

REVISED JUSTIFICATION STATEMENT

CHANGE IN ZONING FROM R-6 MULTI-FAMILY RESIDENTIAL
TO C-1 COMMERCIAL
AND CONDITIONAL USE PERMIT FOR RESTAURANT WITH OUTDOOR ALCOHOL SALES
AND CONSUMPTION AND INDOOR ENTERTAINMENT
11840 and 11950 Ellingsworth Lane
Case No. 14ZONE1026

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Lifestyle Communities (the "applicant") is requesting a change in zoning to C-1 Commercial and a conditional use permit for a restaurant with outdoor alcohol sales and consumption and indoor entertainment on a 0.8 acre portion of the property located at 11840 and 11950 Ellingsworth Lane, in Middletown, Kentucky. The subject property is zoned R-6 Multi Family Residential, located in the Neighborhood Form District, and is approved for an apartment community containing 398 units. The applicant is proposing a change in zoning to C-1 Commercial and conditional use permit for a portion of the clubhouse and outdoor amenity area to allow a restaurant with outdoor dining and indoor entertainment as an integral part of the planned apartment community. For the reasons stated herein, the proposed rezoning and conditional use permit comply with the Cornerstone 2020 Comprehensive Plan and, therefore, should be approved.

GUIDELINE 1 COMMUNITY FORM

According to Core Graphic 1 of the Cornerstone 2020 Comprehensive Plan, the subject property lies within the Neighborhood Form Area. Guideline 1.B.3 provides that the Neighborhood Form may contain, at appropriate locations, neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services. These neighborhood centers should be at a scale that is appropriate for nearby neighborhoods. The Neighborhood Form should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit.

The proposed rezoning and conditional use permit comply with Guideline 1 because the restaurant at the clubhouse facility will provide a neighborhood-serving use for residents of the apartment community and surrounding areas. Pedestrian walkways will be provided to, from and throughout the entire development site, linking the focal point and various uses on the site with each other and with adjacent properties. Therefore, the development provides an adequate level of vehicular, pedestrian, bicycle, and transit connectivity. The development is appropriate in terms of scale, design, and intensity for a neighborhood. The clubhouse facility will be developed at a neighborhood scale incorporating a high quality architectural design that is compatible with the apartment community within which it is located, as well as the development in the surrounding area. The applicant is also proposing to retain the large landscape buffers and berms along

Ellingsworth Lane and adjacent to Swan Pointe that were part of the previously approved plan for apartments on the subject property.

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GUIDELINE 2 CENTERS

The proposed rezoning and conditional use permit comply with Guideline 2 of the Cornerstone 2020 Comprehensive Plan because Guideline 2, Policy A.2. specifically provides that non-residential uses are appropriate in new planned or proposed developments where the commercial use mainly serves residents of the development and is similar in character and intensity to the residential development. The restaurant in the clubhouse facility will be a unique amenity of an upscale apartment community and is intended to primarily serve the residents thereof. The clubhouse building is designed to be compatible with the scale and design of the other buildings within the development and will contain apartment units on the upper stories.

The proposed development is designed in a compact pattern organized around a centralized focal point that is connected via walkways extending throughout the development. The proposed development incorporates significant landscaping and the applicant is utilizing a high quality architectural design for the proposed buildings. The buildings will be articulated to provide visual interest and will include a mixture of building materials, windows, transparent doorways and entry areas, and other animating features, all of which will work to promote vitality and sense of place in this neighborhood activity center.

Adequate parking will be provided as required by the Land Development Code, which is designed to ensure the safe and efficient movement of vehicles and pedestrians. Interior landscape areas will be installed to break up the parking areas and enhance the overall aesthetic quality of the site. Sidewalks will be built to provide adequate pedestrian linkages to, from, and through the development. The parking areas are designed to ensure safe pedestrian connectivity between the proposed structures. The proposed development will also utilize the practice of shared access and parking to minimize the overall impervious area. For the foregoing reasons, the proposed development complies with Guideline 2 of the Cornerstone 2020 Comprehensive Plan.

