

Planning Commission
Staff Report
September 17, 2020



Case No:	20-DDP-0040
Project Name:	Norton Audubon Medical Office
Location:	3101 Poplar Level Road
Owner(s):	Andrew M. McCarthy, J.D.
Applicant:	Andrew M. McCarthy, J.D.
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Lacey Gabbard, AICP, Planner I

REQUESTS:

- 1. Revised District Development Plan with Binding Element Amendments**

CASE SUMMARY/BACKGROUND

The subject site is located south of Audubon Plaza Drive, west of Illinois Avenue and north of Poplar Level Road. It is zoned C-1 Commercial in the Neighborhood form district, and is currently developed as a vacant 40,727 square foot grocery. It is located within the Audubon Center development.

The applicant is proposing to convert the existing structure on the subject site into medical offices for Norton Audubon. The proposed plan includes an 820 square foot addition at the front entrance to the existing structure. The existing vehicular use area is proposed to be reconfigured within the existing footprint to allow for 28 additional parking spaces. Additionally, the dumpster and its required enclosure for screening will be relocated to an area of existing asphalt. The woodland preservation area will remain with no modifications.

Previous cases:

- 9-39-04: Change in zoning from R-5 Single Family Residential, OR-1 Office Residential and OR-3 Office Residential to C-1 Commercial

STAFF FINDINGS

The Revised District Development Plan and Binding Element Amendments are adequately justified and meet the standard of review.

TECHNICAL REVIEW

Public Works and MSD have provided preliminary plan approval.

Staff is recommending revisions to several binding elements (#4, #5, #9, #10, #18 and #24) which refer to the grocery store use, or no longer apply to the site, or are redundant with other regulations. Additionally, amendments to Binding Elements #1, #3, #6a-e, and #7a-c require Metro Council approval:

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 authorized Committee thereof; any changes/additions/alterations not so referred shall not be valid. The proposed grocery store shall not be used for any purpose other than a grocery unless such change in use is approved by the Metro Council.

3. The development shall not exceed the square feet of gross floor area as shown on the approved development plan. The square footage of the development shall not be increased without the approval of Metro Council.

6. a) Outdoor storage, display and sales are permitted only as allowed by Section 9.7 of the Jefferson County Development Code.

b) Outdoor sales and display. Outdoor sales and display areas shall be limited to the designated area shown on the development plan.

c) Outdoor storage. Outdoor storage of pallets and/or bundled or unbundled boxes shall be limited to the designated area shown on the development plan. No other exterior storage shall be permitted on site.

d) Trash storage: compaction/container unit. Outdoor trash storage and the compactor/container unit shall be each contained in a screened area and shall be limited to the designated area(s) shown on the development plan. "Trash" shall include any pallets, cardboard boxes, extra shelving, disabled cars or any similar items.

e) Outdoor equipment. No refrigeration systems, refrigerators, freezers, coolers, vending machines, ice machines or similar equipment (except compressors) shall be located outside the building. All roof top equipment shall be adequately screened from public view. This binding element may be amended only with the approval of Metro Council.

7. Lighting

(a) All outdoor lighting shall be directed down and away from adjoining residential properties. Light poles shall not exceed twenty-eight feet in height. Parking lot lighting fixtures shall be fully shielded and shall utilize flat lenses so that no light source (i.e., the lamp within the fixture) is visible from adjacent residential property. All other lighting within the development shall be coach style lighting. Light levels due to lighting on the subject site shall not exceed 0.5 foot candles measured at the property line. At the time a building permit is required, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with this Binding Element. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certifications shall be maintained on site at all times thereafter.

(b) Drive-thru pharmacy lighting. All luminaries mounted on or recessed into the lower surface of canopies or drive-through bays shall be fully shielded and utilize flat lenses. The

maximum lighting level shall be 50 foot candles. Such lighting shall be decreased to 5-10 foot candles between the hours of 10 PM and 7 AM.

(c) This binding element may be amended only with the approval of Metro Council.

INTERESTED PARTY COMMENTS

Staff has not received any comments pertaining to this request.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDP

- (a) The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: There do not appear to be any environmental constraints or historic resources on the subject site. Tree canopy requirements of the Land Development Code will be provided on the subject site.

- (b) The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided. Public Works and MSD have provided preliminary approvals.

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

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

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

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

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

STAFF: The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks.

