

# PLANNING COMMISSION MINUTES

May 15, 2003

## PUBLIC HEARING

### DOCKET NO. 9-14-03CVLW

Change in zoning from C-1 Commercial to C-2 Commercial a variance for structures to encroach into required rear yards and a landscape waiver to waive the required LBA along Dixie Highway, the required LBA along the railroad and to not provide Interior Landscape Areas every 120 feet, on property located at 9211, 9217 & 9221 Dixie Highway, containing 2.39 acres and being in Jefferson County.

Owner/Applicant: Gerald T. and Barbara Decker  
11500 Flowervale Lane  
Louisville, Ky. 40272

Marshall C. and Cathy Smith  
9213 Dixie Highway  
Louisville, Ky. 40272

Existing Uses: RV Dealership and Heating & AC Repair  
Proposed Use: RV Dealership and Heating & AC Repair  
Council District: 25 – Doug Hawkins  
**Staff Case Manager: Stephen Rusie, Planner II**

**Note:** Mr. Rusie stated that, "upon reviewing my binding elements, the sign binding element, I would like to add that they remove the billboard sign within three months after the expiration date."

Notice of this public hearing appeared in The Courier Journal on April 24, 2003, a notice was posted on the property and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Louisville Metro Planning and Design Services offices, 900 Fiscal Court Building).

**The following spoke in favor of this request:**

Kathy Linares, Mindel, Scott, and Associates, P.O. Box 7246, Louisville, Ky.  
40257

**The following spoke in opposition:**

No one

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#### **The following spoke as other interested parties:**

Diane Newton, 10000 Moon Beam Court, Louisville, Ky. 40272

#### **SUMMARY OF TESTIMONY OF PROPONENTS: (See transcript for text in full.)**

Ms. Linares stated that the minor changes include an addition to the buffer area, landscape buffer, and sidewalk (previously a curb) and the ditch will be extended across Lot 3.

The applicant/representative has no problem with removing the sign in three months.

Ms. Linares stated that they request one year to complete plantings. Also, the landscape waiver is to not provide trees because of utilities overhead and underground.

Ms. Linares stated that regarding the Conditional Use Permit, "if the Commission were utilizing the (new) current code for this case it would be in compliance and not be a nuisance or cause any safety issues."

#### **SUMMARY OF TESTIMONY OF OPPONENTS: (See transcript for text in full.)**

None

#### **SUMMARY OF TESTIMONY OF INTERESTED PARTIES: (See transcript for text in full).**

Ms. Newton stated that her issues with the sidewalk and landscaping have been resolved and she is happy to be in support of this project.

#### **DISCUSSION:**

Commissioner Norton stated that the buildings are existing and the applicant agreed to remove the billboard sign. The plan is in compliance with Guidelines 1.8, 2.7, and 3.9.

**A transcript of the public hearing is on file in this docket.**

In a business session subsequent to the public hearing on this request, the Commission took the following action.

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On a motion by Commissioner Norton, the following resolution was adopted.

**WHEREAS**, based on testimony and evidence submitted with the application, in the Staff Report and to the Planning Commission at various meetings, including the LD&T Committee meeting and the public hearing, the Commission finds that the application complies with the intent of Guideline 1 of the Cornerstone 2020 Comprehensive Plan because the proposal is a use that is desirable and appropriately located in the Suburban Marketplace Corridor; because its continued operation at this location encourages revitalization of the Suburban Marketplace Corridor; because accessibility and connectivity between adjacent uses for automobile, pedestrian, bicycles and transit users have been addressed by certain design characteristics of the proposed development plan and has been approved by the Louisville Metro Department of Public Works and Transportation (LMPW&T); and

**WHEREAS**, the Commission further finds that the application complies with the intent of Policies 1, 2, 3, 4 and 5 of Guideline 2 of the Cornerstone 2020 Comprehensive Plan because this request is for an existing use, located along Dixie Highway a major arterial and within a Suburban Marketplace Corridor; is served by TARC mass transit thereby providing alternative modes of transportation for use by its employees and customers; is surrounded by a mix of commercial developments along this corridor none of which offer the same services as this proposal and it encourages revitalization with the expansion of the current use and with the remodeling of the existing residence to provide additional storage; and

**WHEREAS**, the Commission further finds that the application complies with the intent of Policies 13 and 14 of Guideline 2 of the Cornerstone 2020 Comprehensive Plan because these 3 lots shall share a single entrance thereby reducing the number of curb cuts and improving safety and security of this development; because this proposal will utilize existing utility infrastructure, including sanitary lines; and

