

**DEVELOPMENT REVIEW COMMITTEE OF THE LOUISVILLE
METRO PLANNING COMMISSION
MINUTES**

JULY 27, 2011

MEMBERS PRESENT

Lula Howard, Chairperson
Paula Wahl, Vice Chairperson
Chief Richard Carlson, Commissioner
Vince Jarboe, Commissioner

MEMBERS ABSENT

David Tomes, Commissioner

STAFF MEMBERS PRESENT

Dawn Warrick, Assistant Director of Planning and Design Services
Latondra Yates, Planner II
Mike Wilcher, Planner II
Chris Brown, Planner I
Pat Barry, MSD
Jennifer Caummisar, Engineer Supervisor
Jon Baker, Legal Counsel
Pamela M. Brashear, Management Assistant

APPROVAL OF MINUTES FROM THE JULY 13, 2011 MEETING

1:05:29 Commissioner Carlson moved to **APPROVE** the minutes from July 13, 2011. Commissioner Jarboe seconded the motion. Unanimously approved.

The vote was as follows:

YES: Commissioners Carlson, Howard and Wahl

NO: No one

NOT PRESENT: Commissioner Tomes

ABSTAINING: Commissioner Jarboe

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NEW CASES:

Case No. 12586

Case: 12586
Project Name: Ferndale Plaza / Creeker's Tavern
Location: 6300 - 6330 Bardstown Road
Owner(s): Ferndale, LLC
Applicant: Ken Sims
Representative: Wyatt, Tarrant & Combs / Deborah Bilitski
Engineer: Evans-Griffin, Inc. / Jim Griffin
Project Size/Area: 2.36 acres
Jurisdiction: Louisville Metro
Council District: 22 – Robin Engel
Form District: Town Center
Case Manager: Mike Wilcher, Planner II

An audio/visual recording of the Development Review Committee related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this meeting will be found on the cd of the July 27, 2011 proceedings.

SUMMARY OF STAFF PRESENTATION:

1:06:22 The applicant requests the following: a sidewalk waiver of section 6.2.6 requirement along Ferndale Road; a waiver of section 10.2.11 to decrease the ILA requirement by 3,994 square feet; a waiver of section 10.2.9 to omit 15 foot vehicular use area landscape buffer areas (VUA/LBA's); and a Revised Detailed District Development Plan.

A change in zoning from C-1 to C-2 was requested for the 2.36-acre subject site, which consists of an existing 21,268 square foot retail center, to bring an established tavern featuring live entertainment into compliance with zoning district regulations. Multiple variances were requested to permit structures to exceed the maximum 15 foot front and street-side setbacks, as well as to permit parking and a dumpster to encroach into the 5 foot rear setback. In addition, multiple waivers were requested to omit VUA/LBA's and a sidewalk along Ferndale Road, as well as to decrease the ILA requirement. The case was recommended for denial to Metro Council by the Planning Commission on February 17, 2011; however, Metro Council approved the change in zoning from C-1 to C-2 Commercial on May 12, 2011, on condition that a Revised Detailed District Development Plan and LDC waivers are presented to the Development Review Committee and variances are presented to the Board of Zoning Adjustment - within 90 days of the May 12, 2011, approval date.

The following spoke in favor of this request:

Deborah Bilitski, 500 West Jefferson Street, Suite 2800, Louisville, Ky. 40202

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Kenneth J. Sims, 4813 Bardstown Road, Louisville, Ky. 40291

The following spoke in opposition:

No one

SUMMARY OF TESTIMONY OF PROPONENTS:

