

DRC MINUTES

April 25, 2007

OLD CASES:

DOCKET NO. 9-35-97

Case: 9-35-97
Project Name: Home Depot
Location: 10301 Westport Road
Owner(s): HD Development of Maryland, Inc.
Applicant: HD Development of Maryland, Inc.
Representative: Jennifer Maxwell, Greenberg / Farrow
Project Size/Area: 11.39 Acres
Jurisdiction: Metro Louisville
Council District: 17 – Glen Stuckel
Case Manager: Joseph Reverman, Planner I

Request

Approval of a Revised Detailed District Development Plan to allow outdoor sales and display areas on the site

Staff Recommendation

Approval of the Revised Detailed District Development Plan based on information provided by the applicant and research done by staff

Summary

This case was deferred by DRC for 3 weeks on 4/4/07 for the applicant to meet with neighbors. The Committee also requested that staff look into regulations controlling hours of operation for loading and unloading. Section 4.1.6 of the LDC restricts loading operations between 10:00 pm and 7:00 am for properties within 100 feet of residential property. The closest residential property to the Home Depot property is at least 160 feet away. There is no property maintenance regulation restricting loading operation hours. The Metro noise ordinance states the following is unlawful, "Creation of any unreasonably loud, harsh, or excessive noise in connection with the loading or unloading of any vehicle, except as provided for in § 99.03 (B) (14), or by the operation of any such vehicle." The exception does not relate in any way to operations by Home Depot.

The property is located on the north side of Westport Road just west of the Gene Snyder Expressway. The site is used by Home Depot.

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On March 24, 2006, Home Depot USA, Inc. was issued a binding element violation notice and order to remedy.

On May 31, 2006, Home Depot USA, Inc. was issued a binding element violation citation for violating binding element number 6 and 23H of the approved general development plan under docket number 9-35-97. Binding element number 23 restricts outdoor storage on the site except as allowed by Section 9.7 of the Development Code.

The applicant is now requesting approval of a Revised Detailed District Development Plan to allow outdoor sales and display of 5,873 sf, which equals 4.4% of the interior square footage along with outdoor storage as allowed by the Land Development Code.

Outdoor Sales and Display (General Requirements)

- a. Outdoor sales and display may be permitted within an area not greater than 10% of the ground floor area of the building.
- b. Stacked items located less than 50 feet from a public right-of way shall not exceed 5 feet in height. Any material within 3 feet of any building entry shall not exceed 3.5 feet in height.
- c. Outdoor sales and display of items shall be located on a "hard and durable" surface as defined by Metro Public Works Standards.
- d. Items for outdoor sale, display or storage shall be screened from view from any abutting residentially zoned or used property.
- e. Any product located outdoors in a manner constituting a sign as defined in Chapter 1 of the Land Development Code must conform to the requirements set forth in Chapter 8.

There is an existing fence along west property line adjacent to residentially zoned properties.

Background

The property was changed to a C-2, Commercial zoning district under docket number 9-35-97. A Revised Development Plan and Revised Parking Waiver were approved by the Planning Commission on March 1, 2001 to allow the expansion of the Home Depot for a 2,200 sf tool rental facility and to convert parking spaces to outdoor storage.

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Lot 1 received approval of a Detailed District Development Plan on December 10, 1998 for a 30,338 sf building attached to the Home Depot building.

The owner was issued a binding element violation citation on March 31, 2006 for violation of binding element number 6 and 23H of the general development plan.

Existing General Plan Binding Elements – Docket #9-35-97

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. Prior to development of Lots 3, 4, 5, 6, 7, 8 and 9 of this project, a detailed district development plan shall be submitted to the Planning Commission for approval. Each plan shall be in adequate detail and subject to additional binding elements. The additional binding elements may relate, but not be limited to the following items:
 - a. screening, buffering, landscaping, tree preservation
 - b. density, floor area, size and height of buildings
 - c. points of access and site layout with respect to on-site circulation
 - d. land uses
 - e. signage
 - f. loading berths
 - g. parking
 - h. sidewalks
 - i. site design elements relating to alternative transportation modes
 - j. outdoor lighting
 - k. minor subdivision plat approval
 - l. air pollution
 - m. the timing of construction to coincide with the availability of flood protection measures, municipal sewer and water service, and adequate fire protection
 - n. dumpsters
3. The development shall not exceed:

