

Development Review Committee

Staff Report

June 30th, 2021



Case No:	20-DDP-0039
Project Name:	Gustavo's Patio Addition
Location:	401 S Hurstbourne Parkway
Owner(s):	Gustavo Reyes Torres
Applicant:	Joshua Gedney, Encompass
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Molly Clark, Planner I

REQUEST(S)

- Revised Detailed District Development plan

CASE SUMMARY/BACKGROUND

The applicant is proposing to build a 1,200 square foot patio that will be used by the existing sit down restaurant, Gustavo's. In order to build the patio, 6 parking spaces will be eliminated from the site bringing the total parking spaces from 132 to 126 spaces. The site is currently zoned C-2 in the Suburban Marketplace Corridor form district. It is located south of Vieux Carre Drive, right at the intersection with Hurstbourne Parkway and Vieux Carre Drive.

This would normally be a staff level approved Revised Detailed District Development plan however, binding element #2 requires that any "deviations or alterations" of the previously approved plan has to be heard in front of a Committee with notification being sent to the President of the Plainview Residents' Association, the Willowhurst Residents Association and the Mayor of the City of Hurstbourne two week prior to LD&T meeting. Notices were sent accordingly.

Binding Element #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 will require notification of the President of the Plainview Residents' 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.*

Previous cases:

- 9-62-93 -Rezoning from R-6 to C-2 with a general plan and detailed plans.

STAFF FINDING

The Revised Detailed District Development Plan is adequately justified and meet the standard of review.

TECHNICAL REVIEW

Transportation Planning and MSD have preliminarily approved the proposal.

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP

- 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. There will not be any disturbance of the existing landscaping on site for the proposed patio..

- 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, and Metro Public Works and the Kentucky Transportation Cabinet have approved the preliminary development plan.

- 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. Future multi-family development proposed on the subject site will be required to meet Land Development Code requirements.

- 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. 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 **Revised Detailed District Development Plan** to the **City of Jeffersontown**.

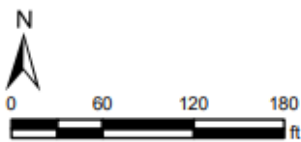
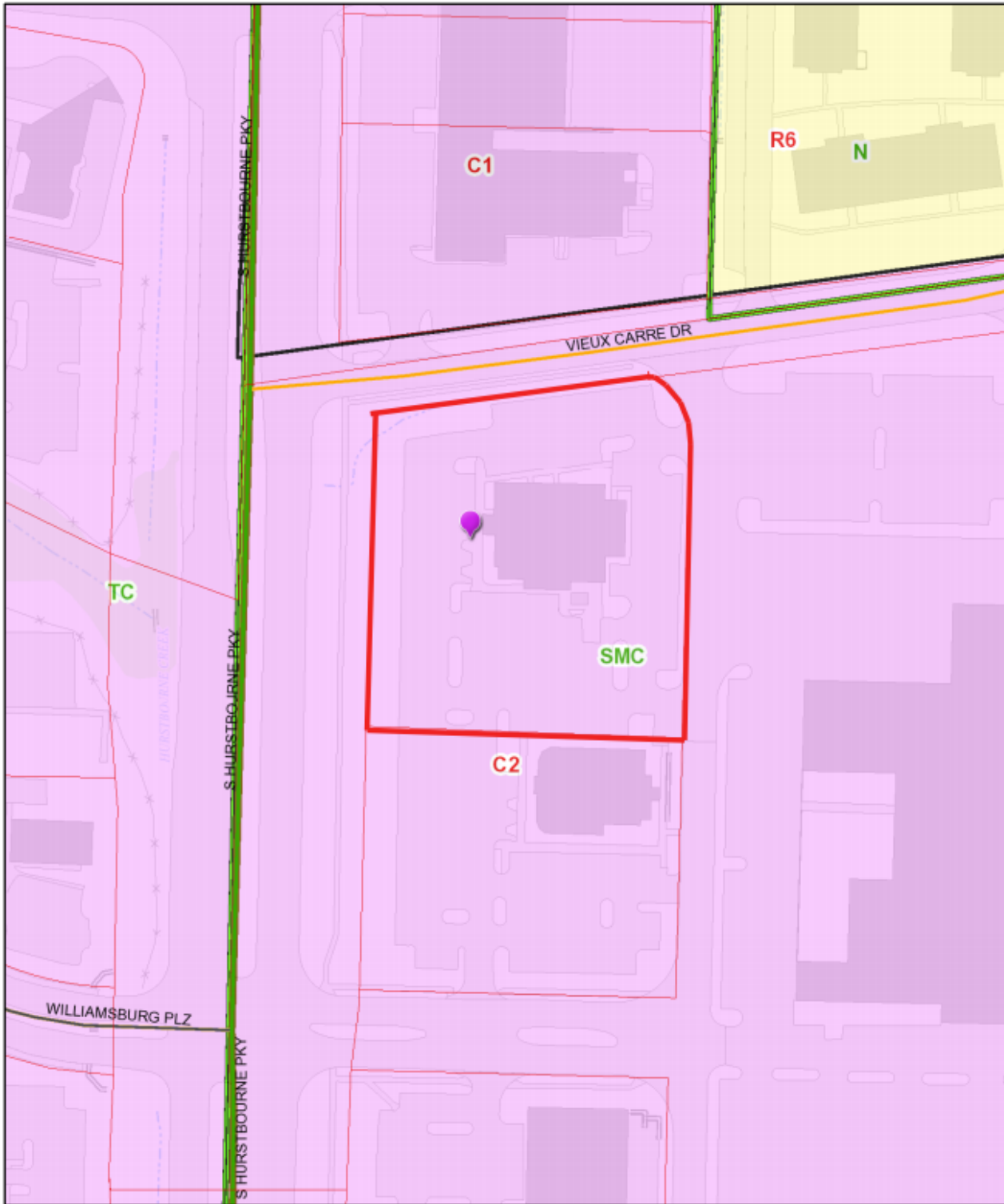
NOTIFICATION

