

Planning Commission

Staff Report

February 3, 2022



Case No:	21-AMEND-0006
Project Name:	Jeffersontown Restaurant Binding Elements
Location:	421, 615 and 617 S Hurstbourne
Owner(s):	RD Thurman, LLC.
Applicant:	Bardenwarper, Talbott and Roberts
Jurisdiction:	Jeffersontown
Council District:	18 – Marilyn Parker
Case Manager:	Jay Lockett, AICP, Planner II

REQUEST(S)

- Revisions to Binding Elements

CASE SUMMARY/BACKGROUND

The applicant is proposing to alter certain binding elements to allow existing restaurants to have drive-thru and curbside food service. The property at 421 S Hurstbourne Pkwy is a Chili's restaurant and 615 S Hurstbourne is the former Mimi's Café; they were rezoned under docket 9-62-93, and the applicant is requesting a revision to binding elements 5a and 20 for those sites. 617 S Hurstbourne Pkwy is Carrabas Restaurant. It was rezoned under docket 9-3-99 and the applicant requests amendments to binding elements 11 and 12 for that site. All subject properties are zoned C-2 in the Suburban Marketplace corridor form district within the City of Jeffersontown.

STAFF FINDING

The requests are adequately justified and meet the standards of review. The restaurants are in an existing commercial activity center appropriate for restaurant uses, including drive-thru and curbside service. The nature of the restaurant industry has evolved significantly since the binding elements were approved, especially since the emergence of the Covid-19 virus. The applicant has put forth a reasonable argument that a restriction on drive-thrus and curbside carryout creates a substantial difficulty in marketing vacant restaurant spaces to potential new clients. The restaurant locations in question are located along S Hurstbourne Pkwy and do not directly abut any residential properties.

TECHNICAL REVIEW

Changes to the subject sites to create new drive-thru service would require a Revised Detailed District Development Plan for each site and would be reviewed for compliance with the Jeffersontown Land Development Code, including but not limited to queuing, parking and screening requirements.

INTERESTED PARTY COMMENTS

Staff has received some emails and calls expressing concern and opposition to this proposal.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP and AMENDMENT TO BINDING ELEMENTS

- 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.

- 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. Subsequent changes to any of the subject sites related to these uses will be reviewed by Transportation Planning, KYTC and the City of Jeffersontown.

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

STAFF: There are no open space requirements pertinent to the current 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: There is no new land disturbance or additional impervious surface proposed at this time. Future changes to the subject sites to facilitate these uses will be reviewed by MSD for compliance.

- 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. Future changes to the subject sites will be subject to review and approval against the Jeffersontown Land Development Code.

- 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 proposed changes to binding elements conform to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Jeffersontown Land Development Code.

REQUIRED ACTIONS:

- **RECOMMEND** that the **City of Jeffersontown APPROVE** or **DENY** the **Revisions to Binding Elements**