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25,600 square feet of gross floor area for the retail on Lot 1;
107,500 square feet of gross floor area for the retail on Lot 2;
22,560 square feet of gross floor area for a garden center on Lot 2;
2,740 square feet of gross floor area for the bank on Lot 3;
3,600 square feet of gross floor area for the bank on Lot 4;
7,000 square feet of gross floor area for the retail on Lot 5;
60,000 square feet of GFA (100 rooms) for the hotel Lot 6;
60,000 square feet of GFA (100 rooms) for the hotel Lot 7;
6,400 square feet of gross floor area for the restaurant on Lot 8;
8,000 square feet of gross floor area for the restaurant on Lot 9.

4. There shall be no direct vehicular access to Springhurst Blvd. from Lots 3, 5, 6, 7, 8 and 9 of the project.
5. The only permitted freestanding signs shall be located as shown on the approved development plan and in the chart below. No portion of the signs, including the leading edge of the sign frame, shall be closer to front property line than as shown in the chart below. The signs shall not exceed the square feet in area per side and the height as shown in the chart below. No sign shall have more than two sides. No outdoor advertising signs (billboards), small free-standing (temporary) signs, pennants, balloons, flags 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. Lighting fixtures shall have a 90 degree cutoff so that no light source is visible off-site. Lighting levels attributable to the fixtures located on the subject site shall not exceed two foot candles at the property lines adjacent to residential uses.
8. Construction fencing shall be erected at the edge of the area of development prior to any grading or construction to protect the existing tree stands and their 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.

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9. The applicant shall submit a plan for approval by the Planning Commission staff landscape architect showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Any modification of the tree preservation plan requested by the applicant may be approved by the Planning Commission staff landscape architect if the changes are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:
 - a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable)).
 - b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
 - c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
 - d. Location of construction fencing for each tree/tree mass designated to be preserved.
10. 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. 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) prior to requesting a building permit. The landscaping plan for the Westport frontage of Lots 1 and 2 shall be consistent with the "Conceptual Westport Road Perimeter Planting Plan" received September 5, 1996. the screening plans shall comply with Article 12 and shall be implemented prior to occupancy of the site and shall be maintained thereafter.

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- d. A minor subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
 - e. An access and crossover easement agreement for Lots 1 and 2 in a form acceptable to the Planning Commission legal counsel shall be secured 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.
 - f. The developer shall prepare a plan for stabilization and vegetation of the fill slope along the north perimeter of the building site on Lots 1, 2 and 3 for approval by the Planning Commission's staff landscape architect and MSD representatives. If staff determines that the proposed plan is not adequate, it shall be referred to LD&T for consideration.
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- 11. Prior to construction approval, the developer shall submit to MSD for approval a slope stability study to identify construction techniques and measures, if any, necessary to stabilize slopes in excess of 3:1, as generally indicated on the Grading Plan, dated 9/9/1997.
 - 12. The owner/developer shall install and maintain orange construction fencing along the south perimeter of the existing variable MSD drainage easement prior to and during construction.
 - 13. The MSD drainage easement area shall not be disturbed (meaning no existing trees along Little Goose Creek shall be removed by either the owner or any subsequent developer, and the easement will be allowed to remain in its current state of old field succession.
 - 14. The owner and any subsequent developer shall not mow more than five (5) feet over the boundary line into the MSD drainage easement area.
 - 15. The owner (and/or/ subsequent developer and any property manager thereafter) shall abide by the terms of this Management Agreement at all times during and subsequent to construction of the improvements shown

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on the approved Springhurst Commons General and Detailed District Development Plan.

16. If a building permit 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.
17. 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.
18. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system permitted on the site.
19. A soil erosion and sedimentation control plan shall be developed and implemented in accordance with the Metropolitan Sewer District and the USDA Natural Resources Conservation Service recommendations. Documentation of the MSD's approval of the plan shall be submitted to the Planning Commission prior to grading and construction activities.
20. Prior to transmittal to the legislative body of this rezoning request, the applicant shall obtain Planning Commission approval of a parking waiver reducing the parking requirement by 62 spaces, and shall either (i) submit a 30 year lease or a cross-over parking and access easement, or (ii) adjust the property line to accommodate the 54 spaces on Lot 1 that are counted toward the parking requirement for Lot 2.
21. The following binding elements pertain to the Residential Single Family area shown on the approved development plan which will remain R-4:
 1. A preliminary subdivision plan for the Lot (the "Lots") shown on the R-4 Residential Single Family area of the approved Development Plan (and such additional Lots as may be available to be platted using all or a portion of adjoining property, in the event such

