

Planning Commission

Staff Report

August 1, 2019



Case No:	19ZONE1008
Project Name:	W Burnett Boarding and Lodging House
Location:	2630 W Burnett Avenue
Owner(s):	2630 Burnett LLC
Applicant:	2630 Burnett LLC
Jurisdiction:	Louisville Metro
Council District:	1 – Jessica Green
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Change in zoning** from R-5 Single Family Residential to OR-1 Office Residential
- **Waivers**
 1. from Land Development Code table 10.2.4 to omit the required plantings within the property perimeter landscape buffer area (LBA)
 2. from Land Development Code section 10.2.4.B.1 to allow a driveway to encroach into the required property perimeter LBA
- **Detailed District Development Plan with Binding Elements**

CASE SUMMARY/BACKGROUND

The subject site is located near the terminus of W Burnett Avenue at Olive Street, in the Park Duvalle neighborhood. The applicant proposes to rezone the property to OR-1 in order to utilize the existing building as a boarding and lodging house with 8 units. The subject property is surrounded by R-5 zoned properties except to the north-east, which is zoned R-6. The nearest non-residential zoning is 1 block away to the north, where properties are zoned C-2 and M-2. The properties that surround the site are in single-family residential use.

This case was heard on July 18, 2019 by the Planning Commission and was continued to allow the applicant time to work on binding elements.

STAFF FINDING

Staff finds that the proposed zoning meets the guidelines of the Comprehensive Plan, and the Detailed District Development Plan meets the guidelines of the Comprehensive Plan and requirements of the Land Development Code. Waiver #1 does not meet the standard of review. Waiver #2 meets the standard of review.

TECHNICAL REVIEW

Land Development Code (Louisville Metro)

Plan 2040

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

INTERESTED PARTY COMMENTS

Staff received several phone calls from Mr. Foster, an interested neighbor. Mr. Foster is opposed to the rezoning request. Staff also received an email from Brenda Foster, also in opposition.

STANDARD OF REVIEW FOR REZONING

Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

1. The proposed form district/rezoning change complies with the applicable guidelines and policies Plan 2040; OR
2. The existing form district/zoning classification is inappropriate and the proposed classification is appropriate; OR
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Plan 2040 which have substantially altered the basic character of the area.

STAFF ANALYSIS FOR CHANGE IN ZONING

Following is staff's analysis of the proposed rezoning against the Guidelines and Policies of Plan 2040.

The site is located in the Traditional Neighborhood Form District

This form is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys. Residential lots are predominantly narrow and often deep, but the neighborhood may contain sections of larger estate lots, and also sections of lots on which appropriately integrated higher density residential uses may be located. The higher density uses are encouraged to be located in centers or near parks and open spaces having sufficient carrying capacity. There is usually a significant range of housing opportunities, including multi-family dwellings. Traditional neighborhoods often have and are encouraged to have a significant proportion of public open space such as parks or greenways, and may contain civic uses as well as appropriately located and integrated neighborhood centers with a mixture of mostly neighborhood-serving land uses such as offices, shops, restaurants and services. Although many existing traditional neighborhoods are 50 to 120 years old, the Traditional Neighborhood Form may be used when establishing new developments and redevelopments. Revitalization and reinforcement of the Traditional Neighborhood Form will require particular emphasis on (a) preservation and renovation of existing buildings in stable neighborhoods (if the building design is consistent with the predominant building design in those neighborhoods), (b) in the case of new developments or redevelopments using traditional building scales and site layouts, (c) the preservation of the existing or establishing a new grid pattern of streets and alleys, and (d) preservation of or creation of new public open spaces.

The subject site is the location of a historic structure, the Wedekind House, constructed in 1877 and listed on the National Register of Historic Places. It is currently somewhat in disrepair. The surrounding subdivision, Astoria Place, was platted in 1916. The proposal would re-use the historic

structure. Plan 2040 describes the Traditional Neighborhood form district as prioritizing the preservation and renovation of existing buildings.

