

Board of Zoning Adjustment
Staff Report
 February 3, 2020



Case No:	19-VARIANCE-0063
Project Name:	7931 Bardstown Road
Location:	7931 Bardstown Road
Owner(s):	Patrick W. Madden, Bardstown Road Development, LLC
Applicant:	Patrick W. Madden, Bardstown Road Development, LLC
Jurisdiction:	Louisville Metro
Council District:	22 – Robin Engel
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUESTS:

1. **Variance** from Land Development Code table 5.3.2 to reduce the required street setback from 10 feet to 4 feet for the drive-thru lane to encroach (19-VARIANCE-0063)

Location	Requirement	Request	Variance
Street Side Yard	10 feet	4 feet	6 feet

2. **Variance** from Land Development Code section 8.3.3 to allow a 10 foot, 100 square foot monument sign on Tract 3 (19-VARIANCE-0063)

Land Use	Street Frontage	Area (S.F.)/Height (ft)
Institutional, Office, Commercial and Industrial	<450 feet	60/6

CASE SUMMARY/BACKGROUND

The subject site is zoned C-1 Commercial in the Neighborhood form district. It is located on the eastern side of Bardstown Road, south of Brentlinger Lane and west of Major Lane. The subject site is surrounded on the same side of the street by other C-1 Commercial parcels, in the Kohl's shopping center on Bardstown Road. On the west side of Bardstown Road are primarily other commercially zoned properties, with the exception of one which is zoned R-4.

The site is currently developed with an existing 11,470 square foot commercial building. The applicant is proposing to construct a 4,077 square foot retail structure on the east side of the site, near Major Lane. The previously approved plan, 9-10787-08, proposed a 5,000 square foot retail building in approximately the same location. The currently proposed plan increases the site's current impervious area from 43,036 square feet to 55,222 square feet (a 28.32% increase).

The applicant is requesting to reduce the required street setback along Major Lane from 10 feet to 4 feet to allow the drive-thru lane to encroach. Additionally, the applicant is requesting to allow a 10 foot tall, 100 square foot monument sign on Tract 3 (the subject site). Table 8.3.3 Freestanding Signs on Designated Parkways restricts signs on the subject site to 60 square feet in area and 6 feet in height.

There is an associated development plan, 19-DDP-0065, that was approved by the Development Review Committee on January 22, 2020 under condition that the variances are approved. The development plan request included an amendment to Binding Element #3 (which restricted the signage on Tract 3 to a 6 foot tall, 60 square foot sign) to accommodate the applicant's sign variance request. The Board of Zoning Adjustment does not act on the development plan.

Previous cases:

- 9-10787-08: Change in zoning from R-4 to C-1, a form district change from Neighborhood to Regional Center, and a Conditional Use Permit for alcoholic beverage sales in outdoor dining areas.
- 18490: Revised detailed district development plan with waivers (approved February 6, 2013)

STAFF FINDINGS

The variances are adequately justified and meet the standard of review. Staff recommends the Board of Zoning Adjustment discuss with the applicant the site conditions that result in the variance requests.

TECHNICAL REVIEW

Public Works and MSD have provided preliminary approval.

INTERESTED PARTY COMMENTS

Staff has received no comments from interested parties concerning this proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM LAND DEVELOPMENT CODE TABLE 5.3.2 TO REDUCE THE REQUIRED STREET SETBACK FROM 10 FEET TO 4 FEET FOR THE DRIVE-THRU LANE TO ENCROACH

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The variance will not adversely affect the public health, safety or welfare because the proposed encroachment is located interior to the shopping center, next to Major Lane. The parcel on the opposite side (the east side) of Major Lane is Tract 1000, which is a non-buildable lot with a detention basin (according to plan certain case 9-10787-08). Additionally, the drive-thru lane and encroachment will be located behind a proposed retaining wall and at a higher elevation than Major Lane.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity because the subject site is part of a larger shopping center, located along the Bardstown Road commercial corridor.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because the proposed encroachment is interior to the shopping center. Because of the retaining wall and variable LBA along Major Lane, the encroachment will not be obvious to drivers traveling

along Major Lane or those using the drive-thru on the subject site. Additionally, the retaining wall will create a barrier between vehicles in the drive-thru and vehicles on Major Lane.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations because, according to the applicant, it is necessary in order to allow a reasonable and efficient site design.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances unique to the subject site because of the elevation change that occurs at the rear (east side) of the parcel that abuts Major Lane. Staff recommends that the Board of Zoning Adjustment discuss with the applicant the site conditions which result in this variance request.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because, according to the applicant, the proposed structures could not be built.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the existing layout of Tract 3 (the subject site) or the existing structures.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE LAND DEVELOPMENT CODE SECTION 8.3.2 TO ALLOW A 10 FOOT HIGH, 100 SQUARE FOOT MONUMENT SIGN ON TRACT 3

