

PLANNING COMMISSION MINUTES
November 20, 2014

PUBLIC HEARING

CASE NO. 14ZONE1032

Request: Change in zoning from M-2, Industrial to EZ-1, Enterprise Zone, Detailed District Development Plan and Binding Elements, and Waivers

Project Name: Three Winks, LLC

Location: 317-321 Winkler Avenue, 2621 S. 4th Street

Owner: The First Capital Bank of Kentucky
293 Hubbards Lane
Louisville, KY 40207

Applicant: Three Winks, LLC
10817 Bluegrass Pkwy
Louisville, KY 40299

Representative: Bardenwerper, Talbott & Roberts, PLLC
1000 N. Hurstbourne Pkwy, 2nd Floor
Louisville, KY 40223

Milestone Design Group, Inc.
108 Daventry Lane, Suite 300
Louisville, KY 40223

Jurisdiction: Louisville Metro

Council District: 6-David James

Staff Case Manager: David B. Wagner, Planner II

Notice of this public hearing appeared in **The Courier Journal**, 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 Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

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03:18:23 David Wagner discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

Bill Bardenwerper, 1000 N. Hurstbourne Pkwy, Louisville, KY 40223
Mark Madison, 108 Daventry Lane, Suite 300, Louisville, KY 40223
Ron Kuster, 10817 Bluegrass Pkwy, Louisville, KY 40299

Summary of testimony of those in favor:

03:25:32 Mr. Bardenwerper gave a power point presentation of the proposed development.

The following spoke in opposition to this request:

No one.

Rebuttal

None

Deliberation

03:38:18 Planning Commission deliberation.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning Change from M-2 to EZ-1

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the intents of GUIDELINE 1: COMMUNITY FORM. The community form for this area is the Traditional Workplace Form District; as such, it contemplates a mixture of uses, which the EZ-1 District allows; commercial, industrial and multi-family housing is deemed appropriate; by virtue of the proximity of this site to the U

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of L Belknap Campus, this site is especially appropriate for the intended uses, which are retail student housing; and

WHEREAS, this application complies with **GUIDELINE 2 – CENTERS**. This Guideline of the Comprehensive Plan because it addresses the Intents of this Guideline to promote the efficient use of land and investment in existing infrastructure, lowering utility costs by reducing need for utility extensions, by providing an opportunity for a mixture of residential development with other land uses, by providing an opportunity for the growth and enhancement of neighborhood centers, by encouraging vitality and a sense of place in neighborhoods and by encouraging commercial revitalization in redeveloping areas; also, this application is in an already developed area where the infrastructure already exists, where utilities are already located, where students can live in close proximity to the University of Louisville Belknap Campus, where a mixture of uses exist, and this site also includes a possibility of retail and restaurant combined with student housing, where an existing activity center is evident at this corner, and where the end result is a serious contribution to the continuing revitalization of this redeveloping area; and

WHEREAS, this application also complies with Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 for these reasons: this proposal is an activity center located within a form district that is appropriate for activity center uses; it is also a combination of non-residential and residential use which the Comprehensive Plan highly commends; it involves the location of more commercial use in an area where commercial activity already exist; it also involves compact mixed development, because residential is proposed above the commercial uses on the lower floors; the uses that are proposed are compatible with the commercial and student housing uses located within the area; multi-family is already located next door in the brand new U of L-affiliated student housing building; also, this redevelopment of the corners of Fourth Street and Winkler Avenue are consistent with the kind of development that is already occurring nearby; and utilities exist at this site along the existing streets; transit and sidewalks are also available in the area; and

WHEREAS, this application complies with **GUIDELINE 3 – COMPATIBILITY**. this Guideline of the Comprehensive Plan because it addresses the Intents of this Guideline which are to allow a mixture of land uses and densities as long as they are designed to be compatible one with the other, to prohibit the location of sensitive land uses where noise, lighting, odors or similar nuisances are violated or visual quality is significantly diminished, and to preserve the character of existing

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neighborhoods; this application addresses these Intents of this Guideline because there are multiple uses proposed in this application (retail with student housing); also these uses are already evident in the area so they will not violate acceptable standards for noise, lighting, odors, etc which are already evident on properties adjoining this site; furthermore, redevelopment of this kind helps to preserve and revitalize in a neighborhood, as it will this one; and