The immediate surroundings of the subject site is mainly zoned R-5, but a mixture of zoning districts exists relatively close by. C-1, C-2 and M-2 zoning exist one block away to the north and west. North of the site is a large section of R-6 zoning. Another pocket of M-2 zoning is 4 blocks away to the north-west, with a third located one block away to the north-east. U-N zoning is located two blocks away to the north-east, with EZ-1 zoning another block to the east. A mixture of zoning districts is therefore typical of this neighborhood.

The proposed zoning district, OR-1, is considered a medium density/intensity zoning district. It would allow for neighborhood-serving office uses, or, if the property is used residentially, would increase the range of options for housing in the neighborhood. Plan 2040 emphasizes the provision of fair and affordable housing options by providing a variety of ownership options and unit costs throughout Louisville Metro. The applicant seeks OR-1 in particular because boarding and lodging houses are allowed by right in that district. Plan 2040 also allows for a mixture of densities so long as the designs are compatible. The design of the historic structure is not proposed to be changed, and would be the same as it would have been as a single-family residence.

All other agency comments should be addressed to demonstrate compliance with the remaining Goals, Objectives and Policies of Plan 2040.

A checklist is attached to the end of this staff report with a more detailed analysis. The Louisville Metro Planning Commission is charged with making a recommendation to the Louisville Metro Council regarding the appropriateness of this zoning map amendment. The Louisville Metro Council has zoning authority over the property in question.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #1:

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

STAFF: The waiver may adversely affect adjacent property owners by omitting much of the buffering between the subject site and adjacent properties. The applicant proposes to construct an 8' screening fence instead of the plantings. A 6' fence is already required by the Land Development Code in addition to the plantings.

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

STAFF: The waiver will violate specific guidelines of Plan 2040 as Plan 2040 advises to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.

The Land Development Code emphasizes landscaped buffer yards to ensure appropriate transitions. To eliminate the landscaping in the buffer yard would reduce the effectiveness of the transition.

- (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 not the minimum necessary to afford relief to the applicant as the buffering vegetation could be reduced if it is onerous to the applicant rather than eliminated entirely.

- (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 designs measure that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived by proposing an 8' screening fence instead of the 6' fence that would have otherwise been required.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER #2:

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

STAFF: The waiver will not adversely affect adjacent property owners because the driveway already exists and has existed for some time with no known adverse effect.

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

STAFF: The waiver will not violate specific guidelines of Plan 2040 as the encroachment is relatively minor and would not impact the ability of the applicant to provide appropriate transitions between the subject property and adjacent properties.

- (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 driveway exists and relocating it would be impractical given the existence of a curb cut and the location of the existing basement garage.

- (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 by requiring the applicant to move a curb cut and adversely impact the use of the existing basement garage.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR DDDP

- (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 on the subject site. The historic structure is proposed to be retained. 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, 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: There are no open space requirements pertinent to the current proposal.

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

STAFF: 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. The proposed site plan reuses an existing vacant building for a boarding and lodging house.

- (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** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-5 Single Family Residential to OR-1 Office Residential
- **APPROVE** or **DENY** the **Waivers**
- **APPROVE** or **DENY** the **Detailed District Development Plan with Binding Elements**

