

Development Review Committee

Staff Report

November 18, 2020



Case No:	19-DDP-0050
Project Name:	Oxmoor Center West
Location:	7900 Shelbyville Road
Owner(s):	WMB 2, LLC & TWB Oxmoor 2, LLC
Applicant:	Brookfield Properties Retail, Inc.
Representative(s):	Frost Brown Todd, LLC
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Joel P. Dock, AICP, Planner II

REQUEST(S)

- **Waivers:**
 1. **Waiver** of Land Development Code (LDC), section 5.5.2.A to orient the primary customer entrance away from public streets
 2. **Waiver** of LDC, section 5.6.1.C to not provide clear windows and doors on at least 50% of the wall surfaces at street-level
 3. **Waiver** of LDC, section 5.9.2.A.1.b.i to allow pedestrian connection to be located greater than 50' from transit stop
 4. **Waiver** of LDC, section 10.2.10 to allow for existing encroachments in the landscape buffer areas
- **Revised Detailed District Development Plan**

CASE SUMMARY

This case was originally scheduled for DRC on February 19, 2020. At the request of the applicant, the case was continued indefinitely at the Planning commission meeting on April 23, 2020. Notice to all those receiving notice of the hearing on 2/19/20 have received notice of the current public meeting. No development plan revisions have occurred between meetings.

The proposal calls for a roughly 9,000 SF restaurant with outdoor patio at Oxmoor Center, a regional shopping center. The subject site is in the northwest corner of Oxmoor Center at the intersection of Oxmoor Lane and Shelbyville Road. Access to Interstate-264 is within immediate proximity and public transit service is readily available from the development site. Public sidewalks and pedestrian connectivity will be provided in the area of development. Landscape islands will also be provided in the area of development.

Associated Cases

- 19-CUP-0174: Conditional Use Permit for outdoor alcohol sales and consumption for restaurant in the C-1 zoning district (LDC 4.2.41) – To be heard by the BOZA on 2/17/20.
- A summary of development history at the Oxmoor Center is provided in *Attachment 3*.

STAFF FINDING

The revised detailed district development plan and waivers for entrance orientation, pedestrian connectivity, and landscaping appear to be adequately justified based on staff's analysis contained in

the standard of review. The waiver to not provide clear windows along 50% of the wall surfaces at street level does not appear to be adequately justified. Windows offering views into the building or appropriate mitigation, such as enhanced landscaping, additional architectural features or patio area enhancements to minimize the impact of blank wall surfaces have not been provided.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (1) - ENTRANCE

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

STAFF: The waiver will not adversely affect adjacent property owners as the orientation of the primary entrance at this location does not affect the use of, or access to, adjacent properties.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040 as the orientation does not limit pedestrian accessibility or multi-modal accessibility. The orientation does not by itself detract from the established character of the area. The primary entrance is oriented towards the centrally located shopping center and interior parking lots. Pedestrian connectivity and public walks will be provided to the customer entrance. A similar orientation for a proposal in the east corner of the shopping center was approved in docket 19-DDP-0051.

- (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 not the minimum necessary to afford relief to the applicant as the customer entrance and building could be rotated 90 degrees and comply with minimum regulations of the district.

- (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 as the orientation of the proposed structure is consistent with the approval of a similar use approved for the east corner. The primary entrance is oriented towards the centrally located shopping center and interior parking lots. Pedestrian connectivity and public walks will be provided to the customer entrance.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (2) - WINDOWS

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

STAFF: The waiver will adversely affect adjacent property owners as it will detract from the overall character and appearance that has been provided by similar uses along the corridor and at corners.

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

STAFF: Plan 2040 Community Form Goal 1, Policy 4 encourages new development and redevelopment to be compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Development in the area that is of a similar scale consists of windows having views into the building from the public street or architectural features that mitigate and/or provide similar aesthetics to that of a window.