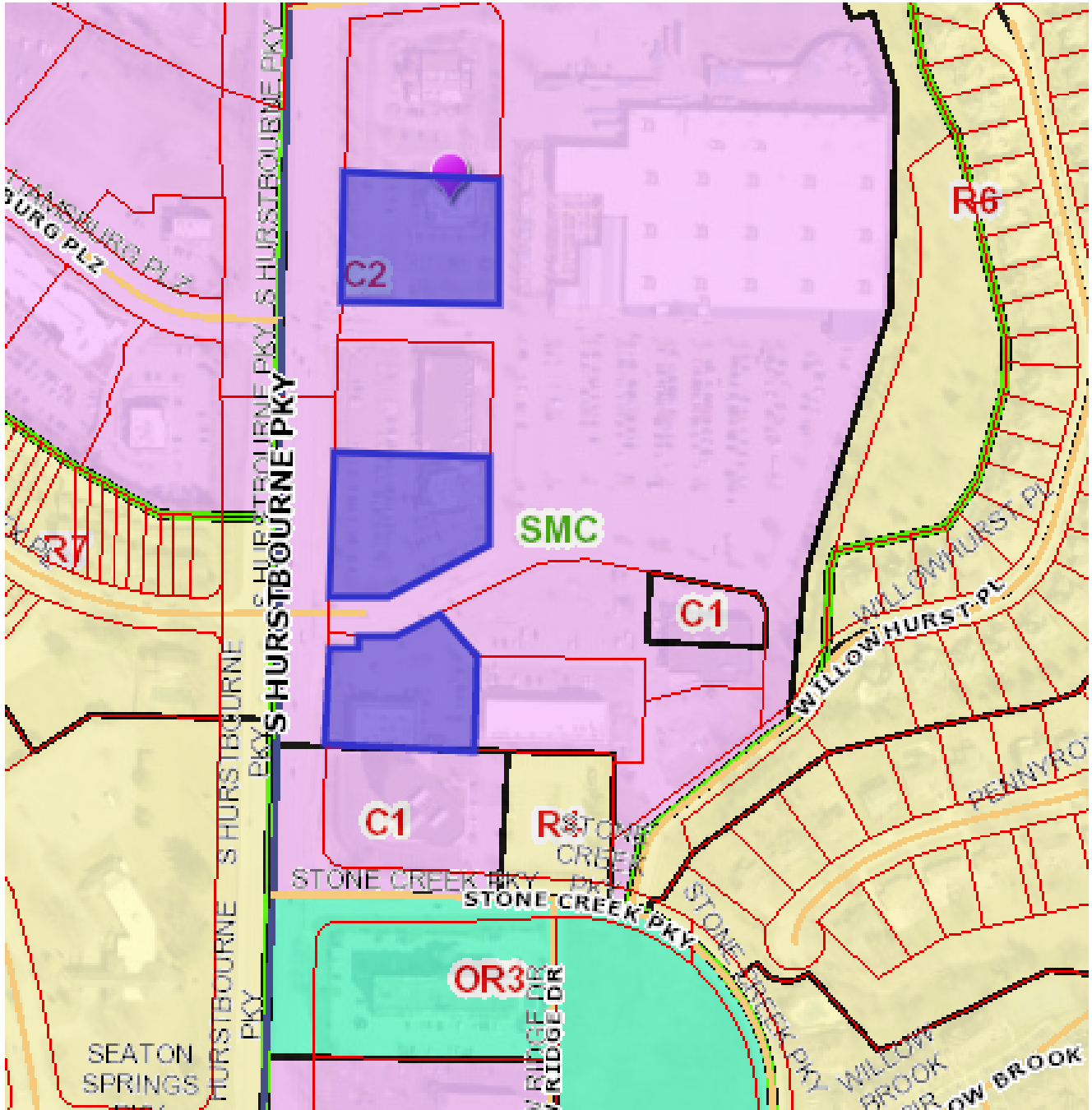
NOTIFICATION

Date	Purpose of Notice	Recipients
11-17-21	Hearing before DRC	1 st tier adjoining property owners Speakers at Planning Commission public hearing Required recipients per binding elements Registered Neighborhood Groups in Council District 18
12-03-21	Hearing before DRC	Willowhurst Homeowners Association per binding element requirements.

ATTACHMENTS

1. Zoning Map
2. Aerial Photographs
3. Existing Binding Elements with proposed changes for 421 and 615 S Hurstbourne Pkwy
4. Proposed Binding Elements for 421 and 615 S Hurstbourne
5. Existing Binding Elements with proposed changes for 617 S Hurstbourne Pkwy
6. Proposed Binding Elements for 617 S Hurstbourne Pkwy

1. Zoning Map



2. Aerial Photographs



421 S Hurstbourne



615 S Hurstbourne Pkwy



617 S Hurstbourne Pkwy

3. Existing Binding Elements with proposed changes applicable to 421 and 615 S Hurstbourne Pkwy only

1. Prior to development of each non-residential site or phase of this project, a detailed district development plan shall be submitted to the Planning Commission and the City of Jeffersontown for approval. Each plan shall be in adequate detail and subject to additional binding elements, which may relate, but not be limited to the following items:
 - a. Screening, buffering, landscaping
 - b. Density, floor area, size and height of buildings
 - c. Points of access
 - d. Land uses
 - e. Signs
 - f. Loading berths
2. The development on the entire 44.29 acres shall be in accordance with the District Development Plan and no further development will occur on the property beyond the plan submitted and subsequently approved by the Planning Commission. The binding elements are for the benefit of the surrounding areas. Any deviations or alterations of that Plan shall require notification of the President of the Plainview Resident's Association, the Willowhurst Residents Association and the Mayor of the City of Hurstbourne two weeks before the Land Development and Transportation Committee meeting at which a proposed deviation or alteration is considered.
3. The density of the development shall not exceed the following:
 - a. R-5A, Residential District, 23 dwelling units to be developed as single-family residences with a density not to exceed 2.45 residences per acre on the 9.37 acres of the area designated as R-5A with this area including the right of way.
 - b. R-6, Residential District, not more than twenty (20) single family residences and not fewer than 2.5 acres of open common area.
 - c. OR-3, Office/Residential District, 62,000 square feet not to exceed 697.5' elevation above sea level, which is 3 stories above the highest point of the terrain at the front building line, and not to exceed 4 stories at any point.
 - d. C-2, Commercial District 207,000 square feet, not to exceed 2 stories or 35 feet in height.
4. The architectural feature above the front door will not extend higher than the parapet. The parapet or architectural feature above the front door will not extend higher than the roof line. The 35' height limitation will remain applicable to the roof line.
5. In the area zoned C-2, with respect to use:
 - a. The following uses shall not be permitted:
Adult Entertainment, Auction Sales, Automobile Repair Garages, Automobile Sales (Agencies), Automobile Service Stations, Beer Depots, Boarding & Lodging Houses, Book Binding, Bowling Alleys, Car Washes, Community Buildings, and Residences, Dance Halls, Day Care Centers, Family Care Home (Mini-Home), Flea Market,

Fraternities and Sororities, Garage or Yard Sales, Governmental Buildings including (Armories, Storage, Maintenance, & Repair Facilities), Hotels, Motels, Ice Storage Houses, Self-Service Laundries & laundrettes, Kennels, Nursing Homes, Package Liquor Stores, Plumbing & Heating Shops, Printing & Lithographing or Publishing Establishments, Public Transportation Terminal, Refrigerated Lockers, ~~Restaurants having drive-through service windows as a part of their operation~~, Rubber-stamp Manufacturing, Sign Painting, Skating Rinks, Taverns, Bars, Saloons, & Lounges not connected with service of food, Tourist Home, Trade Schools, Upholstery and Furniture Repair Shops, Used Car Sales, and including uses which may be more similar in appearance and intensity to those in the prohibited list of activities than to uses that are permitted under the C-2 Zoning regulations.

