

Development Review Committee

Staff Report

November 16, 2022



Case No:	21-DDP-0121
Project Name:	Proposed Grocery Store
Location:	10201 Brownsboro Road
Owner(s):	The Deerfield Co.
Applicant:	Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	17 – Markus Winkler
Case Manager:	Molly Clark, Planner II

REQUEST(S)

- Waivers:
 1. Waiver from 5.6.1.C.1 to not provide 50% clear windows and doors to facades facing the right of way. (21-WAIVER-0165)
 2. Waiver from 10.2.4.B.3 to allow a landscape buffer to have a utility easements overlap over 50% (22-WAIVER-0210)
- Revised General and Detailed District Development plan with Proposed General and Detailed Plan Binding Elements

CASE SUMMARY

This site is zoned C-1 Commercial zoning district within the Neighborhood Form District. The applicant is proposing a 64,301 sf grocery store, with a liquor store, retail and restaurant on 8.81 acres. The applicant is also proposing a 1.59 acre outlot in addition to a 8.56 residual lot. The applicant will need to come back with a revised detailed district development plan in order to develop the proposed outlot and residual lot.

This site is related to a rezoning under 09-57-93 and a revised detailed district development plan under 15817. This site is also related to 21-VARIANCE-0181 to allow the proposed grocery store to exceed the 150' front yard setback. This has been docketed for November 21, 2022 Board of Zoning Adjustment.

STAFF FINDING

Staff finds that the revised detailed district development plan is in order and that the waivers are adequately justified and meet the standards of review.

TECHNICAL REVIEW

Transportation Planning and MSD have preliminarily approved the proposal.

INTERESTED PARTY COMMENTS

None Received.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 5.6.1.C.1 to waive the required 50% clear windows and doors for facades facing the public right of way 21-WAIVER-0165:

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

STAFF: The requested waiver will not adversely affect adjacent property owners because the applicant is providing all the requiring plantings along Brownsboro Road and Ballardsville Road which will create screening of the facades from the public right of way.

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

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes. Community Form Goal 2, Policy 11 calls for ensuring appropriate placement, design and scale of centers in Traditional Neighborhood, Neighborhood and Village Form Districts to ensure compatibility with nearby residences. Community Form Goal 2, Policy 15 calls for parking in activity centers should reflect the area's associated Form District standards to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations.

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

STAFF: The extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant since the applicant is providing all the requiring plantings along Brownsboro Road and Ballardsville Road which will create screening of the facades from the public right of way.

- (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 create an unnecessary hardship on the applicant because the applicant is providing all the requiring plantings along Brownsboro Road and Ballardsville Road which will create screening of the facades from the public right of way.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 10.2.4. to allow a utility easement to encroach more than 50% into the landscape buffer area 22-WAIVER-0210):

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

STAFF: The waiver will not adversely affect adjacent property owners since the applicant is proposing to still provide all the required plantings in the landscape buffer areas.

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

STAFF: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. Community Form Goal 1, Policy 6 calls to discourage non-residential expansion into existing residential areas unless applicant can demonstrate that any adverse impact on residential uses will be mitigated. Evaluation of impacts may include, but not be limited to, displacement of residents, loss of affordable housing units, traffic, parking, signs, lighting, noise, odor, and stormwater. Appropriate transitions from non-residential to residential uses should depend on the pattern of development of the Form District and may include natural vegetative buffers, landscaping or the use of higher density residential between lower density residential and/or non-residential. Community Form Goal 1, Policy 9 calls 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. Community Form Goal 1, Policy 10 calls to mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between uses that are substantially different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Residential uses that develop adjacent to agricultural land uses may be required to provide screening and buffering to protect both the farmer and homeowners. Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Community Form Goal 1, Policy 20 calls to mitigate adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces. Economic Development goal 2 policy 3 calls to Encourage design elements that address the urban heat island effect and energy efficiency, such as the planting and preservation of trees, cool roofs and green infrastructure, for new development. Livability Goal 1 Goal 5 calls to 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. Livability Goal 1 Goal 6 calls to encourage the natural process of landscape succession by adding to and connecting a system of natural corridors that can provide habitat areas and allow for migration.

