

LD&T MINUTES

MAY 25, 2006

DOCKET NO. 9-75-97W

Case:	9-75-97
Project Name:	First Federal Savings Bank
Location:	9420 Seatonville Road
Owner(s):	James E. Vogt
Applicant:	First Federal Savings Bank
Representative:	Bill Bardenwerper- Bardenwerper, Talbott, and Roberts
Project Size/Area:	2.9 acres
Jurisdiction:	Louisville Metro
Council District:	22- Robin Engel
Case Manager:	Julia Williams, Planner I

Request

The applicant requests approval of a Revised Detailed District Development Plan and waivers.

Staff Recommendation

Staff recommends the site be redesigned to accommodate the Town Center Form District standards for site design by moving the building closer to Seatonville and Bardstown Road and having the parking for the bank to the rear and the side thus eliminating the waiver between Seatonville and the principal structure and reducing the impact of the waiver between Bardstown Road and the principal structure.

Staff further recommends approval of the waiver to remove trees from the 100' stream buffer setback on condition that only trees 4" caliper and smaller are removed from views #1 and #2 as shown on the exhibit received 5/4/06 with the rest of the site complying with the standards set forth in Chapter 4.8.6.M.

Case Summary / Background

Summary

The applicant requests approval of a revised detailed district development plan with waivers and variances to permit construction of a bank consisting of 4,000 square feet (s.f.).

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Variances

Location	Requirement	Request	Variance
Front yard setback	20' min	270'	190'
Street side setback	20' min	82'	52'
Side setback (south)	5'	170'	n/a
Rear setback	25'	25'	n/a
Building Height	35'	34'	n/a

Site Context

This is a 2.9-acre site located at the corner of Bardstown Road and Seatonville Road, north of the Gene Snyder Expressway. The site is proposed to be accessed from Seatonville Road.

Land Use / Zoning District / Form District

	Land Use	Zoning	Form District
<i>Subject</i>			
Existing	Vacant	R-4	Town Center
Proposed	Bank	C-1	Town Center
<i>Surrounding</i>			
North	Church	R-5A	Neighborhood
South	Single Family Residence	R-4	Town Center
East	Single Family Subdivision- Ledgewood 10-21-02	R-4	Neighborhood
West	Church	R-4	Town Center

Background

This case was previously before the Planning Commission in 1998 for a proposed rezoning from R-4 to C-1 at which time the Planning Commission recommended approval to Fiscal Court. Fiscal Court overturned the Planning Commission's recommendation, and the applicant appealed to Circuit Court. The matter is now pending before the Kentucky Supreme Court.

Project History

Project History	Date	Issues addressed / discussion / changes to proposal
Project submittal	5/2/06	
LD&T review	5/25/06	

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Note: The following information represents staff analysis of the subject property with respect to site inspection/observation, sound planning practices, and adopted policies and regulations of the jurisdiction. Materials submitted by the applicant or their representative prior to the deadline for filing information related to cases docketed for this hearing were reviewed and specifically applied in the staff review of this request. The board is advised to consider this staff report as well as new information introduced at the hearing in formulating their decision.

Staff Findings

1. Staff has added a binding element that states, "Prior to any site disturbance permit being issued and any clearing or grading to occur on the site, the tree preservation fencing must be installed and inspected by Planning and Design Services."
2. The variances associated with this plan have been filed and will be heard by the Board of Zoning Adjustment on June 19, 2006.

Technical Review

1. There is a Protected Waterway stream buffer zone waiver to allow:
 - Removal of vegetation within the 100' stream buffer zone.
2. There are waivers from Chapter 5 to allow:
 - The parking lot to be between the principal structure and Seatonville Road.
 - A drive lane to be in between the principal structure and Bardstown Road.
3. The monument sign along Bardstown Road is not permitted to be placed in the middle stream buffer zone. The sign will either need to be moved out of the buffer or a waiver requested.