- b. Use shall be limited to high quality architecture.
6. In the OR-3, Office/Residential District, the following uses shall not be allowed: Boarding or Lodging Houses, Day Care Center, Family Care Home (Mini-Home), Fraternities and Sororities, and Garage and Yard Sales.
 7. Two (2) R-4 lots on Pennyroyal Way, shall be for single family residence only and shall conform with all restrictive covenants as to type of construction, and permitted uses as connected with the adjoining properties located in Sections 3 of Plainview recorded in Plat Book 30, page 21 and 22, with the exception of the requirements as to size with any residence being built on the two (2) R-4 lots to have the following minimum floor areas:
 - a. The ground floor area of a one-story house without an attached garage, 1,500 square feet.
 - b. The ground floor area of a one-story house with a single attached garage, 1,400 square feet, exclusive of garage.
 - c. The ground floor area of a one-story house with two car attached garage, 1,300 square feet, exclusive of the garage.
 - d. The ground floor area of a one and a half story house, 1,500 square feet, exclusive of the garage.
 - e. The total floor area of a tri-level house shall be a minimum of 2,000 square feet, exclusive of the garage.
 - f. The ground floor area of a two story house shall be a minimum of 1,200 square feet, exclusive of the garage.
 - g. Finished basement areas and open porches, as well as garage areas, are not included in computing floor area.
 - h. There shall be no ingress or egress across these lots to any other part of the 44 acre property at any time.
 8. The single-family R-5A:
 - a. The single-family homes contained in R-5A or R-6 (residential apartment area) shall be of brick stone, brick veneer, stone veneer, dryvit, or any combination of the same construction. In no event shall dryvit exceed sixty-five percent (65%) of the area of the exterior. Siding shall be allowed for bay windows, dormers, garage trim and other accenting but in no event shall exceed twenty-five percent (25%) of the exterior.

- b. The R-5A area shall be governed by these Binding Elements and a deed of restrictions substantively the same as the one governing Plainview Section 3. In the event of a conflict between these Binding Elements and Plainview Section 3 Deed Restrictions, these binding elements shall control.
 - c. The single-family residences on the R-5A and R-6 Residential districts shall not be less than 1,500 square feet. On the east side of Stone Creek Way (lots 10-32) the units shall average at least 1,725 square feet, have side yard setbacks no less than seven feet (7') exclusive of fireplaces and shall not be less than 1,600 square feet. In computing floor space, finished basement areas, open porches and garage areas shall not be included as floor area.
9. Landscape Buffer Area: The developer shall create a landscape buffer along the rear of the proposed R-5A lots, which immediately adjoin the existing R-4 zoned property contained in Plainview being lots having minimum building setbacks from the rear property line of 70 feet for 25% of the lots, 75 feet for 37.5% of the lots and 80 feet for 37.5% of the lots. Within such set back area, there shall be established a buffer strip consisting of a berm or landscape mound planted with (1) approximately 201 evergreen trees a minimum of 8 feet tall planted on 10 foot centers trees which in combination with a berm, if any, shall be 10 feet high at the time of planting, (b) 54 flowering trees 10 feet high at the time of planting, and (c) 27 shade trees having 1.5 inch caliper at the time of planting. Any new berm or graded area shall be sodded.
- a. Construction of the mound or berm and planting shall be completed before construction of any buildings on any of the 44 acre site proposed for development.
 - b. The buffer zone will be perpetually maintained by the developer or any successor title holder or condominium association, keeping the grass on the landscape area properly cut with the trees and plantings maintained, including replacement of any diseased or dead landscaping and free from weeds, trash and other debris.
 - c. The landscape buffer strip will be free of any structure, building or any other development including, but not limited to paving for vehicles, pedestrian walkways, bicycle paths, dumpsters, or trash and garbage collection facilities.
 - d. Storm drainage in the landscape buffer zone shall consist of buried pipe or tile, and not be open concrete, rip-rap or earthen ditches.
10. During all phases of construction, the developer shall make substantial efforts to keep down all dust, associated with the construction by the applying of water and shall not begin construction prior to 7:30 a.m. nor extend beyond 8:30 p.m. in the R-5A area and shall not begin before 7:00 a.m. in other areas.
11. Any blasting done on the property shall be in accordance with KRS 351.310 et seq. and the applicable regulations.
12. Applicant shall by written contract require its construction/blasting contractor(s) to execute an indemnity bond with a reputable surety in an amount sufficient to satisfy all blasting damage claims made by Willowhurst residents.
13. Access to lots 1, 2, 3, 4 and 5 from Hurstbourne Lane shall be prohibited.
14. Before a building permit is issued:

- a. The development plan must be re-approved by the Jefferson County Department of Public Works and Transportation, the Metropolitan Sewer District, and the Engineer for the City of Jeffersontown: all drainage, including, but not limited to, the retention basins, must be reviewed by the City Engineer and approved.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12. Such plan shall be implemented prior to requesting a certificate of occupancy and maintained thereafter.
 - d. The applicant must request from the Board of Zoning Adjustment abandonment of the CUP approved under Docket No. B-210-89.
 - e. A minor plat or legal instrument shall be recorded consolidating the properties containing the Lowe's development into one lot. A copy of the recorded instrument shall be submitted to the Planning Commission.
15. Small freestanding (temporary) signs shall not be permitted on any lot excluding signs for sale or lease of real estate.
 16. There shall be no structures placed on Lot 8 without the prior approval of the Jeffersontown City Council, and said lot shall be maintained in a like manner as provided in paragraph 8.b. above.
 17. THP agrees that no further changes will be submitted except for the possibility of engineer/architect changes or other unforeseen changes that may be necessary.
 18. Prior to the development of any non-residential site or phase of this project, the applicant and/or owner agrees to contribute an equitable share of the cost of a computer-coordinated signalization system for the existing Hurstbourne Lane, said amount not to exceed \$20,000.00. The basis for the amount of the contribution shall be determined by the Louisville and Jefferson County Planning Commission.
 19. The applicant and/or owner agrees to construct a pedestrian walkway parallel to Hurstbourne Lane to connect to sidewalks on adjoining properties. The time for construction shall be coincident with the construction of sidewalks on either of the adjoining properties, said adjoining properties to include that which abuts Vieux Carre Drive to the north, or when deemed appropriate by the Jefferson County Traffic Engineer, whichever occurs first.
 20. The commercial site shall have not more than 4 out parcel sites, none of which shall be fast-food restaurants. Any structure erected on Lot 3 shall not exceed 9,000 square feet of enclosed floor space. ~~"Fast food restaurants" as defined in this subsection prohibits drive-through windows and requires served dining; however, nothing herein shall prohibit cafeteria or other self-service, sit-down restaurants.~~
 21. The signage above the main entrance of the Lowes building shall be no higher than 6 feet for the "L" and 5 feet for the "OWES".

22. The only permitted freestanding sign on the lot containing the Lowe's development shall be a monument style sign located as shown on the approved general district development plan. The sign shall not exceed 56.25 square feet in area and 6 feet in height and must be approved by the City of Jeffersontown.
23. The existing berm along the west side of the entrance to Willowhurst shall be landscaped and retained.
24. The Willowhurst monument sign and the portions of the wooden fence which encroach on Lowers east property line between Willowhurst and the Lowe's parcel shall remain.
25. The facade of the Lowers building shall be constructed of brick, except for the Garden Area which shall be constructed of decorative steel fence which shall have the appearance of wrought iron and, except at gates and entrances, a brick knee-wall ranging from two and one-half feet at some points to three and one-half feet at other points; except for architectural features at Lowers main entrance and contractor service entrance which shall be constructed of dryvit; and except for windows, doors, roof flashing, signage, canopy and other architectural elements which are traditionally not of masonry.
26. The garden area as shown on the development plan shall contain the following additional features: Brick columns on the perimeter of the garden area, twenty-foot high brick wall on north wall of the garden area, and brick wall on the west wall of the garden area beginning at the northwest point and extending at least seventy-five feet south. No portion of the wall of the garden area, including access gates, shall be chain link fencing.
27. All building materials and other inventory, except items sold in the garden area shall be enclosed within the building or staging area, and shall not be visible from grade level at the exterior of the building.
28. No merchandise shall be displayed, stored or sold outside of the building, garden area or enclosed atrium area.
29. No loudspeaker shall be used which allows the sound to be heard from the exterior of the building.
30. The truck radius behind the staging area shall be screened by a 150 linear foot masonry wall at least fifteen feet in height. Deliveries to and from the staging area shall be restricted to 7:00 a.m. - 9:00 p.m.
31. Roof top mechanical items such as HVAC units shall be screened with aesthetically pleasing metal screening systems.
32. The shoe-box lighting in the interior of the parking lot shall be directed down and away from Willowhurst Place Subdivision and Hurstbourne Lane so as to minimize dispersion of light toward Willowhurst Place Subdivision and the City of Hurstbourne.
33. The perimeter of the parking area shall contain period lighting fixtures of the same types used at the three existing restaurants on Hurstbourne Lane. The interior of the parking

area will contain lighting fixtures under the trade name Hadco, in black aluminum, which direct light down and away.

