

## Planning Commission

### Staff Report

April 6, 2017



<b>Case No:</b>	17SUBDIV1001
<b>Project Name:</b>	The Park at Locust Creek
<b>Location:</b>	17015 Shelbyville Road
<b>Owners:</b>	Creek Partners, LLC; Maurice Sweeney & Sweeney Farm Family, LP
<b>Applicant:</b>	Creek Partners, LLC
<b>Representative(s):</b>	Sabak, Wilson, & Lingo, Inc. – Kelli Jones
<b>Project Area/Size:</b>	38.93 Acres
<b>Existing Zoning District:</b>	R-4/R-5, Single-Family Residential
<b>Existing Form District:</b>	N, Neighborhood
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	19 – Julie Denton
<b>Case Manager:</b>	Joel P. Dock, Planner II

### REQUEST

- **Revised Major Preliminary Subdivision Plan** to create 47 residential lots
- **Revised District Development Plan**
- **Waiver** of Land Development Code (LDC), section 10.3.5.A.3 to encroach upon the 15' x 100' parkway buffer
- **Waiver** of LDC, section 10.3.5.A.1 to allow encroachment into 75' parkway setback
- **Waiver** of LDC, section 5.8.1.B to not provide sidewalk along Shelbyville Road
- **Variance** of LDC, section 5.3.1.C.2 to provide a 20' front yard setback

### CASE SUMMARY

The applicant proposes to create forty-seven single-family residential lots with three open space lots in Eastern Louisville Metro; roughly one mile West of the Jefferson/Shelby County boundary. Long Run Creek forms the Northern boundary of the site. An attached single-family dwelling unit scheme known as Lot 474 of Locust Creek was previously proposed on the subject site under the innovative subdivision regulations. The R-5 portion of the subject site along Shelbyville Road was rezoned to allow it to become incorporated into the attached unit project. Binding elements were placed upon that portion only; thus, a revised district development plan is required in conjunction with the application for a preliminary subdivision. The Planning Commission may choose to eliminate the binding elements on the R-5 portion and move forward with Conditions of Approval for the requested subdivision only.

Due to natural features and topography on the subject site, the applicant has requested relief from parkway standards in order to move infrastructure and the single family lots closer to Shelbyville Road. For the same reasons and for consistent the applicant has requested a reduction in the front yard from twenty-five feet to twenty feet.

A sidewalk waiver to not provide sidewalks along Shelbyville Road has also been requested.

### LAND USE/ZONING DISTRICT/FORM DISTRICT

The subject site is within the R-4, Single-family Residential zoning district with a small portion being zoned R-5 and Neighborhood form district. It's surrounded on all sides by R-4, Single-family Residential within the same form district. A Blue-line perennial stream is the Northern boundary.

## PREVIOUS CASES ON SITE

- 10-35-98: Major preliminary subdivision for Locust Creek (approved 12/3/98)
- 9-87-02/10-37-02: Change in zoning from R-4 to R-5 and preliminary subdivision (approved 12/5/02)

## INTERESTED PARTY COMMENTS

Staff has not received any inquires or comments on the proposal.

## APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER

Section 10.3.5.A.3 to encroach upon the 15' x 100' parkway buffer; and  
Section 10.3.5.A.1 to allow encroachment into 75' parkway setback

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

STAFF: The waiver will not adversely affect adjacent property owners as the required parkway buffer and plantings will be provided, no structures will be located with the setback, and natural features to the rear of the property will be preserved to the benefit of the general welfare of the public.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 7 calls for protection of the character of parkways and scenic byways and corridors through standards for buffers, landscape treatment, lighting and signs. The intent of parkway development standards is to protect existing scenic and aesthetic qualities, to ensure a quality visual experience on developing corridors and to protect and improve the visual experience on established corridors. The proposed plan is in compliance with these elements as no structural encroachments will be made into the setback or 15' x 100' buffer area. The applicant will provide additional plantings in the 15' x 100' buffer area to mitigate any adverse impact caused by the encroachment. The encroachment is minimal and will not adversely affect visual quality of the parkway as the applicant will provide 75% more trees within the buffer.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the encroachment is minimal and the applicant will provide 75% more trees within the buffer along Shelbyville Road and 75% more plant material within the 15' x 100' buffer area.