1:09:12 Ms. Bilitski represents Ferndale, LLC. "This came before the commission a couple of months ago. The waivers and variances were also before the commission at that time but because the recommendation was denial, the commission did not take action on those. When the Metro Council overturned and approved the zoning, they couldn't take action on the waivers or variances so we had to bring it back before you. Everything we're asking for is the result of an existing condition. The site was constructed in compliance with the previous development code. We're not proposing any structural additions/changes to the site. We are, in fact, making numerous improvements to the site today – the right-of-way dedications that were requested by Public Works are being made. There are zero interior landscape areas on the site today so the proposal is an improvement that keeps us in compliance with parking requirements and adds some interior landscape areas. There will be some perimeter landscaping installed along Bardstown Road where none exists today. It also provides for cross access with the adjoining sites, which doesn't currently exist. Dumpsters that are currently sitting unscreened will be screened and bicycle parking will be added." Commissioner Wahl asked Ms. Bilitski if she attended the public hearing. Ms. Bilitski said no, she did not represent the clients at that time. Ms. Wahl stated, "One thing I recall that I requested and was agreed to at the time, but is not reflected on the plan, was a sidewalk (pedestrian) connection from the existing sidewalk on Bardstown Road." Ms. Bilitski said she's not familiar with the request and will have to consult with her client. If they were agreeable at that time, then there should be no problem agreeing to it now. Mr. Sims just entered the meeting and agrees to provide the sidewalk connection. He will work with Metro Public Works to determine the details.

1:13:00 Ms. Bilitski said they are proposing a binding element that was requested by Metro Council. It's the last binding element restricting the uses to C-1 or tavern.

SUMMARY OF TESTIMONY OF OPPONENTS:

None

REBUTTAL:

None

ACTION

1:16:21 Commissioner Carlson moved to **GRANT** a waiver on the sidewalk requirement along Ferndale Road based **ON CONDITION** that a sidewalk connection be made from the sidewalk on Bardstown Road into the parking lot at a location agreeable to the applicant and Public Works based on the staff report, information

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heard today and **ADOPT** staff's analysis as the justification for granting the waiver. Commissioner Wahl seconded the motion. Motion carried unanimously.

WHEREAS, it appears that the requested sidewalk waiver along Ferndale Road will not adversely affect adjacent property owners considering that the applicant is dedicating right-of-way for future improvements to the area; and

WHEREAS, it does not appear that the requested sidewalk waiver violates specific guidelines of Cornerstone 2020 since the applicant will be dedicating right-of-way for future improvements that will enhance the area; and

WHEREAS, the extent of the waiver of the regulation appears to be the minimum necessary to afford relief to the applicant; and

WHEREAS, it appears that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant.

The vote was as follows:

YES: Commissioners Carlson, Howard, Jarboe and Wahl

NO: No one

NOT PRESENT: Commissioner Tomes

ABSTAINING: No one

1:17:13 Commissioner Carlson moved to **GRANT** a waiver to reduce the interior landscaping area by 3,994 square feet based on the information heard today, the staff report and **ADOPT** the staff's analysis as the justification for granting the waiver, noting there will be some additional landscape work done to include dumpster screening. Commissioner Wahl seconded the motion. Motion carried unanimously.

WHEREAS, the requested waiver to decrease the ILA requirement on-site does not appear that it will adversely affect adjacent property owners; and

WHEREAS, the waiver does not appear that it will violate specific guidelines of Cornerstone 2020 considering that this is existing development and the applicant proposes to work with the staff landscape architect to provide some ILA's on-site; and

WHEREAS, the extent of the waiver of the regulation appears to be the minimum necessary to afford relief to the applicant due to existing conditions; and

WHEREAS, it appears that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant. In addition, the applicant revised the plan to provide 1,513sf of ILA space by eliminating additional parking spaces. Therefore, the ILA waiver request decreased from the required 5,507sf of ILA space to 3,994sf as a result of plan revisions.

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The vote was as follows:

YES: Commissioners Carlson, Howard, Jarboe and Wahl

NO: No one

NOT PRESENT: Commissioner Tomes

ABSTAINING: No one

1:17:53 Commissioner Carlson moved to **GRANT** the waiver to omit the 15 foot vehicle use area landscape buffer area based on the information heard today, the staff report and **ADOPT** the staff's analysis as the justification for granting the waiver. Commissioner Jarboe seconded the motion. Motion carried unanimously.

WHEREAS, the requested waivers to omit VUA/LBA's along the north & east site boundaries do not appear to adversely affect adjacent property owners; and

WHEREAS, the requested waivers do appear to be in violation of Guideline 3.A.24, which requires appropriate screening of parking areas adjacent to all areas of the site with street frontage. However, the space required to provide landscape buffer areas to screen existing parking would require removal of several rows of parking that would be in addition to future right-of-way dedication; and

WHEREAS, the extent of the waiver of the regulation does appear to be the minimum necessary to afford relief to the applicant since existing conditions create obstacles for compliance; and

WHEREAS, the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land. The applicant will be required to dedicate future right-of-way that will eliminate several on-site parking spaces. It appears that the number of parking spaces will eventually be equal to the minimum parking requirement.

