

Development Review Committee

Staff Report

Date: October 20th, 2021



Case No:	21-DDP-0079
Project Name:	Proposed Grocery Store with Outlots
Location:	2500 Terra Crossing Boulevard
Owner(s):	DLP Real Estate, LLC
Applicant:	Matt McLaren – Gresham Smith & Partners Cliff Ashburner – Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	19 – Anthony Piagentini
Case Manager:	Molly Clark

REQUEST(S)

- **Waiver:**
 1. **Waiver** from 5.6.1 to allow a building façade to have less than 50% clear windows and doors facing a public street. (21-WAIVER-0101)
- **Revised Detailed District Development plan with a removal and replacement of binding elements.**

CASE SUMMARY/BACKGROUND

The applicant is proposing to build a 54,000 square foot Grocery Store with 2 adjacent out lots that will all have access off of Terra Crossing Blvd. The site is zoned C-2 with a very small sliver of PEC Zoning all within the Suburban Workplace Form District.

Related Cases:

- 9-01-07: R-4 to C-2, R-4 to PEC, R-4 to R-6 and a Form District Change from Neighborhood Form to Suburban Workplace with a General Plan.
- 9419: Rezoning from R-4 to C-2
- 11126: Revised General Plan and Amendment to Binding Elements (Related to 09-01-07)
- 11883: Rezoning from C1 & OR3 to C2 with a detailed plan
- 12277: Detailed District Development Plan related to 9419
- 12710: Revised Detailed District Development Plan (Related to 9419)

STAFF FINDING

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

TECHNICAL REVIEW

Staff is proposing to keep 3 detailed plan binding elements from case numbers 12277 and 11883.

Transportation Planning and MSD have preliminarily approved the proposal.

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of section 5.5.2.B.1 & C.1 to waive the 50% clear windows and doors affording into the business for facades facing public ROW:

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

STAFF: The requested waiver will not adversely affect adjacent property owners, the applicant is meeting all the other requirements. They are providing all the landscaping plantings in the remaining landscape buffers that will provide visual interest and screening for the facades that do not meet the Land Development Code.

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

STAFF: Guideline 1, policy 4 of Plan 2040 mentions that new development should be compatible with scale and site design of nearby existing development. They are asking for the building design waiver regarding windows being less than 50% but will still be providing some clear windows and doors for the front façade that will have all the primary customer entrances. 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 the minimum necessary to afford relief to the applicant since the proposed building will be a large grocery store.

- (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 design measures that compensate for non-compliance with the requirements to be waived but providing all the required plantings in the remaining landscape buffers that will help screen and provide visual interest to the building façades that don't meet the Land Development Code.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR (R)DDDP and/or 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.

- 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 **Waiver** from 5.5.2.B.1 & 5.5.2.C.1 to not provide 50% clear windows (**20-WAIVER-0041**)
- **APPROVE** or **DENY** the **Revised Detailed District Development Plan and the removal and replacement of binding elements**