Date	Purpose of Notice	Recipients
6/14/21	Hearing before DRC 6/30/21	1 st tier adjoining property owners Registered Neighborhood Groups in Council District

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements

1. Zoning Map



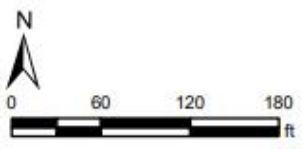
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2. Aerial Photograph



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3. Existing Binding Elements

Existing Binding Elements - Docket #9-62-93

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, site 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 will require notification of the President of the Plainview Residents' 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-SA, 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 2½ stories or 35 feet in height, except for the one Lowe's architectural feature over the main entrance.
4. The architectural feature over the main entrance will not extend higher than 42 feet. The 35 foot 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 Centers, Family Care Home (Mini-Home), Fraternities and Sororities, and Garage and Yard Sales.
 7. Two R-4 lots on Pennyroyal Way, shall be for single family residence only and will 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 area 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 adjoining 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 (a) approximately 201 evergreen tree 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 a. THP shall pay \$150,000.00 to the Willowhurst Residents Association, Inc. (hereafter the Association) for the Association's expense incurred in connection with the THP/Lowes rezoning case and this litigation, not less than \$100,000.00 of which shall be expended by the Association for construction and maintenance of such landscaping and other improvements in the common area of its subdivision as the Association in its sole discretion shall determine are reasonable. The \$150,000.00 shall be paid in cash and in full at the same time the first site work shall begin for construction of the Lowe's Center. Site work shall include without limitation, clearing, grading, blasting, or fencing. Payment of the \$150,000.00 shall be a condition presedent to the beginning of any site work. Upon the payment of \$150,000 to the Association, THP and Lowe's shall be relieved of any further obligation under this paragraph 10a.

- b. THP or Lowe's will grant to the Association and easement for the purposes of access to the subdivision common area, and THP or Lowe's and the Association

agree to negotiate in good faith all the terms and conditions of the easement. A plat showing the easement shall be prepared and recorded in the Jefferson County Clerk's office with the easement deed. The easement shall be negotiated and recorded within 30 days from entry of this Order.

- c. THP or Lowe's will, if requested by the Association, cooperate with the Association in seeking approval from the Metropolitan Sewer District (and any other governmental agency having jurisdiction) for locating the Association's landscaping and/or fencing in the retention basin located on THP's property near the northwestern corner of the subdivision.
 - d. The existing earth berm in the west right of way of Willowhurst Place will be retained and will be landscaped at THP's or Lowe's expense as soon as practical after site work begins (as defined in paragraph 10a. above). The landscaping constructed by THP or Lowe's will be maintained by THP or Lowe's. The Association may construct additional landscaping in this west right-of-way and THP or Lowe's and the Association will work together to coordinate all landscaping in this area including the initial landscaping to be done by THP or Lowe's.
11. During all phases of construction, the developer will make substantial efforts to keep down all dust, associated with the construction by the applying of water and will 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.
 12. Any blasting done on the property shall be in accordance with KRS 331.310 et seq. and the applicable regulations. THP or Lowe's will perform at its expense pre-blast surveys for any homes in the Willowhurst Place Subdivision requesting the same. THP or Lowe's will furnish information concerning the surveys and forms for requesting the surveys to all homeowners in the Subdivision in sufficient time for the surveys to be made before blasting begins.
 13. THP or Lowe's shall be written contract require its construction/blasting contactor(s) to execute a one million dollar indemnity bond with a reputable surety to satisfy all blasting damage claims made by Willowhurst residents. The bond shall remain in effect for two (2) years after blasting is completed.
 14. Access to lots 1, 2, 3, 4 and 5 from Hurstbourne Lane shall be prohibited.
 15. 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. the size and location of any proposed sign must be approved by the City of Jeffersontown. The City of Jeffersontown may require that the signs be smaller than would otherwise be permitted by the Zoning District Regulations.