WHEREAS, this application also complies with Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14,15, 20, 21, 22, 23, 24 and 28 of this Guideline for these reasons; and

WHEREAS, as to the issue of building type and building materials, this application involves a reuse of existing buildings; the buildings will be rehabilitated in the process, such that this is not an introduction of something new but rather of something better; building materials will be consistent with those already evident in the area; as to the residential uses, the small number of apartments proposed above the retail are compatible with the large student housing complex under construction directly to the north; and the non-residential uses proposed are consistent with the restaurants and retail also located next door and close by; although odors are common in restaurants, and noise are not unfamiliar in student housing situations, the neighbors to this property already involve those circumstances; of course noise will be limited by virtue of any noise ordinance, plus the fact that the owners of this property will be able to manage who lives in these facilities; if residents do not abide by the owners' rules and regulations, they will be evicted; lighting will be compatible with the Land Development Code Regulations in this regard; visual quality will be improved because the buildings are being rehabilitated; the apartments will be utilized probably by students, thus the apartments will not necessarily be of interest to the elderly or people with disabilities, although they will need to meet, in design, any laws with respect to same; this is an existing activity center; because the property is going to be rezoned EZ-1 (or possibly commercial if the Planning Commission or Metro Council prefer that instead) significant buffers against similar uses are not required; however, the setbacks are appropriate and on-site parking is provided; and

WHEREAS, this application complies with **GUIDELINES 4: 5: NATURAL AREAS & HISTORIC RESOURCES &GUIDELINE 13: LANDSCAPE CHARACTER.** These Guidelines and the Intents relating thereto to the extent that there are applicable; this site will not require open space given its location and the form district; to the extent that the buildings being rehabilitated as part of this application are older, especially the eastern most building, one could consider that a renovation of an historic resource; and to the extent required landscaping will

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be provided where none is presently evident; and

WHEREAS, this application also complies with Policies 2 and 4 of Guideline 5 and Policies 1, 2 and 4 of Guideline 13; that is to say that this application does involve the rehabilitation of an older building that has historic characteristics; those will be preserved and rejuvenated; there are interesting architectural features on the eastern-most building that are in a state of decay and will become more evident as they are rebuilt and restored; and landscaping will meet requirements of the Land Development Code; and

WHEREAS, this application complies with **GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY**. This Guideline of the Comprehensive Plan in that the Intents of it are to ensure the availability of necessary usable land to facilitate commercial, industrial and residential development; to reduce public and private cost for land development; and to ensure that people have access to goods and services; this application meets these Intents of this Guideline in that this is a under-utilized piece of land in a redeveloping portion of Metro Louisville where infrastructure already exists and does not need to be extended; also, by promoting the idea of retail use on portions of this property and proximity to existing housing, that will provide for the possibility of pedestrian access; and

WHEREAS, this application also complies with Policies 2, 3, 4, 5, 6, and 11 of this Guideline for these reasons: this site has good access along Third and Fourth Streets at Winkler; investment in this case is in an older neighborhood; if any of this site is industrially utilized, again, industry already exists in this area, as evident, among other things, by the EZ-1 zoning that exists nearby and as is proposed for this site; this does involve a redevelopment of an existing under-utilized site and somewhat depilated buildings; this is already an activity center evident at Third and Fourth Streets and Winkler Avenue; and what is proposed is very much an adaptive reuse; and

WHEREAS, this application complies with **GUIDELINES 7: CIRCULATION & S:TRANSPORTATION FACILITY DESIGN**. These two Guidelines of the Comprehensive Plan because it addresses the Intents which are to provide for safe and proper functioning of the local street networks, to ensure that new developments do not exceed the traffic carrying capacity of those streets, to ensure that internal and external circulation for the proposed development works, to address air quality, and provide an efficient and safe attractive system of roadways, transit and sidewalks; and

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WHEREAS, this application is in the heart of South Louisville where sidewalks and street systems are designed to accommodate development of these kinds; access points already exist; sidewalks are available throughout the area; transit is located nearby; and