- (f) Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan conforms to applicable guidelines and policies of the Comprehensive Plan and to requirements of the Land Development Code.

REQUIRED ACTIONS:

- Recommend **APPROVAL** or **DENIAL** of the **Binding Element Amendments to METRO COUNCIL (Binding Elements #1, #3, #6a-e, and #7a-c)**
- **APPROVE** or **DENY** the **Binding Element Amendments (Binding Elements #4, #5, #9, #10, #18, #24)**

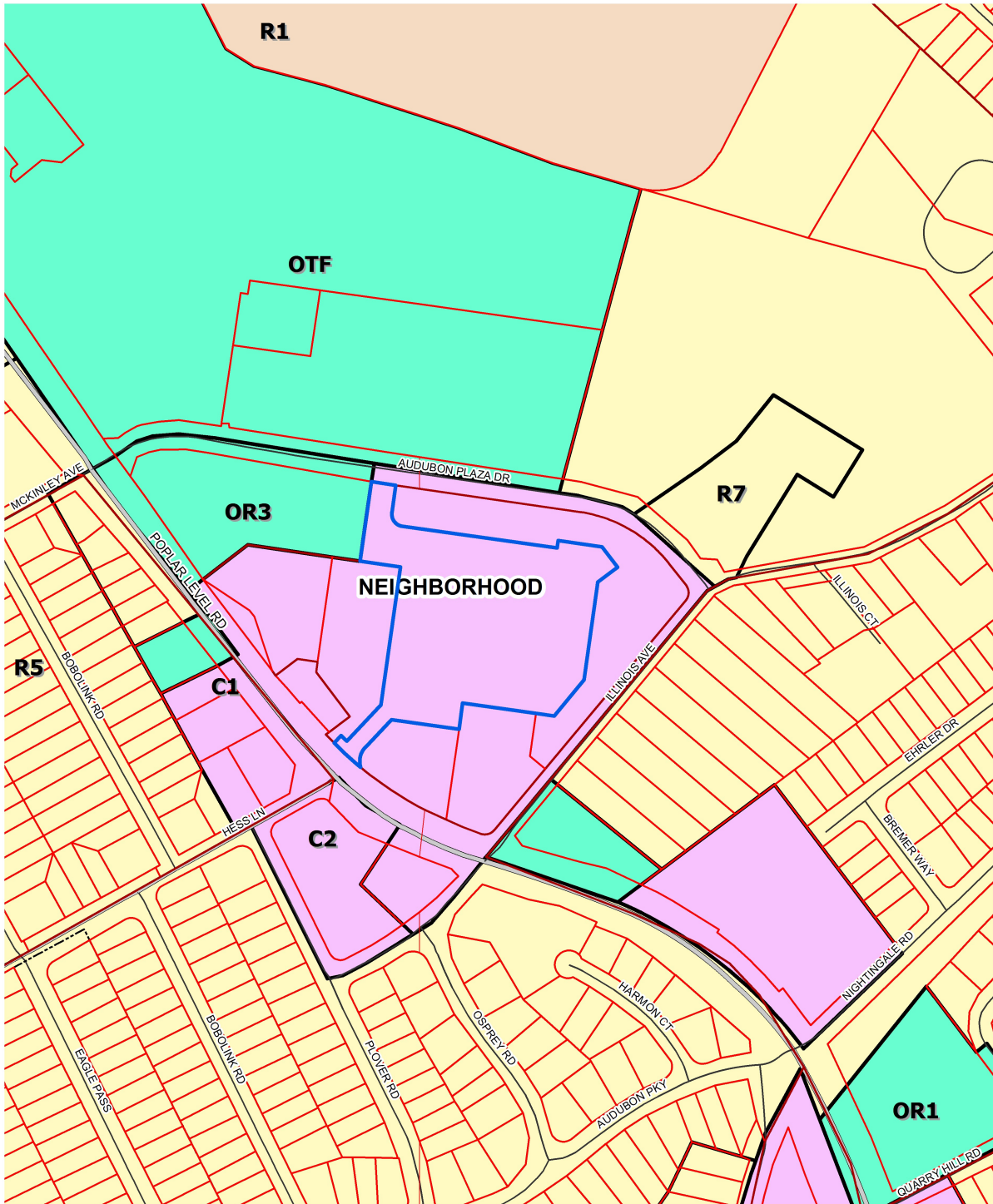
NOTIFICATION

Date	Purpose of Notice	Recipients
9-17-20	Hearing before Planning Commission	1 st tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 10

