

**RESOLUTION AND ORDER
AP-PC-06-1 and AP-PC-06-2**

**Affirming Warrenton Planning Commission's Decision
Approving Home Depot's Subdivision (SUB-06-5)
and Site Design (SD-06-3) Applications**

AND

**Denial of the Appeals of Subdivision (AP-PC-06-2)
and Site Design (AP-PC-06-1)**

AND

Adopting Findings of Fact, Conclusion of Law and Decision

WHEREAS, the Warrenton City Planning Commission approved the Home Depot's Subdivision and Site Design Applications on May 17, 2006; and

WHEREAS, said approval was subject to conditions imposed by the Planning Commission; and

WHEREAS, adjoining property owner, Peter Ettro, appealed the decision of the Planning Commission, through his attorney, Daniel Kearns within the time allotted by the Warrenton Development Code and furthermore, the City Commission of the City of Warrenton held a public hearing on the appeal on June 27, 2006; and

WHEREAS, the City Commission reviewed the testimony, submittals, and staff report, including the record before the Warrenton Planning Commission and found that the proposed development as conditioned, is in compliance with all applicable criteria in the Warrenton Development Code.

NOW, THEREFORE, be it resolved and ordered by the Warrenton City Commission that:

Section 1: The Warrenton City Commission hereby affirms the Planning Commission's decision for SUB-06-5 and SD-06-3), subject to the conditions of approval as stipulated by the Warrenton Planning Commission based on the information provided in the public record (Exhibit A).


Section 2: The Warrenton City Commission hereby denies the appeals of the Subdivision (AP-PC-06-2) and the Site Design (AP-PC-06-1) applications.

Section 3: The Warrenton City Commission hereby adopts the Findings of Fact, Conclusion of Law and Decision attached as Exhibit "B".

Section 4: This resolution is effective immediately upon its passage.

Adopted by the Warrenton City Commission this 11th day of July, 2006.

APPROVED


Gilbert Gramson, Mayor

ATTEST


Linda Engbretson, City Recorder

**CITY OF WARRENTON
CITY COMMISSION CHAMBERS
CITY HALL**

**IN THE MATTER OF APPEALS OF THE
PLANNING COMMISSION'S APPROVAL OF APPLICATIONS
FOR THE HOME DEPOT SITE DESIGN AND SUBDIVISION
FOR TAX LOTS 2500, 2501, 2502, 2504, ABD 2600
IN TOWNSHIP 8, RANGE 10, SECTION 27BC.**

**CITY OF WARRENTON
FILE NOS. AP-PC-06-1 (Site Design(SD-06-3))
AND AP-PC-06-2 (Subdivision (SUB-06-5)),**

**FINDINGS OF FACT.
CONCLUSION OF LAW AND
DECISION**

1. SUMMARY

This matter comes before the City Commission on the Appeal of Peter Ettro of decisions by the Planning Commission approving the applications ("Home Depot Applications") by The Home Depot USA, Inc. (the "Applicant") and Martin Nygaard (property owner) for approval of Site Design Review and Large Scale Development and Subdivision applications pursuant to the Warrenton Development Code Chapters 3.19 and 4.2, which would allow for the development of an approximately 102,000 square foot Home Depot store and associated Garden Center of approximately 28,000 square feet, together with related parking areas and landscaping. The proposal includes improvements to public infrastructure, including upgrades in the water, sewer and stormwater systems and roads.

2. PROCEDURAL STATUS

Following notice of a public hearing as required by the applicable Warrenton Development Code section and ORS Chapter 197, the Planning Commission held a public hearing on April 26, 2006. Oral and written testimony was received from the Applicant, the Applicant's attorney Glenn Amster, and engineering firm JRH. Argument and testimony also was provided by Daniel Kearns (attorney for Appellant Peter Ettro).

The Planning Director issued a staff report dated April 14, 2006, which included background information, approval criteria, applicable Warrenton Code standards and Comprehensive Plan policies, and several attachments, including the Applicant's narrative, plans, and traffic impact

report. The staff report contains a recommendation for approval for the "Home Depot Project" as defined therein.