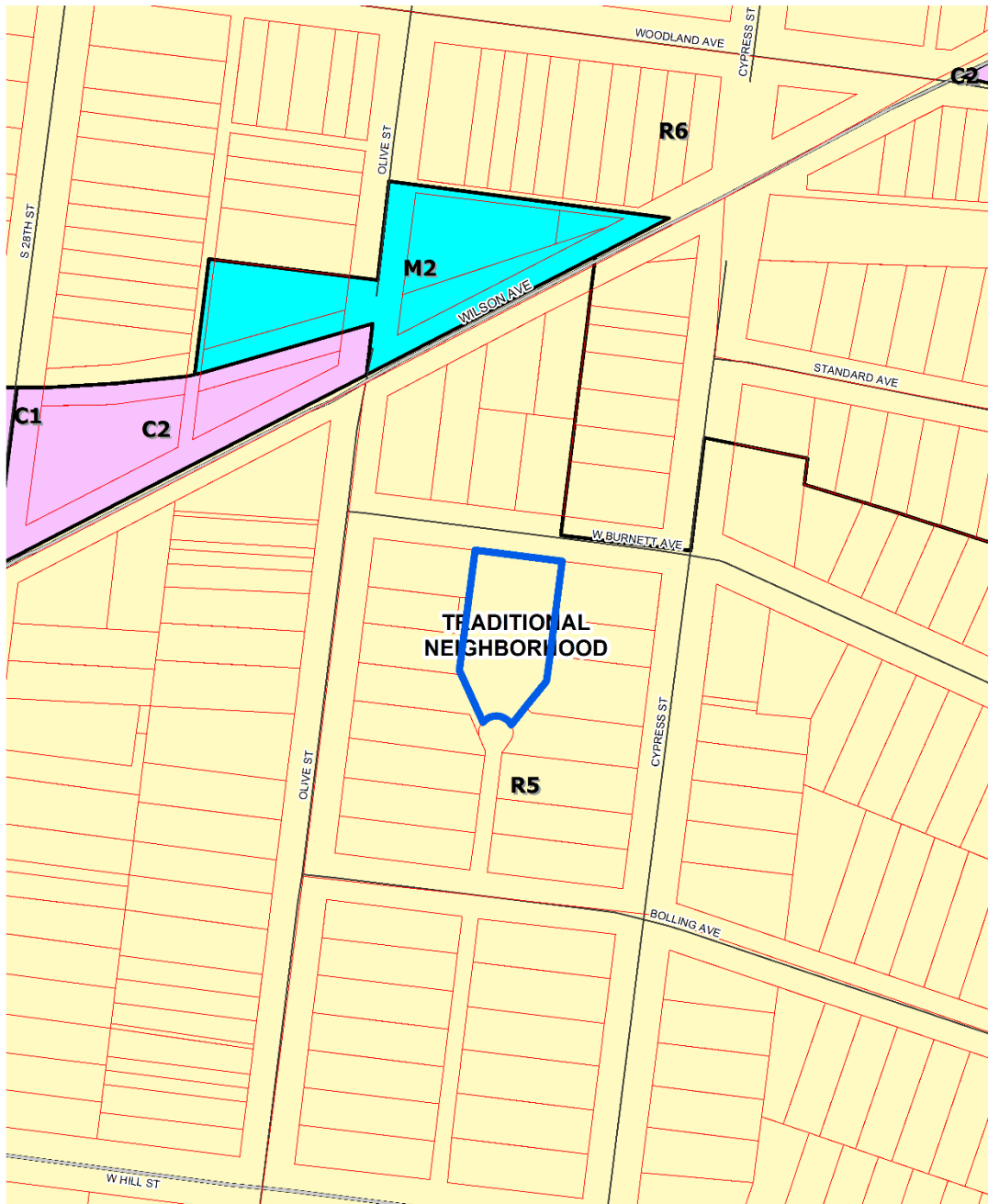
NOTIFICATION

Date	Purpose of Notice	Recipients
05/23/2019	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 1 & 3
06/26/2019	Hearing before PC	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 1 & 3
06/19/2019	Hearing before PC	Sign Posting on property
07/10/2019	Hearing before PC	Legal Advertisement in the Courier-Journal

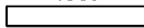
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Plan 2040 Checklist
4. Proposed Binding Elements

1. Zoning Map



2630 W Burnett Avenue
feet



140

Map Created: 2/18/2019



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2. Aerial Photograph



2630 W Burnett Avenue
feet

70

Map Created: 2/18/2019



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3. Staff Plan 2040 Checklist