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adjoining property is purchased by owner/developer of the R-4 Residential Single Family area or included on the subdivision plan by agreement with the owner thereof) shall be filed not later than July 1, 1998. The owner/developer shall diligently seek to have the record plat approved and recorded not later than July 1, 1999. Such Lots shall be restricted pursuant to an extension of (or a new declaration containing substantially identical provisions to) the Declaration of Restrictions for the Village of Wynbrooke of record in Deed Book 6465, Page 654.

2. A berm shall be constructed along the entire length of the rear property line between the single family Lots and the commercial portion of the development.
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22. In the retail are of the development fronting on Westport Road:
 - A. Customer hours shall not be earlier than 6 AM nor later than 11 PM.
 - B. No deliveries shall be made between 11 PM and 6 AM.
 - C. Compactors shall be used, emptied or replaced only between 6 AM and 10 PM and shall be located only where shown on the approved development plan.
 - D. No loudspeakers shall be audible beyond the western property line of the site.
 - E. No business shall be permitted that creates strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittent noise, beeping sounds, frequency, shrillness or loudness, or creates unusual fire or explosive hazard or other hazard.
 - F. In the 25,600 square foot building area shown on the development plan; (a) a boarding facility for dogs or other animals having an outdoor exercise area, outdoor play area, or outdoor "potty yard" is not permitted; however, indoor boarding of dogs or other animals is permitted; (b) not more than 50% of any store therein shall be used for sale of animals; (c) the maximum building height shall be 27 feet (not including parapet, if any); and (d) and HVAC roof units shall be screened by either (i) installation of wood or other screening

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material either around the units on the north and west sides of the unit or in a straight line along the west and north sides of the nearest HVAC unit blocking the view of any HVAC unit from the west or north property lines, or (ii) a parapet wall.

- G. The landscape buffer area along the west property line shall show white pine or similar trees to be planted on fifteen foot centers, staggered along both side of the eight-foot tall wood privacy fence, ten-to-twelve feet tall at time of plating, all as shown on the approved landscape buffer plan. A fence located within the landscape buffer area along the west and north property lines shall be placed along the high point of the berm to be constructed therein. The combined height of the berm and fence along the north and west property lines shall not be less than thirteen feet. The fence shall be consistent in design with the existing fence separating the south side of the Village of Wynbrooke and Westport Road. Property maintenance of the landscape buffer area shall be the responsibility of applicant or its designee.
 - H. There shall be no outdoor storage permitted on site except as allowed by Section 9.7 of the Development Code. Outside storage shall be limited to the area indicated on the approved development plan. Stored materials shall not be stacked higher than the top of the fence. Delivery truck idling shall not occur within 500 feet of the western property line (the property line in common with the rear yard line of the residential lots to be created which front on Wynbrooke Circle).
 - I. The following uses are not permitted: taverns, bars, saloons or dance halls; however, restaurants which sell alcoholic beverages are permitted.
- 23. The Home Depot building shall not have its logo striping located on the rear of the building or on the side of the building facing the Village of Wynbrooke.
 - 24. Outdoor lighting shall be high pressure sodium and shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90 degree cutoff so that any light source is not visible off site. Lighting levels shall not exceed 2 foot candles at the property line.