ATTACHMENTS

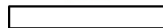
1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements (9-39-04)
4. Proposed Binding Elements

1. Zoning Map



3101 POPLAR LEVEL RD

feet



320

Map Created: 8/26/2020

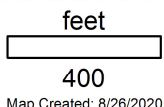


Copyright (c) 2020, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

2. Aerial Photograph



3101 POPLAR LEVEL ROAD



Copyright (c) 2020, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

3. Existing Binding Elements (9-39-04)

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

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC), and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or authorized Committee thereof; any changes/additions/alterations not so referred shall not be valid. ~~The proposed grocery store shall not be used for any purpose other than a grocery unless such change in use is approved by the Metro Council.~~
2. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
3. ~~The development shall not exceed the square feet of gross floor area as shown on the approved development plan. The square footage of the development shall not be increased without the approval of Metro Council.~~
4. ~~Signs shall be in accordance with Chapter 8, shall be monument style and shall be no more than 12 feet in height.~~
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site. ~~This binding element shall not prohibit advertising signs within store windows which are visible from the exterior of the store, otherwise in compliance with applicable sign regulations.~~
6.
 - a) ~~Outdoor storage, display and sales are permitted only as allowed by Section 9.7 of the Jefferson County Development Code.~~
 - b) ~~Outdoor sales and display. Outdoor sales and display areas shall be limited to the designated area shown on the development plan.~~
 - c) ~~Outdoor storage. Outdoor storage of pallets and/or bundled or unbundled boxes shall be limited to the designated area shown on the development plan. No other exterior storage shall be permitted on-site.~~
 - d) ~~Trash storage: compaction/container unit. Outdoor trash storage and the compactor/container unit shall be each contained in a screened area and shall be limited to the designated area(s) shown on the development plan. "Trash" shall include any pallets, cardboard boxes, extra shelving, disabled cars or any similar items.~~
 - e) ~~Outdoor equipment. No refrigeration systems, refrigerators, freezers, coolers, vending machines, ice machines or similar equipment (except compressors) shall be located outside the building. All roof top equipment shall be adequately screened from public view. This binding element may be amended only with the approval of Metro Council.~~
7. Lighting ~~(a) All outdoor lighting shall be directed down and away from adjoining residential properties. Light poles shall not exceed twenty eight feet in height. Parking lot lighting fixtures shall be fully shielded and shall utilize flat lenses so that no light source (i.e., the lamp within the fixture)~~

~~is visible from adjacent residential property. All other lighting within the development shall be coach style lighting. Light levels due to lighting on the subject site shall not exceed 0.5 foot candles measured at the property line. At the time a building permit is required, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with this Binding Element. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certifications shall be maintained on-site at all times thereafter.~~

~~(b) Drive thru pharmacy lighting. All luminaries mounted on or recessed into the lower surface of canopies or drive through bays shall be fully shielded and utilize flat lenses. The maximum lighting level shall be 50 foot candles. Such lighting shall be decreased to 5-10 foot candles between the hours of 10 PM and 7 AM.~~

~~(c) This binding element may be amended only with the approval of Metro Council.~~

8. 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.

9. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

- ~~a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.~~
- ~~b. 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 Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
- d. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
- e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

~~10. If a building permit is not issued within one year 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.~~

11. 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.

12. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for

compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors, assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

13. The site shall be developed in accordance with the woodland protection areas delineated on the site plan, tree preservation plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and Metro Council approval.

14. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed of restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval. All plans setting out woodland protection areas must contain the following notes:

- (a) Woodland Protection Areas (WPAs) identified on this plan represent portions of the site on which all existing vegetation shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat, except that the gazebo required by these binding elements may be constructed within the WPA and a walking path may be installed in the WPA in a location agreeable to the applicant and approved by Planning and Design Services staff.
- (b) Dimension lines have been used on this plan to establish the general location of WPAs and represent the minimum boundary of the designated WPAs. The final boundary for each WPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.

15. The materials and design of proposed structures shall be substantially the same as depicted in the renderings as presented at the February 17, 2005 and March 17, 2005 Planning Commission meetings. The materials and design of the proposed grocery shall be masonry and designed to have the appearance of brick similar to that of the grocery located on Thierman Lane in St Matthews. This binding element may be amended only with the approval of Metro Council.

16. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval. This binding element may be amended only with the approval of Metro Council.

17. No overnight idling of trucks shall be permitted on site. This binding element may be amended only with the approval of Metro Council.

~~18. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.~~

19. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

20. Skylights. The roof of the building shall have no skylights.

21. Outdoor activity. No loading, trash pickup (i.e. dumpster loading and unloading, pallet or trash removal from the site), trash compacting audible beyond the property line, outdoor construction or maintenance, parking lot cleaning or sweeping (except snow and ice), shall occur on the property between the hours of 7 PM and 7 AM. This binding element may be amended only with the approval of Metro Council.

22. Deliveries. No deliveries shall be made to or on the site or drive-thru window operation shall be made between the hours of 10 PM and 6 AM.

23. Delivery Truck Parking On-Site. No delivery trucks with lights, engines, refrigerator motors or similar equipment in operation shall be allowed to park on the property between the hours of 10 PM and 7 AM. The property owner or store operator shall post signs to this effect. This binding element may be amended only with the approval of Metro Council.

~~24. Recreational vehicles. No recreational vehicles, campers or similar vehicles shall be allowed to park on the property except for normal shopping usage on the property. Owner or store operator shall post signs to this effect.~~

25. Alarms. Provided no applicable law or regulation otherwise requires, no security alarms, sirens or bells shall be located on the exterior of the building. However, it is permissible for an alarm system to be operated in conjunction with exit doors.

26. No blasting shall occur on the site unless approved by the Land Development and Transportation Committee after notice to those individuals who spoke at the public hearing. This binding element may be amended only with the approval of Metro Council.

27. Prior to commencing site disturbance work the developer shall contract with an archaeologist to perform an archaeological survey report and shall provide a copy of the survey report to the Urban Design Division ("Landmarks") of Louisville Metro Planning and Design Services. Within thirty days following delivery of the survey report to Landmarks, the developer and Landmarks shall meet to review the findings of the survey report and to agree upon what action, if any, should be taken. This binding element may be amended only with the approval of Metro Council.

28. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.

All plans setting out tree preservation areas must contain the following notes:

1. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Trees in these areas may be removed during construction of homes or buildings on individual lots.

2. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
3. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.
4. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
5. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.

29. First flush stormwater runoff for the site is to be funneled into storm ceptors, settling/retention basins, and/or oil/water separators as needed so that grit, oil, gas, antifreeze, and other potential toxic substances are captured before entering the detention basin. MSD is to approve both the details of capturing the first flush material and the details of the maintenance plan for the ceptors, basin,s and/or oil/water separators. The property owner is responsible for proper maintenance of the storm ceptors, basins, and/or oil/water separators as per MSD's approved maintenance plan, and is to provide MSD with documentation of such maintenance ensuring that the maintenance plan is properly followed.

30. Prior to issuance of a construction permit the developer shall obtain approval of the development plan from the U.S. Army Corps of Engineers.

31. Access from Audobon Plaza Drive shall be designed so as to restrict access by delivery trucks, which design shall initially include placement of bollards at appropriate locations. The Planning Commissioner shall have the right to require additional restrictions at a later date should the placement of bollards be unsuccessful in restricting delivery truck access. This binding element may be amended only with the approval of Metro Council.

32. Exterior improvements to the VFW building shall be made similar to those presented at the March 17, 2005 public hearing so as to integrate its design with the design of the proposed structures in the center.

33. Although the approved Development Plan indicates an on-site detention basin, the developer agrees to continue to pursue the concept of an off-site basin or downstream improvement suitable to MSD, with the intent of balancing the issues of tree preservation and acceptable stormwater management.

34. The design of the fencing along the easterly portion of the property shall be presented at the March 17, 2005 public hearing. In addition, the landscaping along the fencing shall be evergreens at least 6 feet in height and irrigation shall be installed in connection with the landscaping. This binding element may be amended only with the approval of Metro Council.

35. The developer/applicant/property owner shall plant large shade trees on the subject property approximately 50 feet on center along the entire Poplar Level Road frontage. Said trees shall be a minimum 3 inches in caliper at time of planting. A landscape plan that conforms to this binding element and Chapter 10 of the LDC shall be approved by Planning and Design Services staff prior to requesting any permits, in accordance with Binding Element No. 9. This binding element may be amended only with the approval of Metro Council.