The vote was as follows:

YES: Commissioners Carlson, Howard, Jarboe and Wahl

NO: No one

NOT PRESENT: Commissioner Tomes

ABSTAINING: No one

1:18:27 Commissioner Carlson moved to **APPROVE** the Revised Detailed District Development Plan to include the adoption of the binding elements as described in the staff report based on the staff report and the information heard today. Commissioner Wahl seconded the motion with the following addition: the plan will have a revision

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showing a pedestrian connection. Commissioner Carlson accepted the addition. Unanimously approved.

RESOLVED, that the Development Review Committee does hereby **APPROVE** the RDDDP for Case No. 12586, subject to the following binding elements:

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. The development shall not exceed 21,268 square feet of gross floor area.
3. Signs shall be in accordance with Chapter 8 or as presented at the public hearing (207 square feet total area and **30** feet in height).
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 *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.
 - c. Upon development or redevelopment of adjacent properties, a unified access and circulation system shall be developed to eliminate preexisting curb-cuts and to provide for vehicular movement throughout adjacent sites as determined by the department of Public Works. Moreover, a crossover and access agreement to run with the land in a form acceptable to Planning Commission legal counsel shall be secured from the adjoining property owner and recorded at the time of construction approval.
 - d. The applicant agrees to dedicate to public right-of-way the area shown on the plan, not to exceed 40' from the centerline of the existing Ferndale Road, within 60-days of request by the Director of Metro Public Works.
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

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implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

6. The property shall not be used for any use other than those allowed in the C-1 Commercial District, or as a tavern offering live entertainment, until such change in use has been reviewed and approved by the Planning Commission, or authorized committee thereof, in a public meeting noticed in accordance with the Planning Commission's policies in effect at the time of the proposed change in use. Any such review shall be to determine compliance with the standards for Revised Detailed District Development Plans in effect at the time of the adoption of this binding element.

The vote was as follows:

YES: Commissioners Carlson, Howard, Jarboe and Wahl

NO: No one

NOT PRESENT: Commissioner Tomes

ABSTAINING: No one

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NEW CASES:

Case No. W-16117-11

Case: W-16117-11
Project Name: Proposed Carport
Location: 504 Tin Dor Way
Owner(s): Patrick E. Foster
Applicant: Same
Representative: Same
Project Size/Area: 372 square feet (buildings)
Jurisdiction: Louisville Metro
Council District: 13 – Vicki Aubrey Welch
Case Manager: Latondra Yates, Planner II

An audio/visual recording of the Development Review Committee related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this meeting will be found on the cd of the July 27, 2011 proceedings.

SUMMARY OF STAFF PRESENTATION:

01:19:50 The applicant requests a Land Development Code (LDC) waiver of section 5.4.2.D.1. and 4.3.6 to allow the maximum footprint of accessory structures to exceed the footprint of the principal structure.

The waiver would allow the square footages of accessory structures to exceed that of the house by approximately 312 square feet. The waiver is for construction of a 372 square foot carport. There is also an existing 2 car garage and shed on the property. The square footage of the accessory structures, including the carport, is 1,304 square feet. The square footage of the house is 992.

The applicant's justification for the waiver is that the carport will be used to keep an RV out of the elements.

1:21:55 Commissioner Wahl asked if there are any regulations pertaining to parking recreational vehicles on residential property. Mr. Baker said it can't be parked between the street and the façade of the principle structure of the lot.

The following spoke in favor of this request:

Patrick Foster, 504 Tin Dor Way, Louisville, Ky. 40118

The following spoke in opposition:

No one

SUMMARY OF TESTIMONY OF PROPONENTS:

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Case No. W-16117-11

01:24:42 Mr. Foster said he wants to protect his property. Also, gas is too expensive to take trips at this time.