- (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 since the applicant is still going to provide all the required plantings in the required landscape 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 strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the applicant is still going to provide all the required plantings in the landscape buffer area.

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

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

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided, 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. 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.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **WAIVER** from **5.6.1.C.1** to allow a building to not provide the required 50% clear windows and doors on facades that face the public right of way 21-WAIVER-0165
- **APPROVE** or **DENY** the **WAIVER** from **10.2.4.B.3** to allow a landscape buffer to have a utility easements overlap over 50% 22-WAIVER-0210
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan with Detailed Plan Binding Elements and General Plan Binding Elements**

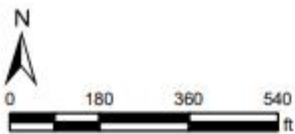
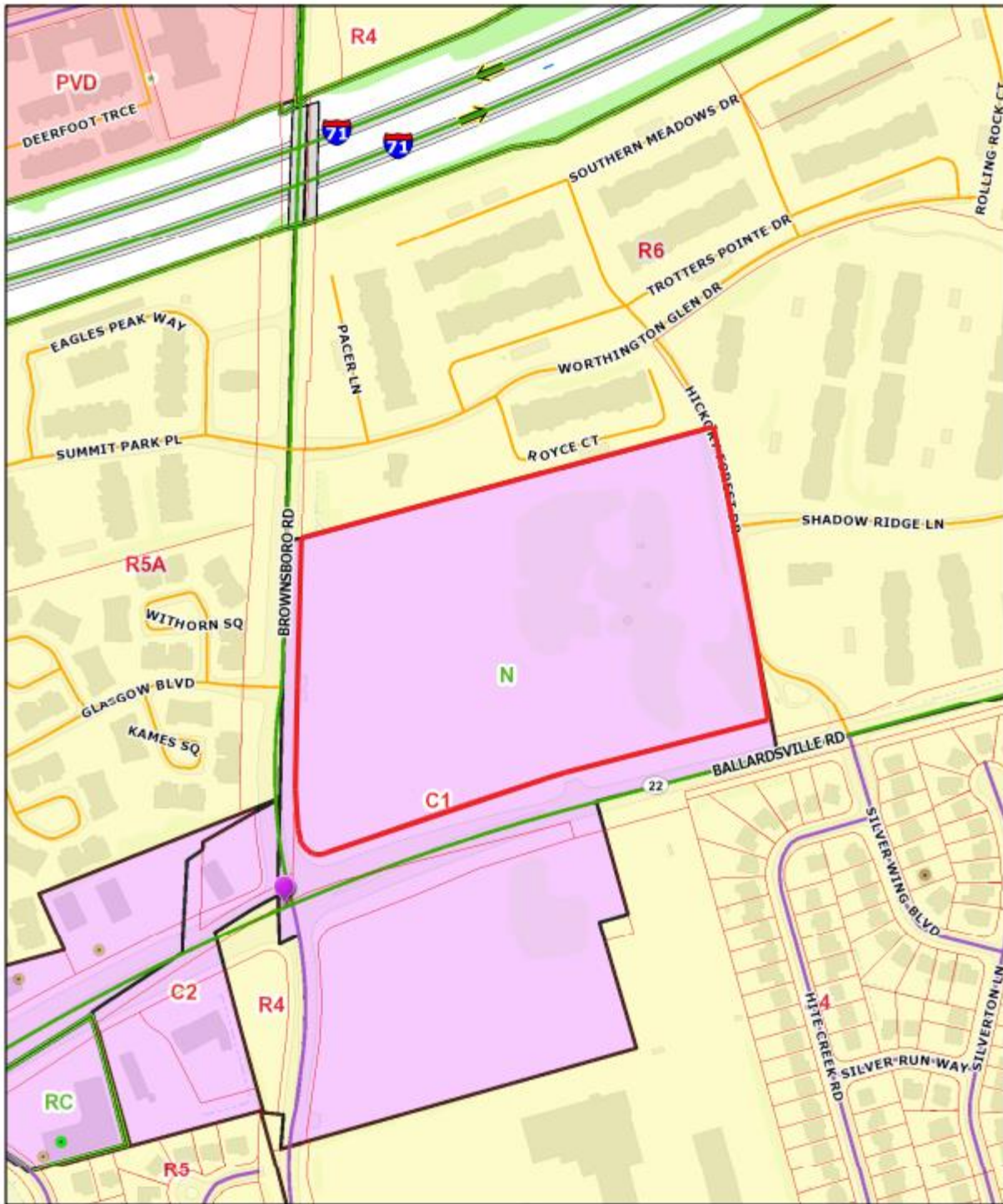
NOTIFICATION