Standard Of Review

Staff Findings- Stream Corridor Waiver

1. Chapter 4.8.6.C states that the following uses/activities are permitted within the 25' Streamside Buffer Zone:
 - Public flood control structures,
 - Utility rights of way (Type A buffer only),
 - Pedestrian-only trails, and
 - Road crossings, where permitted.
2. Chapter 4.8.6.D states that the following uses/activities are permitted within the 50' Middle Buffer Zone:
 - Utility rights of way

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- Biking or hiking trails,
 - Stormwater management and sediment control facilities approved by the MSD,
 - Recreational uses that entail no impervious surfaces, or are approved by the Planning Commission.
3. The plan proposes a flood compensation basin within the 100' buffer zone. This would be considered a public flood control structure or a stormwater management facility.
4. Chapter 4.8.6.M states, "existing, healthy trees and vegetation within a buffer area shall be preserved". 4.8.6.M further lists that the following shall not be prohibited:
- Removal of dead or diseased trees/vegetation (provided a live root system stays intact),
 - Removal of noxious weeds;
 - Removal of non-native trees/vegetation that threaten native species growth or reintroduction,
 - Removal of fallen trees, tree limbs, brush and similar debris that accumulate naturally in river/stream beds and that impede river/stream flow, or
 - Removal of any other tree/vegetation that is a threat to the public health or safety.
 - Removal of trees as part of an approved plan for stream side recreation or access (e.g. pedestrian trail) or as part of an approved utility or road construction project.
5. On July 8, 2005 staff met Phyllis Croce and Diane Secor, both from MSD, on site to discuss the site conditions and the applicants proposal. At the time the applicant wished to remove all trees 4" caliper and below and complete removal of vegetation within the three views described in a exhibit June 21, 2005. The results of our meeting are outlined in a memo dated 7/12/05. The following observations and recommendations from the memo are for the portion of the site that does not include Views #1 and #2. "Ms. Croce and I stand by MSDs and the LDCs 25' streamside buffer, where only limited construction and vegetation removal may occur...The Tree Inventory Plan (received 7/6/05) shows a floodplain compensation basin within the streamside buffer as well as the middle and outer buffers. The applicant should work with MSD in developing a basin that will have minimal effects on the existing plant materials. Realizing that there will be significant disturbance and tree removal in the streamside buffer zones due to the construction of the basin...

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“Chapter 4 of the LDC describes limited tree and vegetation removal in the remaining 50’ middle and 25’ outer buffer zones. Based on our site visit, Ms. Croce and I believe that this regulation would allow substantial removal of non-native and invasive vegetation considering some of the undergrowth falls into the category of non-native/invasive. The invasive species and non-natives that exist should be removed by hand and replaced with native shrubs such as Fragrant Sumac, Coralberry, Elderberry etc. and native grasses. Removal of invasive vegetation by hand would permit the least amount of disturbance, such as root damage, to the rest of the existing vegetation. It appears that all of the trees are native species.

“Ms. Croce and I could also support some pruning of the large trees within the middle and outer buffer zones by a professional certified arborist and without a cherry picker. This would include dead branches as well as the trimming up of branches to provide greater visibility from Bardstown Road. We also suggest that once the site comes in for development review that a condition of approval be added to the approval. That condition would be, “Prior to any site disturbance permit being issued and any clearing or grading to occur on the site, the tree preservation fencing must be installed and inspected by Planning and Design Services.” Ms. Croce suggests submitting a plan showing a limit of construction zone...”

6. Monument style signage is proposed. A bank does not require the same kind of visibility that a convenience store would because it is a destination and not an attractor or an impulse activity which would require more visibility.

Conditions to be met to grant the waiver-

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

Staff finds that the waiver will adversely affect adjacent property owners because the trees and vegetation in this area provide a noise buffer between Bardstown Road traffic and the nearby adjacent residential uses.

