

# Planning Commission

## Staff Report

April 20, 2023



<b>Case No:</b>	22-DDP-0129
<b>Project Name:</b>	7 Brew
<b>Location:</b>	12525 Shelbyville Road
<b>Owner(s):</b>	IPH Holdings LLC
<b>Applicant:</b>	IPH Holdings LLC
<b>Jurisdiction:</b>	City of Middletown
<b>Council District:</b>	17 – Markus Winkler
<b>Case Manager:</b>	Dante St. Germain, AICP, Planner II

### REQUESTS

- **Waiver** from 8.3.3.A.1 to permit more than three signs on one façade of a non-residential building (23-WAIVER-0061)
- **Parking Waiver** to exceed the maximum allowable parking (23-PARKWAIVER-0001)
- **Revised Detailed District Development Plan** with Revised Binding Elements

### CASE SUMMARY/BACKGROUND

The subject site is located on Shelbyville Road between the intersections with Juneau Drive and Aiken Road, and consists of one parcel currently developed with a commercial structure. The applicant proposes to replace the existing structure with a 510 square foot coffee shop with drive-through under the 7 Brew brand.

The site is located within the Shelbyville Road commercial corridor and is surrounded by non-residential development. The site is an outlot of a commercial strip center anchored by Kroger.

### STAFF FINDING

The waiver is adequately justified and meets the standard of review. The parking waiver meets the standard of review. The site plan meets the requirements of the Land Development Code with the exception of the requested waiver, and generally meets the guidelines of the Comprehensive Plan.

### TECHNICAL REVIEW

Plan 2040

Land Development Code (City of Middletown)

MSD and Transportation Planning have provided preliminary approval of the proposal.

### INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 8.3.3.A.1**

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

STAFF: The waiver will not adversely affect adjacent property owners as the signage is relatively small and no variance is being requested for the total allowed square footage.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040 as Plan 2040 does not address attached signage.

- (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 each of the proposed signs serves a different, distinct purpose and removing any of them would impact the functionality of the site.

- (d) Either:

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

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

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as the removal of any of the proposed signs would negatively impact the functioning of the site.

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

- a. The Parking Waiver is in compliance with the Comprehensive Plan;

Staff: The parking waiver is in compliance with the Comprehensive plan since the proposed coffee shop operates differently from most drive-through restaurants, as it will have many more employees than a building of this size would normally be expected to have, and those employees will need parking. Additionally, walk-up traffic is accommodated by the building design, and must be accommodated in the parking as well.

- b. The applicant made a good faith effort to provide as many parking spaces as possible on the site, on other property under the same ownership, or through joint use provisions;

Staff: The applicant conducted a parking study using existing 7 Brew branded facilities in other locations.

- c. The requirements found in Table 9.1.3B do not allow the provisions of the number of parking spaces needed to accommodate the parking needs of the proposed use; and

Staff: The requirements found in Table 9.1.3B do not allow for the provision of parking needed to accommodate the parking spaces needs of the proposed use. A parking study was

performed for similar facilities that demonstrated a higher parking need than allowed by the Land Development Code.

- d. The requested increase is the minimum needed to do so;

Staff: The requested increase is the minimum needed to do so because the parking study done on other 7 Brew branded coffee shops shows that more spaces are needed than would be permitted by the Land Development Code.

### **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: No natural resources are evident on the site. The site is fully developed.

- (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 has approved the preliminary development plan.

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

STAFF: No open space requirements are pertinent to the request.

- (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 is compatible with existing and projected future development of the area. The site will be developed at an appropriate intensity and scale for the form district and the area.

- (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 Land Development Code, with the exception of the requested waivers, and conforms with the Comprehensive Plan.

**REQUIRED ACTIONS**

- **RECOMMEND** that the City of Middletown **APPROVE** or **DENY** the **Waiver**
- **RECOMMEND** that the City of Middletown **APPROVE** or **DENY** the **Parking Waiver**
- **RECOMMEND** that the City of Middletown **APPROVE** or **DENY** the **Revised Detailed District Development Plan with Revised Binding Elements**

