

Planning Commission

Staff Report

April 5, 2021



Case No:	20-ZONE-0066
Project Name:	Cooper Chapel Apartments
Location:	6600 & 6702 Cooper Chapel Road
Owner(s):	Gary & Cherrlynn Eibeck Living Trust
Applicant:	LDG Development
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
Case Manager:	Dante St. Germain, AICP, Planner II

REQUESTS

- **Change in zoning** from PRD Planned Residential Development & R-4 Single Family Residential to R-6 Multi-Family Residential
- **Variance** from LDC table 5.3.1 to allow structures to exceed the maximum allowed height (allowed 35', proposed height 38', variance of 3') (20-VARIANCE-0126)
- **Detailed District Development Plan** with replacement of Binding Elements

CASE SUMMARY/BACKGROUND

The subject site is located along Cooper Chapel Road near the intersection with Smyrna Parkway and consists of two contiguous parcels. The applicant proposes to rezone the property to R-6 to construct a new 288-unit multi-family development.

The site is generally surrounded by single-family and large-lot single-family residential uses, with a small amount of commercial located along Smyrna Parkway to the west. McNeely Lake Park is located nearby to the east, and abuts the site to the south and south-east.

A portion of the site was rezoned in 2011 under docket 13679, from R-4 to PRD, in order to construct a new 32-lot single-family subdivision. This plan was not constructed.

STAFF FINDING

Staff finds that the proposed zoning change generally meets the guidelines of the Comprehensive Plan. The plan meets the requirements of the Land Development Code with the exception of the requested variance. Staff finds that the variance is adequately justified and meets the standard of review.

TECHNICAL REVIEW

Plan 2040

Land Development Code (Louisville Metro)

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

INTERESTED PARTY COMMENTS

Staff has received an email of opposition from neighbor Billy Grey, and a petition for a night hearing from neighbor Thomas Simmons regarding a night hearing. The night hearing petition met the 50% APO threshold for a night hearing for large proposals. Staff also received a phone call in opposition from neighbor Karen Lauder, with concerns about traffic on Cooper Chapel Road.

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

The site is located in the Neighborhood Form District

The Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibly into the existing landscape and neighborhood areas. High-density uses will be limited in scope to minor or major arterials and to areas that have limited impact on the low to moderate density residential areas.

The Neighborhood Form will contain diverse housing types in order to provide housing choice for differing ages, incomes and abilities. New neighborhoods are encouraged to incorporate these different housing types within a neighborhood as long as the different types are designed to be compatible with nearby land uses. These types may include, but not be limited to, large lot single family developments with cul-de-sacs, traditional neighborhoods with short blocks or walkways in the middle of long blocks to connect with other streets, villages and zero-lot line neighborhoods with open space, and high density multi-family housing.

The Neighborhood Form may contain open space and, at appropriate locations, civic uses and neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycle and transit.

Neighborhood streets may be either curvilinear, rectilinear or in a grid pattern and should be designed to support physical activity for all users and invite human interaction. Streets are connected and easily accessible to each other, using design elements such as short blocks or bike/walkways in the middle of long blocks to connect with other streets. Examples of design elements that encourage this interaction include narrow street widths, street trees, sidewalks, shaded seating/gathering areas and bus stops. Placement of utilities should permit the planting of shade trees along both sides of the streets.

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

The proposed zoning district change would permit the construction of multi-family development in a neighborhood which is currently mostly single-family development. This would increase the variety of

housing in the neighborhood, and increase the ownership options and price points for future residents. The site is located close to an existing small activity center at the intersection of Smyrna Parkway and Cooper Chapel Road, providing neighborhood goods and services. The site is adjacent to McNeely Lake Park. Although there is no sidewalk network connecting the site to the park, residents will be able to reach the park quickly by vehicle and utilize its amenities.

The proposed zoning district is generally in compliance with the plan elements of Plan 2040, and with the CHASE principles in the Comprehensive Plan.

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 VARIANCE FROM TABLE 5.3.1

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect public health, safety or welfare as the increase in building height will not affect sight lines or create any other public health, safety or welfare issues.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as the variance requested is relatively small and unlikely to be apparent to the public.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the increase in height is relatively small and unlikely to be visible to the public.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of zoning regulations as the requested variance is relatively small and is needed to provide an extra foot of interior height for each floor to provide higher ceilings.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the variance is needed for a design choice on the part of the developer and not due to unique characteristics of the lot.