- b) **The waiver will not violate specific guidelines of Cornerstone 2020; and**

Staff finds that the waiver will violate guidelines of the Comprehensive Plan because it is the intent and goal of Cornerstone 2020 to support improving the water quality in local streams, protect watersheds, and to support efforts to protect wildlife habitats and other natural areas. Much of

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the existing vegetation will be removed due to the construction of the compensation basin. Cornerstone 2020's Plan Elements Section A: Community Form/Land Use Guideline 5 Policy 1, encourages development that respects natural features of the site though sensitive site design... minimizes environmental degradation resulting from disturbance of natural systems. Plan Elements Section D: Livability/Environment Guideline 11 Policies 9 states that buffers were established "around lakes and streams to protect the riparian zone as a critical wildlife habitat and/or a filter to catch waterborne pollutants from site construction activities, on-lot sewage disposal and stormwater runoff."

c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

Staff finds that the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant because signage is proposed along both Bardstown and Seatonville Road. A bank does not require the same kind of visibility that a convenience store would because it is a destination and not an attractor or an impulse activity which would require a lot of visibility.

d) Either:

- 1. 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**
- 2. 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 finds that the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because efficient signage is proposed and as stated above a bank does not require the same kind of visibility that a convenience store would because it is a destination and not an attractor or an impulse activity which would require more visibility.

Staff Findings- Chapter 5 Waivers

1. Chapter 5.9.2C.4 states that there shall be no traffic circulation or parking in front of principal buildings.
2. If the site design showed the building up to the existing sewer and drainage easement and shifted 20' to the west, one of the waivers would be completely

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eliminated while the other waiver would still be required but the impact reduced. Shifting the building forward would also reduce the amount of disturbance to the outer stream buffer zone and increase visibility of the building from the corner of Seatonville and Bardstown Road.

3. The site could be redesigned to accommodate Town Center form district standards without reducing the size of the building or number of parking spaces.
4. Through redesign of the site and placing the building closer to Seatonville Road, bicycle and pedestrian conflicts with vehicles could be eliminated or reduced.

Conditions to be met to grant the waiver-

- a) **The waiver will not adversely affect adjacent property owners; and**
Staff finds that the waiver will not adversely affect adjacent property owners because the buffer to the east will be provided. The adjacent subdivision to the east shows an open space lot along Seatonville Road as well as a 15' WPA along the common property line with the proposed bank.
- b) **The waiver will not violate specific guidelines of Cornerstone 2020; and**
Staff finds that the waiver will violate guidelines of the Comprehensive Plan because it is the intent and goal of Cornerstone 2020 to reduce major conflicts between vehicular, bicycle, and pedestrian movements for improved safety. Through redesign of the site and placing the building closer to Seatonville Road, bicycle and pedestrian conflicts with vehicles could be eliminated or reduced.
- c) **The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and**
Staff finds that the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant because the site could be redesigned to accommodate form district standards and would eliminate one waiver while reducing the impact of the other.
- d) **Either:**
 1. **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**
 2. **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.**

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Staff finds that the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the site could be redesigned to accommodate form district standards and would eliminate one waiver while reducing the impact of the other. Redesign would not reduce the size of the building or number of parking spaces but could increase visibility to the building from the corner of Bardstown Road and Seatonville Road.

Notification

The following forms of notification were provided pertaining to this proposal:

Notification

Date	Description	Recipients
5/12/06	APO notice of revised district development plan and waivers	1 st Tier Property Owners and concerned citizens in the area.

Proposed Binding Elements – Docket No. 9-75-97 (unique to this case)

1. Prior to any site disturbance permit being issued and any clearing or grading to occur on the site, the tree preservation fencing must be installed and inspected by Planning and Design Services.

Standard Binding Elements - Docket No. 9-75-97 (applicable to all cases of this type)

2. 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.
3. Use of the subject site shall be limited to a bank and other uses permitted in the C-1 zoning district. There shall be no other use of the property unless prior approval is obtained from the LD&T Committee. Notice of a request to amend this binding element shall be given in accordance with the Planning Commission's policies and procedures. The LD&T Committee may require a public hearing on the request to amend this binding element.
4. The development shall not exceed 4,000 square feet of gross floor area.

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5. There shall be no direct vehicular access to Bardstown Road.
6. Signs shall be in accordance with Chapter 8.
7. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
8. 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.
9. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - i. 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. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - ii. A minor subdivision plat or deed of consolidation shall be recorded dedicating additional right-of-way to Bardstown Road to provide a total of 65 feet from the centerline and dedicating additional right-of-way to Seatonville Road to provide a total of 50 feet from the centerline. 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.
 - iii. The appropriate variances shall be obtained from the Board of Zoning Adjustment to allow the development as shown on the approved district development plan.
 - iv. 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.