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25. Regarding delivery truck access to (a) the retail area of the development fronting on Westport Road, or (b) the area of the development fronting on Springhurst Boulevard, delivery trucks shall be instructed to utilize the Westport Road/I-265 interchange, rather than the Ky. 22/I-265 interchange.
26. Dumpster areas shall be enclosed pursuant to the requirements of the Development Code.
27. In the event of a request is filed to modify or delete the following Binding Elements: [All schedule B and the following binding elements shown on the May 22 minutes: Nos. 1, 2, for the district development plans for the Lots fronting on Westport Road, 3, 4.a, 4.b, 5, 6, 7, 8, 9 and 11—actual nos. to be added in when actual number are known], in addition to notice that may otherwise be required by Planning Commission policy or regulation, notice of the LD&T meeting at which the request is considered shall be given 13 days in advance by hand-delivery to the following addresses (Hand delivery shall be the responsibility of the applicant):
 - A. 9905 Wynbrooke Place, Louisville, Kentucky 40241
 - B. 3213 Wynbrooke Circle, Louisville, Kentucky 40241
 - C. 9906 Wynclyffe Court, Louisville, Kentucky 40241
 - D. 9806 Calamar Court, Louisville, Kentucky 40241
 - E. 9907 Wynbrooke Place, Louisville, Kentucky 40241
 - F. 9901 Wynbrooke Place, Louisville, Kentucky 40241
28. Any HVAC roof units on the Home Depot building shall be screened by (i) painting the units the same color as the roof color, or (ii) any alternate and commercially reasonable method to screen the HVAC units from view from the rear of the building. In the event alternative (ii) is chosen by Home Depot, Home Depot shall make the determination in its sole discretion as to which commercially reasonable method is implemented.
29. 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

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binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.

Proposed Changes to General Plan Binding Elements - Docket #9-35-97

3. The development shall not exceed:
- 36,342** square feet of gross floor area for the retail on Lot 1;
 - 109,600** square feet of gross floor area for the retail on Lot 2;
 - 22,560 square feet of gross floor area for a garden center on Lot 2;
 - 2,740 square feet of gross floor area for the bank on Lot 3;
 - 3,600 square feet of gross floor area for the bank on Lot 4;
 - 7,000 square feet of gross floor area for the retail on Lot 5;
 - 60,000 square feet of GFA (100 rooms) for the hotel Lot 6;
 - 60,000 square feet of GFA (100 rooms) for the hotel Lot 7;
 - 6,400 square feet of gross floor area for the restaurant on Lot 8;
 - 8,000 square feet of gross floor area for the restaurant on Lot 9.

5.

Lot #	Zoning District	Use	Type	Location*	Height	Area
1	C-2	Retail	None	NA	NA	NA
2	C-2	Home Depot	Shopping Center ID	30 Ft.	8 Ft. 15.5 Ft.	72 Sq. Ft. 147.5 Sq. Ft.
2	C-2		Business ID	32 Ft.	6 Ft.	60 Sq. Ft.
3	C-1	Bank	Business ID	30 Ft.	6 Ft.	60 Sq. Ft.
4	C-1	Bank	Business ID	37 Ft.	6 Ft.	60 Sq. Ft.
5	C-2	Retail	Business ID	36 Ft.	6 Ft.	60 Sq. Ft.
6	C-1	Hotel	Business ID	10 Ft.	6 Ft.	60 Sq. Ft.
7	C-1	Hotel	Business ID	10 Ft.	6 Ft.	60 Sq. Ft.
8	C-2	Restaurant	Business ID	29 Ft.	6 Ft.	60 Sq. Ft.
9	C-2	Restaurant	Business ID	20 Ft.	6 Ft.	60 Sq. Ft.

7. ~~There shall be no outdoor storage on the site.~~

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23. In the retail are of the development fronting on Westport Road:
- H. There shall be no outdoor storage permitted on site except as allowed by ~~Section 9.7~~ of the Land Development Code. Outside storage shall be limited to the area indicated on the approved development plan. Stored materials shall not be stacked higher than the top of the fence. Delivery truck idling shall not occur within 500 feet of the western property line (the property line in common with the rear yard line of the residential lots to be created which front on Wynbrooke Circle).

Existing Detailed Plan Binding Elements - Docket #9-35-97

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. The development shall not exceed 168,388 square feet of space.
3. The Binding Elements (as contained in the Planning Commission minutes of September 18, 1997) from the approved general plan shall be in effect for this parking waiver.
4. In the event a request is filed to modify or delete any binding element or to change the approved development plan, and in addition to notice that may otherwise be required by the Planning Commission policy or regulation, notice of the Land Development and Transportation Committee meeting at which the request is considered shall be given 13 days in advance by hand delivery to the following addresses (hand delivery shall be the responsibility of the applicant):
 - A. 3301 Wynnbrooke Circle, Louisville, KY 40241
 - B. 3303 Wynnbrooke Circle, Louisville, KY 40241
 - C. 3305 Wynnbrooke Circle, Louisville, KY 40241
 - D. 3229 Wynnbrooke Circle, Louisville, KY 40241
 - E. 3231 Wynnbrooke Circle, Louisville, KY 40241