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

STAFF: The strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the building height is a design choice to improve the look of the interior rooms and the buildings could be shorter with more standard ceiling heights without depriving the applicant of the use of the land or creating an unnecessary hardship.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no construction has yet taken place and the variance is being sought at this time.

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: No steep slopes, water courses, flood plains, soils, air quality, scenic views or historic sites are evident on the subject site. The required tree canopy is being preserved on 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: Sufficient open space as required by the Land Development Code is being provided to meet the needs of the proposed development.

- (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 the existing and future development of the area. The required buffers are being provided between the three-story buildings and the adjacent single-family development. The proposal would permit future residents to live in proximity to the park.

- (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 generally conforms to applicable guidelines and policies of the Land Development Code, with the exception of the requested variance. The development plan is generally in conformance with the Comprehensive Plan, as the proposal would provide additional housing and increase the variety of housing in the neighborhood.

REQUIRED ACTIONS

- **RECOMMEND** that Metro Council **APPROVE** or **DENY** the **Change-in-Zoning** from R-4 to R-6
- **APPROVE** or **DENY** the **Variance**
- **APPROVE** or **DENY** the **Detailed District Development Plan** with new **Binding Elements**

NOTIFICATION

Date	Purpose of Notice	Recipients
01/13/2021	Hearing before LD&T	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 23
03/04/2021	Hearing before PC	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 23
03/05/2021	Hearing before PC	Sign Posting on property
03/19/2021	Hearing before PC	Legal Advertisement in the Courier-Journal

ATTACHMENTS

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

1. Zoning Map



6600 & 6702 Cooper Chapel Road
feet

330

Map Created: 4/3/2020



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2. Aerial Photograph



6600 & 6702 Cooper Chapel Road
feet

330

Map Created: 4/3/2020



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3. Staff Plan 2040 Checklist

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

Neighborhood: Residential

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
1	Community Form: Goal 1	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 permit higher density and intensity uses. There is a small activity center near the site providing neighborhood goods and services.
2	Community Form: Goal 1	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.	✓	Adequate transitions and buffering is being provided between the proposed development and adjacent, lower-intensity development.
3	Community Form: Goal 2	9. Encourage new developments and rehabilitation of buildings that provide commercial, office and/or residential uses.	✓	The proposal would be a new development providing residential zoning.
4	Community Form: Goal 3	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.	✓	No wet or highly permeable soils, or severe, steep or unstable slopes are evident on the subject site.
5	Community Form: Goal 4	2. Encourage preservation of distinctive cultural features including landscapes, natural elements and built features.	✓	Tree canopy is being preserved on the site as required by the Land Development Code.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
6	Community Form: Goal 4	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 structures on the site are not proposed to be preserved. They are eligible for the National Register of Historic Places.
7	Mobility: Goal 1	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 permit higher density and intensity uses. The site is within proximity to a small existing activity center providing neighborhood goods and services.
8	Mobility: Goal 2	4. Avoid access to development through areas of significantly lower intensity or density development if such access would create significant nuisances.	✓	Access to the site is via Cooper Chapel Road, a primary collector at this location.
9	Mobility: Goal 3	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 site is easily accessible by car. It would be more difficult to access the site by bicycle, transit, pedestrians and people with disabilities. The sidewalk network in the neighborhood is incomplete, and to reach it residents would need to cross Cooper Chapel Road at an uncontrolled location.
10	Mobility: Goal 3	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.	✓	Transportation Planning has approved the proposal.
11	Mobility: Goal 3	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.	✓	Transportation Planning has approved the proposal.
12	Mobility: Goal 3	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.	✓	Transportation Planning has approved the proposal.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
13	Mobility: Goal 3	10. Ensure that necessary improvements occur in accordance with long-range transportation plans and level of mobility criteria for all modes of travel.	✓	Transportation Planning has approved the proposal.
14	Mobility: Goal 3	21. Prevent safety hazards caused by direct residential access to high speed roadways.	✓	No direct residential access to high speed roadways is proposed.
15	Community Facilities: Goal 2	1. Locate development in areas served by existing utilities or capable of being served by public or private utility extensions.	✓	The relevant utilities have approved the proposal.
16	Community Facilities: Goal 2	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.	✓	Louisville Water Company has approved the proposal.
17	Community Facilities: Goal 2	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	Livability: Goal 1	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.	✓	Tree canopy is being preserved on the site and additional tree canopy will be provided.
19	Livability: Goal 1	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.	✓	Karst features on the site have been identified and will be mitigated at construction.
20	Livability: Goal 1	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 site is not located in the regulatory floodplain.