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- v. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
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 or permitted on the site).
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 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. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the May 25, 2006 Land Development and Transportation meeting.
14. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site.
15. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the

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property in accordance with Chapter 4 Part 1.3 of the land development code.

DISCUSSION:

Staff case manager, Julia Williams, presented the case. Bill Bardenwerper, the applicant's attorney, submitted the plan that was approved 10 years ago. He said at that time the developer was proposing a Walgreens Pharmacy Store. He said the Planning Commission recommended approval of the change in zoning, but Fiscal Court overturned the Planning Commission's decision. He said it then went to Circuit Court who overturned Fiscal Court's decision; and the Court of Appeals overturned Circuit Court's decision. He said the property owner asked if something else could be built here to avoid going to court anymore. Mr. Bardenwerper recommended something smaller and that First Federal Savings Bank was interested in building here. Mr. Bardenwerper thought this request would not be as difficult, but said he was wrong. He said he's been working on this latest venture for 2 ½ years now. He said he has met with staff several times and said that all involved want to compromise. He said they have to keep the building back as far as they have it because of the setbacks and floodplain. He explained that environmental regulations take precedence over other regulations. He said this will be a small bank with minimal parking. He said it's an extremely wooded site with a lot of invasive plant growth which will have to be removed. He said they will be leaving it in as natural a state as they can. He said if they don't position the building the way they have it, the property will be completely unusable. He said if they fully complied with the development code there wouldn't even be enough room for a "For Sale Sign". Mr. Bardenwerper explained that this would be a "regulatory taking" on their part. He said if the Committee approves this today along with the waivers, it will have to go before Metro Council for their approval.

Ann Richard, with Land Design and Development, said the trees that are ghosted out on the rendering will be removed and the trees that are colored in will remain. She said she made four visits with Mark Timmons, a certified arborist and Alan Bishop, the Metro County arborist. She said they identified the predominant tree species and said they can be removed without harming the environment. She said they would also be removing trees that are 4" inch caliper and less. Ms. Richard presented photographs of another area where this was done successfully.

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Mr. Bardenwerper said that they already have an approved plan, but that this development is much more limited than the previously approved Walgreens. He said the open space will be very nice and look like a community park even though it will be owned by the applicant. He said it will not be manicured like a regular lawn, but left more natural. Mr. Bardenwerper and Mr. Young explained the design with relation to parking and the drive-through. Paula Wahl, with Transportation, said the applicant submitted two plans and either way they position the buildings is acceptable. She said they have enough stacking per the regulations.

Mr. Bardenwerper said he met with Fern Creek Residents for Proper Planning and said that he concluded his discussion with them in a positive manner.

Jon Baker, the Planning Commission's Legal Counsel, said for the Committee members to stay focused on the plan that's before them today and not concern themselves so much with the past legal issues.

Commissioner Jones said the architecture is very attractive. Commissioner Blake said this will enhance the area. Ann Richard said the stream has been a dumping ground for many years and that this will be cleaned up.

Stephen Ott said he is speaking as a resident today and not for Metro Council. He said he is very happy to see something happen on this corner. He said what they are proposing now is more than what he could ever expect. He said the corner is extremely unsightly now.

Commissioner Ernst asked if they were removing the trees for better visibility. Ms. Richard replied yes. Commissioner Ernst said if they can remove only the trees that they agreed to and still have a nice rural setting, she is agreeable to the request. She said developers in the past have removed much more or all of the trees after they promised not to. She said she doesn't want that to happen here. Ms. Richard said they will also be planting additional trees per Chapter 10 requirements. Mr. Bardenwerper interjected stating that they hired the arborists to identify the trees and determine which trees should be left and which should be removed. He said he feels they have gone to great lengths to preserve the natural features on this property.

Mr. Ott asked how the proposed turning lane onto Seatonville Road will affect the future road widening. Ms. Wahl said she didn't believe this portion is considered for improvements, but said she would look into it. Mr. Bardenwerper said the applicant is spending over \$100,000.00 in road and sidewalk improvements. Ms.

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Richard interjected stating that the applicant has agreed to extend the box culvert over to the church so they can install their sidewalks.