The Planning Commission denied a request for a continuance from Mr. Kearns, but left the record open on both applications for seven (7) days to allow Mr. Kearns to submit additional written testimony. On May 3, Mr. Kearns submitted objections to the applications on behalf of Mr. Ettro. The applicant's attorney, Glenn Amster, submitted a written response to the objections. On May 17, 2006, the Planning Commission reconvened and unanimously voted to approve the two applications. The Planning Commission's decisions approving the two applications was issued on May 22, 2006.

On June 2, 2006, Peter Ettro, through his counsel Mr. Kearns, filed a Notice of Appeal of the Site Design and Subdivision decisions. Following notice of a public hearing required by the applicable Warrenton Development Code sections and ORS Chapter 197, the City Commission held a public hearing on June 13, 2006, to consider the appeals. The Planning Director issued a staff report dated June 22, 2006, which responded to the issues in the appeals. On June 27, 2006, the City Commission heard Mr. Kearns arguments on appeal, as well as the Applicant's response. At the conclusion of the public hearing and upon due deliberation, the City Commission unanimously voted to deny the appeals and directed staff to prepare findings and conclusions.

3. FINDINGS IN RESPONSE TO RAISED ISSUES

Mr. Ettro claims that the Planning Commission's decisions are in error because the Home Depot subdivision and site design applications are in violation of the Warrenton Development Code for the following reasons:

a. *Front yard setbacks:* Mr. Ettro claims that the project violates the requirements for front yard setbacks set forth in WDC 2.5.130(2)(a), which requires a 15-foot (15') front yard setback when there is an adjoining residential district. Mr. Ettro contends the front yard should be defined by the orientation of the face of the store. The front setback is measured from the Front Lot Line, which is defined in the code as the "lot line separating the lot from the street" (Chapter 1.3, Definitions). Therefore, the front lot line is the line separating the Home Depot lot from Dolphin Lane. Accordingly, the front setback is measured from the frontage along Dolphin Lane, regardless of building orientation. The Site Plan shows the required setback along Dolphin Lane. The lot line between the Home Depot site and TL 2400 is a side lot line.

Moreover, the setback is defined to mean the distance between a property line and a building. Here, the Home Depot building is located more than one hundred feet (100') from the Ettro property. Thus, regardless of which yard is the front yard, the proposed site plan satisfies the front yard setback requirement.

b. *Mechanical Equipment.* Mr. Ettro claims the proposed site plan violates WDC 3.04.3(F), which requires that outdoor storage and loading areas be located to the sides of buildings if the rear of the building faces SR 101, as is the case here. The Home Depot site plan shows a loading area in the southeast corner of the building. The loading docks do not face SR

101; they face to the south. In the absence of landscaping, trucks would be visible from SR 101 while parked in the loading area. This activity, however, does not violate the code provision. It is the physical location of the loading dock that the code seeks to address.

At oral argument, Mr. Kearns also argued that the proposed Home Depot project also violates this provision of the Code because there is mechanical equipment in the rear yard. The prohibition, however, applies only to storage, service and loading areas. It does not apply to mechanical equipment.

In any case, the proposed site plan shows a well-developed plan for landscaping the area between SR 101 and the rear of the building, including the area where trucks may load and unload. The landscaping includes shrubs and trees that will after a few years of growth obscure most if not all of the loading activities.

c. *Buffering and Screening.* Mr. Ettro claims the site plan does not provide the requisite vegetative buffer between his property and the Home Depot parking area, citing WDC 3.2.3(E)(3) and 3.2.5. First, Mr. Ettro cites a code provision (3.2.3(E)(3)(a)) that applies to buffering between parking areas and public roads and drives. There is no evidence of a driveway on Mr. Ettro's property that would implicate this code provision. Even if there were a driveway, it is not open to the public and, therefore, this provision would not apply.

Second, even if this provision of the Code did apply, there is an ample landscape buffer between the Home Depot parking area and Mr. Ettro's property, which includes Hogan Cedar and Dogwood trees, shrubs and grasses. This landscaping will after a few years of growth screen the view of the Home Depot property from Mr. Ettro's property.

Third, at oral argument, Mr. Kearns recited language from WDC 3.2.3(E)(3)(a), which requires "non-see" through barriers in certain conditions. Those conditions are not present here. WDC 3.2.3(E)(3)(a) pertains only to screening mechanical equipment, outdoor storage and manufacturing and service and delivery areas, none of which are located adjacent to or within sight of the Ettro parcel.