- (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 not the minimum necessary to afford relief to the applicant as windows offering views into the building or appropriate mitigation could be provided, such as enhanced landscaping to minimize the impact of blank wall surfaces, additional architectural features or patio area features.

- (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 not incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived as appropriate mitigation could be provided, such as enhanced landscaping to minimize the impact of blank wall surfaces, additional architectural features or patio area features.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (3) – TRANSIT

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

STAFF: The waiver will not adversely affect adjacent property owners as pedestrian connectivity will be provided from newly constructed public sidewalks.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040 as accessibility will be provided with proximity (100') of the transit stop while avoiding a drainage facility. The connection is provided at the intersection and will capture foot traffic crossing Shelbyville Road.

- (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 as connectivity is maintained without spanning drainage facility.

- (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 as connectivity is provided within 100' and does not result in a span of sidewalk across a drainage feature. The connection will also capture pedestrian traffic from the intersection.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER (4) - LANDSCAPE

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

STAFF: The waiver will not adversely affect adjacent property owners as existing conditions create the lack of conformance with the current regulation and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided.

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

STAFF: Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The existing conditions create the lack of conformance with the current regulation and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided.

(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 as existing conditions create the lack of conformance with the current regulation and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will 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 create an unnecessary hardship on the applicant as existing conditions create the lack of conformance with the current regulation and no greater encroachment into the area appears to be made. All planting material and screening as required by Chapter 10 of the Land Development Code will be provided.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR REVISED DETAILED DISTRICT DEVELOPMENT PLAN

- 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: 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 will not be impacted as the site is located within an existing surface parking lot. Trees will be planted within required buffers and landscape islands as required by the LDC.

- 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 are provided as public sidewalks and pedestrian connectivity will be provided in the area of development

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

STAFF: The development of this site does not require provisioning for open space. Proposed landscape islands will help break up surface parking areas and an outdoor patio is provided.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall site design and land uses are compatible with the existing and future development of the area as the site is in the Regional Center form district. The regional center serves as an area for the concentration of regional shopping, office, services, entertainment facilities and medium to high-density residential uses. The development site is not adjacent to residential zones or uses. It will not create any significant nuisances upon adjoining property.

- 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 proposal complies with land Use and Development Goals 1 & 2: Community Form as the site is compatible with the scale and intensity of uses within the center. No significant negative impacts on the environment or from traffic will be created. The proposal further concentrates mixed-uses within a current activity center, which encourages a more compact

pattern of development and efficient land use pattern. The proposal complies with Land Use and Development Goal 3: Mobility as the site is accessible via safe pedestrian walkways from public ways and necessary pedestrian improvements (sidewalks) within the public right-of-way have been provided. The development promotes public transit and pedestrian use. Lastly, Plan 2040 calls for out-lot development in underutilized parking lots of existing development to promote utilization of existing infrastructure.

REQUIRED ACTIONS

- **APPROVE or DENY the Waivers:**
 1. **Waiver** of LDC, section 5.5.2.A to orient the primary customer entrance away from public streets
 2. **Waiver** of LDC, section 5.6.1.C to not provide clear windows and doors on at least 50% of the wall surfaces at street-level
 3. **Waiver** of LDC, section 5.9.2.A.1.b.i allow pedestrian connection to be located greater than 50’ from transit stop
 4. **Waiver** of land Development Code (LDC), section 10.2.10 to allow for existing encroachments in the landscape buffer area
- **APPROVE or DENY the Revised Detailed District Development Plan**