WHEREAS, this application also complies with Policies 2, 3, 4, 10, 11, 12, 13, 14 ,15 and 16 of Guideline 7 and Policies 4, 7, 9, 10 11 and 12 of Guideline 8; that is because this is a reuse of an existing site which involves two buildings with shared access points and shared parking; sidewalks exist; road capacity is not over-utilized; the types of uses at these sites will encourage pedestrian access because they are located near the University of Louisville Belknap Campus where tenants of these apartments are likely to spend much of their time as students; and any retail and restaurants located in these buildings are likely to be frequented by U of L students, especially those residing in these buildings and in the new student housing complex under construction directly to the north; also, access to this site and circulation through it must be approved by the Metro Transportation Planning staff, which, prior to docketing of this proposal for LD&T and full Planning Commission review, stamp this development plan as preliminarily approved based on its design criteria for access, internal circulation, site distances and so on; and

WHEREAS, this application complies with **GUIDELINE 9: BICYCLE, PEDESTRIAN AND TRANSIT**. This Guideline of the Comprehensive Plan because it addresses the Intents and Policies 1, 2, 3, 4 and 5 of this Guideline in that sidewalks are located along adjoining streets; furthermore, students who reside in the proposed apartments are likely to walk to school at U of L; also U of L students living here and nearby in the student housing complex to the north are likely to frequent by foot and bicycle the retail proposed for this site; and transit is available along Third and Fourth streets; and

WHEREAS, this application complies with **GUIDELINES 10: STORMWATER MANAGEMENT; 11: WATER QUALITY; A_ND 12: AIR QUALITY**. These environmental Guidelines of the Comprehensive Plan because the Intents of these Guidelines are addressed by virtue of the fact that this application involves rehabilitation of existing buildings where storm water is already handled through existing storm water systems, where water quality guidelines will be met as required, and where air quality is taken into account by virtue of the fact that students will be able to locate within walking distance of University of Louisville Belknap Campus; and

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WHEREAS, specifically, this application complies with Policies 7, 10 and 11 of Guideline 10, Policies 3 and 5 of Guideline 11 and Policies 1, 2, 3, 6 and 8 of Guideline 12; that is because, as stated, storm water in an already developed area like this is handled through the existing drainage system; whatever added improvements are needed will be provided; water quality measures will be addressed also as required by local regulation; and air quality is addressed by virtue of the fact that people who live here, notably students, are able to live in close proximity to the University of Louisville, the school where residents of these apartments are likely to attend; and

WHEREAS, The Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby recommend to the legislative body of Louisville Metro Government that the requested Change in zoning from M-2, Industrial, to EZ-1, Enterprise Zone, on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

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Waiver #1 South Lot Line of Building A

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because the site is a mixed use location surrounded by a large apartment complex and a variety of existing commercial uses. Building A was built on the property line and there is no room for plantings or screenings along this lot line.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will not violate **Guideline 4 (Open Space)**, **Guideline 5 (Natural Areas and Scenic and Historic Resources)**, and **Guideline 13 (Landscape Character)** of Cornerstone 2020. The abutting property to the south and Building A were developed properties before this request and did not provide areas for landscaping or open space. There is no room to provide landscaping or screening and the abutting sites have both been retail uses which would not normally require buffering.

WHEREAS, the Louisville Metro Planning Commission further finds, The extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.

WHEREAS, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the there is no area available to provide the required buffering and plantings without demolishing the building or existing parking on the abutting site.

WHEREAS, The Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** of section 10.2.4 of the Land Development Code to waive the 15' LBA and all planting/screening materials along the south lot line.

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The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #2 North & West Lot Lines of Building A

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because the site is a mixed use location surrounded by a large apartment complex and a variety of existing commercial uses. The building and parking were built on the property line and due to the abutting alleys and streets there is no room for plantings or screenings along this lot line.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will not violate **Guideline 4 (Open Space)**, **Guideline 5 (Natural Areas and Scenic and Historic Resources)**, and **Guideline 13 (Landscape Character)** of Cornerstone 2020. The building and parking were previously built on the lot lines and did not provide areas for landscaping or open space. There is no room to provide landscaping or screening due to the abutting alleys and streets along the lot lines.

WHEREAS, the Louisville Metro Planning Commission further finds, The extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.