- + Exceeds Guideline
- ✓ Meets Guideline
- Does Not Meet Guideline
- +/- More Information Needed
- NA Not Applicable

Traditional Neighborhood: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Land Use & Development Goal 1: Community Form	7. Locate higher density and intensity uses near major transportation facilities and transit corridors, employment centers, in or near activity centers and other areas where demand and adequate infrastructure exists or is planned.	✓	The proposed zoning district would allow medium density residential uses. The subject site is located two blocks from two separate transit corridors.
2	Land Use & Development Goal 1: Community Form	9. Ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements.	-	The Planning Commission must determine whether an 8' screening fence is adequate to ensure appropriate transition between the subject site and adjacent single-family residential, and determine whether to grant the requested waiver from providing plantings in the LBA.
3	Land Use & Development Goal 2: Community Form	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal would reuse an existing structure on the site.
4	Land Use & Development Goal 3: Community Form	10. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes where the potential for severe erosion problems exists in order to prevent property damage and public costs associated with soil slippage and foundation failure and to minimize environmental degradation.	✓	There are no wet or highly permeable soils, severe, steep or unstable slopes evident on the site.
5	Land Use & Development Goal 4: Community Form	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	There are no landscapes or natural elements evident on the site. The existing structure is proposed to be preserved.
6	Land Use & Development Goal 4: Community Form	3. Encourage preservation and/or adaptive reuse of historic sites listed on or eligible for the National Register of Historic Places and/or recognized by the Louisville Metro Landmarks Commission or other national, state or local government historic preservation agencies.	✓	The existing structure is proposed to be reused. The structure is on the National Register of Historic Places.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
7	Land Use & Development Goal 1: Mobility	4. Encourage higher densities and intensities within or near existing marketplace corridors, existing and future activity centers, and employment centers to support transit-oriented development and an efficient public transportation system.	✓	The proposed zoning district would allow medium-density/intensity uses.
8	Land Use & Development Goal 2: Mobility	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Wilson Avenue, a minor arterial street, is located ½ block from the subject site, providing principal access to the site, with relatively minor connections from Olive Street to W Burnett Avenue.
9	Land Use & Development Goal 3: Mobility	2. To improve mobility, and reduce vehicle miles traveled and congestion, encourage a mixture of compatible land uses that are easily accessible by bicycle, car, transit, pedestrians and people with disabilities. Housing should be encouraged near employment centers.	✓	The proposed zoning district would encourage a mixture of compatible land uses by allowing neighborhood-serving office uses and medium-density residential.
10	Land Use & Development Goal 3: Mobility	5. Evaluate developments for their impact on the transportation network (including the street, pedestrian, transit, freight movement and bike facilities and services) and air quality.	✓	No changes to the transportation network are proposed at this time. There is no anticipated significant impact to the transportation network by the proposed zoning district change.
11	Land Use & Development Goal 3: Mobility	6. Ensure that those who propose new developments bear or share in rough proportionality the costs of transportation facilities and services made necessary by development.	✓	No changes to transportation facilities and services are anticipated to be made necessary by the proposed zoning district change.
12	Land Use & Development Goal 3: Mobility	9. When existing transportation facilities and services are inadequate and public funds are not available to rectify the situation, the developer may be asked to make improvements, roughly proportional to the projected impact of the proposed development, to eliminate present inadequacies if such improvements would be the only means by which the development would be considered appropriate at the proposed location.	✓	No improvements to transportation facilities and services are anticipated to be made necessary by the proposed zoning district change.
13	Land Use & Development Goal 3: Mobility	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	No improvements to transportation facilities and services are anticipated to be made necessary by the proposed zoning district change.
14	Land Use & Development Goal 3: Mobility	21. Prevent safety hazards caused by direct residential access to high speed roadways.	✓	Direct access to the site would be achieved from W Burnett Avenue, a local road.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
15	Land Use & Development Goal 2: Community Facilities	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The site is currently developed and is served by utilities.