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect public health safety or welfare since there are no known safety concerns associated with the sign request.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since Tract 3 (the subject site) is located in a shopping center where there are several signs already existing along Bardstown Road.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public since there are no known safety concerns associated with the sign request and there are several existing signs along Bardstown Road for businesses in this shopping center.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of zoning regulations since the existing sign does not appear able to accommodate all of the businesses in the shopping center.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since Tract 3 (the subject site) has five tenants/businesses, while the other tracts in the shopping center appear to have one tenant each. A 6 foot tall, 60 square foot sign (the restriction imposed by Binding Element #3 as well as the Parkway Designation) will not accommodate the tenants on Tract 3.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the square footage and height restrictions on signage restricts the sign's ability to advertise for all of the tenants on the subject site.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the Parkway Designation for signage was in existence.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Variance Requests**

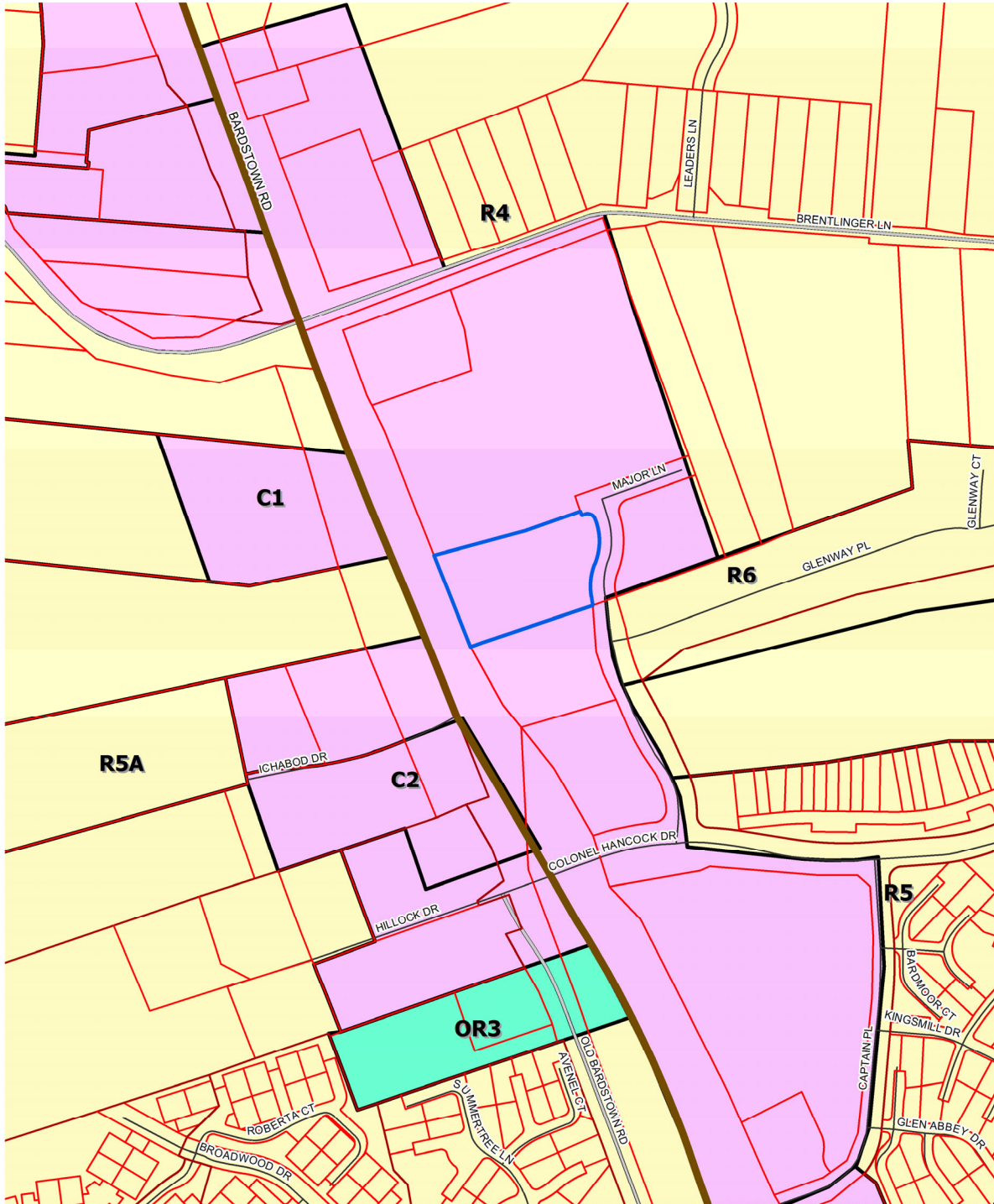
NOTIFICATION

Date	Purpose of Notice	Recipients
2-3-20	Hearing before BOZA	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 22

ATTACHMENTS

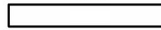
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements (19-DDP-0065)