Date	Purpose of Notice	Recipients
10/27/22	Hearing before DRC 11/16/22	1 st and 2 nd tier adjoining property owners and current residents Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 17

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed General Plan Binding Elements
5. Proposed Detailed Plan Binding Elements

1. Zoning Map



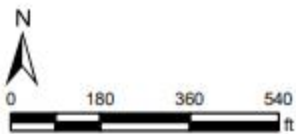
Wednesday, November 9, 2022 | 11:16:14 AM



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2. Aerial Photograph



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3. Existing Binding Elements

(Case # 15817)

- ~~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 or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.~~
- ~~2. The development shall not exceed 159,925 square feet of gross floor area. Total outdoor dining areas on Lots 1 through 5 may not exceed 925 square feet unless adequate parking is provided to meet minimum Land Development Code Requirements. Parking shall be reviewed at the time of submittal of detailed district development plans.~~
- ~~3. Signs shall be in accordance with Chapter 8 or as presented at the public hearing.~~
- ~~4. 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 requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.~~
- ~~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 Louisville Metro Department of Inspections, Permits and Licenses, 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 building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.~~
 - ~~c. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.~~
- ~~6. The materials and design of existing/proposed structures shall be substantially the same as depicted in the photos/rendering as presented at the January 5, 2012 Planning Commission public hearing.~~
7. If transit is added along Brownsboro Road or Ballardsville Road in the future, the Owner/Developer shall dedicate a 5 ft x 25 ft public facilities easement parallel to the roadway right-of-way in the locations shown on the development plan.
8. A Certificate of Occupancy for any building shall not be requested or issued until the earlier to occur of completion (excluding grass, landscaping and sidewalks) of the KTC/Metro Works KY 22 road improvements project along the subject property's frontages or October 31, 2012.

4. Proposed General Plan 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. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance with Chapter 11, Part 6. Each plan shall be in adequate detail and subject to additional binding elements.
3. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
4. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
5. Before any permit (including but not limited to building, parking lot, change of use, site disturbance)
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - 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 reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
6. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
7. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
8. 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.

9. The property owner shall provide a cross over access easement if the property to the east is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
10. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.

5. Proposed Detailed Plan Binding Elements

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

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or 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. Before any permit (including but not limited to building, parking lot, change of use, site disturbance is requested:
 - a. The development plan must receive full construction approval from Construction Review, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Transportation Cabinet.
 - c. The appropriate variance shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
 - d. 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.
 - e. A minor subdivision plat creating the lots as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
 - f. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services prior to obtaining a building permit.
 - g. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 16, 2022 DRC 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. 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.
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.
8. The property owner shall provide a cross over access easement if the property to the East is ever developed for a nonresidential use. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
9. No idling of trucks shall take place within 200 feet of residences. No overnight idling of trucks shall be permitted on-site.
10. If transit is added along Brownsboro Road or Ballardsville Road in the future, the Owner/Developer shall dedicate a 5 ft x 25 ft public facilities easement parallel to the roadway right-of-way in the locations shown on the development plan.
11. A Certificate of Occupancy for any building shall not be requested or issued until the earlier to occur of completion (excluding grass, landscaping and sidewalks) of the KTC/Metro Works KY 22 road improvements project along the subject property's frontages or October 31, 2012.