Mr. Ott asked for the applicant to expound on how they will be removing the underbrush and trees. Ms. Williams said they will have to use axes and shovels. She said they will not be bulldozing the area.

Ms. Richard agreed to submit a 24X36 plan numbering and labeling all of the trees on the site. She said she will show the trees that will be removed, the trees that will remain and identify where they will be planting new trees. Theresa Senninger, the Commission's Legal Counsel, also asked Ms. Richard to submit a photographic inventory of the trees prior to and after grading occurs and submit this to Ms. Williams. Ms. Richard agreed. It was also determined that a binding element will be added stating that if any trees are removed that weren't supposed to be then the applicant will replace it with a 4" caliper or greater native specie.

The applicant(s) and/or representative(s) were provided a copy of the proposed comments and binding elements and given the opportunity to discuss them. Staff confirmed that the binding elements were read and agreed upon as approved.

REVISED DETAIL DISTRICT DEVELOPMENT PLAN

On a motion by Commissioner Jones, the following resolution was unanimously adopted:

RESOLVED, That the Land Development and Transportation Committee does hereby **APPROVE** the Revised Detailed District Development Plan for Docket No. 9-75-97W, **ON CONDITION** that the applicant submit a 24X36 inch plan labeling all of the trees on site illustrating all of the trees that are to be removed; all of the trees that are to remain and where they will be planting new trees. A certificate of occupancy will not be issued until this is submitted; and **ON CONDITION** that a binding element be added noting that any trees that are removed that weren't supposed to be will be replaced with a 4" caliper native species; and **ON CONDITION** that the variances are approved by the Board of Zoning and Adjustment; and is also subject to the above listed conditions of approval and/or binding element(s) as recommended by Planning Commission staff.

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The vote was as follows:

YES: Commissioners Ernst, Carlson, Howard, Hamilton, Abstain, Blake and Queenan.

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioner Hamilton, Wells-Hatfield and Adams.

ABSTAINING: No one.

WAIVER—CHAPTER 4.8.6.C

On a motion by Commissioner Jones the following resolution was unanimously adopted:

WHEREAS, the Land Development and Transportation Committee (LD&T Committee) found that the waiver request met the conditions for approval; now therefore, be it

RESOLVED, that the land Development and Transportation Committee does hereby **GRANT** the waiver of Chapter 4.8.6.C to allow removal of trees within the 100-foot stream buffer area **ON CONDITION** that the applicant submit a 24X36 inch plan labeling and numbering all of the trees on site. This plan will also label all of the trees that are to be removed; all of the trees that are to remain and where they will be planting new trees. A certificate of occupancy will not be issued until this is submitted; and **ON CONDITION** that a binding element be added noting that any trees that are removed that weren't supposed to be will be replaced with a 4" caliper native species; and **ON CONDITION** that only 4" caliper trees or smaller will be removed and any other trees specified by the applicant's representative on the 24X36 inch plan, filed in Docket No. 9-75-97W.

The vote was as follows:

YES: Commissioners Ernst, Carlson, Howard, Hamilton, Abstain, Blake and Queenan.

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioner Hamilton, Wells-Hatfield and Adams.

ABSTAINING: No one.

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WAIVER—CHAPTER 5.9.2C.4

On a motion by Commissioner Jones, the following resolution was unanimously adopted:

WHEREAS, the Land Development and Transportation Committee (LD&T Committee) found that the waiver request met the conditions for approval; now therefore, be it

RESOLVED, that the Land Development and Transportation Committee does hereby **GRANT** the waiver of Chapter 5.9.2C.4 to allow parking and maneuvering in front of the principal building; filed in Docket No. 9-75-97W.

The vote was as follows:

YES: Commissioners Ernst, Carlson, Howard, Hamilton, Abstain, Blake and Queenan.

NO: No one.

NOT PRESENT AND NOT VOTING: Commissioner Hamilton, Wells-Hatfield and Adams.

ABSTAINING: No one.

Bill Bardenwerper, Ann Richard, Stephen Ott, Charles Channey and one unidentified person were present.

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The meeting adjourned at 5:48 p.m.

Chairman

Division Director