Finally, Mr. Ettro cites WDC 3.2.5, which pertains to fences and walls. There is no evidence of any fence or wall, other than a four foot (4') retaining wall, along the Ettro/Home Depot boundary. WDC 3.2.5 does not apply to walls below six feet (6') in height.

d. *Bicycle Parking.* Mr. Ettro claims the site plan does not provide the requisite number of bicycle parking spaces. Although a home improvement retailer may not serve the number of bicyclists contemplated by the Development Code, the applicant has stipulated to provide the requisite number of bicycle spaces. These spaces will be moveable and set at various locations around the building by operations personnel to provide the flexibility necessary to accommodate the seasonal operations and bicyclist demand.

e. *Sidewalks and Planter strips.* Mr. Ettro claims the Home Depot site plan violates WDC 3.5.1(J), because it does not include sidewalks and planter strips along the right-of-way frontages of the excess or out parcels.

The Home Depot site plan approval contemplates the associated subdivision, which would divide the site into five (5) parcels. The Home Depot site would sit on the largest of these parcels and is the only parcel to be developed at this time. Sidewalks and planter strips are provided on Dolphin Lane along the frontage of the Home Depot site and extending northwest to Highway 104 Spur to provide a continuous pedestrian route along Dolphin Lane.

The out lots on the south side of Dolphin Lane are not part of this Site Design Review application. It is not necessary or practical to provide sidewalks and planter strips along the out lots at this time because the lots are vacant and future development may require alterations to the design of the sidewalks and/or the location of curb cuts. Adequate right-of-way for sidewalks and planter strips that may be developed with the out parcels is shown on the plat and will be dedicated as part of the subdivision application. It should also be noted that when applications for development of any of the out lots are submitted, the sidewalk and planter strip installation requirement would apply.

f. *Grades and Curves.* Mr. Ettro claims that the new Dolphin Lane will not meet the radius requirement set forth in WDC 3.5.1(N). The new Dolphin Lane depicted on the site plan would be characterized as a minor collector, which requires a curve radius of 350'. In order to address issues pertaining to the intersection of the new Dolphin Lane and SR 101, the curve radius depicted on the site plan is less than 350', which does not meet the City standard. This alteration of the development standards, which Mr. Ettro's counsel acknowledges may be available, would require a variance. For purposes of clarification, the Commission directs Home Depot to modify the curve radius to meet Development Code standards for a minor collector or apply for and obtain a variance pursuant to the provisions of WDC 3.5.1(B).

g. *Wetland Standards.* Mr. Ettro claims that the Site Plan applications do not meet the requirements of WDC 3.10.3, which contains certain requirements for development that would alter "mapped wetlands." The "mapped wetlands" referred to in this section are defined in WDC 3.10.3(1) to mean the wetlands identified on the City's *Wetland Conservation Plan Inventory* dated October 17, 1997. Although there are wetlands on the southern corner of the Home Depot property, the wetlands to be altered by the Home Depot project are not identified in the City's inventory. Therefore, the requirements of WDC 3.10.3 do not apply. Alteration of wetlands on the site may be subject to the regulatory requirements of other state or federal agencies, but are not subject to regulation by the City.

h. *Reliance on Unacknowledged Amendments.* Mr. Ettro alleges the subdivision approval requires Statewide Goal findings pursuant to ORS 197.625(3) because it relies on an unacknowledged zoning amendment. Mr. Ettro did not raise this issue before the Planning Commission and, therefore, the City Commission need not address it for the first time in this appeal. Nonetheless, the Commission notes (1) the Planning Commission's decision included a specific condition that the subdivision and site plan approvals would be valid only if the rezoning was approved; and (2) the City Commission made express Statewide Goal findings in connection with its approval of the Home Depot Rezone Application, RZ-06-04. To the extent applicable, the City Commission's findings in RZ-06-04 are incorporated herein by this reference.

4. INCORPORATION OF APPLICATION AND STAFF REPORT.

The City Commission hereby incorporates by reference the staff reports dated April 14, 2006 and June 13, 2006 including any attachments or exhibits. In the event of any conflict between the incorporated documents and these findings, these findings shall control.

5. CONCLUSION.

For the reasons contained herein and in the incorporated documents, the City Commission finds that the appeals should be denied and the Planning Commission's decisions sustained.

6. DECISION

The City Commission hereby **DENIES** the appeals of Peter Ettro and affirms the decisions of the Planning Commission.