GUIDELINE 3 COMPATIBILITY

The proposed rezoning and conditional use permit comply with Guideline 3 of the Cornerstone 2020 Comprehensive Plan because the Neighborhood Form District encourages a mixture of land uses within neighborhoods provided they are designed to be compatible with each other. The clubhouse will be compatible with the general character of the surrounding residential development and neighborhoods in terms of height, scale, elevation, intensity, lighting, and appearance. Further, the clubhouse is adequately landscaped and buffered from adjoining properties, as it is located in the center of the proposed development. The buildings will include a variety of building materials and architectural animating features which will serve to harmonize the proposed development

with the existing area by honoring the character of the Neighborhood Form District. A significant setback and landscaped berm will be provided along the northern and eastern edges of the subject property to fully buffer the clubhouse facility and apartment buildings from Belmont Park and Swan Pointe, two adjacent residential developments.

The proposed development is designed to enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties. Stormwater runoff will be detained on-site at 1.5 times the runoff volume of the proposed development, which will help to alleviate any existing drainage problems in the area. The stormwater detention design will receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development.

Parking is designed to be safe and simple and will utilize the practice of shared parking to minimize impervious surface. The proposed development will contain sufficient parking to serve the uses on the site, including handicap-accessible parking spaces in accordance with local, state, and federal requirements.

The neighborhood-serving use proposed, the design of the building, and the extensive internal and perimeter landscaping will all result in an amenity that serves the needs of the local residents in an effective manner, while retaining the neighborhood character and ensuring there will be no adverse noise, odor, or visual impacts on other properties in the vicinity. For the aforementioned reasons, the proposed development complies with Guideline 3 of the Cornerstone 2020 Comprehensive Plan.

**GUIDELINES 4 AND 5
OPEN SPACE, NATURAL AREAS, AND SCENIC AND HISTORIC RESOURCES**

Open space is provided in the overall apartment development which is designed to protect natural resources and meet aesthetic needs. Significant landscape buffer areas are proposed, as approved in the previously approved apartment development, around the perimeter of the site. Interior landscape areas are located throughout the entire development which include extensive landscape plantings. The open space areas are accessible by an interconnected system of walkways linking living areas with the clubhouse facility and other focal points within the development. The site contains no environmental limitations, scenic or historic resources which would inhibit the proposed development. Accordingly, the proposed development meets Guidelines 4 and 5 of the Cornerstone 2020 Comprehensive Plan.

**GUIDELINES 7, 8, AND 9
CIRCULATION, TRANSPORTATION FACILITY DESIGN, AND BICYCLE, PEDESTRIAN,
AND TRANSIT**

The proposed development complies with Guidelines 7, 8, and 9 of the Cornerstone 2020 Comprehensive Plan because the proposed restaurant within the clubhouse facility will not create additional traffic impacts as it will mainly serve residents of the apartment

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community and surrounding residents. The entrances are located to facilitate safe vehicular and pedestrian access to and from the apartment community and adjacent land uses. Sidewalks will be provided throughout the development, ensuring that the subject property is easily accessible by pedestrians, bicycles, and motor vehicles alike. Furthermore, the proposed development will contribute to and enhance the overall mixture of uses in the area.

By providing a neighborhood-serving use within an apartment community, the proposed development will enable area residents to minimize vehicular miles traveled, as well as total travel time, in order to minimize air pollution and to conserve fuel. The development is located to take advantage of the existing transportation system to complement the overall development of the area and minimize additional roadway construction. Adequate parking spaces are provided on the subject property as required by the Land Development Code, including handicapped spaces as required by the ADA. In addition, bicycle amenities will be provided within the development in accordance with the Land Development Code. Therefore, the proposed development complies with Guidelines 7, 8, and 9 of the Cornerstone 2020 Comprehensive Plan.

**GUIDELINES 10 AND 11
FLOODING, STORMWATER, AND WATER QUALITY**

The subject property is located above the 100 year flood plain, does not contain steep slopes, unstable soils, or blueline streams and, as a result, there are no environmental constraints which would prevent commercial development of this property. As mentioned, the proposed development is located on a site that will enable proper stormwater handling and release management that will not adversely affect adjacent and downstream properties. In addition, an Erosion Prevention and Sediment Control Plan utilizing best management practices will be implemented prior to commencing construction of the development. On-site detention areas will accommodate onsite drainage and mitigate any impacts of the proposed development to the watershed and its capacity to transport stormwater. Stormwater runoff will be detained on-site at 1.5 times the runoff volume of the proposed development, which will help to alleviate any existing drainage problems in the area. The stormwater detention design will receive approval from MSD prior to construction of the proposed development. For the foregoing reasons, the proposed development complies with Guidelines 10 and 11 of the Cornerstone 2020 Comprehensive Plan.