WHEREAS, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because there is no area available to provide the required buffering and plantings without demolishing the building or existing parking on the abutting site.

WHEREAS, The Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; therefore be it

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RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** of section 10.2 of the Land Development Code to waive the 5 ft VUA LBA and all planting/screening materials along the north & west lot lines.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and white

ABSTAINING: No one.

Waiver #3 North, South, & West Lot Lines of Building B

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because the site is a mixed use location surrounded by a large apartment complex and a variety of existing commercial uses. The building and parking were built on the property line and due to the abutting alleys and streets there is no room for plantings or screenings along this lot line

WHEREAS, the Louisville Metro Planning Commission further finds The waiver will not violate **Guideline 4 (Open Space)**, **Guideline 5 (Natural Areas and Scenic and Historic Resources)**, and **Guideline 13 (Landscape Character)** of Cornerstone 2020. The building and parking were previously built on the lot lines and did not provide areas for landscaping or open space. There is no room to provide landscaping or screening due to the abutting alleys and streets along the lot lines.

WHEREAS, the Louisville Metro Planning Commission further finds The extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.

WHEREAS, the Louisville Metro Planning Commission further finds The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the

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there is no area available to provide the required buffering and plantings without demolishing the building or existing parking on the abutting site.

WHEREAS, The Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** of section 10.2 of the Land Development Code to waive the 5 ft VUA LBA and all planting/screening materials along the north, south, & west lot lines.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Waiver #4 of all required ILA and plantings on Building A & Building B Lots

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The waiver will not adversely affect adjacent property owners because the site is a mixed use location surrounded by a large apartment complex and a variety of existing commercial uses. The parking was previously built at its current location and no ILA was previously provided.

WHEREAS, the Louisville Metro Planning Commission further finds, The waiver will not violate **Guideline 4 (Open Space)**, **Guideline 5 (Natural Areas and Scenic and Historic Resources)**, and **Guideline 13 (Landscape Character)** of Cornerstone 2020. The parking was previously built at its current location without any ILA and no open space is required for this proposal.

WHEREAS, the Louisville Metro Planning Commission further finds, The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.

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WHEREAS, the Louisville Metro Planning Commission further finds, The strict application of the provisions of the regulation will deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because there is no area available to provide the required ILA without demolishing the building or existing parking on the abutting site.

WHEREAS, The Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the **Landscape Waiver** of section 10.2 of the Land Development Code to waive all required ILA and plantings on building A and building B lots.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.

Development Plan and Binding Elements

On a motion by Commissioner Proffitt, seconded by Commissioner Turner, the following resolution was adopted.

WHEREAS, the Louisville Metro Planning Commission finds, The site is already built out and there are no natural resources on the site to conserve.

WHEREAS, the Louisville Metro Planning Commission further finds, Transportation Review has approved the proposal's transportation facilities.

WHEREAS, the Louisville Metro Planning Commission further finds, No open space is required on this site.

WHEREAS, the Louisville Metro Planning Commission further finds, MSD has approved the drainage facilities for the site.

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WHEREAS, the Louisville Metro Planning Commission further finds, The site design is compatible with existing commercial development in the area. The existing buildings will remain as is with cosmetic improvements. The required screening and landscaping cannot be provided do the existing built environment and parking will remain located along the sides of the buildings.

WHEREAS, the Louisville Metro Planning Commission further finds, The proposal complies with the guidelines of the Comprehensive Plan as explained in the review for the re-zoning request.

WHEREAS, The Louisville Metro Planning Commission further finds that, based on the evidence and testimony presented, the staff report, and the applicant's justification and findings of fact that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following 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. 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 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 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 legal instrument shall be recorded consolidating the Building B lots into one lot. A copy of the recorded instrument shall be submitted to

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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.

3. 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.
4. 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.
5. A legal instrument providing for the long-term use of the off-site parking spaces, as shown on the approved general district development plan and in accordance with Section 9.1.5 Off-Site Parking, shall be submitted and approved by the Planning Commission legal counsel and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
6. No M-3, Industrial zone uses shall be permitted on this site.

The vote was as follows:

YES: Commissioners Blake, Proffitt, Kirchdorfer, Turner and Jarboe

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioners Tomes, Peterson, Brown, Butler and White

ABSTAINING: No one.