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- F. 3233 Wynnbrooke Circle, Louisville, KY 40241
 - G. 3235 Wynnbrooke Circle, Louisville, KY 40241
 - H. 3237 Wynnbrooke Circle, Louisville, KY 40241
 - I. 3239 Wynnbrooke Circle, Louisville, KY 40241
 - J. 9905 Moss Court, Louisville, KY 40241
 - K. 9923 Wyncliff Circle, Louisville, KY 40241
 - L. 9924 Wyncliff Circle, Louisville, KY 40241
 - M. 9919 Wyncliff Circle, Louisville, KY 40241
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- 5. The shopping center identification sign shall be 15.5 feet in height and 147.5 square feet in area.
 - 6. Home depot shall consolidate all on-site parcels. The form of the consolidation instrument shall be approved by the general Counsel of the Planning Commission. The instrument shall be executed and put to record, with a copy filed in the Planning Commission record of this case.
 - 7. Additional plantings to be located on the Home Depot USA/Springhurst Commons LLC property as shown on "The Home Depot at Springhurst Commons Planting Plan prepared by Sabak, Wilson and Lingo, Inc. (rev. 1/26/98) as color-marked and presented at the Land Development and Transportation Committee meeting of November 22, 2000 shall be in place prior to April 30, 2001, weather permitting.
 - 8. The shopping center identification sign shall be 15.5 feet in height and 147.5 square feet in area.
 - 9. Home Depot shall consolidate all on-site parcels. The form of the consolidation instrument shall be approved by the General Counsel of the Planning Commission; the instrument shall be executed and put to record, with copy filed in the Planning Commission record of this case.
 - 10. Additional plantings to be located on the Home Depot USA/Springhurst Commons LLC property as shown on "The Home Depot at Springhurst Commons Plan" prepared by Sabak, Wilson & Lingo, Inc. (rev. 1/26/98) as color-marked and presented at the Land Development & Transportation

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Committee of November 22, 2000 shall be in place prior to April 30, 2001, weather permitting.

11. Signs shall be placed where shown on the "Truck Idling Plan" dated 2/28/01. The signs shall state: "Trucks: No idling. Turn off engine after parking. Do not use horn. Violations will be subject to fines by Home Depot." Each sign shall not be higher than 2 feet tall and no larger than 8 square feet in area.
12. No deliveries shall be made between 11:00 p.m. and 6:00 a.m. The west rear loading door (lumber overhead door) shall be closed between 11:00 p. m and 6:00 a.m.
13. The sidewalk on Westport Road shall be installed by May 1, 2001.
14. The drainage pipe behind Michaels shall be repaired no later than 8 months after final approval of the development plan.

Proposed Changes to Detailed Plan Binding Elements - Docket #9-35-97

2. The development shall not exceed 168,388 ~~168,502~~ square feet of space.
8. ~~The shopping center identification sign shall be 15.5 feet in height and 147.5 square feet in area.~~
9. ~~Home Depot shall consolidate all on-site parcels. The form of the consolidation instrument shall be approved by the General Counsel of the Planning Commission; the instrument shall be executed and put to record, with copy filed in the Planning Commission record of this case.~~
10. ~~Additional plantings to be located on the Home Depot USA/Springhurst Commons LLC property as shown on "The Home Depot at Springhurst Commons Plan" prepared by Sabak, Wilson & Lingo, Inc. (rev. 1/26/98) as color marked and presented at the Land Development & Transportation Committee of November 22, 2000 shall be in place prior to April 30, 2001, weather permitting.~~

PRESENT

Melanie Byers

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Robbie Selamie
Jay Stuart
Julie Stuart

DISCUSSION

Mr. Reverman read a letter of opposition from the Park Place Subdivision (letter is in the file). Their main issues for opposition are as follows: the large tents that have been erected in the parking lot next to Westport Road; the storage of garden center supplies in the eastern portion of the Home Depot parking lot; and the fireworks vendors that set up during the summer on the Westport Road/Springhurst area of the Home Depot parking lot.

Ms. Byers stated that there are no restrictions for using tents on the property – they obtained a permit for it.