34. Trash compactors shall be fed internally from inside the building. No dumpsters will be located on the exterior of the building.
35. In the event carbon monoxide air pollution exceeds APCD standards at the signalized intersection at the entrance of the development within one year of substantial completion of the development plan, the developer shall contribute an amount not to exceed \$10,000 to provide improvements at this intersection to improve air quality. The developer shall also negotiate in good faith to provide other mitigation measures, such as bicycle racks, to reduce air quality impacts.
36. Any future change in use in the Lowe's site to any use other than a home improvement store causing increased trip generation shall require an air quality analysis satisfactory to APCD.
37. If building permits are not issued within two years of the date of approval of the plan or rezoning, whichever is later, 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, and the City of Jeffersontown, Kentucky City Council.
38. A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements must be implemented prior to requesting issuance of the certificate.

4. **Proposed Binding Elements applicable to 421 and 615 S Hurstbourne Pkwy only**

1. Prior to development of each non-residential site or phase of this project, a detailed district development plan shall be submitted to the Planning Commission and the City of Jeffersontown for approval. Each plan shall be in adequate detail and subject to additional binding elements, which may relate, but not be limited to the following items:
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2. The development on the entire 44.29 acres shall be in accordance with the District Development Plan and no further development will occur on the property beyond the plan submitted and subsequently approved by the Planning Commission. The binding elements are for the benefit of the surrounding areas. Any deviations or alterations of that Plan shall require notification of the President of the Plainview Resident's Association, the Willowhurst Residents Association and the Mayor of the City of Hurstbourne two weeks before the Land Development and Transportation Committee meeting at which a proposed deviation or alteration is considered.
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(Armories, Storage, Maintenance, & Repair Facilities), Hotels, Motels, Ice Storage Houses, Self-Service Laundries & laundrettes, Kennels, Nursing Homes, Package Liquor Stores, Plumbing & Heating Shops, Printing & Lithographing or Publishing Establishments, Public Transportation Terminal, Refrigerated Lockers, Rubber-stamp Manufacturing, Sign Painting, Skating Rinks, Taverns, Bars, Saloons, & Lounges not connected with service of food, Tourist Home, Trade Schools, Upholstery and Furniture Repair Shops, Used Car Sales, and including uses which may be more similar in appearance and intensity to those in the prohibited list of activities than to uses that are permitted under the C-2 Zoning regulations.

- b. Use shall be limited to high quality architecture.
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event of a conflict between these Binding Elements and Plainview Section 3 Deed Restrictions, these binding elements shall control.

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 - c. The landscape buffer strip will be free of any structure, building or any other development including, but not limited to paving for vehicles, pedestrian walkways, bicycle paths, dumpsters, or trash and garbage collection facilities.
 - d. Storm drainage in the landscape buffer zone shall consist of buried pipe or tile, and not be open concrete, rip-rap or earthen ditches.
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 11. Any blasting done on the property shall be in accordance with KRS 351.310 et seq. and the applicable regulations.
 12. Applicant shall by written contract require its construction/blasting contractor(s) to execute an indemnity bond with a reputable surety in an amount sufficient to satisfy all blasting damage claims made by Willowhurst residents.
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 14. Before a building permit is issued:
 - a. The development plan must be re-approved by the Jefferson County Department of Public Works and Transportation, the Metropolitan Sewer District, and the Engineer

for the City of Jeffersontown: all drainage, including, but not limited to, the retention basins, must be reviewed by the City Engineer and approved.

- b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12. Such plan shall be implemented prior to requesting a certificate of occupancy and maintained thereafter.
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 17. THP agrees that no further changes will be submitted except for the possibility of engineer/architect changes or other unforeseen changes that may be necessary.
 18. Prior to the development of any non-residential site or phase of this project, the applicant and/or owner agrees to contribute an equitable share of the cost of a computer-coordinated signalization system for the existing Hurstbourne Lane, said amount not to exceed \$20,000.00. The basis for the amount of the contribution shall be determined by the Louisville and Jefferson County Planning Commission.
 19. The applicant and/or owner agrees to construct a pedestrian walkway parallel to Hurstbourne Lane to connect to sidewalks on adjoining properties. The time for construction shall be coincident with the construction of sidewalks on either of the adjoining properties, said adjoining properties to include that which abuts Vieux Carre Drive to the north, or when deemed appropriate by the Jefferson County Traffic Engineer, whichever occurs first.
 20. The commercial site shall have not more than 4 out parcel sites, none of which shall be fast-food restaurants. Any structure erected on Lot 3 shall not exceed 9,000 square feet of enclosed floor space.
 21. The signage above the main entrance of the Lowes building shall be no higher than 6 feet for the "L" and 5 feet for the "OWES".
 22. The only permitted freestanding sign on the lot containing the Lowe's development shall be a monument style sign located as shown on the approved general district development plan. The sign shall not exceed 56.25 square feet in area and 6 feet in height and must be approved by the City of Jeffersontown.