36. The developer/applicant/property owner shall install a "Bright Side" on Poplar Level Road somewhere along the frontage of the subject property if approved by the State Highway Department. This binding element may be amended only with the approval of Metro Council.

37. The developer/applicant/property owner shall donate the property within the designated Woodland Protection Area along Illinois Avenue to Metro Government at such time as Metro Government indicates that it will accept the donation. This binding element may be amended only with the approval of Metro Council.

38. The developer/applicant/property owner shall construct/install a gazebo on the northeast portion of the site along Illinois Avenue similar in size to the gazebo at Willow Park; the cost of said gazebo is not required to exceed \$5,000. The exact location of the gazebo shall be approved by Planning and Design Services staff. This binding element may be amended only with the approval of Metro Council.

4. Proposed Binding Elements

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

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC), and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or authorized Committee thereof; any changes/additions/alterations not so referred shall not be valid.

2. The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.

3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

4. 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.

5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:

- f. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
- g. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
- h. 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.
- i. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
- j. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

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. 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, assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.

8. The site shall be developed in accordance with the woodland protection areas delineated on the site plan, tree preservation plan and related notes. Any modification of the woodland protection area requires notification of adjoining property owners and Metro Council approval.

9. The applicant shall provide deeds of restriction ensuring that WPAs will be permanently protected in a manner consistent with these binding elements and the approved plan. The form of the deed of restrictions shall be approved by Planning Commission counsel. Deed Restrictions must be recorded prior to tree preservation approval. All plans setting out woodland protection areas must contain the following notes:

- (c) Woodland Protection Areas (WPAs) identified on this plan represent portions of the site on which all existing vegetation shall be permanently preserved. All clearing, grading, and fill activity in these areas must be in keeping with restrictions established at the time of development plan approval. No further clearing, grading, construction or other land disturbing activity shall take place within designated WPAs beyond pruning to improve the general health of the tree or to remove dead or declining trees that may pose a public health and safety threat, except that the gazebo required by these binding elements may be constructed within the WPA and a walking path may be installed in the WPA in a location agreeable to the applicant and approved by Planning and Design Services staff.
- (d) Dimension lines have been used on this plan to establish the general location of WPAs and represent the minimum boundary of the designated WPAs. The final boundary for each WPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.

10. The materials and design of proposed structures shall be substantially the same as depicted in the renderings as presented at the February 17, 2005 and March 17, 2005 Planning Commission meetings. The materials and design of the proposed grocery shall be masonry and designed to have the appearance of brick similar to that of the grocery located on Thierman Lane in St Matthews. This binding element may be amended only with the approval of Metro Council.
11. The façade elevations shall be in accordance with applicable form district standards and shall be approved by PDS staff prior to construction permit approval. This binding element may be amended only with the approval of Metro Council.
12. No overnight idling of trucks shall be permitted on site. This binding element may be amended only with the approval of Metro Council.
13. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
14. Skylights. The roof of the building shall have no skylights.
15. Outdoor activity. No loading, trash pickup (i.e. dumpster loading and unloading, pallet or trash removal from the site), trash compacting audible beyond the property line, outdoor construction or maintenance, parking lot cleaning or sweeping (except snow and ice), shall occur on the property between the hours of 7 PM and 7 AM. This binding element may be amended only with the approval of Metro Council.
16. Deliveries. No deliveries shall be made to or on the site or drive-thru window operation shall be made between the hours of 10 PM and 6 AM.
17. Delivery Truck Parking On-Site. No delivery trucks with lights, engines, refrigerator motors or similar equipment in operation shall be allowed to park on the property between the hours of 10 PM and 7 AM. The property owner or store operator shall post signs to this effect. This binding element may be amended only with the approval of Metro Council.
18. Alarms. Provided no applicable law or regulation otherwise requires, no security alarms, sirens or bells shall be located on the exterior of the building. However, it is permissible for an alarm system to be operated in conjunction with exit doors.
19. No blasting shall occur on the site unless approved by the Land Development and Transportation Committee after notice to those individuals who spoke at the public hearing. This binding element may be amended only with the approval of Metro Council.
20. Prior to commencing site disturbance work the developer shall contract with an archaeologist to perform an archaeological survey report and shall provide a copy of the survey report to the Urban Design Division ("Landmarks") of Louisville Metro Planning and Design Services. Within thirty days following delivery of the survey report to Landmarks, the developer and Landmarks shall meet to review the findings of the survey report and to agree upon what action, if any, should be taken. This binding element may be amended only with the approval of Metro Council.
21. The site shall be developed in accordance with the tree preservation areas delineated on the site plan and related notes. Any modification of the tree preservation plan requested by the applicant may

be approved by the designated DPDS staff if the changes are in keeping with the intent of the approved tree preservation plan.