- (d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

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

STAFF: The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) as the

applicant will provide 75% more trees within the buffer along Shelbyville Road and 75% more plant material within the 15' x 100' buffer area.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER**

#### **Section 5.8.1.B to not provide sidewalk along Shelbyville Road**

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

STAFF: The waiver will adversely affect adjacent property owners as sidewalk connectivity along Shelbyville Road is sporadic and not providing sidewalks contributes to the absence of safe pathways for residents to travel to nearby communities on foot.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The sidewalk waiver violates these elements of the comprehensive plan as the sidewalk network in the area is sporadic. While the subject site and surrounding developments may provide sidewalks internal to their respective subdivisions, connection between communities becomes unavailable and traversing within the right-of-way on foot is a risk to the public health, safety and welfare of the community. The site has roughly 1,400 feet of frontage that without sidewalks would further contribute to the poor condition of connectivity within the area. As more land is needed to accommodate projected population growth, especially in East end communities of Louisville Metro alternative forms of transportation should be evaluated not based on current need but future demand and sustainability. The surrounding land is zoned R-4 single-family residential which permits standard 9,000 square foot residential lot subdivisions.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant

STAFF: The extent of waiver of the regulation is not the minimum necessary to afford relief to the applicant as there are no environmental constraints that would prevent the installation of sidewalks and the construction of sidewalks would benefit the overall well-being of residents in the area.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE**

#### **Section 5.3.1.C.2 to provide a 20' front yard setback**

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

STAFF: The requested variance will not adversely affect public health safety or welfare as the request is internal to the subdivision and will allow for structures to minimize their impact on natural features to the rear of the subject site and the parkway buffer along the frontage.

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

STAFF: The requested variance will not alter the essential character of the general vicinity as the proposal is for a new subdivision and the proposed setback will establish the front yard character of the subdivision.

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

STAFF: The requested variance will not cause a hazard or nuisance to the public as the request is internal to the subject site and does not impact sight lines or movement for pedestrians or vehicular traffic.

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

STAFF: The requested variance will not allow an unreasonable circumvention of zoning regulations as no setbacks have been established within the subdivision and the request does not adversely impact public health, safety, or welfare and does not create any hazards or nuisances.

**ADDITIONAL CONSIDERATIONS:**

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

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as this site contains floodplain and potential steep slopes that are not typical of other portions of the Locust Creek development.

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

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as would require more disturbances of natural areas which the applicant wishes to protect.

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

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

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDP 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: The design of the proposed subdivision respects the environmental features on site. The R-5 portion subject to binding elements does not contain any significant natural features.

- 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 has not been provided along the frontage of Shelbyville Road and staff does not support the requested sidewalk waiver. However, sidewalks are being provided internally within the subdivision.

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

STAFF: Open space is being provided and natural features are being preserved in within the subdivision.

- 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.

- 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.

### **TECHNICAL REVIEW**

The revised major preliminary subdivision plan is in order and has received preliminary approvals from Transportation Planning Review and the Metropolitan Sewer District.

The Planning Commission should consider the removal of binding elements of docket 9-87-02 from the R-5 portion of the subject site beginning on page 9 of the *Staff Report* and consider the appropriateness of moving forward on the subject site with conditions of approval only. The site was rezoned to R-5 to allow its incorporation into the surrounding Locust Creek innovation subdivision. As the site is no longer being developed as a component of an innovative subdivision and the R-5 zoning district is compatible with the surrounding area the subject site zoned R-5 may be left to be developed as permitted by right within the zoning district. Staff supports the removal of these binding elements for the above-mentioned reasons. If the Planning Commission chooses to eliminate these elements it should do so in their motion on the Revised District Development Plan.

### **STAFF CONCLUSIONS**

The Revised District Development Plan, Parkway Waivers, and Variance appear to be adequately justified and meet the standard of review based on staff analysis in the staff report.

Due to the staff's negative analysis of the sidewalk waiver, the major preliminary subdivision does not meet the minimum standards for approval established in the LDC.

Based upon the information in the staff report, the testimony and evidence provided at the public meeting, the Planning Commission must determine if the proposal meets the standards established in the LDC for approving the aforementioned requests.

## REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Waiver** of LDC section 10.3.5.A.3 to encroach upon the 15' x 100' parkway buffer **AND** the **Waiver** of LDC, section 10.3.5.A.1 to allow encroachment into 75' parkway setback
- **APPROVE** or **DENY** the **Waiver** of LDC, section 5.8.1.B to not provide sidewalk along Shelbyville Road
- **APPROVE** or **DENY** the **Variance** of LDC, section 5.3.1.C.2 to provide a 20' front yard setback
- **APPROVE** or **DENY** the **Revised District Development Plan** with existing binding elements or remove those existing binding elements beginning on Page 9 of the *Staff Report*
- **APPROVE** or **DENY** the **Major Preliminary Subdivision Plan**

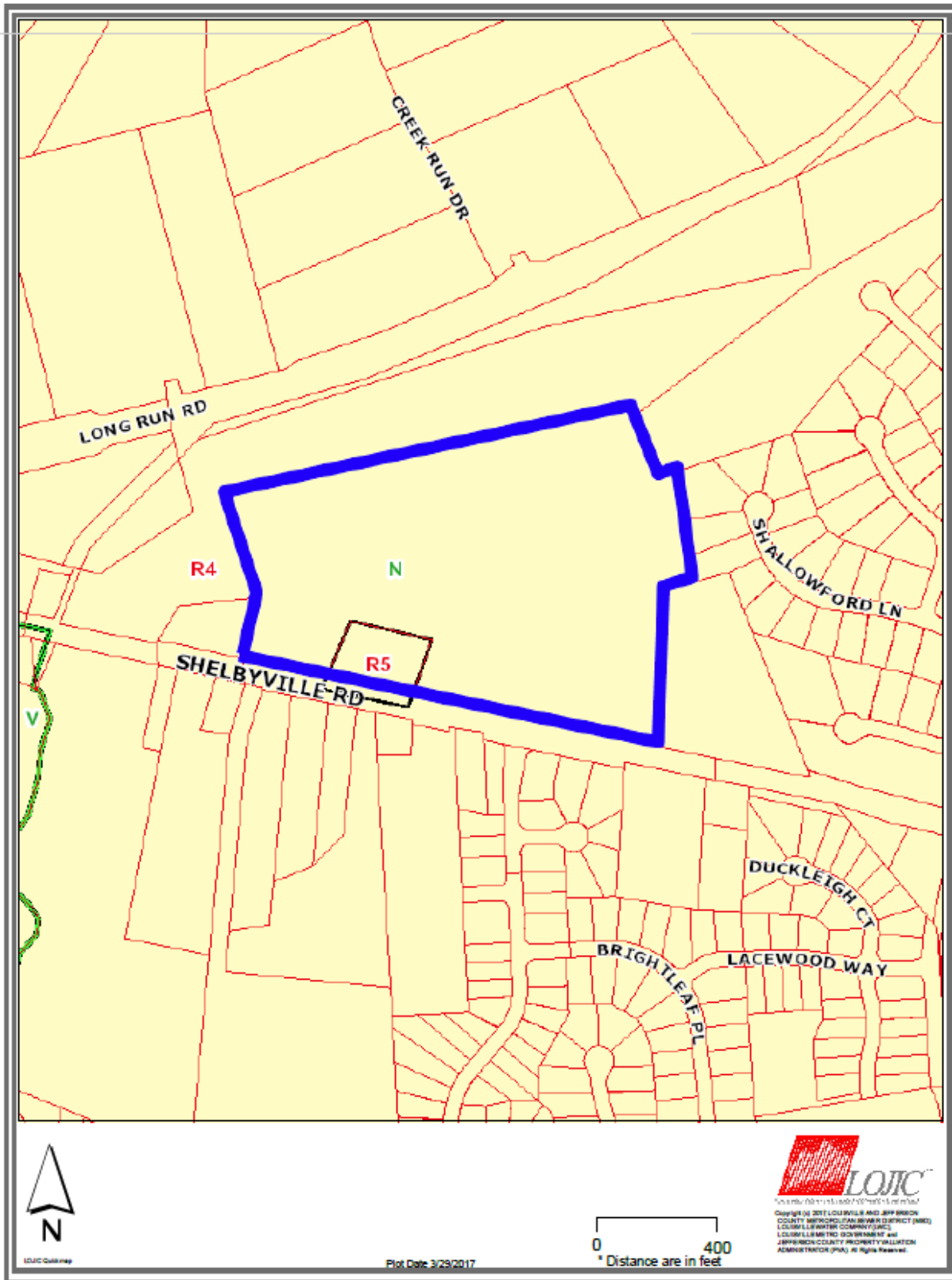
## NOTIFICATION

Date	Purpose of Notice	Recipients
3/17/17	LD&T	Adjoining property owners, applicant, representative, case manager, and neighborhood groups