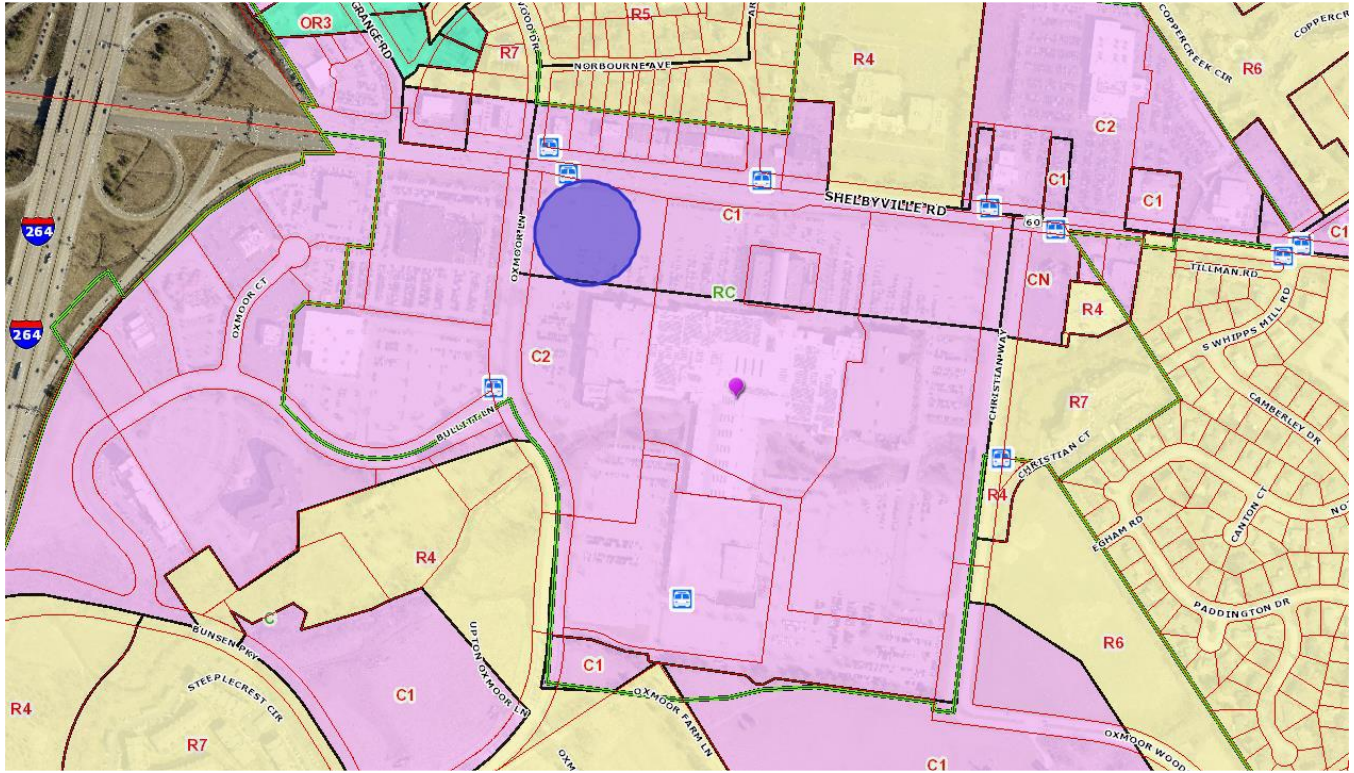
NOTIFICATION

Date	Purpose of Notice	Recipients
1/31/20	Hearing before DRC	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 18