**GUIDELINE 12
AIR QUALITY**

The proposed rezoning and conditional use permit comply with Guideline 12 of Cornerstone 2020, because, as previously demonstrated, the proposal represents an efficient land use pattern and utilizes current traffic patterns. By providing a restaurant within the clubhouse and amenity area of the apartment community, the proposed development will enable and promote a reduction in vehicle miles traveled and increased pedestrian travel in an effort to reduce the air impacts of the development. The

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neighborhood-serving use being proposed on the subject property will also aid in reducing commuting time and transportation-related air pollution.

**GUIDELINE 13
LANDSCAPE CHARACTER**

The proposed development complies with Guideline 13 of Cornerstone 2020, because it meets or exceeds all landscape requirements of the Land Development Code. Significant landscape buffer areas along Ellingsworth Lane and along the east property line, with large landscaped berms will be provided to ensure that the surrounding uses are adequately buffered from the proposed development. Interior landscaping will be installed in the vehicular use areas, which will enhance the buildings, break up the parking areas, and enhance the overall aesthetics of the site. Outdoor signage and lighting will comply with the Land Development Code and will be compatible with the surrounding area. Tree canopy in accordance with Land Development Code requirements will also be provided on the overall development site.

**GUIDELINES 14 AND 15
INFRASTRUCTURE AND COMMUNITY FACILITIES**

The proposed development complies with Guidelines 14 and 15 of the Cornerstone 2020 Comprehensive Plan because the subject property will be served by infrastructure which has adequate carrying capacity for the proposed development. All necessary utilities, including water, electricity, telephone, and cable, are available. The subject property is served by the Middletown Fire Department and the Louisville Metro Police Department. Therefore, the proposal complies with Guidelines 14 and 15 of the Cornerstone 2020 Comprehensive Plan.

CONDITIONAL USE PERMIT

The proposed development includes a restaurant/outdoor amenity area for the residents of the apartment community. The applicant would like to be able to offer a full service menu throughout the restaurant/outdoor amenity area and indoor entertainment inside the restaurant, as it does in other communities with great success. The proposed restaurant/outdoor amenity area is in the center of the subject property, surrounded by the proposed apartment development and will primarily serve the residents of the apartment community.

Because the proposed restaurant/outdoor amenity area is an integral part of the overall complex, the applicant is proposing a waiver of the required 6-foot continuous screen around the outdoor amenity area. The applicant is also requesting to revise the CUP listed requirements to reference the updated license designations per recent changes in Kentucky's ABC laws.

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REVISED WAIVER JUSTIFICATION STATEMENT
11840 and 11950 ELLINGSWORTH LANE
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The club is internal to the proposed apartment community. It is designed as a mixed-use community facility which also includes 16 apartment units, community space, leasing office, fitness center, restaurant, pool, deck and outdoor recreation areas. The materials are the same as the surrounding residential apartment buildings. The clubhouse is also comparable in terms of size, scale, and massing. The proposed apartment community is intended as a walkable, pedestrian-friendly neighborhood where most of the club patrons will commute on foot. The clubhouse is located away from perimeter streets and interior to the apartment community. The large setbacks and landscape berms along Ellingsworth Lane and the east property line, the clubhouse and the surrounding buildings within the community will effectively buffer the restaurant and outdoor amenity areas from the adjacent residential uses. Residential streets and buildings surround the outdoor amenity area. The clubhouse has been designed as a true multi-use facility that will be an integral part of the larger apartment community. As a result, the waiver will not adversely affect adjacent property owners.

This waiver will not violate the Comprehensive Plan because the clubhouse building has been specifically designed to be compatible in terms of building materials, mass, size, and scale with the apartment community which it will serve. The clubhouse facility will be an integral and pedestrian-accessible part of the overall development, which incorporates new urban design features, including two- and three-story buildings in a traditional architectural style, compact site design, a grid pattern of streets with sidewalks, and centrally-located and accessible open space/amenity areas. The proposed site design and associated amenities will result in a walkable, compact, and vibrant community that encourages interaction among residents, and ease of access to entertainment and

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recreation. For these reasons, as well as all the reasons stated in the justification statement for the proposed change in zoning and conditional use permit, the granting of these waivers will not violate the Comprehensive Plan.