**WHEREAS**, the Commission further finds that the application complies with the intent and Policies 1, 2 and 23 of Guideline 3 of the Cornerstone 2020 Comprehensive Plan because the existing buildings are all single story structures which are compatible in scale and style with other buildings in the vicinity; because the setback of the buildings, their height and the depth of the lots are consistent with the established pattern of development in the area; because a 5 foot buffer is proposed adjacent to the north and south property lines to provide a

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green space to distinguish this development from the surrounding uses and as an alternative to providing the required perimeter trees along the Dixie Highway frontage where existing easements, and utilities (both underground and overhead lines) conflict with the provision of trees in the buffer area; and

**WHEREAS**, the Commission further finds that the application complies with the intent and Policies 7, 8 and 9 of Guideline 3 because the requests are for existing uses with operating hours typically between 8:00am and 6:00pm; because all existing and proposed lighting will be directed down and so as not to shine in the eyes of passers by the site; and

**WHEREAS**, the Commission further finds that the application complies with the intent and Policy 24 of Guideline 3 of the Cornerstone 2020 Comprehensive Plan because a single access drive is proposed to serve these 3 lots; that all other existing access points shall be removed, and a curb, sidewalk, landscape buffer area and ditch provided along the Dixie Highway frontage; because these improvements will provide improved safety for motorists and pedestrians alike; because all loading and unloading will occur within the rear of the lots so as not to be a physical or visual nuisance; and

**WHEREAS**, the Commission further finds that the application complies with the intent and Policy 28 of Guideline 3 of the Cornerstone 2020 Comprehensive Plan because the existing sign will be utilized to serve the development and because the existing billboard will be removed upon expiration of the lease and as a result shall enhance the visual quality of this corridor by reducing sign clutter; and

**WHEREAS**, the Commission further finds that the application complies with the intent of Guideline 6 of the Cornerstone 2020 Comprehensive Plan because this proposal allows existing uses on the site to expand and continue operation at this their current location; and

**WHEREAS**, the Commission further finds that the application complies with Policies 1 and 2 of Guideline 7 of the Cornerstone 2020 Comprehensive Plan because Dixie Highway, a major arterial, has adequate traffic-carrying capacity for this development; because by locating this use within a Suburban Marketplace Corridor, air quality will be addressed by reducing the need for long commuting distances for potential customers who would also be traveling this route to obtain other goods and services; and

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**WHEREAS**, the Commission further finds that the application complies with Policies 3, 4, and 6 of Guideline 7 of the Cornerstone 2020 Comprehensive Plan because the proposed development will provide a curb and sidewalk along Dixie Highway, thus promoting safe pedestrian and bicycle travel within the vicinity; and

**WHEREAS**, the Commission further finds that the application complies with Policy 10 of Guideline 7 of the Cornerstone 2020 Comprehensive Plan because parking is provided as required by the off-street parking regulation of the Development Code; and

**WHEREAS**, the Commission finds that the application complies with Policies 9, 11, 12, 13, 14, 15 and 16 of Guideline 7 of the Cornerstone 2020 Comprehensive Plan because the proposed development has received the preliminary stamp of approval from LMPW&T, thus indicating that corner clearances, points of access, connections, driveway design, and so forth have been designed in accordance with LMPW&T standards; and

**WHEREAS**, the Commission further finds that the application complies with the intent of Guideline 8 of the Cornerstone 2020 Comprehensive Plan because Dixie Highway is adequate to accommodate the traffic generated by this development; and because a single access drive is proposed to serve the three lots with all other access points being removed, thereby improving visibility and vehicular safety along this corridor; and because the development plan accompanying this application has received the preliminary stamp of approval from LMPW&T, thus indicating that agency's view that all required sidewalks and systems for the safe movement of pedestrian and vehicles will be provided; and

**WHEREAS**, the Commission further finds that the application complies with the intent of Policies 1, 2 and 3 of Guideline 9 of the Cornerstone 2020 Comprehensive Plan because of the sites location on Dixie Highway has transit access, and because a sidewalk and curb is proposed along the Dixie Highway frontage for improved safety and access by pedestrians and bicycles; and

**WHEREAS**, the Commission further finds that the application complies with the intent of Guideline 10 of the Cornerstone 2020 Comprehensive Plan because the development plan has received the preliminary stamp of approval of MSD, thus indicating that agency's view that the application complies with this guideline; and

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**WHEREAS**, the Commission finds that the application complies with the intent of Guideline 11 of the Cornerstone 2020 Comprehensive Plan because the proposed development shall comply with the new Soil Erosion and Sediment Control Ordinance, such that a soil erosion and sedimentation control plan shall be prepared and implemented throughout the construction process; and