1. **Zoning Map**



7931 BARDSTOWN ROAD

feet



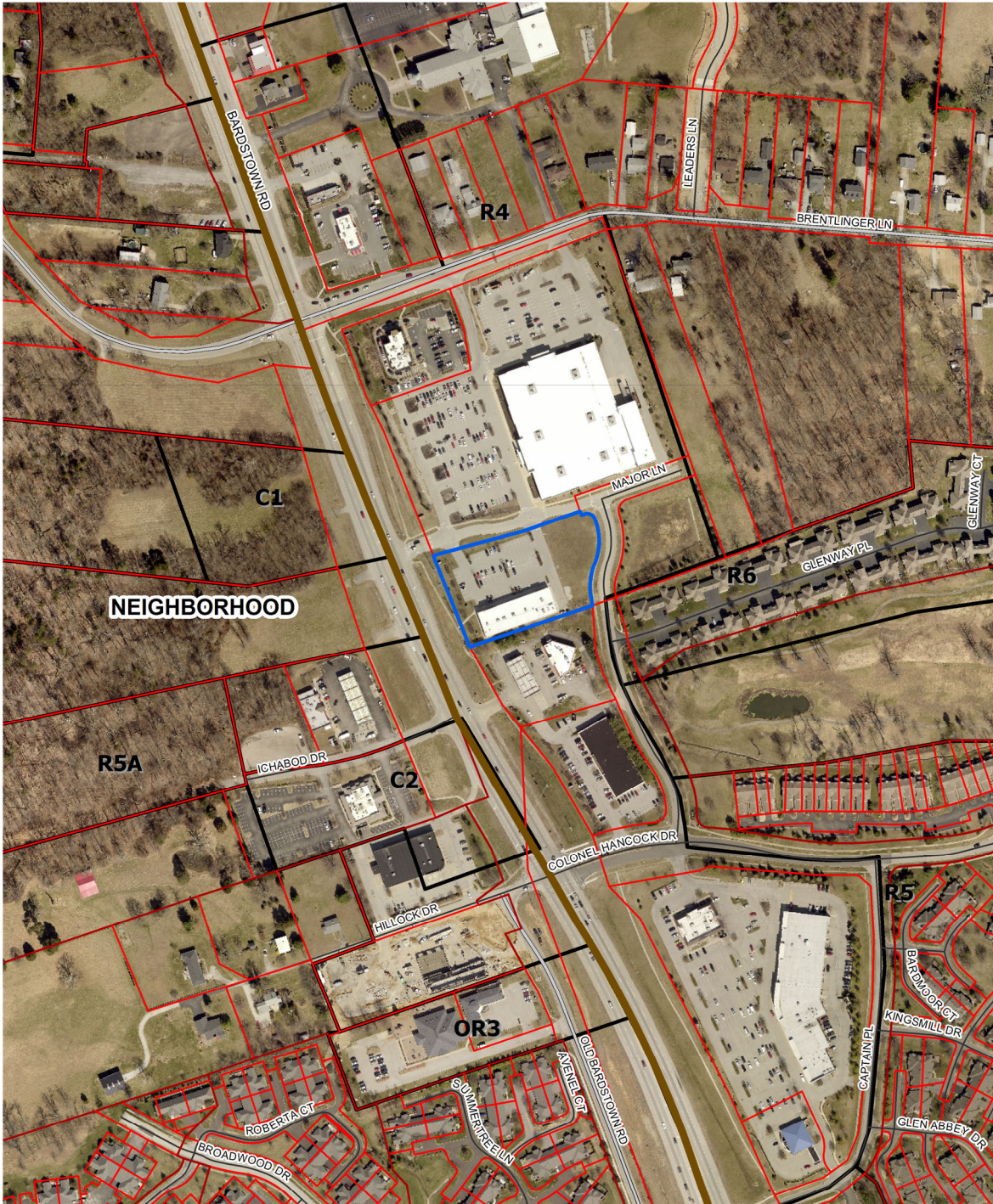
320

Map Created: 1/13/2020



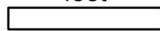
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2. Aerial Photograph



7931 BARDSTOWN ROAD

feet



320

Map Created: 1/13/2020



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3. Existing Binding Elements (19-DDP-0065)

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. The development shall not exceed 118,138 square feet of gross floor area. Tract 1 shall not exceed 4,195 square feet, Tract 2 shall not exceed 93,673 square feet, and Tract 3 shall not exceed 20,270 square feet.

Amended by the DRC, February 6, 2013.

3. Signs shall be in accordance with Chapter 8. The sign on Tract 1, Tract 2 shall not exceed (60 square feet in area and 6 feet tall).

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 Tree Preservation Plan prepared in accordance with Chapter 10 of the LDC shall be reviewed and approved.
- d. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
- 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 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.

6. 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.

7. 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.

8. The property owner/developer must adhere to the detailed concept landscape plan for screening (buffering/landscaping) as submitted to the Fairways at Glenmary Neighborhood Association on August 20, 2008, and as described in the proposed plan rendering which is attached to these binding elements. Such plan shall be implemented prior to occupancy of the site and shall be maintained in perpetuity thereafter by the applicant and developer, their heirs, successors; and assigns, contractors, subcontractors, and other parties engaged in development and maintenance of the site. The bald cypress trees shown on the concept landscape plan shall be a minimum of 6-8 feet tall and the Colorado spruce a minimum of 4-6 feet tall at the time of planting.

