

# Development Review Committee

## Staff Report

May 8, 2019



<b>Case No:</b>	19DEVPLAN1047
<b>Project Name:</b>	Scooter's Triple B's Restaurant
<b>Location:</b>	3840 S Hurstbourne Pky
<b>Owner(s):</b>	Scott A. Weis, Weis Properties LLC
<b>Applicant:</b>	Chris Guffey, Allegiant Construction LLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	11 – Kevin Kramer
<b>Case Manager:</b>	Lacey Gabbard, AICP, Planner I

### REQUESTS:

#### **Waivers:**

1. **Waiver** of Land Development Code section 10.2.4.A to reduce the 25 foot LBA along the southern property line to 15 feet and to allow the existing plantings to fulfill the requirements
2. **Waiver** of Land Development Code section 10.2.4.A to not provide the 25 foot LBA along the zoning boundary near the western property line and to instead allow the existing 15 foot LBA and existing plantings along the property line to fulfill the requirement

#### **Requests:**

3. **Revised Detailed District Development Plan and Binding Element Amendments**

### CASE SUMMARY/BACKGROUND

The subject site is zoned C-2 Commercial with an R-6 Residential Multi-Family portion at the rear of the site. It is located in the Suburban Marketplace Corridor form district, on the west side of S Hurstbourne Parkway and south of the Ridgehurst Place intersection. The current use is a retail space and carwash in two separate structures. The applicant is proposing to leave the existing retail building unchanged and renovate the existing car wash building to allow for a Scooter Triple B's Restaurant with sit-down and outdoor dining.

#### **Previous cases:**

- 9-29-88: Change in zoning from R-4 Residential Single Family to R-5 Residential Single Family, R-6 Residential Multi-Family, OR-3 Office/Residential and C-2 Commercial Stony Brook South

Staff recommends removal of General Plan Binding Elements #3 and #14:

3. The development shall not exceed 177,560 square feet of gross floor area (174,320 square feet of retail buildings and 4488 square feet for the bank).
14. The exterior design and materials of the shopping center shall be substantially the same as approved by the Planning Commission designee on 01/18/2007.

### STAFF FINDINGS

The waiver requests and Revised Detailed District Development Plan are justified and meet the standard of review.

## **TECHNICAL REVIEW**

Public Works and MSD have provided their preliminary approval.

## **INTERESTED PARTY COMMENTS**

Staff has received emails in opposition to this development, which are included in the case file.

### **STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4.A TO REDUCE THE 25 FOOT LBA ALONG THE SOUTHERN PROPERTY LINE TO 15 FEET AND TO ALLOW THE EXISTING PLANTINGS TO FULFILL THE REQUIREMENTS**

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

STAFF: The waiver will not adversely affect adjacent property owners since the existing plantings are already in place and the retail building on the south of the property is not changing use, so the intensity will not increase. Additionally, the closest residential structure in the neighboring property is approximately 50 feet from the southern property line. In addition to the existing plantings, the plan indicates an existing 8 foot wood screen fence at the southern property line.

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

STAFF: Land Use & Development 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. Land Use & Development Goal 1, Policy 20 calls for mitigation of adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces.

The subject site is commercial and the neighboring property to the south is zoned R-6 Multi-family Residential, so the intensity and density of the two properties are different. However, the closest residential structure is approximately 50 feet from the property line. Additionally, the applicant is not proposing to change the use of the retail building on the southern property line and the landscaping in the existing 15 foot LBA is already in place.

- (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 existing retail building on the southern property line would encroach into a 25 foot LBA. Additionally, the plantings along the southern property line are already existing.

- (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 since there is already an existing 15 foot LBA on the southern property border and the existing retail building would encroach into a 25 foot LBA.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER OF SECTION 10.2.4.A TO NOT PROVIDE THE 25 FOOT LBA ALONG THE ZONING BOUNDARY NEAR THE WESTERN PROPERTY LINE AND TO INSTEAD ALLOW THE EXISTING 15 FOOT LBA AND EXISTING PLANTINGS ALONG THE PROPERTY LINE TO FULFILL THE REQUIREMENT**

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

STAFF: The waiver will not adversely affect adjacent property owners since there are already plantings in existence at the property line, not at the zoning boundary. In addition to the existing plantings, the plan indicates an existing 8 foot wood screen fence at the western property line.

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

STAFF: Land Use & Development 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. Land Use & Development Goal 1, Policy 20 calls for mitigation of adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces.