**WHEREAS**, the Commission further finds that the application complies with the intent of Guideline 12 of the Cornerstone 2020 Comprehensive Plan because this proposal is located on Dixie Highway a designated major arterial, is supported by the availability of mass transit and is appropriately located with the Suburban Marketplace Corridor and as such shall reduce the need for long commuting distances for potential customers who would also be traveling this route to obtain other goods and services; and

**WHEREAS**, the Commission further finds that the application complies with the intent of Guideline 13 of the Cornerstone 2020 Comprehensive Plan because it provides for interior and perimeter landscaping in compliance with the requirements of Article 12 of the Development Code with the exception of the landscape waiver request; because dumpsters and service structures will be screened in accordance with the Development Code; and

**WHEREAS**, the Commission further finds that the application complies with the intent of Guideline 14 of the Cornerstone 2020 Comprehensive Plan because all necessary utilities currently serve these businesses, and any improvements required will be addressed by the owner; and

**WHEREAS**, based on all of the foregoing, the Commission finds that the proposal is also in conformance with all other applicable guidelines of the Cornerstone 2020 Comprehensive Plan; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of the Louisville/Jefferson County Metro Government that the change in zoning from C-1 Commercial to C-2 Commercial on property described in the attached legal description be **APPROVED**.

**RESOLVED**, That the Louisville Metro Planning Commission does hereby **APPROVE** the district development plan **SUBJECT** to the following 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. 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. Use of the subject site shall be limited to RV sales including (camping trailers), Heating & AC Repair and other uses permitted in the C-1 district. There shall be no other use of the property unless prior approval is obtained from the Planning Commission. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The Planning Commission may require a public hearing on the request to amend this binding element.
3. The development shall not exceed the amount of gross floor area as shown on the development plan.
4. The only permitted freestanding sign shall be located as shown on the approved development plan/sign plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 15 feet to front property line. The sign shall not exceed 96 square feet in area per side and 20 feet in height. No sign shall have more than two sides. The existing billboard shown on the plan shall be removed when the current lease expires, no extensions or renewals of the current lease agreement shall be granted. The current lease expires on August 31, 2003. The billboard sign shall be removed within 3 months of the termination of the lease.
5. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
6. There shall be no outdoor storage, display or sales except as permitted under Section 9.7 of the Jefferson County Development Code and within designated areas on the approved development plan.
7. 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 so that no light source is visible off-site.

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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 Louisville Metro Department of Inspections, Permits and Licenses (617 W. Jefferson Street) and the Metropolitan Sewer District (700 West Liberty).
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
  - c. 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 within 12-months of approval of the zoning and shall be maintained thereafter.
  - d. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Development Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
9. If a certificate of occupancy is not issued within one year 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.
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 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



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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.

#### The vote was as follows:

**YES: Commissioners Abstain, Ernst, Hamilton, Hatfield, Howard, Norton, and Richard**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Adams, Carlton, and Thieneman**

**ABSTAINING: No one**

#### CONDITIONAL USE PERMIT:

On a motion by Commissioner Norton, the following resolution was adopted.

**WHEREAS**, the Commission finds that the Applicant has requested a Conditional Use Permit for Mobile Home Sales to allow the sale and display of vacation campers and trailers.

**WHEREAS**, the Commission finds that the this use is appropriately located on a major arterial and within the Suburban Marketplace Corridor Form District, per Guideline 1 – Community Form, of the Cornerstone 2020 Comprehensive Plan. Per Guideline 3 – Compatibility this use is compatible with those found in the vicinity which include: the existing RV sales, several automobile sales agencies, a gas station, a commercial strip center (including a bread store, trading post and cash pawn) an automobile parts center, army surplus store, a boutique, an animal hospital, a collision center and carpet stove, to name a few; and that this development will result in an enhancement of the corridor with the improvements proposed; and

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**NOW, THEREFORE BE IT RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the Conditional Use Permit for Docket No. 9-14-03CVLW.

The vote was as follows:

**YES: Commissioners Abstain, Ernst, Hamilton, Hatfield, Howard, Norton, and Richard**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Adams, Carlton, and Thieneman**

**ABSTAINING: No one**

**VARIANCE:**

On a motion by Commissioner Norton, the following resolution was adopted.