#	Plan 2040 Plan Element	Land Use & Development Policy	Staff Finding	Staff Analysis
21	Housing: Goal 1	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 would permit a variety of housing types.
22	Housing: Goal 1	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 proposed zoning district would support aging in place by increasing the variety of housing options and price points in the neighborhood.
23	Housing: Goal 2	1. Encourage inter-generational, mixed-income and mixed-use development that is connected to the neighborhood and surrounding area.	✓	The proposed zoning district would allow for inter-generational mixed-income development.
24	Housing: Goal 2	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 site is not located in proximity to a multi-modal transportation corridor. The proposed zoning district would permit higher density residential uses. The site is located in proximity to an activity center.
25	Housing: Goal 3	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 permit an increase in the variety of ownership options and unit costs throughout Louisville Metro. The proposal would expand opportunities for people to live in quality, variably priced housing in locations of their choice.
26	Housing: Goal 3	2. As neighborhoods evolve, discourage displacement of existing residents from their community.	✓	No existing residents will be displaced by the proposal.
27	Housing: Goal 3	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 permit innovative methods of housing.

4. Existing 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 elements 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.~~
- 1a. ~~The development shall be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.~~
2. ~~The density of the development shall not exceed:
_____ Gross Density: 6.2 du/ac, 32 lots on 5.1 acres
_____ Net Density: 6.95 du/ac, 32 lots on 4.6 acres~~
3. ~~Signs shall be in accordance with Chapter 8 or as presented at the public hearing.~~
4. ~~No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.~~
5. ~~The existing residential driveway to Cooper Chapel Road is to be closed and access to the site be made through the new subdivision entrance directly across from the existing Lantana Drive.~~
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 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.~~
7. ~~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. ~~Encroachment permits must be obtained from Louisville Metro Public Works.~~
 - 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 major subdivision record plat creating the lots and roadways as shown on the approved district development plan/preliminary plan shall be recorded prior to issuance of any building permits.~~
 - e. ~~A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.~~
8. ~~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.~~

9. ~~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.~~
10. ~~Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a) ~~Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.~~
 - b) ~~A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of TCPA's) and other issues required by these binding elements / conditions of approval.~~
 - c) ~~Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.~~~~
11. ~~At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.~~
12. ~~The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the 12/2/2010 Planning Commission meeting.~~
13. ~~At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.~~
14. ~~All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.~~
15. ~~Covenants, Conditions and Restrictions ("CCRs") shall be prepared by the developer to be submitted to and reviewed and approved by Planning Commission legal counsel, prior to recording of the subdivision's Record Plat, for consistency with any binding elements that mandate inclusion in the CCRs of certain Planning Commission, Metro Works, MSD or other agency requirements. Among those CCR provisions shall be these requirements: (a) that all road, drainage, sanitary sewer, water, other necessary infrastructure and other required landscaping and facilities be installed by the developer prior to turn-over of maintenance responsibilities to the Home Owners Association ("HOA"); (b) that any shared water meters and property service connections for sanitary sewers be the sole responsibility of the HOA; (c) that any water, sewer and drainage facilities that cross lot lines be included in blanket easements for purposes of both~~

~~lot owner and HOA access and maintenance; and (d) that attached residences shall have easements over the adjoining lots of those attached units for purposes of incidental encroachments and property maintenance and repair.~~

- ~~16. The developer shall install signs at the entrance to the private roads within the subdivision that indicate those particular roads are privately owned roads and are maintained by the Park Pointe Homeowners Association. The language on these signs to be approved by Metro Public Works.~~
- ~~17. The developer shall include within the subdivision's covenants language creating and upkeep of the private roads in the subdivision will be assessed and collected. This private road maintenance fund shall be kept separate from the subdivision's general fund.~~

5. 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. 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. A minor plat or legal instrument shall be recorded consolidating the parcels into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - 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 certificate of occupancy. 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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 5, 2021 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. 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. 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.