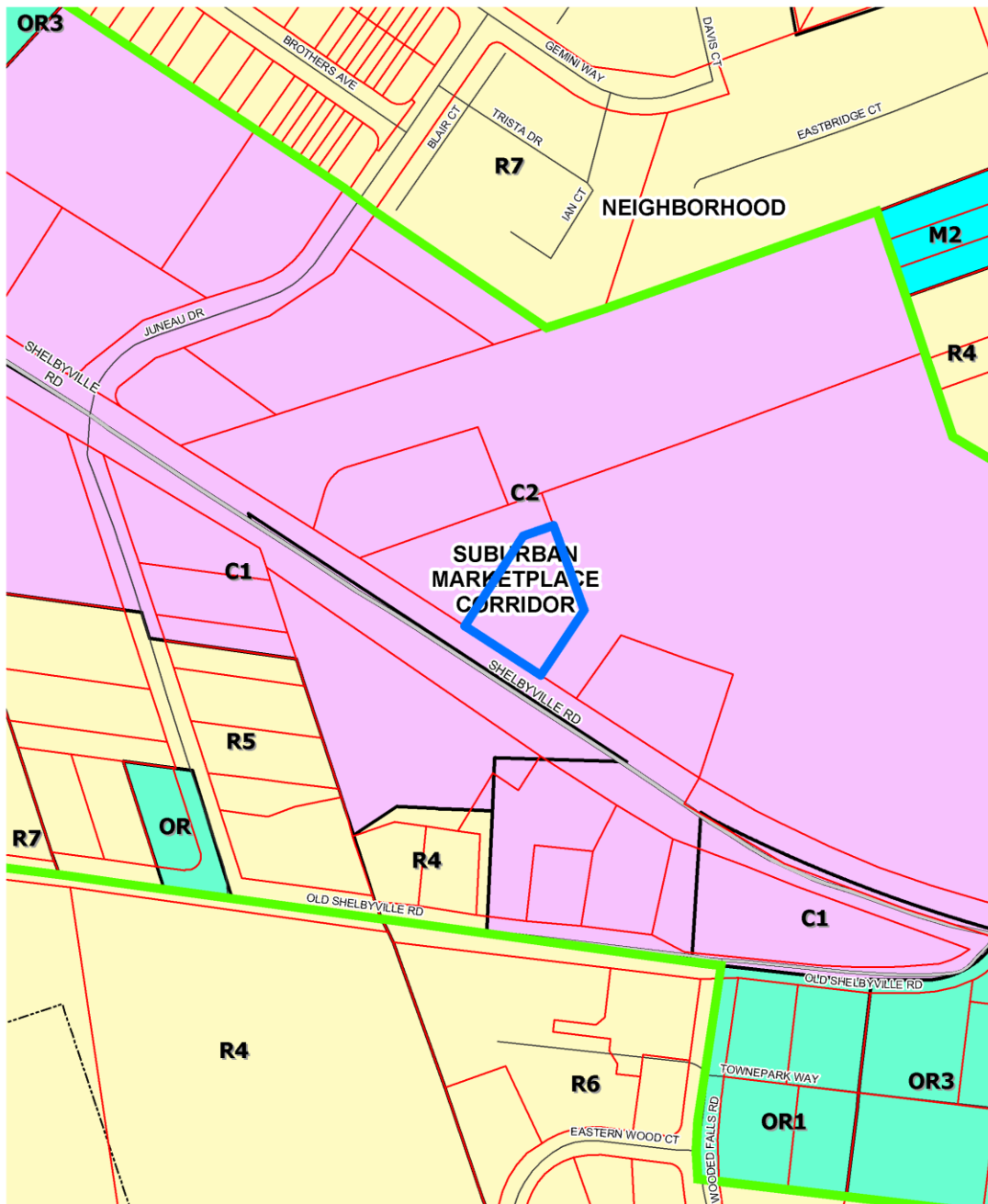
**NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>04/07/2023</b>	Hearing before DRC	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents Registered Neighborhood Groups in Council District 17

