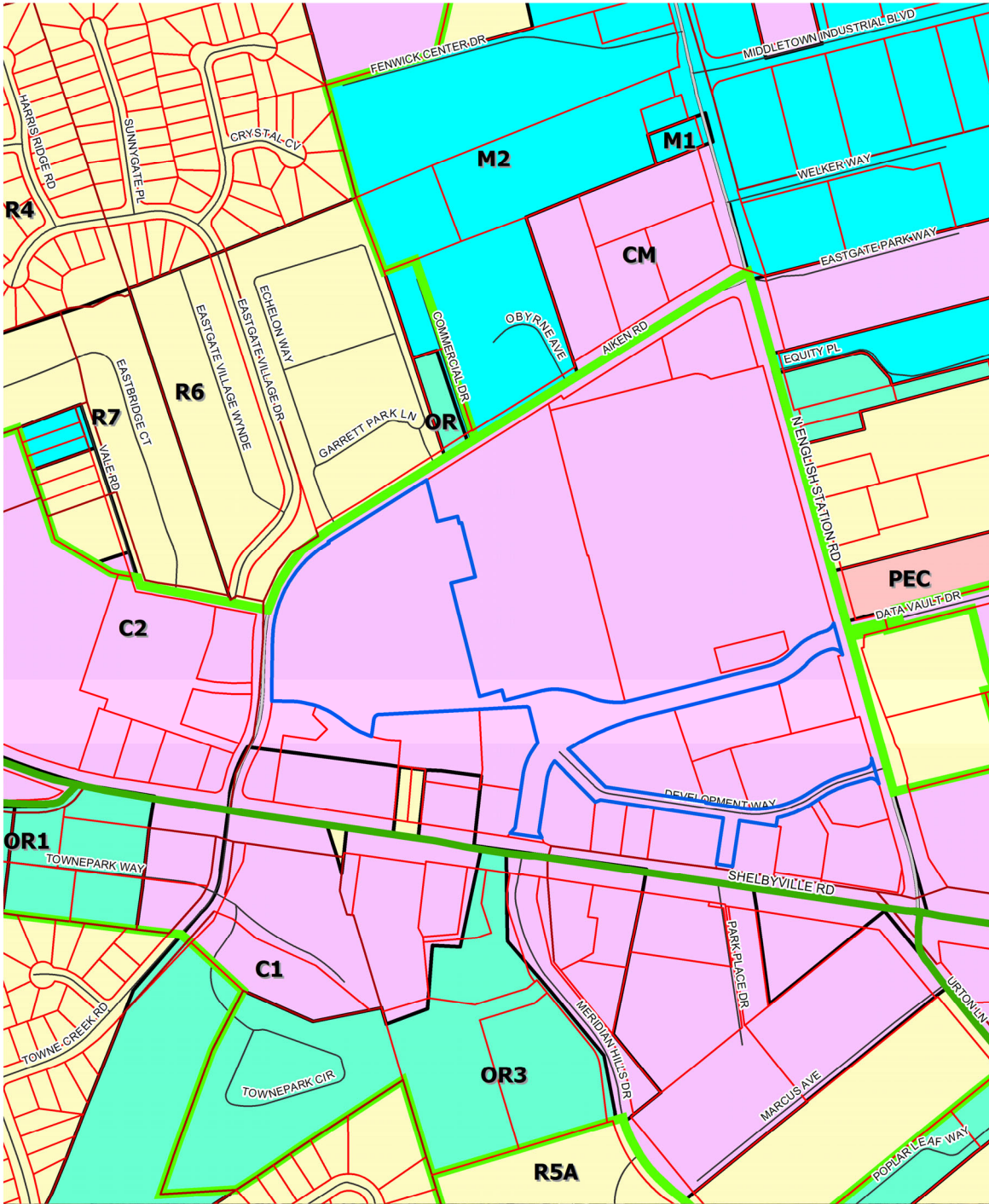
**NOTIFICATION**

| Date     | Purpose of Notice  | Recipients  |
|----------|--------------------|---|
| 10-30-19 | Hearing before DRC | 1 <sup>st</sup> tier adjoining property owners<br>Speakers at Planning Commission public hearing<br>Registered Neighborhood Groups in Council District 19 |