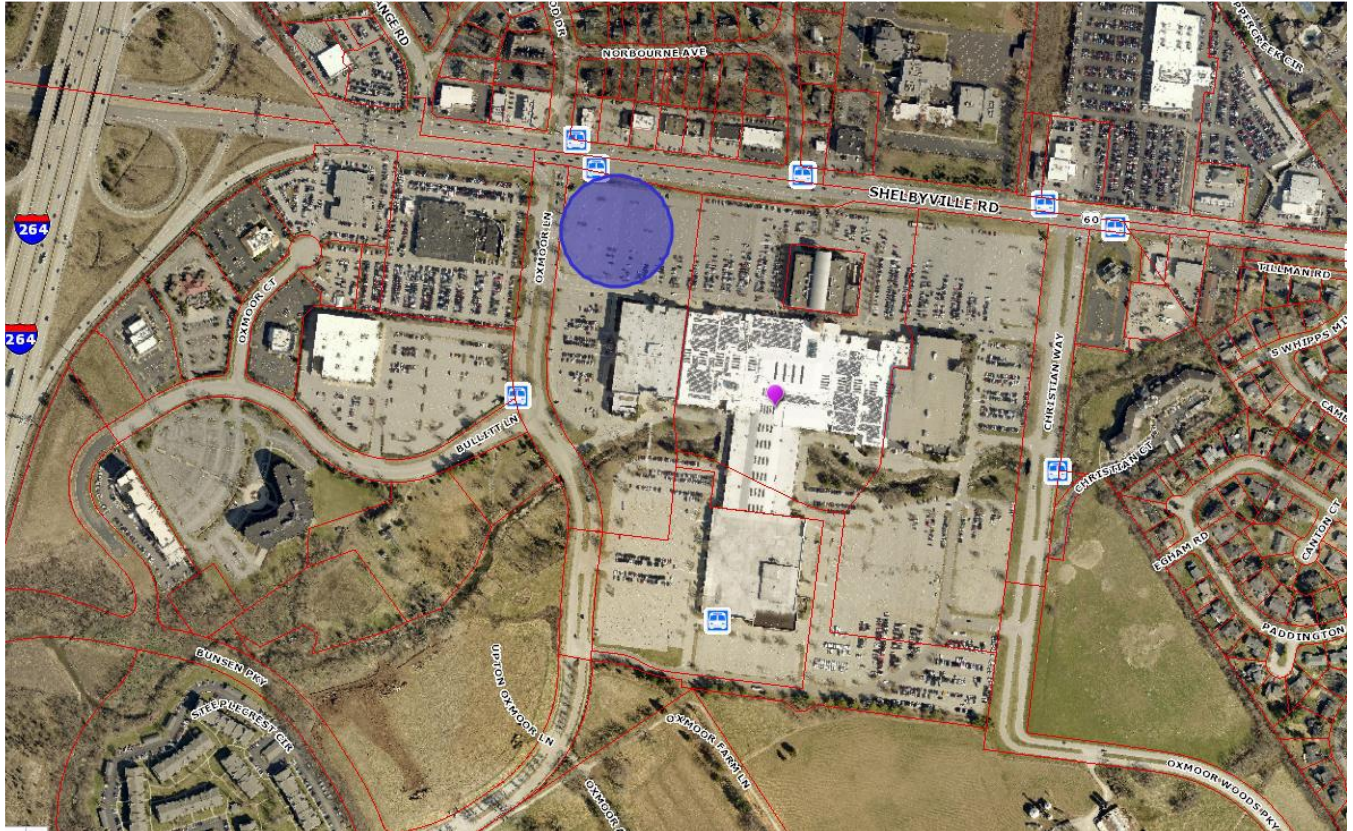
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Development Case History
4. Existing Binding Elements (PW-10-00/9-50-80/9-49-83)