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Binding Elements 9-87-02
4. Existing Conditions of Approval 10-35-98
5. Proposed Conditions of Approval

1. Zoning Map





2. Aerial Photograph





**3. Existing Binding Elements 9-87-02**

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. 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 density of the development shall not exceed 4.35 dwelling units per acre (6 units on 1.38 acres).
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. The applicant shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.
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 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.
8. 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.
9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
10. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.

11. 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. Tree 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.
12. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
- a) Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b) A deed of restriction in a form approved by Counsel to the Planning Commission.
  - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
13. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
14. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the \_\_\_\_\_ Planning Commission meeting.
15. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.

**4. Existing Conditions of Approval 10-35-98**

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.
2. The density of the development shall not exceed 11.9 dwelling units per acre (312 units on 29.788 acres).
3. The only permitted freestanding sign shall be a monument style sign, located as shown on the approved development plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 25 feet to front property line. The sign shall not exceed six square feet in area per side and six feet in height. No sign shall have more than two sides.
4. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants balloons, or banners shall be permitted on the site.
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.
6. Construction fencing shall be erected at the edge of the area of development prior to any grading or construction to protect the existing tree stands and their 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.
7. The applicant shall submit a plan for approval by the Planning Commission staff landscape architect showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, and demolition). Any modification of the tree preservation plan requested by the applicant may be approved by the Planning Commission staff landscape architect if the changes are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
  - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
  - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
  - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
  - d. Location of construction fencing for each tree/tree mass designated to be preserved.
8. 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).
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
9. If a building permit is not issued within three 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.
10. 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.

11. 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.
12. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to grading and construction activities.

## 5. Proposed Conditions of Approval

- ~~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.~~
- ~~2. The density of the development shall not exceed 11.9 dwelling units per acre (312 units on 29.788 acres).~~
- ~~3. The only permitted freestanding sign shall be a monument style sign, located as shown on the approved development plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 25 feet to front property line. The sign shall not exceed six square feet in area per side and six feet in height. No sign shall have more than two sides.~~
- ~~4. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants balloons, or banners shall be permitted on the site.~~
- ~~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.~~
- ~~6. Construction fencing shall be erected at the edge of the area of development prior to any grading or construction to protect the existing tree stands and their 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.~~
- ~~7. The applicant shall submit a plan for approval by the Planning Commission staff landscape architect showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, and demolition). Any modification of the tree preservation plan requested by the applicant may be approved by the Planning Commission staff landscape architect if the changes are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:~~
  - ~~a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).~~
  - ~~b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).~~
  - ~~c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.~~
  - ~~d. Location of construction fencing for each tree/tree mass designated to be preserved.~~

- ~~8. 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).~~
  - ~~b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.~~~~
- ~~9. If a building permit is not issued within three 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.~~
- ~~10. 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.~~
- ~~11. 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.~~
- ~~12. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to grading and construction activities.~~
- 1. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.**
- 2. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.**
  - b. Encroachment permits must be obtained from Louisville Metro Public Works.**
  - 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.****
- 3. 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.**
- 4. The applicant, developer, or property owner shall provide copies of these conditions of approval to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These**

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

5. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
  - a) Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
  - b) A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of TCPAs etc.) and other issues required by these conditions of approval.
  - c) Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
6. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
7. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
8. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
9. After release of the drainage bond, mosquito abatement on open space lots shall be the responsibility of the Homeowners Association. Accumulations of water in which mosquito larvae breed or have the potential to breed are required to be treated with a mosquito larvicide approved by the Louisville Metro Health Department. Larvicides shall be administered in accordance with the product's labeling. This language shall appear in the deed of restrictions for the subdivision.
10. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 1 of the Land Development Code and are to be permanently protected. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.
11. At the time the developer turns control of the homeowners association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowners association account. The subdivision performance bond may be required by the planning Commission to fulfill this funding requirement.
12. 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.**

- 13. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan and construction plan that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."**