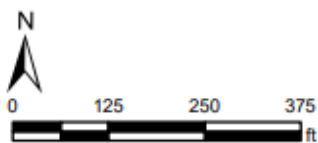
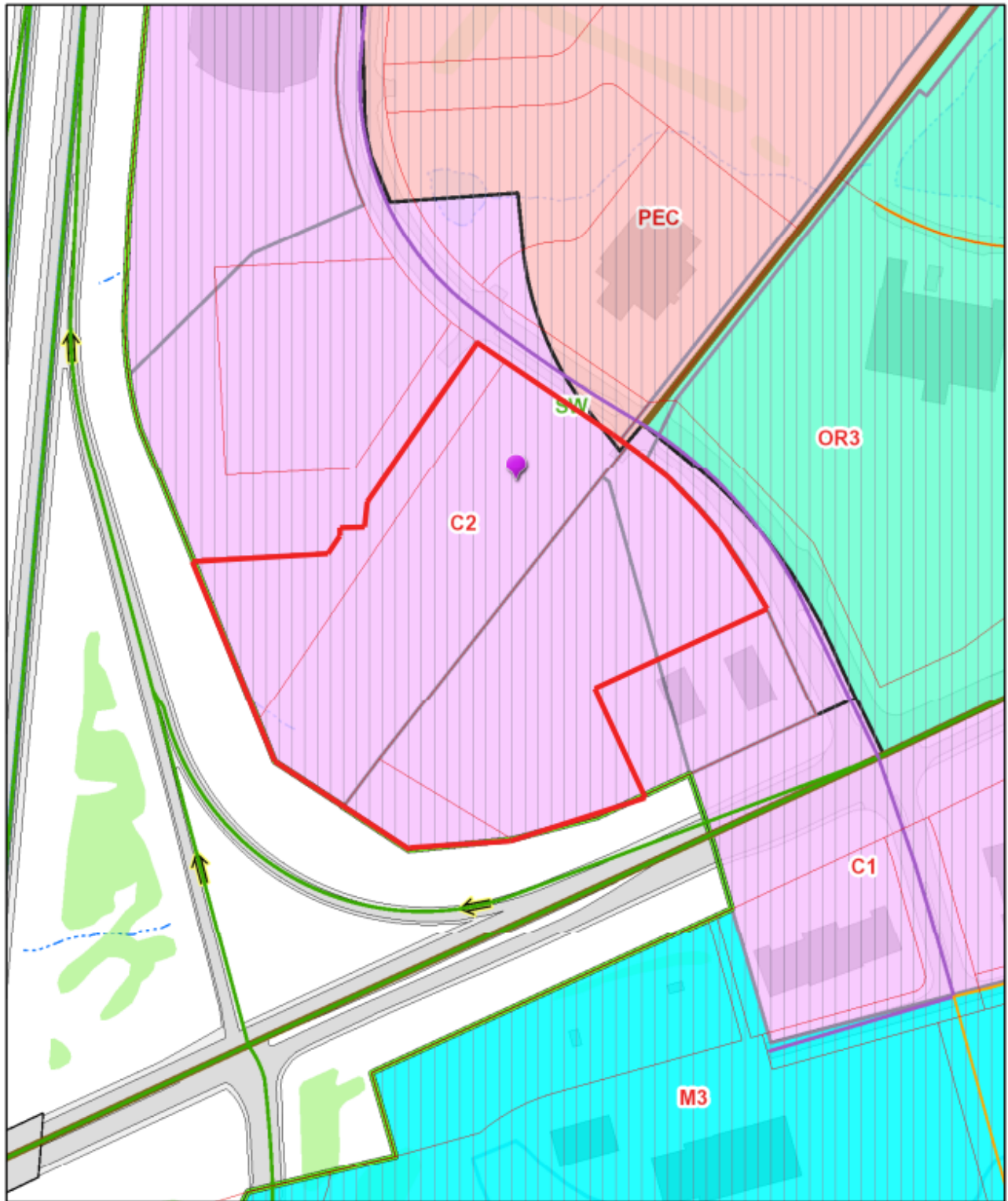
NOTIFICATION

Date	Purpose of Notice	Recipients
10-5-21	Hearing before DRC on 10-20-21	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 19

ATTACHMENTS

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

1. Zoning Map



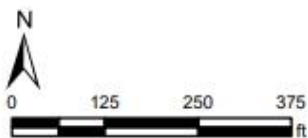
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2. Aerial Photograph



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3. Existing Binding Elements

9419 & 12277 Detailed Development Plan Binding Elements (to be removed):

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 (excluding clearing, grading, roads, utilities, basins and other infrastructure development) 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 may be subject to additional binding elements.
Modified by the DRC on March 4, 2009 under Case # 12277
3. The square footage of the development shall not exceed 21,000 square feet of restaurant space.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property lines. 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.
6. Prior to issuance of a permit (including but not limited to building, parking lot, change of use, site disturbance permit):
 - a. The Development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses and the Metropolitan Sewer District.
 - b. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - 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.
7. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
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 materials and design of proposed structures shall be substantially in accordance with the procedures outlined in the Design Guidelines & Development Pattern Book for Claiborne Crossings (9-01-07) as presented at the July 19th, 2007 public hearing before the Planning Commission.
10. 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 thereafter. 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.

11. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for the structure.
12. When a detailed development plan is filed for any of the lots shown on this general plan, developer shall make application for closure of Old Henry Farm Court as shown on the approved general development plan.
13. Trees will be preserved be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land development Code and as indicated in the Tree Canopy Calculations on the Detailed Development/Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, part1 of the LDC. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
14. Prior to full construction plan approval by metro Public Works (MPW) for tracts associated with case number 9419, and lots 1-8 excluding Office Buildings 3,4 & 5) of the Claibourne Crossing development (9-1-07) up to 65% of total AM and PM peak hour trips anticipated by QK4 June 2007 Traffic Impact Study, as amended March 2008 (QK4 TIS), developer shall construct Old Henry Rd. and Terra Crossings Blvd. Road improvements as shown on the approved traffic study schematic plans.
These improvements will include funding to signalize the intersection of Terra Crossings Boulevard/Old Henry Road, with the timing of signal installation to be determine by the Kentucky Transportation Cabinet (KTC); the KTC will provide the signal equipment and developer shall be responsible for signal installation.
15. Development of tracts associated with case #9419 and Lots 1-8 (excluding Office Buildings 3,4 & 5) of Claibourne Crossings (9-01-07) that represents up to 75% of total AM and PM peak hour trips anticipated by QK4 TIS (as amended March, 2008), shall require the completion of cross-access with Old Henry Crossings Lot 1 development to Old Henry Rd.
16. Updated trip generations, or additional analysis if warranted by change in development character, shall be required per MPW requirements prior to each Detailed Development Plan Approval. The Planning Commission may withhold approval of the revised plan if such analysis reveals an unacceptable level of trip generation with inadequate mitigation by the developer.
17. All facades visible from the public right-of-way in the C-2 zoned portions of the property shall be clad in brick, stone, stucco or glass, or a combination thereof.