**ATTACHMENTS**

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

1. Zoning Map



12525 Shelbyville Road

feet



230

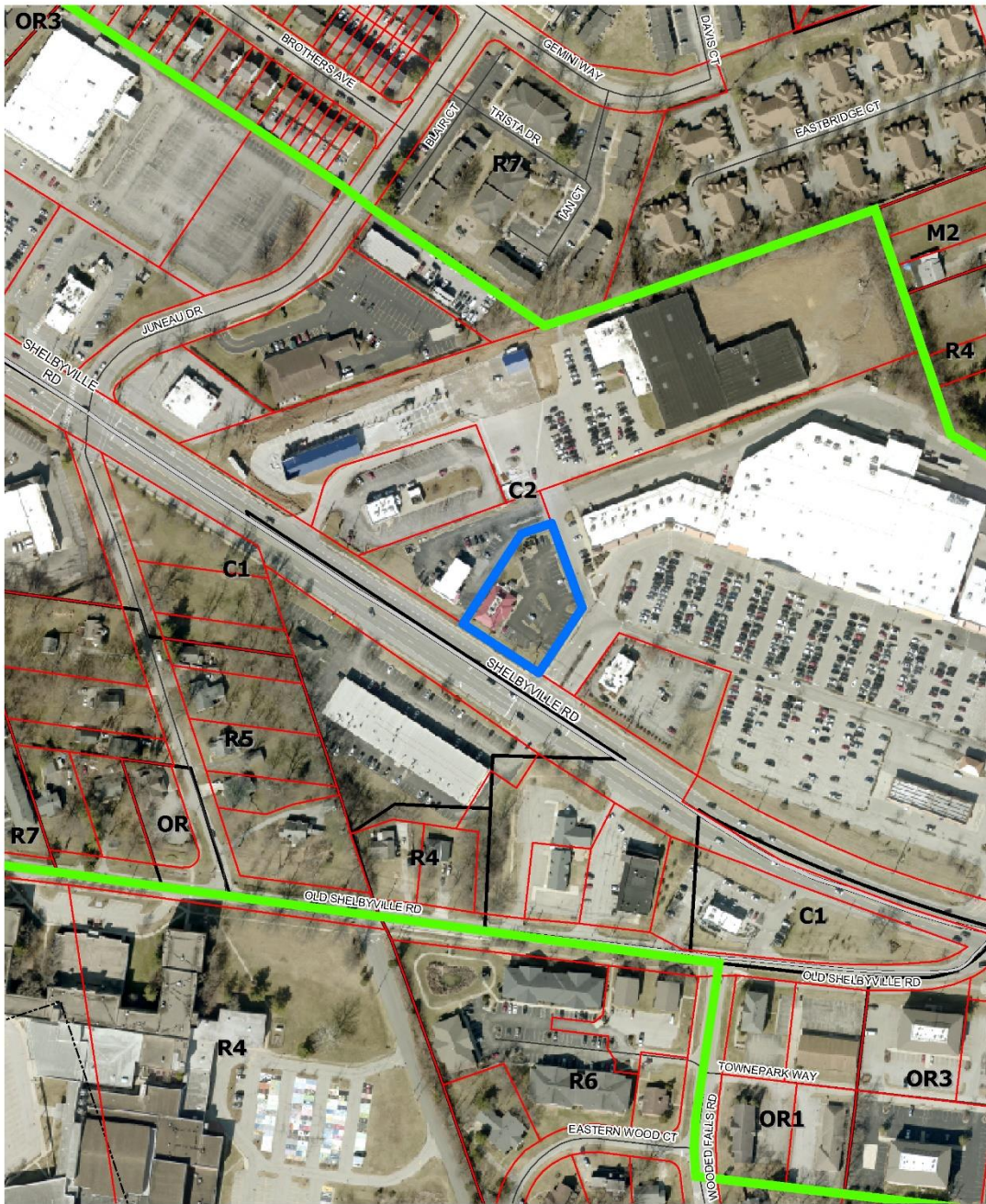
Map Created: 4/17/2023



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2. Aerial Photograph



12525 Shelbyville Road

feet



230

Map Created: 4/17/2023



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### 3. Existing Binding Elements

#### **General Plan Binding Elements (to remain)**

1. The Developer shall request that the existing Aiken and Vale Road be vacated within the boundaries of the proposed development. The existing roads may not be closed until the new roadways are open and dedicated to public use by record plat.
2. The development will be in accordance with the approved district development plan. No further development will occur, except with the prior approval of the Planning Commission and the subsequent approval of the City of Middletown.
3. The development shall not exceed 2,500 square feet of gross floor area per outlot. Additionally, all final architectural elevations and renderings, and exterior lighting shall be approved prior to installation by the City of Middletown. All exterior lighting shall be subdued.
4. Detailed district development plans shall be submitted for each outlot. Each plan shall be subject to the binding elements set out herein and additional binding elements, subsequently prescribed by the Planning Commission and the City of Middletown. The additional binding elements may relate, but not limited, to the following items.
  - a. Screening, buffering, landscaping.
  - b. Points of access.
  - c. Density, floor area, size and height of buildings.
  - d. Land uses.
  - e. Signs.
  - f. Handicapped parking.
  - g. Loading berths.
5. Access to the outlots shown on the approved district development plan shall be restricted to internal access roads. There shall be no direct access to Shelbyville Road or Aiken Road from any outlot.
6. The applicant shall relocate and reconstruct Aiken Road and Vale Road as shown on the approved district development plan and on the district development plan for Docket Nos. 9-82-78, 9-47-86, 1-30-87 and 1-12-87. The construction shall be to design and standards approved by the Jefferson County Department of Public Works and Transportation.
7. Before a building permit is issued:
  - a. A major subdivision record plat shall be recorded relocating Aiken Road and Vale Road as shown on the approved preliminary subdivision plan, Docket No. 10-30-87.
  - b. The detailed district development plans must be reapproved by the Jefferson County Department of Public Works and Transportation, the Metropolitan Sewer District, the Planning Commission and the City of Middletown.
  - c. The property owner must obtain approval from the Planning Commission and the City of Middletown of a plan for screening (buffering and landscaping) property lines. Such plan shall be implemented prior to occupancy and maintained thereafter.
  - d. Encroachment permits must be obtained from the Kentucky Department of Transportation Bureau of Highways.
8. There will be one freestanding sign permitted on each outlot. The sign shall not exceed 30 square feet in area and 15 feet in overall height, and must otherwise be in compliance with City of Middletown Ordinance No. 2, Series 1984.