23. The existing berm along the west side of the entrance to Willowhurst shall be landscaped and retained.
24. The Willowhurst monument sign and the portions of the wooden fence which encroach on Lovers east property line between Willowhurst and the Lowe's parcel shall remain.
25. The facade of the Lovers building shall be constructed of brick, except for the Garden Area which shall be constructed of decorative steel fence which shall have the appearance of wrought iron and, except at gates and entrances, a brick knee-wall ranging from two and one-half feet at some points to three and one-half feet at other points; except for architectural features at Lovers main entrance and contractor service entrance which shall be constructed of dryvit; and except for windows, doors, roof flashing, signage, canopy and other architectural elements which are traditionally not of masonry.
26. The garden area as shown on the development plan shall contain the following additional features: Brick columns on the perimeter of the garden area, twenty-foot high brick wall on north wall of the garden area, and brick wall on the west wall of the garden area beginning at the northwest point and extending at least seventy-five feet south. No portion of the wall of the garden area, including access gates, shall be chain link fencing.
27. All building materials and other inventory, except items sold in the garden area shall be enclosed within the building or staging area, and shall not be visible from grade level at the exterior of the building.
28. No merchandise shall be displayed, stored or sold outside of the building, garden area or enclosed atrium area.
29. No loudspeaker shall be used which allows the sound to be heard from the exterior of the building.
30. The truck radius behind the staging area shall be screened by a 150 linear foot masonry wall at least fifteen feet in height. Deliveries to and from the staging area shall be restricted to 7:00 a.m. - 9:00 p.m.
31. Roof top mechanical items such as HVAC units shall be screened with aesthetically pleasing metal screening systems.
32. The shoe-box lighting in the interior of the parking lot shall be directed down and away from Willowhurst Place Subdivision and Hurstbourne Lane so as to minimize dispersion of light toward Willowhurst Place Subdivision and the City of Hurstbourne.
33. The perimeter of the parking area shall contain period lighting fixtures of the same types used at the three existing restaurants on Hurstbourne Lane. The interior of the parking area will contain lighting fixtures under the trade name Hadco, in black aluminum, which direct light down and away.
34. Trash compactors shall be fed internally from inside the building. No dumpsters will be located on the exterior of the building.

35. In the event carbon monoxide air pollution exceeds APCD standards at the signalized intersection at the entrance of the development within one year of substantial completion of the development plan, the developer shall contribute an amount not to exceed \$10,000 to provide improvements at this intersection to improve air quality. The developer shall also negotiate in good faith to provide other mitigation measures, such as bicycle racks, to reduce air quality impacts.
36. Any future change in use in the Lowe's site to any use other than a home improvement store causing increased trip generation shall require an air quality analysis satisfactory to APCD.
37. If building permits are not issued within two years of the date of approval of the plan or rezoning, whichever is later, 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, and the City of Jeffersontown, Kentucky City Council.
38. A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements must be implemented prior to requesting issuance of the certificate.

5. **Existing Binding Elements with proposed changes applicable to 617 S Hurstbourne Pkwy only**

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. No further development shall occur without prior approval from the Planning Commission and City of Jeffersontown.
2. Prior to development of each site or phase of this project, a detailed district development plan shall be submitted to the Planning Commission for approval. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
 - a. screening, buffering, landscaping, tree preservation
 - b. density, floor area, size and height of buildings
 - c. points of access and site layout with respect to on-site circulation
 - d. land uses
 - e. signage
 - f. loading berths
 - g. parking
 - h. sidewalks
 - i. site design elements relating to alternative transportation modes
 - j. outdoor lighting
 - k. minor subdivision plat approval
 - l. air pollution
 - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection

- n. dumpsters
- 3. The development shall not exceed 51,159 square feet of gross floor area.
- 4. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants, balloons, or banners shall be permitted on the site. However, standard "for lease" signs shall be permitted.
- 5. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff so that no light source is visible off-site. Lighting levels attributable to the fixtures located on the subject site shall not exceed two foot-candles at the property line.
- 6. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from the Jefferson County Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
- 7. If a building permit is not issued within two years of the date of the plan or rezoning, whichever is later, 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.
- 8. A certificate of occupancy must be received from the appropriate code enforcement office 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.
- 9. The property owner/developer shall provide copies of these binding elements to tenants, contractors and other parties engaged in development of this project and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.
- 10. If approval is granted by utility company and Planning Commission to allow the required LBA to exist within the easement, and if work is required within that easement causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
- 11. The following C-1 uses shall be prohibited:
 - a. Automobile parking areas, public and private
 - b. Automobile service stations with service bays for repair of no more than two vehicles (see definition of Automobile Service Station for the type of repairs permitted)
 - c. Beer depots where alcoholic beverages are not consumed on the premises
 - d. Boarding and lodging houses
 - e. Bowling alleys
 - f. Car washes
 - g. Community Buildings
 - h. Community residences
 - i. Day care centers, day nurseries, nursery schools and kindergartens
 - l. Dwelling, two family
 - k. Family care home (mini-home)