All plans setting out tree preservation areas must contain the following notes:

6. Tree preservation areas (TPAs) identified on this plan represent portions of the site the developer has designated to be left undisturbed during the development of roadways, utilities and similar infrastructure. These are not permanent preservation areas. Trees in these areas may be removed during construction of homes or buildings on individual lots.
7. Dimension lines have been used on this plan to establish the general location of TPAs and represent minimum distances. The final boundary for each TPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.
8. Tree protection fencing shall be erected around all TPAs prior to site disturbance (except as provided in these notes) to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed in a TPA, the fence shall be relocated to protect all remaining trees within that TPA. When a tree mass contains both WPAs and TPAs, fencing shall only be required at the outer most perimeter of that tree mass.
9. No parking, material storage, or construction activities are permitted within the TPAs beyond that allowed for preliminary site investigation work.
10. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed 12 feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at a height of four and one-half feet above ground level shall be removed without prior approval by DPDS.
22. First flush stormwater runoff for the site is to be funneled into storm ceptors, settling/retention basins, and/or oil/water separators as needed so that grit, oil, gas, antifreeze, and other potential toxic substances are captured before entering the detention basin. MSD is to approve both the details of capturing the first flush material and the details of the maintenance plan for the ceptors, basins, and/or oil/water separators. The property owner is responsible for proper maintenance of the storm ceptors, basins, and/or oil/water separators as per MSD's approved maintenance plan, and is to provide MSD with documentation of such maintenance ensuring that the maintenance plan is properly followed.
23. Prior to issuance of a construction permit the developer shall obtain approval of the development plan from the U.S. Army Corps of Engineers.
24. Access from Audobon Plaza Drive shall be designed so as to restrict access by delivery trucks, which design shall initially include placement of bollards at appropriate locations. The Planning Commissioner shall have the right to require additional restrictions at a later date should the placement of bollards be unsuccessful in restricting delivery truck access. This binding element may be amended only with the approval of Metro Council.

25. Exterior improvements to the VFW building shall be made similar to those presented at the March 17, 2005 public hearing so as to integrate its design with the design of the proposed structures in the center.
26. Although the approved Development Plan indicates an on-site detention basin, the developer agrees to continue to pursue the concept of an off-site basin or downstream improvement suitable to MSD, with the intent of balancing the issues of tree preservation and acceptable stormwater management.
27. The design of the fencing along the easterly portion of the property shall be presented at the March 17, 2005 public hearing. In addition, the landscaping along the fencing shall be evergreens at least 6 feet in height and irrigation shall be installed in connection with the landscaping. This binding element may be amended only with the approval of Metro Council.
28. The developer/applicant/property owner shall plant large shade trees on the subject property approximately 50 feet on center along the entire Poplar Level Road frontage. Said trees shall be a minimum 3 inches in caliper at time of planting. A landscape plan that conforms to this binding element and Chapter 10 of the LDC shall be approved by Planning and Design Services staff prior to requesting any permits, in accordance with Binding Element No. 9. This binding element may be amended only with the approval of Metro Council.
29. The developer/applicant/property owner shall install a "Bright Side" on Poplar Level Road somewhere along the frontage of the subject property if approved by the State Highway Department. This binding element may be amended only with the approval of Metro Council.
30. The developer/applicant/property owner shall donate the property within the designated Woodland Protection Area along Illinois Avenue to Metro Government at such time as Metro Government indicates that it will accept the donation. This binding element may be amended only with the approval of Metro Council.
31. The developer/applicant/property owner shall construct/install a gazebo on the northeast portion of the site along Illinois Avenue similar in size to the gazebo at Willow Park; the cost of said gazebo is not required to exceed \$5,000. The exact location of the gazebo shall be approved by Planning and Design Services staff. This binding element may be amended only with the approval of Metro Council.