9. The fence in the buffer zone between the development and the adjacent patio homes shall be a 5-board horse fence and shall be extended in a southerly direction along the westernmost boundary of the Fairways of Glenmary ("Fairways") to a stone column that will be erected by the developer at the northwest corner of the intersection of Major Lane and Glenmary Place, with the actual site determined by the placement of utilities in the area. Said stone column shall be constructed of material closely matching that used in the existing identifying sign for Fairways and contain a granite identifying stone with '*Fairways of Glenmary*' etched into it. Fairways shall maintain this column, as well as the one listed in binding element no. 11.

10. A second stone column, matching the first, with the exception of the identifying stone, shall be erected by the developer at the southwest corner of the intersection of Major Lane and Glenway Place with the actual site determined by the placement of utilities in the area. The aforementioned 5-board horse fence shall continue in a southerly direction from this column along the westernmost boundary of Fairways to the northernmost point on the existing Fairways identification sign.

11. Existing shrubs and flowers in the areas of the proposed new stone columns shall be moved in order to allow the 5-board horse fence to be erected behind them. This cost is to be borne by Fairways with a one-time \$1,000.00 cash allowance given by the developer to Fairways for this purpose.

12. Major Lane shall be designed to prevent the use of it (Major Lane) by delivery trucks. The applicant shall work with Metro Public Works to install "no truck traffic" signs along Major Lane.

13. A 4-board horse fence shall be installed between the detention basin and the Fairways at Glenmary property as shown on the detailed landscape plan presented at the public hearing to ensure the safety of small children.

14. There shall be no outdoor music (live, piped, radio, or amplified), outdoor entertainment, or outdoor PA systems audible past the property line.