The subject site is commercial and the neighboring property to the west is zoned R-6 Multi-family Residential, so the intensity and density of the two properties are different. However, the closest residential structure is approximately 75 feet from the property line, and the landscaping in the existing 15 foot LBA is already in place.

- (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 zoning boundary is internal to the property rather than located along a property line. Additionally, there is already a 15 foot LBA with existing plantings located along the western property line.

- (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 since the zoning boundary is internal to the property rather than located along a property line. Additionally, there is already a 15 foot LBA with existing plantings located along the western property line.

## **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. Public Works' preliminary approval is pending the sidewalk waiver requests. MSD has provided preliminary approval.

- (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. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. 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:**

- **APPROVE or DENY the Waivers**

- **APPROVE** or **DENY** the **Revised Detailed District Development Plan** and **Binding Element Amendments**

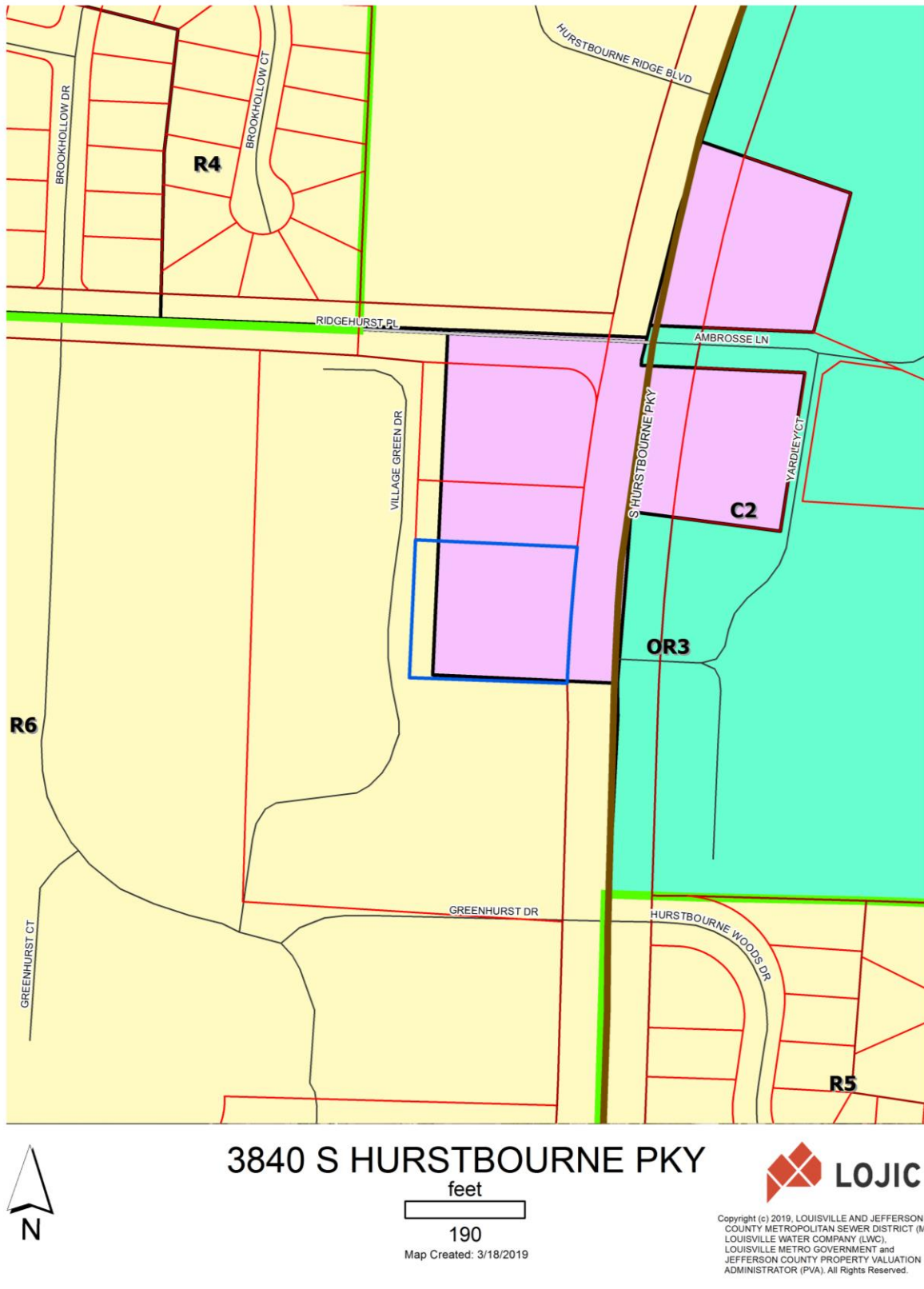
#### **NOTIFICATION**

<b>Date</b>	<b>Purpose of Notice</b>	<b>Recipients</b>
<b>5-8-19</b>	Hearing before DRC	1 <sup>st</sup> tier adjoining property owners Speakers at Planning Commission public hearing Registered Neighborhood Groups in Council District 11

#### **ATTACHMENTS**

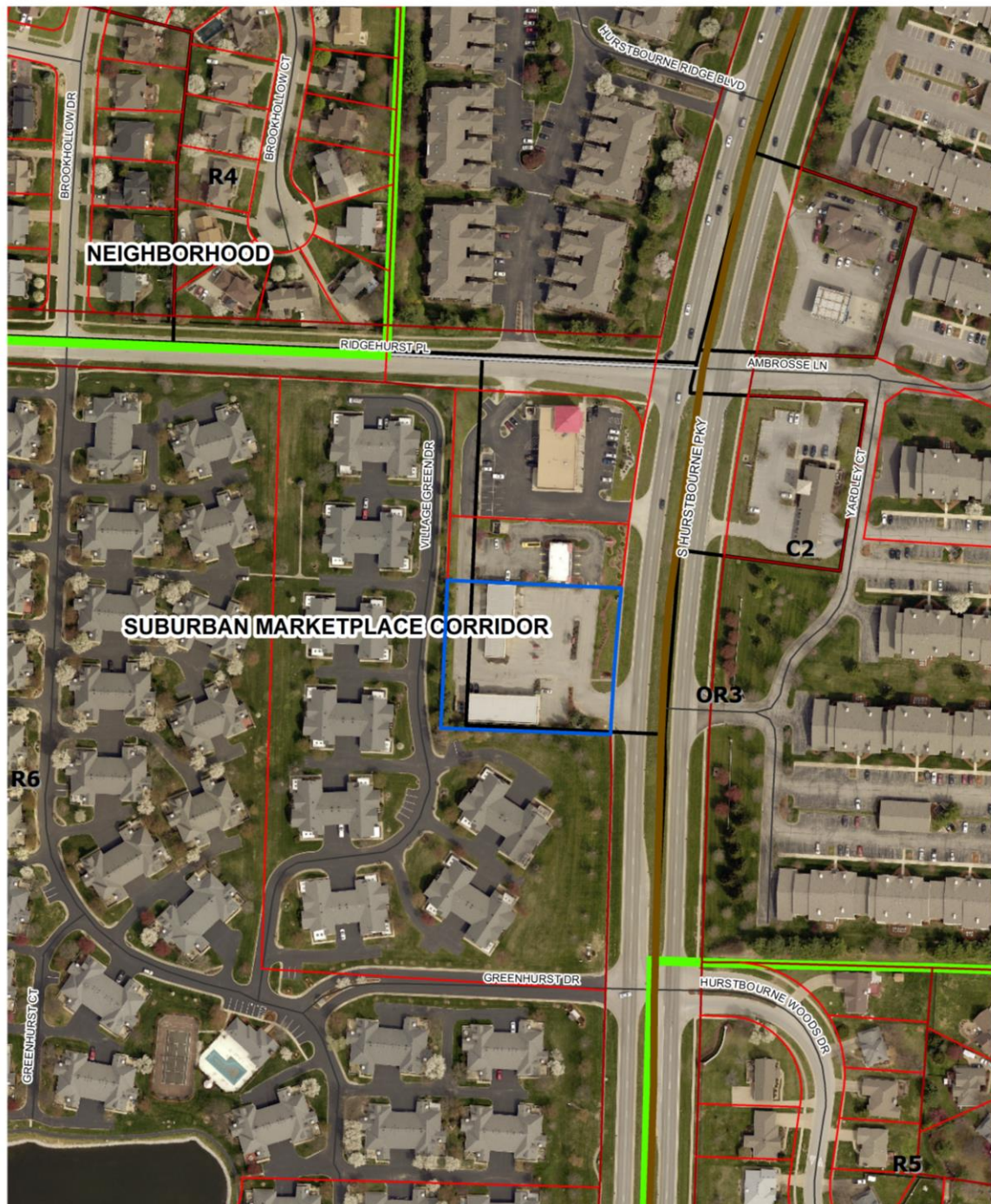
1. Zoning Map
2. Aerial Photograph
3. Existing General Plan Binding Elements
4. Existing Site Plan Binding Elements
5. Proposed Site Plan Binding Elements

1. **Zoning Map**





2. Aerial Photograph



3840 S HURSTBOURNE PKY



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ADMINISTRATOR (PVA). All Rights Reserved.