- c. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - e. the applicant must request from the Board of Zoning Adjustment abandonment of the CUP approved under Docket No. B-10-89.
 - f. 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.
16. Small freestanding (temporary) signs shall not be permitted on any lot excluding signs for sale or lease or real estate.
17. 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 9.b. above.
18. 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.
19. Prior to the development of any non-residential site or phase of this project, the applicant and/or owner agrees to:
- a. Contribute an equitable share of the cost of a computer-coordinated signalization system for 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.
20. 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.
21. The commercial site shall have not more than 4 out parcel sites, none of which shall be fast-food restaurants. Any structure erected on an out parcel 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.
22. The signage above the main entrance of the Lowe's building shall be no higher than 6 feet for the "L" and 5 feet for the "OWES."
23. 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 display area and 6 feet in height and must conform with Jeffersontown sign ordinances and be approve by Jeffersontown.
24. (Deleted by Agreed Order; but binding elements not renumbered.)

25. The Willowhurst monument sign on the west side of Willowhurst Place shall remain in place and THP or Lowe's will grant and record an easement with a plat thereof to the Association for that purpose. Any portion of the Willowhurst wooden fence which encroaches on THP's property may, in the discretion of the Association, remain in place and THP or Lowe's will grant and record an easement with a plat thereof for that purpose or grand and record a temporary construction easement for removal of the fence from THP's property. THP or Lowe's will cooperate with the Association to identify the encroachment.
26. The façade of the Lowe's 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 Lowe's 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.
27. 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.
28. All building materials and other inventory, except items sold in the garden area or vestibule area will be enclosed within the building or staging area, and shall not be visible from grade level at the exterior of the building.
29. No merchandise shall be displayed, stored or sold outside of the building, garden area or enclosed atrium area.
30. No loudspeaker will be used which allows the sound to be heard from the exterior of the building.
31. The truck radius behind the staging area shall be screened by a 150 linear foot masonry wall at least fifteen feet in height. THP or Lowe's shall make reasonable efforts to use sound deadening material on the inside of the wall. Deliveries to and from the staging area shall be restricted to 7:00 a.m. - 9:00 p.m.
32. Roof top mechanical items such as HVAC units shall be screened with aesthetically pleasing metal screening systems.
33. 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.

34. 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 (or a fixture of similar architectural style or quality), in black aluminum, which direct light down and away.
35. Trash compactors shall be fed internally from inside the building. No dumpsters will be located on the exterior of the building.
36. In the event carbon monoxide air pollution exceeds APCC 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.
37. 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.
38. 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.
39. 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.
40. THP, the Association, the City of Jeffersontown and the Jeffersontown City Council agree that the developer or operator of the Lowe's Center will use the lowest reverse noise level devices (beepers) for its high lifts or forklifts which will conform with OSHA or other applicable safety standards.
41. There will be only one access point Off Of Willowhurst Place to be located just east of the "Existing Republic Bank" lot as shown on the district development plan approved by the Planning commission on May 5, 1994 (erroneously stated on the plan as approved on Hay 5, 1993). This access point will not be used for construction traffic.
42. Development of the Lowe's site shall be in accordance with the district development plan approved by the Planning Commission on May 5, 1994 (erroneously stated on the plan as approved on Hay 5, 1993) and all binding elements set forth in this Agreed Order and in Jeffersontown Ordinance No. 1069, Series 1994 and Ordinance No. 1070, Series 1994.
43. Binding Elements 10a, 10b, 13, 15e, 22-35, 37, and 40-42 shall only be applicable upon conveyance of the subject property to Lowe's Home Centers, Inc., or to another purchaser for the construction Of a similar home supply center.

44. The flex storage area for the Lowe's development shall not exceed 16.430 square feet of gross floor area