SUMMARY OF TESTIMONY OF OPPONENTS:

None

REBUTTAL:

None

ACTION

1:24:58 Commissioner Carlson moved to **GRANT** the waiver of section 5.4.2.D.1 and 4.3.6 of the Land Development Code to allow the maximum footprint of accessory structure to exceed the footprint of the principal structure for a 372 square foot open area carport to be located adjacent to the garage based on the information heard today, the staff report and **ADOPT** the staff's analysis as the justification for granting the waiver. Commissioner Wahl seconded the motion. Motion carried unanimously.

WHEREAS, the waiver will not adversely affect adjacent property owners because there are other houses in the area with similar additions; and

WHEREAS, the waiver will not violate the applicable guideline of Cornerstone 2020; and

WHEREAS, the waiver is the minimum necessary to afford relief to the applicant in order to construct the carport as proposed; and

WHEREAS, the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create unnecessary hardship because the carport is needed to protect a vehicle.

RESOLVED, that the Development Review Committee does hereby **GRANT** the waiver for Case No. W-16117-11.

The vote was as follows:

YES: Commissioners Carlson, Howard, Jarboe and Wahl

NO: No one

NOT PRESENT: Commissioner Tomes

ABSTAINING: No one

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NEW CASES:

Case No. 16043

Case: 16043
Project Name: Family Dollar
Location: 6312 Greenwood Road
Owner(s): Greenwood Road Development, LLC
Applicant: Chuck Borysiak, the Hutton Company
Representative: Ann Richard
Project Size/Area: 1.2 acres
Jurisdiction: Louisville
Council District: 14 – Bob Henderson
Case Manager: Christopher Brown, Planner I

An audio/visual recording of the Development Review Committee related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this meeting will be found on the cd of the July 27, 2011 proceedings.

SUMMARY OF STAFF PRESENTATION:

1:26:31 The applicant requests amendments to binding elements 2 and 8 a,e and a Revised Detailed District Development Plan.

The proposal is for a Family Dollar retail store. An 8,000 square foot structure and associated 24,975 square foot vehicular use area are proposed for the subject site. An existing entrance from Greenwood Road will be utilized for ingress and egress. The existing 13 parking spaces on the subject site that are part of a shared parking agreement with the adjacent McDonald's to the east are to remain.

Improvements are proposed along Greenwood Road to connect the existing sidewalk network from the McDonald's site along the street frontage to the west property line.

The proposed signage will meet the Land Development Code requirements of 10 feet in height and 80 square foot maximum.

All landscaping requirements are being met on the subject site proposal with 20% tree canopy provided and above the required interior landscape percentage.

The following spoke in favor of this request:

Ann Richard, 503 Washburn Avenue, Louisville, Ky. 40222

The following spoke in opposition:

No one

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The following spoke as “interested party” neither for nor against:

Todd Metzmeier, 1600 Ormsby Station Court, Louisville, Ky. 40223

SUMMARY OF TESTIMONY OF PROPONENTS:

1:30:53 Ms. Richard said there’s an existing parking lot and curb cut. Family Dollar will make some minor improvements to the curb cut. They will also provide a sidewalk on the Greenwood Road right-of-way.

SUMMARY OF TESTIMONY OF OPPONENTS:

None

SUMMARY OF TESTIMONY OF INTERESTED PARTY:

1:31:38 Mr. Metzmeier requested that MSD attend the meeting. “Kroger has a store across the drainage easement and earlier this year (in the spring) we had a severe rodent infestation in our store. We have been battling with some adjacent property owners to keep their properties properly maintained. My first question to the gentleman from MSD is; I assume you have reviewed this plan and it’s in compliance?” Mr. Barry, MSD, replied “Yeah, we looked at it and obviously our job is to review for drainage and sewers. It meets all our criteria – they’ve got a big public outlet, which is a little black pond. They meet all the requirements so drainage is not an issue.” Mr. Metzmeier asked, “Is your variable easement under some sort of regularly scheduled maintenance policy that requires you to address and clean it out (mowing the lawn)?” Mr. Barry remarked, “I don’t think this is on a regular mowing schedule. We don’t usually do that with ditches like this. Obviously someone mows it because it’s kept clean – there’s about 100 foot easement. I don’t know if it’s on our list to maintain. You called in April and we were out there in May to look at it. I found tires, carts, etc. in the flow line of the channel and it’s scheduled to be cleaned out in November.” Mr. Metzmeier remarked, “I’m trying to get this established so it is properly looked at and maintained on a regular basis, particularly now that we’ve got more development going in. I think there’s potential for more items to end up in the ditch. That’s my main reason for being here.” Mr. Barry asked Mr. Metzmeier if he has contacted the Board of Health. Mr. Metzmeier said they contacted him and asked him to address the surrounding properties. Also, he mows to the edge only and not in the ditch itself. Mr. Barry remarked, “If it’s already mowed and cleaned, obviously MSD ‘s approach now is to leave things growing up and green around these channels. Mr. Metzmeier remarked, “The Health Dept. is telling us that when you have those channels like that, that become overgrown and debris filled, the pockets in the sides of the ditches develop and that’s where the rodents are nesting.” Mr. Barry remarked, “I’ll see if it’s on our routine maintenance mowing schedule, call you and let you know. In the meantime, we are