16	Land Use & Development Goal 2: Community Facilities	2. Ensure that all development has an adequate supply of potable water and water for fire-fighting purposes. Locate only very low-density land uses on sites that use on-lot sewage disposal systems or on a private supply of potable water.	✓	LWC has approved the proposal.
17	Land Use & Development Goal 2: Community Facilities	3. Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	✓	MSD has approved the proposal.
18	Land Use & Development Goal 1: Livability	5. Encourage development that recognizes and incorporates the unique characteristics of identified general landscape types and native plant communities (e.g., upland hardwood forest) throughout Louisville Metro.	✓	No clearing of vegetation is proposed.
19	Land Use & Development Goal 1: Livability	17. Determine site susceptibility to erosion; identify the presence of on-site carbonate conditions and features that are vulnerable to site disturbance; identify the extent of existing groundwater use and the impacts of the project on groundwater resources, flow patterns, and existing and proposed surface drainage. Then mitigate potential hazards to such systems resulting from the project.	✓	The subject site is not located in a karst area. The site is not susceptible to erosion.
20	Land Use & Development Goal 1: Livability	21. Mitigate negative development impacts to the integrity of the regulatory floodplain by encouraging development patterns that minimize disturbance and consider the increased risk of more frequent flooding events.	✓	The subject site is not located in the regulatory floodplain.
21	Land Use & Development Goal 1: Housing	1. Encourage a variety of housing types including, but not limited to, detached and attached single family, multi-family, mixed use, zero lot line, average lot, cluster, and co-housing. Allow for accessory residential structures and apartments. Housing types should reflect the Form District pattern.	✓	The proposed zoning district change would introduce a new housing density. The proposed use would introduce a new housing type to the neighborhood.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
22	Land Use & Development Goal 1: Housing	2. Promote housing options and environments that support aging in place. Encourage housing for older adults and people with disabilities to be located close to shopping and transit routes and, when possible, medical and other supportive facilities.	✓	The proposal would support aging in place by allowing for a mixture of housing options in the neighborhood, or neighborhood-serving office uses.
23	Land Use & Development Goal 2: Housing	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposal would support inter-generational, mixed-income and mixed-use development by allowing for a mixture of housing options in the neighborhood, or neighborhood-serving office uses.
24	Land Use & Development Goal 2: Housing	2. Locate housing within proximity to multi-modal transportation corridors providing safe and convenient access to employment opportunities, as well as within proximity to amenities providing neighborhood goods and services. Higher density, accessible residential uses should be located along transit corridors and in or near activity centers.	✓	The proposed zoning district would allow medium-density housing. The site is not located along a transit corridor but is relatively close to two corridors.
25	Land Use & Development Goal 3: Housing	1. Encourage provision of fair and affordable housing by providing a variety of ownership options and unit costs throughout Louisville Metro. Expand opportunities for people to live in quality, variably priced housing in locations of their choice by encouraging affordable and accessible housing in dispersed locations throughout Louisville Metro.	✓	The proposed zoning district would encourage the provision of fair and affordable housing by increasing the variety of unit costs in Louisville Metro, and would encourage affordable and accessible housing in dispersed locations.
26	Land Use & Development Goal 3: Housing	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	Existing residents will not be displaced because the structure is currently vacant and in a state of relative disrepair.
27	Land Use & Development Goal 3: Housing	3. Encourage the use of innovative methods such as clustering, mixed-use developments, co-housing, and accessory apartments to increase the production of fair and affordable housing.	✓	The proposed zoning district would allow the use of innovative methods of development to increase the production of fair and affordable housing, as the requested district is relatively flexible.

4. Proposed Binding Elements

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 the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. 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.
4. The residential character of the structure shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission or its designee:
 - a. Roof line
 - b. Building material
 - c. Porch
 - d. Windows
 - e. Exterior Paint
5. 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 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.
6. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
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; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.