If the requested waivers are not granted, the applicant would be required to provide a 25-foot landscape buffer area and 6-foot high screen around the clubhouse and amenity area, which would be in direct conflict with new urban design principles which seek to seamlessly integrate neighborhood services, amenities, and gathering spaces with the surrounding neighborhood to promote walkability, ease of access to entertainment and recreation, and encourage interaction among residents. Furthermore, to require a 25-foot landscape buffer area around the C-1 zoned property would preclude the ability to have a mixture of residential, commercial, and recreational uses within the clubhouse facility. Finally, the requested waivers are partially the result of the applicant's attempt to minimize the amount of area to be rezoned to C-1 and subject to the conditional use permit. Therefore, the extent of the requested waivers of the regulations is the minimum necessary to afford relief to the applicant.

The restaurant building has been designed as an integral part of the 398-unit apartment and is compatible in terms of building materials, size, mass, and scale of the residential apartment buildings. The community has been designed with a pedestrian friendly streetscape with on-street parking that allows residents to walk safely to the club facility. The clubhouse will be set back from Ellingsworth Lane and located within the interior of the community so as to be less visible from perimeter roads and have less impact to surrounding properties. In addition, the overall development provides a 150-foot setback and 10-foot berm along Ellingsworth Lane, and 75-foot setback and 8-foot berm adjacent to Swan Pointe. Collectively, these design measures exceed the minimum requirements of the district and the compatible design measures provided compensate for non-compliance with the requirements to be waived, which were intended to buffer disparate and incompatible uses from one another.

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REVISED VARIANCE JUSTIFICATION
11840 and 11950 ELLINGSWORTH LANE
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In Case No. B-18373-12, the Louisville Metro Board of Zoning Adjustment approved a plan to allow the proposed apartment buildings associated with the residential buildings to be 39.5 feet in height. The applicant is proposing to revise the previously-approved plan for the apartment community to include a clubhouse with community space, leasing office, fitness center and related amenities, and a restaurant on the first floor, and 16 apartment units on the upper floors. The clubhouse building will be near the center of the proposed apartment community and will be three stories tall with a hip roof with dormers and other design elements.

The variance will not adversely affect the public health, safety or welfare of the area because the additional building height will not be noticeable from surrounding properties. The proposed clubhouse building is near the center of the subject property, is surrounded by shorter buildings, which are, in turn, surrounded by large landscape buffer areas that include berms and significant plantings.

The variance will not alter the essential character of the general vicinity for the reasons above and because the proposed apartment complex will contain traditional building materials in a walkable, pedestrian scale community, similar in many respects to the historic center of Middletown. The proposed clubhouse building will be near the center of the subject property, softening any impact it could have off-site.

The variance will not cause a hazard or nuisance to the general public. The proposed clubhouse building is intended to be both the geographic and programmatic center of the proposed community. The limited amount of additional height will allow the

clubhouse to be designed in such a way as to reflect its significant role in the community and will allow the building to contain apartment units on the upper floors.

The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The building design requirements of the Land Development Code work for the vast majority of buildings on the vast majority of properties. But here, the proposed variance is to allow a single building located in the middle of the proposed apartment community to be slightly taller than the rest. The subject property is very large, and all of the proposed buildings have been designed to be compatible with one another and with the buildings located on adjacent properties.

The variance arises from special circumstances, which do not generally apply to land in the general vicinity. The subject property is located adjacent to the Blankenbaker Parkway interchange at I-64, near a large religious campus and other non-residential uses. The subject property is also quite large, and significant setbacks and landscape buffer areas are provided along the property's perimeter to adequately screen the proposed development from adjacent residential properties. The circumstances giving rise to the variance are not the result of actions the applicant has taken since the adoption of the LDC's height limitations. The circumstances are, instead, the result of the application of height limitations that are necessary on smaller properties, which do not give consideration to the subject property's characteristics and location to the subject property. While the applicant is responsible for the proposed site and building design, the location of the clubhouse building near the center of the proposed development as well as the large setbacks and landscape buffer areas around the property's perimeter ensure that the additional 5 feet of building height will have no impact on surrounding properties. The Board of Zoning Adjustment has been characterized in Kentucky case law as a "relief valve" for zoning regulations. Here, the proposed building and site design demonstrate that the requested relief is warranted.

The strict application of the LDC's height limitations would create an unnecessary hardship because the applicant would be unable to include residential units on the upper floors of the clubhouse building, which is a critical component of the applicant's overall mixed-use development.

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