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going to clean it out and I'll check on it and see what we will do with the long term maintenance."

1:35:57 Mr. Metzmeier asked the applicant regarding the residual tract, "Who's responsibility would it be to maintain and see that the tract is properly mowed and maintained?" Ms. Richard said it remains with the current owner, Greenwood Road Development, LLC.

REBUTTAL:

None

ACTION

1:37:04 Commissioner Carlson moved to **APPROVE** the Revised Detailed District Development Plan to include the binding element amendments as noted in the staff report based on the information heard today and the staff report. Commissioner Wahl seconded the motion. Unanimously approved.

WHEREAS, the conservation of natural resources will remain on the property with no intrusions into the variable width perpetual drainage easement to the rear of the subject site; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation will be met with the sidewalk connection along Greenwood Road, addition of bus pad and 5' walk and the use of the existing vehicular access from Greenwood Road; and

WHEREAS, open space will remain on the subject site with the residual tract to the rear of the property; and

WHEREAS, all sewer and drainage easements will remain on the subject site and proper drainage facilities created as part of the proposal; and

WHEREAS, the proposed retail site will be compatible with the surrounding mix of commercial uses; and

WHEREAS, the RDDDP conforms to all Land Development Code requirements derived from the plan elements of the Comprehensive Plan for Neighborhood form districts.

RESOLVED, that the Development Review Committee does hereby **APPROVE** the RDDDP for Case No. 16043, subject to the following binding elements:

Existing Binding Elements

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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. No further development shall occur without prior approval from the Planning Commission, except for land uses permitted in the established zoning district.
2. The development shall not exceed 54,000 square feet of gross floor area. (Tract B 14,729 square feet, Tract C 3,506 square feet).
3. There shall be no additional vehicular access to Terry Lane or Greenwood Road.
4. The only permitted freestanding signs shall be as shown on the approved development plan. The sizes and heights shall not exceed the dimensions shown on the plan. No sign shall have more than 2 sides.
5. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants 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.
8. 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 size and location of any proposed freestanding sign for Tract A must be approved by the Planning Commission. The Planning Commission may require that the signs be smaller than would otherwise be permitted by the Zoning District Regulations.
 - c. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - d. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan and dedicating additional right-of-way to Greenwood Road and Terry Lane to provide a minimum of 50 feet from the centerline. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

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- e. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Article 12 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - f. An access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be secured from the adjoining property owner and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
9. A certificate of occupancy must be received from the appropriate code enforcement office 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. Outdoor PA systems shall not be audible in residential areas off site.
 11. The property owner/developer shall provide copies of these binding elements to tenants, contractors and other parties engaged in development of this project, and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties

Proposed Binding Elements

2. The development shall not exceed 54,000 square feet of gross floor area. (Tract B 44,729 **8,000** square feet, Tract C 3,506 square feet).
8. 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).~~ **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.**
 - e. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in ~~Article 12~~ **Chapter 10** prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.

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The vote was as follows:

YES: Commissioners Carlson, Howard, Jarboe and Wahl

NO: No one

NOT PRESENT: Commissioner Tomes

ABSTAINING: No one

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The meeting adjourned at 1:37 p.m.

**Lula Howard
Chairperson**

**Dawn Warrick, AICP
Assistant Director of Planning and Design Services**