1. **Zoning Map**



2. Aerial Photograph



3. Development Case History

- **9-320-65 (Pre-Plan Certain):** 'A Master Plan for the Development of the William Marshall Bullitt Trust Property' change in zoning from R-4 to R-7, R-8, R-10, C-5 (office), C-1 & C-2. Planning Commission recommends denial on June 30, 1966. Fiscal Court approves in-part and denied the requested C-2 district. Majority of present C-1 zoning district at Oxmoor Center is established.
- **9-162-68 (Pre-Plan Certain):** Change in zoning from R-4 to C-2, R-4 & C-1 to C-2, and R-4 to C-1. Planning Commission recommends denial of C-2 on the west side of Oxmoor Lane on August 8, 1968. Fiscal Court approves all requested districts. Central C-2 zoning district at Oxmoor Center is established.
- **B-69-69:** A parking variance to reduce parking from 3,301 to 2,939 spaces.
- **B-20-76:** Conditional use permit for off-street parking (note: area currently zoned C-1).
- **9-50-80:** Change in zoning from R-4 to C-1 & C-2 and C-1 to C-2 for rear additions, including Sears department store is approved November 11, 1980. Expanded the C-2 zoning district established under docket 9-162-68 and created the current extent of the C-1 zoning district making up the rear of the Oxmoor Center.
- **9-49-83:** Change in zoning from C-1 to C-2 to expand the perimeter of the previously approved C-2 zoning by 2.9 acres is approved August 18, 1983. Binding elements carried forward from 9-50-80.
- **B-7-92:** attached signage variance.
- **B-197-98:** attached signage variance.
- **B-149-00:** Conditional use permit for off-street parking. This request was approved in an area to the immediate southeast of the current development site. The site of the request is now associated with docket 9-15-02 (Oxmoor farms) and is zoned C-1, Commercial. It was approved on condition that it would not be used unless an associated parking waiver (PW-10-00) was denied. B-149-00 expired 1-year later.
- **PW-10-00/9-50-80/9-49-83:** A parking waiver & revised detailed district development plan to reduce the required parking from 6,035 to 4,407 spaces at the Oxmoor Center is approved on September 7, 2000.
- **9-15-02:** Change in zoning on adjacent land containing 415 acres known as Oxmoor Farms from R-4 to R-6, OR-3 and C-1 is approved on July 23, 2002.
- **PW-10-00/9-50-80/9-49-83:** A parking waiver & revised detailed district development plan to reduce the required parking from 4,605 to 4,330 at the Oxmoor Center is approved on July 21, 2005.
- **18DEVPLAN1110:** An RDDDP for restaurant development in the former location of Sears. Binding elements are site specific to this plan and are not binding on areas outside the development site. Approved by DRC August 15, 2018.
- **18ZONE1014:** Change in zoning from C-1 to C-2 with conditional use permit, variances, and waivers, as well as lighting approval for TopGolf. Approved October 18, 2019. Metro Council Ordinance approved December 11, 2018.

4. Existing Binding Elements (PW-10-00/9-50-80/9-49-83)

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. Total building area for Oxmoor Center shall not exceed 1,171,072 square feet of gross floor area; gross leasable space shall not exceed 959,751 square feet. Additional gross building area and/or gross leasable space may be permitted if a revised district development plan is approved together with either (i) additional parking provided pursuant to LDC Article 9, or (ii) approval of an appropriate parking waiver, both of which require filing a revised development plan.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Outdoor storage is not permitted on site except as permitted by LDC Sec. 4.4.8 and as designated on an approved revised development plan.
5. 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 Department of Inspections, Permits and Licenses and Transportation and the Metropolitan Sewer District
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. Crossover and parking agreements shall be obtained. A copy of the recorded instrument(s) shall be submitted to the Department of Planning and Design Services. Annual re-certification is required.
6. 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.
7. 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.
8. 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.

9. 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.
10. The Planning Commission shall require a full traffic and air quality analysis, including an arterial analysis for Shelbyville Road, before considering any additional development of the general area known as Oxmoor Center/the Bullitt Farm. This binding element shall apply to any commercial, retail, residential or office development. The aforementioned analysis shall include expected traffic from all approved developments within the impact area, as defined by the Department of Public Works. It shall also include any proposed roadway improvements expected to be completed before completion of the proposed development. The goal of the traffic analysis is to recommend appropriate mitigation measures to accommodate expected traffic from the proposed development. Mitigation measures for traffic and air quality shall include, but not limited to, recommended signal timing adjustments along Shelbyville Road and construction of Bunsen/Bowling Parkway, in part or whole. The Developer should also furnish additional mitigation recommendations, as required, at impacted intersections.
11. No parking of vehicles in the Star Ford inventory shall take place at the parking areas subject to the Parking Waiver, unless a joint parking agreement is approved by the Planning Commission. The applicant of PW-10-00 shall provide Star Ford with the above conditions of approval and binding elements.