**WHEREAS**, the Commission finds that the Applicant has requested the following variances:

- (1) A variance of as much as 16 feet to allow the existing storage building to encroach the required rear yard on Lot 2, as shown on the development plan, and to be located as close as 4 feet from this the rear property line; and
- (2) A variance of as much as 18.5 feet to allow the existing RV service building and parking to encroach in to the required rear yard on Lot 3, as shown on the development plan, and to be located 1.7 feet away from the rear property line at its closest location; and

**WHEREAS**, the Commission finds that these requests are unique in that the proposed single, shared access for all 3 lots of this development resulted in a change in the orientation of lot 2, and that the encroachment found on lot 3 appears to be the result of the area of the railroad easement being designated a separate entity from the existing lot; and that neither of these requests are the result of new construction; and

**WHEREAS**, the Commission finds that the strict application of the setback requirements on this development would require the Applicants to relocate, remove, and possibly reconstruct these buildings to continue their existing businesses; that this would prevent the Applicants from a reasonable use of the

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land since both of these buildings, the parking and the associated uses have been in operation at this location for more than 6 years with no complaint from any of the surrounding property owners; that for these reasons the strict application of the setback requirements would create an unnecessary hardship on the Applicant; and

**WHEREAS**, the Commission finds that the Applicants are attempting to bring their existing uses into compliance with the Development Code since being made aware of the requirement of the variances and that there was no intentional action from the Applicants from which relief is sought; and

**WHEREAS**, the Commission finds that since both of the structures and the parking involved in the encroachment are existing, are located in the rear of the development, and have been in place for a number of years with no negative impact or complaint; the Planning Commission finds from the reviewing of recent aerial photography and mapping that this development is consistent with the pattern of development established along this corridor that the granting of the requested variances therefore would not adversely affect the public health, safety or welfare, cause a hazard or nuisance to the public, or alter the essential character of the general vicinity; that this request will in fact allow a reasonable variance from the zoning regulations by allowing the continued use of the buildings and parking in their current location; and

**NOW, THEREFORE BE IT RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested variance for structures to encroach into the required rear yards.

**The vote was as follows:**

**YES:** Commissioners Abstain, Ernst, Hamilton, Hatfield, Howard, Norton, and Richard

**NO:** No one

**NOT PRESENT FOR THIS CASE:** Commissioners Adams, Carlton, and Thieneman

**ABSTAINING:** No one

### **LANDSCAPE WAIVER:**

On a motion by Commissioner Norton, the following resolution was adopted.

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**WHEREAS**, the Commission finds that the requested landscape waivers;

- 1) to omit the requirement that interior landscape areas be spaced each 120 feet within the vehicle use area is appropriate due to the maneuvering difficulties associated with large vehicles; and
- 2) to omit the requirement to provide a landscape buffer area adjacent to the railroad is appropriate due to conflicts with existing utilities and since this use will not negatively impact the railroad or the adjacent development to the east; and
- 3) to omit the requirement for the provision of trees within the LBA along Dixie Highway due to conflicts with existing overhead and underground utilities in this area; and

**NOW, THEREFORE BE IT RESOLVED**, that the Louisville Metro Planning Commission does hereby **APPROVE** the requested landscape waiver to waive the required LBA along Dixie Highway, the required LBA along the railroad and to not provide Interior Landscape Areas every 120 feet.

**The vote was as follows:**

**YES: Commissioners Abstain, Ernst, Hamilton, Hatfield, Howard, Norton, and Richard**

**NO: No one**

**NOT PRESENT FOR THIS CASE: Commissioners Adams, Carlton, and Thieneman**

**ABSTAINING: No one**

**Description for Zoning**  
**Tinker Toys Dixie RV**

Being a tract of land located in Jefferson County, Kentucky, on the East side of Dixie Highway and being more particularly described as follows:

Beginning at a point in the Southwesterly right-of-way line in Dixie Highway N 30°57'00" E a distance of 210.00 feet to a point; thence S 59°39'16" E a distance of 252.36 feet to a point; thence S 18°57'57" W a distance of 214.20 feet to a point; thence N 59°39'15" W a distance of 296.84 feet to the point of beginning, having an area of 1.32 acres

Being the same property conveyed to Gerald T. and Barbara J. Decker, Deed Book 5634, Page 179 recorded in the office of the County Clerk of Jefferson County, Kentucky.

The above Legal Description is for zoning purposes only and is not meant to be used for the conveyance of transfer of title. A land survey was not performed for the subject premises and may reveal facts, rights, interests and claims by others or changes in the aforementioned Legal Description.

**RECEIVED**

**FEB 27 2003**

**PLANNING &  
DEVELOPMENT SERVICES**

9-14-03 V2W