### **3. Existing General Plan Binding Elements**

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding elements shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. The following uses, although permitted generally in the C-2, are prohibited uses with the C-2 areas of Stony Brook South: adult entertainment, automobile repair garages, bookbinding facilities, dance halls, kennels, monument sales, plumbing and heating shops, sign painting, skating rinks, taverns, theaters, used car sales unless in connection with a new car sales dealership, and advertising signs (billboards). The remaining of the C-2 uses (being those that are not also specifically listed in the C-1) shall be allowed in the C-2 areas of Stony Brook South, but only to the extent of one-third of the allowable commercial square footage allowed above  $\frac{1}{3} \times 639,477 = 213,159$  square feet.

~~3. The development shall not exceed 177,560 square feet of gross floor area (174,320 square feet of retail buildings and 4488 square feet for the bank).~~

4. Signs shall be in accordance with Chapter 8.

5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

6. There shall be no outdoor storage on the site.

7. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90 degree cutoff and height of the light standard shall be set so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed two foot candles measured at the property line.

8. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) (NOTE: to be used for sites within an historic preservation district) 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 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; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
- d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.

9. If a building permit is 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.



10. 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.

11. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line or permitted on the site.

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 the 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. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.

~~14. The exterior design and materials of the shopping center shall be substantially the same as approved by the Planning Commission designee on 01/18/2007.~~

15. The rear façade of the shopping center shall be a mix of brick, split-face block and dryvit.

16. The dumpster shall not be emptied between the hours of 11pm and 7am.

17. There shall be no idling of trucks permitted between the shopping center and the Hurstbourne Ridge Condominium property.

18. The applicant shall construct the turn lane improvements as required by the Kentucky Department of Highways.

19. Stonybrook, LLC shall plant 55 six feet to eight feet tall Northern Spruce trees along the west berm.

20. Stonybrook, LLC shall widen the existing berm on the shopping center side of the property line.

21. Stonybrook, LLC shall install an irrigation system in said berm to maintain all vegetation on the berm.

22. Stonybrook, LLC shall install a six foot green vinyl chain link fence along the shopping center side of berm and plantings.

23. Stonybrook, LLC shall maintain all vegetation on the entire berm.

#### **4. Existing Site Plan Binding Elements**

~~1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.~~

~~2. The development shall not exceed 6,675 square feet of gross floor area.~~

~~3. There shall be no freestanding sign permitted on site without prior approval. Monument style signs that meet the size and height limits established in the "Policies for Future Development Along Designated Parkways" may be approved by DPDS staff. Signs that exceed those limits are permitted only if approved by LD&T or the Commission. LD&T or the Planning Commission may require that the signs be smaller than would otherwise be permitted by the Zoning District Regulations.~~

~~4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.~~

~~5. See revised binding element below.~~

~~6. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in 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.~~

~~7. 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 (and in conformance with the Parkway Policy) prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.~~

~~8. 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.~~

~~9. 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.~~

~~10. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system permitted on the site.~~

~~11. 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.~~

~~12. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.~~

~~13. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the June 13, 2002 LD&T.~~

~~14. The hours of operation of the facilities car wash shall not exceed the following: Customer hours shall be limited to the following hours: 6AM to 11:59PM daily. These customer hours shall apply to all operations on the site, including the automated washing facilities and vacuum cleaners.~~

~~REVISION TO BINDING ELEMENT #5:~~

~~5. Outdoor lighting (for parking lot illumination and security) shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set no higher than 20 feet so that no light source is visible off-site. Light levels due to lighting on the subject site shall not exceed 0.5 foot candles measured at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.~~

#### **4. Proposed Site 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. 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, 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. 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 Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
- e. Final elevations/renderings shall be submitted for review and approval by Planning Commission staff. A copy of the approved rendering shall be available in the case file on record in the offices of the Louisville Metro Planning Commission.

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 or permitted on the site.

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.