9. The only freestanding signs within the primary development shall be located as shown on the approved district development plans for Docket No. 9-47-86. The three entrance signs shall not exceed 6 feet overall height and 80 square feet in area with subdued illumination and must otherwise be in compliance with City of Middletown Ordinance No. 2, Series 1984.
10. The entire development, both Docket No. 9-47-86 and Docket No. 9-81-87, shall be limited to uses in the C-1 Commercial District with the exception of one restaurant with lounge and entertainment, as permitted in the C-2 District. Additional restaurants without lounges and entertainment being allowed.
11. 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 and the City of Middletown.
12. 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.
13. Structures on the outlots shall not be more than one story and the architectural appearance shall conform to the remainder of the development.
14. All areas containing commercial trash receptacles including dumpsters to be individually enclosed and screened from public view.
15. The above binding elements may be amended as provided for in the Zoning District Regulations, and the Ordinances of the City of Middletown.

#### **Detailed Plan Binding Elements (to be replaced)**

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

- ~~1. The binding elements originally contained in Ordinance 11, Series 1986 and Ordinance 10, Series 1987 of the City of Middletown and Docket Nos. 9-47-86 and 9-81-87, shall apply except as added to or amended herein.~~
- ~~2. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. No further development shall occur without prior approval from the Planning Commission and City of Middletown.~~
- ~~3. The development shall not exceed 3,100 square feet of gross floor area.~~
- ~~4. There shall be no direct access to Shelbyville Road from the site. Access to the site shall be restricted to internal access roads.~~
- ~~5. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:~~



- a. ~~The development plan must receive full construction approval from the 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.~~
6. ~~All signage shall be in accordance with the detailed district development plan and must otherwise be in compliance with the City of Middletown Ordinance 90-06.~~
  7. ~~If a building permit is not issued within one year of the date of approval of the plan, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission and the City of Middletown.~~
  8. ~~A certificate of occupancy must be received from the appropriate code enforcement office prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.~~
  9. ~~The above binding elements may be amended as provided for in the Zoning District Regulations, upon approval of the City of Middletown.~~
  10. ~~The property shall be limited to uses in the C-1 Commercial District with the exception of one (1) automobile repair garage and with the exception of one (1) restaurant with lounge and entertainment as permitted in the C-2 District. Additional restaurants without lounges and entertainment being allowed.~~

#### 4. **Proposed Binding Elements**

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

1. The binding elements originally contained in Ordinance 11, Series 1986 and Ordinance 10, Series 1987 of the City of Middletown and Docket Nos. 9-47-86 and 9-81-87, shall apply except as added to or amended herein.
2. 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 the Planning Commission's designee, and the City of Middletown, for review and approval; any changes/additions/alterations not so referred shall not be valid.
3. There shall be no direct access to Shelbyville Road from the site. Access to the site shall be restricted to internal access roads.
4. 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 Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a certificate of occupancy. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - c. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 20, 2023 Planning Commission meeting. A copy of the approved rendering is available in the case file on record in the offices of the Louisville Metro Planning Commission.
5. All signage shall be in accordance with the detailed district development plan and must otherwise be in compliance with the City of Middletown Ordinance 90-06.
6. If a building permit is not issued within one year of the date of approval of the plan, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission and the City of Middletown.
7. 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.
8. The property shall be limited to uses in the C-1 Commercial District with the exception of one (1) automobile repair garage and with the exception of one (1) restaurant with lounge and entertainment as permitted in the C-2 District. Additional restaurants without lounges and entertainment being allowed.
9. 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.
10. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
11. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
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; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
13. The above binding elements may be amended as provided for in the Zoning District Regulations, upon approval of the City of Middletown.