- l. Family day care home
- m. Garage or yard sale
- n. Homes for the infirm or aged
- o. Hotels and motels, including ancillary restaurants and lounges
- p. Ice storage houses
- q. Laundries or laundrettes, self-service
- r. Multiple family dwellings
- s. Nursing homes
- t. Package liquor stores, where alcoholic beverages are not consumed on the premises
- u. Parks, playgrounds, and community centers
- ~~v. Restaurants with drive-thru windows~~
- w. Tents, air structures and other temporary structures intended for occupancy by commercial activities including but not limited to sales, display, and food services, provided that applicable building and fire - safety codes are met, and provided further that such structures may not be installed for a period (or periods totaling) more than ten (10) days during a calendar year
- x. Towers (radio/tv Receiving or Transmitting) for commercial use, in accordance with Federal Communications Commission and/or Federal Aviation Agency requirements
- y. All Conditional Uses

12. The following C-2 uses shall be prohibited:

- a. Adult entertainment
- b. Auction sales
- c. Automobile parking areas, public and private
- d. Automobile rental agencies
- e. Automobile repair garages
- f. Automobile sales agencies
- g. Automobile service stations
- h. Beer depots
- i. Bingo halls and parlors
- j. Boarding and lodging houses
- k. Bookbinding
- l. Bowling alleys
- m. Building materials, storage and sales
- n. Car washes
- o. Community buildings
- p. Community residences
- q. Dance halls
- r. Day care centers, day nurseries, nursery schools and kindergartens
- s. Dwellings, two family
- t. Family care home (mini-home)
- u. Family day care home
- v. Flea market
- w. Fraternities, sororities, clubs and lodges
- x. Garage or yard sale
- y. Governmental buildings, including armories, storage, maintenance and repair facilities
- z. Home for the infirm and aged.
- aa. Hotels and motels
- bb. Ice storage houses
- cc. Laundries or laundrettes, self-service
- dd. Multiple family dwellings
- ee. Nursing homes

- ff. Package liquor stores
- gg. Parks, playgrounds and community centers, not for profit
- hh. Plumbing and heating shops, storage and sales provided all operations are totally enclosed in a building
- ii. Printing, lithographing, or publishing establishments, if constructed to insure that there is no noise or vibration evident outside the walls of the buildings
- jj. Public transportation passenger terminals
- kk. Refrigerated lockers -~
- ~~ll. Restaurants with drive thru windows~~
- mm. Rubber stamp manufacturing
- nn. Sign painting
- oo. Skating rinks (ice or roller)
- pp. Taverns, bars and saloons and lounges and restaurants identified by signs as a "tavern", "bar", "saloon", "lounge", or similar designation
- qq. Tents, air structures and other temporary structures intended for occupancy by commercial activities including but not limited to sales, display and food services
- rr. Tourist homes
- ss. Towers (radio/tv receiving or transmitting) for commercial or noncommercial use
- tt. Trade schools
- uu. Upholstery and furniture repair shops
- vv. Used car sales areas
- ww. Those uses which are similar in appearance and intensity to the above listed uses.
- xx. All conditional uses.

13. The hours of operation for Buildings 1 and 2 shall be limited to 7 a.m. to 10 p.m.
14. Dumpsters shall be serviced only between the hours of 8 a.m. and 9 p.m. Motorized parking lot sweepers shall be utilized only between the hours of 7:00 a.m. and 10:00 p.m.
15. There shall be no parking, loading or dumpster locations behind Building 1.
16. A lighting plan for the rear of Building 1 (east and southeast elevations) shall be reviewed and approved by the Willowhurst Residents Association prior to issuance of a Certificate of Occupancy for Building 1.
17. No outdoor speakers, public address systems, music, entertainment, dancing or seating, sales or other outdoor activities shall be utilized for any Building except that Building 3 shall be allowed outdoor seating and service in the area shown on the development plan.
18. There will be no blasting on the site.
19. A detailed district development plan for each lot shall be submitted to the Willowhurst Residents Association and Republic Bank thirty (30) days prior to any LD&T review. Construction plans for each building shall be submitted to the Willowhurst Residents Association prior to obtaining building permits.
20. The height and design of outdoor lighting shall be the same as is currently utilized for Lowe's except that the support poles shall not exceed 25' in height.
21. All signs on any of the three buildings which can be seen from the Willowhurst neighborhood will not be illuminated after 10:00 p.m.. There will be no restrictions on hours of illumination for signs not visible from the neighborhood.

22. Any changes to these binding elements and/or the general or detailed district development plans will require a minimum of thirty (30) days notice to the Willowhurst Residents Association and a public hearing before the Planning Commission if requested by Willowhurst Residents Association.
23. No restaurants, tea rooms or cafes will be permitted in Building 1
24. The developer/owner will maintain all landscaping on all three lots.
25. Architectural style, exterior building materials and HVAC screening for all three buildings will be in substantial compliance with the letter to the Willowhurst Residents Association from Presnell Associated dated February 16, 2000 (copy attached), and the architectural drawings submitted with that letter. However, building 3 may be constructed according to standard franchise requirements provided it is compatible in design and construction materials with the balance of the development.
26. Parking lot lights serving Building 1 will be controlled by timers and motion sensors programmed to turn off at 10:00 p.m.