11883 Detailed Development Plan Binding Elements (to be removed):

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 (excluding clearing, grading, roads, utilities, basins and other infrastructure development) 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 may be subject to additional binding elements.

3. The square footage of the development shall not exceed 35,811 square feet of restaurant and patio area space.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. Prior to issuance of a permit (including but not limited to building, parking lot, change of use, site disturbance permit):
 - 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.
 - A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - 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.
7. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.
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 on 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 materials and design of proposed structures shall be substantially in accordance with the procedures outlined in the Design Guidelines & Development Pattern Book for Claibourne Crossings (9-01-07) as presented at the July 19, 2007 public hearing before the planning commission.
10. At the time a building permit is requested, the applicant shall submit a certificate 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 thereafter. No building permits shall be issued unless such a certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 part 1.3 of the Land Development Code.
11. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
12. Trees will be preserved and/or provided on site as required by Chapter 10, part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Detailed Development/Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the LDC. A tree preservation plan shall be submitted for

review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.

13. Prior to full construction plan approval by Metro Public Works (MPW) for tracts associated with case number 9419, and lots 1-8 (excluding office buildings 3,4, &5) of the Claibourne Crossing development (9-1-07) up to 65% of total AM and PM peak hour trips anticipated by QK4 June 2007 Traffic Impact Study, as amended March 2008 (QK4 TIS), developer shall construct Old Henry Rd and Terra Crossing Blvd Road improvements as shown on the approved traffic study schematic plans.

These improvements will also include funding to signalize the intersection of the Terra Crossings Boulevard/Old Henry Road with the timing of signal installation to be determined by the Kentucky Transportation Cabinet (KTC);, the KYC will provide the signal equipment and developer shall be responsible for signal installation.

14. Development of tracts associated with case #9419 and Lots 1-8 (excluding Office Buildings 3,4 & 5) of Claibourne Crossings (9-01-07) that represents up to 75% of total AM and PM peak hour trips anticipated by QK4 TIS (as amended March, 2008), shall require the completion of cross-access with Old Henry Crossings Lot 1 development to Old Henry Rd.
15. Updated trip generations, or additional analysis if warranted by change in development character, shall be required per MPW requirements prior to each Detailed Development Plan Approval. Updated trip generations, or additional analysis if warranted by change in development character, shall be required per MPW requirements prior to each Detailed Development Plan approval. The Planning Commission may withhold approval of the revised plan if such analysis reveals an unacceptable level of trip generation with inadequate mitigation by the developer.
16. All facades visible from the public right-of-way in the C-2 zoned portions of the property shall be clad in brick, stone, stucco or glass, or a combination thereof.
17. The exact location of the dumpsters shall be determined at the time of review and approval of the Detailed District Development Plan for each lot. Dumpsters shall not be located immediately adjacent to the property perimeter of the rights-of-ways or perimeter parkway buffer associated with Old Henry Road unless (a) enclosed with same building materials as for the main structure or by an extension of the building façade and (b) the access gates are oriented to the interior of the development site.
18. An automatic irrigation system shall be provided in the buffer areas adjacent to the Gene Snyder Freeway Ramp and Old Henry Road.
19. Freestanding signs located adjacent to the Old Henry Road right of way shall be limited to six (6) feet in height.
20. The following uses otherwise permitted in Commercial District C-2 shall be prohibited:
 - Auction sales, items transported to site of auction
 - Automobile repair garages

4. Proposed 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. A minor subdivision plat or legal instrument 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 prior to obtaining a building permit.
 - 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 reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners of the proposed outlots, and the existing hotel to the north 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.
 - f. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the October 20th, 2021 Planning Commission 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.
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 2 proposed out lots and the existing hotel to the north on the plan. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.
10. Updated trip generations, or additional analysis if warranted by change in development character, shall be required per MPW requirements prior to each Detailed Development Plan Approval. Updated trip generations, or additional analysis if warranted by change in development character, shall be required per MPW requirements prior to each Detailed Development Plan approval. The Planning Commission may withhold approval of the revised plan if such analysis reveals an unacceptable level of trip generation with inadequate mitigation by the developer.
11. The following uses otherwise permitted in Commercial District C-2 shall be prohibited:
 - a. Auction sales, items transported to site of auction
 - b. Automobile repair garages