Ms. Byers remarked, "I just want to be clear today that we're addressing the Home Depot property. We're not addressing whatever issues or concerns that may be happening on the Michaels' property because they are not part of this development plan approval."

Ms. Byers stated, "We have marked on the plan to make it clear to everyone, a loading and unloading area which stays within that 500 feet; also highlighting the existing storage area and some areas where they would like to do an outdoor display area of various materials."

Mr. Stuart met with staff and the applicant/representatives on April 7, 2007 and also walked the property. The applicant/representative shows a willingness to work with the neighbors.

Mr. Stuart said there are some inconsistencies (time limits) with a couple of binding elements. "Yesterday we learned that none of those binding elements will be placed into real binding elements as we've seen them, but rather, they've been included as notes on this development drawing."

Mr. Stuart remarked, "We're concerned that your approval of this plan and this drawing would be inconsistent with the spirit of the desire that you (DRC) expressed to us three weeks ago. Zoning Enforcement officers will have a

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nightmare trying to figure out if they should be reading this plan or referring to binding elements to determine if an infraction has occurred." When the proposed plan is approved and goes into the file, it is what everyone will refer to. "I submit to you that this is an entire development plan for this development known as this docket number and we certainly appreciate these changes that need to be made in order for Home Depot to operate their store. But if we don't get the entire development plan right, when it's filed and put into place, then we're going to continue to have issues. We need to revise the plan the correct way."

Mr. Stuart remarked (regarding loading and unloading area), "My concern is that we created the 500 foot buffer for a reason and we limited the hours of when items could be moved in and out of commercial properties that are within 100 feet of residential property. Clearly this development is adjacent to residential properties so we have special considerations that are designed into the code for that reason."

Mr. Stuart remarked, "We would really like to see all the agreements that are made between Home Depot and the neighborhood reflected in true binding elements, recorded as part of the case, and not just in the development plan."

Mrs. Stuart asked, "If binding elements are supposed to be a legal document and there are blatant things that are wrong with it, then how can it be a legal document? Also, if this (proposed binding elements) is going to be part of the plan, how do we know that it's going to stay in the folder, because the folder is a mess? Ms. Warrick remarked, "These files are accumulative, they are open to the public and on any given day there could be dozens of people digging through the files. Our case managers do the best that they can to ensure that the information is kept in as orderly a fashion as possible, but that doesn't always happen. Honestly, we have had things walk away, but we have to be as open as possible so that you all can gain access to the information you want and there are some detrimental impacts to that. We do try to ensure and maintain things in a chronological fashion so the most current information is the most readily available. When a plan is approved and transmitted to Inspections, Permits and Licenses', which also includes Code Enforcement, we send them a copy of the most current approved plan as well as the binding elements."

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Commissioner Howard remarked, "I don't see how Home Depot can enforce what happens on lot 1 if Home Depot doesn't own lot 1. It looks like Home Depot is more than 100 feet away from your property, so it is lot 1 that is creating more problems than Home Depot, other than the noise."

Ms. Senninger stated that there may be some confusion as to the distinction between the general and the detailed district development plan. The general plan was approved in the past (1997) and the plan before this committee today is the detailed plan – dealing with lots 2 and 3 only.

Ms. Warrick addressed the committee and stated, "If we're going to consider further restricting something like the hours of the dumpster operation for the applicant that's standing in front of you, I would suggest that you consider a binding element specific only to lots 2 and 3, so we don't impact somebody that doesn't have the opportunity to be here and speak to it." Do not amend binding element 23C, but create another binding element for lots 2 and 3.

ACTION

Commissioner Carlson motioned to **APPROVE** the Revised Detailed District Development Plan to allow outdoor sales and display areas on the site and **AMEND** binding element number 12 on the detailed plan – change the hours of delivery from 11:00 p.m. – 6:00 a.m. to 10:30 p.m. – 7:00 a.m. The rear loading doors will be closed between those same hours – 10:30 p.m. – 7:00 a.m.. Also, add a new binding element to state: Compactors and dumpsters shall be used, emptied or replaced for lots 2 and 3 only between 7:00 a.m. and 10:00 p.m. and shall be located only where shown on the approved detailed development plan. Another binding element will be added: Grass mowing on lots 2 and 3 behind the building will be mowed bi-monthly during the growing season. Commissioner Howard seconded the motion. Unanimous approval.