6. Proposed Binding Elements applicable to 617 S Hurstbourne Pkwy only

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. No further development shall occur without prior approval from the Planning Commission and City of Jeffersontown.
2. Prior to development of each site or phase of this project, a detailed district development plan shall be submitted to the Planning Commission for approval. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited, to the following items:
 - a. screening, buffering, landscaping, tree preservation
 - b. density, floor area, size and height of buildings
 - c. points of access and site layout with respect to on-site circulation
 - d. land uses
 - e. signage
 - f. loading berths
 - g. parking
 - h. sidewalks
 - i. site design elements relating to alternative transportation modes
 - j. outdoor lighting
 - k. minor subdivision plat approval
 - l. air pollution
 - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
 - n. dumpsters
3. The development shall not exceed 51,159 square,feet of gross floor area.
4. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants balloons, or banners shall be permitted on the site. However, standard "for lease" signs shall be permitted

5. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff so that no light source is visible off-site. Lighting levels attributable to the fixtures located on the subject site shall not exceed two foot-candles at the property line.
6. Before any permit (including but not limited to building, parking lot, change of use or alteration permit is requested:
 - a. The development plan must receive full construction approval from the Jefferson County Department of Public Works and Transportation (400 Fiscal Court Building) and the Metropolitan Sewer District (700 West Liberty).
7. If a building permit is not issued within two years of the date of the plan or rezoning, whichever is later, 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.
8. A certificate of occupancy must be received from the appropriate code enforcement office 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.
9. The property owner/developer shall provide copies of these binding elements to tenants, contractors and other parties engaged in development of this project and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.
10. If approval is granted by utility company and Planning Commission to allow the required LBA to exist within the easement, and if work is required within that easement causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
11. The following C-1 uses shall be prohibited:
 - a. Automobile parking areas, public and private
 - b. Automobile service stations with service bays for repair of no more than two vehicles (see definition of Automobile Service Station for the type of repairs permitted)
 - c. Beer depots where alcoholic beverages are not consumed on the premises
 - d. Boarding and lodging houses
 - e. Bowling alleys
 - f. Car washes
 - g. Community Buildings
 - h. Community residences
 - i. Day care centers, day nurseries, nursery schools and kindergartens
 - l. Dwelling, two family
 - k. Family care home (mini-home)
 - l. Family day care home
 - m. Garage or yard sale
 - n. Homes for the infirm or aged
 - o. Hotels and motels, including ancillary restaurants and lounges
 - p. Ice storage houses
 - q. Laundries or laundrettes, self-service
 - r. Multiple family dwellings

- s. Nursing homes
- t. Package liquor stores, where alcoholic beverages are not consumed on the premises
- u. Parks, playgrounds, and community centers
- v. Tents, air structures and other temporary structures intended for occupancy by commercial activities including but not limited to sales, display, and food services, provided that applicable building and fire - safety codes are met, and provided further that such structures may not be installed for a period (or periods totaling) more than ten (10) days during a calendar year
- w. Towers (radio/tv Receiving or Transmitting) for commercial use, in accordance with Federal Communications Commission and/or Federal Aviation Agency requirements
- x. All Conditional Uses

12. The following C-2 uses shall be prohibited:

- a. Adult entertainment
- b. Auction sales
- c. Automobile parking areas, public and private
- d. Automobile rental agencies
- e. Automobile repair garages
- f. Automobile sales agencies
- g. Automobile service stations
- h. Beer depots
- i. Bingo halls and parlors
- j. Boarding and lodging houses
- k. Bookbinding
- l. Bowling alleys
- m. Building materials, storage and sales
- n. Car washes
- o. Community buildings
- p. Community residences
- q. Dance halls
- r. Day care centers, day nurseries, nursery schools and kindergartens
- s. Dwellings, two family
- t. Family care home (mini-home)
- u. Family day care home
- v. Flea market
- w. Fraternities, sororities, clubs and lodges
- x. Garage or yard sale
- y. Governmental buildings, including armories, storage, maintenance and repair facilities
- z. Home for the infirm and aged.
- aa. Hotels and motels
- bb. Ice storage houses
- cc. Laundries or laundrettes, self-service
- dd. Multiple family dwellings
- ee. Nursing homes
- ff. Package liquor stores
- gg. Parks, playgrounds and community centers, not for profit
- hh. Plumbing and heating shops, storage and sales provided all operations are totally enclosed in a building
- ii. Printing, lithographing, or publishing establishments, if constructed to insure that there is no noise or vibration evident outside the walls of the buildings
- jj. Public transportation passenger terminals
- kk. Refrigerated lockers -~

- ll. Rubber stamp manufacturing
- mm. Sign painting
- nn. Skating rinks (ice or roller)
- oo. Taverns, bars and saloons and lounges and restaurants identified by signs as a "tavern", "bar", "saloon", "lounge", or similar designation
- pp. Tents, air structures and other temporary structures intended for occupancy by commercial activities including but not limited to sales, display and food services
- qq. Tourist homes
- rr. Towers (radio/tv receiving or transmitting) for commercial or noncommercial use
- ss. Trade schools
- tt. Upholstery and furniture repair shops
- uu. Used car sales areas
- vv. Those uses which are similar in appearance and intensity to the above listed uses.
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