**ATTACHMENTS**

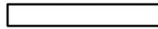
1. Zoning Map
2. Aerial Photograph
3. Existing General Plan Binding Elements
4. Proposed Site Binding Elements

1. **Zoning Map**



12965 SHELBYVILLE RD

feet



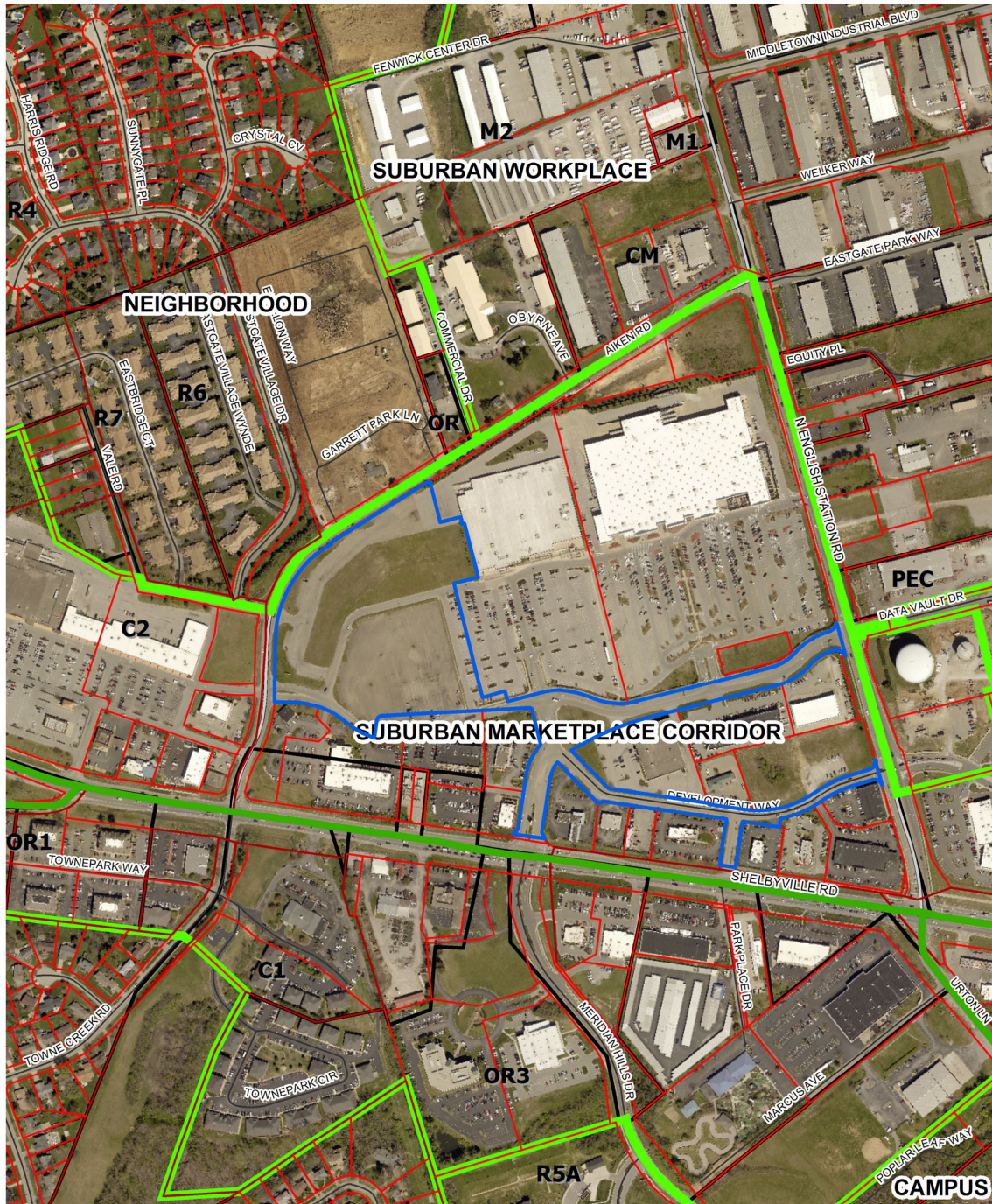
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Map Created: 7/12/2019



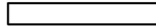
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2. Aerial Photograph



12965 SHELBYVILLE RD

feet



480

Map Created: 7/12/2019



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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 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. Proposed 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.