15. 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 and the maintenance of the site, the applicant and developer, their heirs, successors; and assigns, contractors, subcontractors, and other parties engaged in development shall be responsible for compliance with these binding elements.

16. No overnight idling of trucks shall be permitted on-site.

17. Upon commencing of the operations of businesses on the site:

- a. Trucks may only park on the site for a maximum time-period of six (6) hours.
- b. Semi-trailers with no tractors shall not be stored on the site except in the loading dock well.
- c. Trash collection containers shall be screened with the same building materials as the buildings they serve or shall be located inside the building.
- d. Trash collection times shall be restricted to weekdays between the hours of 7:00am and 7:00pm

18. No business shall be open to the public after 11:00p.m., except for previously advertised special events for the 9,673 square foot retail store only. The number of advertised occasions shall not exceed 60 days per calendar year, in which the 93,673 square foot retail store shall be permitted to remain open until 12:00 midnight, up to 50 days per calendar year, and 24 hours up to 10 days per calendar year. Upon a change in use of the 93,673 square foot retail store on-site, this binding element shall be amended to permit a change in use of the aforementioned structure.

Amended by the DRC, June 3, 2009, Case # 12632

19. Security and other lighting for any and all commercial buildings closest and/or adjacent to the neighboring patio homes in Fairways shall shine toward the walls of the commercial building.

20. The developer/property owner shall install a concrete pipe sized appropriately per MSD standards in the MSD easement located along the boundary between the site and the Fairways to provide storm water flow to the creek at the eastern end of the Fairways property. The existing 8-inch pipe shall be removed. Yard inlets shall be installed at 200' maximum intervals to insure proper surface water drainage. Access to the ditch shall be restricted to the area behind and to the north of Unit #1 in the Fairways.

21. In order to protect the Fairways neighborhood from other nuisances associated with construction, the developer/property owner shall assure that:

- a. Trees on the Fairways property line shall be protected as part of the tree preservation protection plan. As required by this plan, tree protection fencing shall be installed prior to construction activity. Trees will be required to be removed where the storm water pipe exits the detention basin to the Fairways property.
- b. Dumpsters and portable toilets shall be placed in the northwest or northeast corner of the site;
- c. Dirt and mud buildup shall be periodically cleaned from dedicated public and internal private streets; and
- d. Construction equipment shall be operated only between the hours of 7:00 am and sundown.

22. If Metro Public Works determines at construction plan approval that a sight-distance problem exists at Brentlinger Lane and the proposed rear entrance to the Kohl's site, the applicant shall design and construct modifications to Brentlinger Lane and/or the rear entrance to achieve acceptable sight-distance requirements at this location.

23. Bardstown Road and Brentlinger Lane shall be improved as shown per the schematic road improvement drawing per Metro Public Works and KYTC requirements. The developer shall be responsible for utility relocations, final surface overlay, signage, striping, and signal modifications associated with the road improvements. Improvements shall be completed prior to any request for a certificate of occupancy.

24. Prior to issuance of the C.O., the portion of the Major Lane extension shown on the approved plan for this site shall be dedicated by major subdivision plat. Further, at time of construction plan approval,

additional right of way shown on the approved plan along Brentlinger Lane shall be dedicated by major or minor plat.

25. Erosion control measures shall be placed along the drainage ditch on Mr. Herrick's property, as determined to be appropriate by the developer in conjunction with MSD. The drainage improvement work and improvements by the developer on the Herrick property are to be as approved with work monitored by MSD.

26. The applicant shall fill in any gaps in the existing tree line to provide a continuous screen along the south side of the detention basin. The applicant shall work with the staff landscape architect to provide a continuous evergreen screen along the east property line. The screen shall consist of a double row of trees north of Major Lane and a single row of trees south of Major Lane. Trees shall be a minimum of 7 feet tall at the time of planting and shall be spruce or other hardy evergreen species, not to include pine.

27. The development plan for case 10787 shall be revised to demonstrate compliance with the site development and design standards of the Neighborhood Form District, or to obtain a waiver of any standards, which cannot be met, and for which relief is available, including the size of the building. The Planning Commission or its designee is directed to apply the existing site design standards in the Land Development Code to the revised development plan. The revised development plan shall be presented for consideration by the Planning Commission (or committee thereof) within 180 days of final action by the legislative body.