

**Board of Zoning Adjustment
Staff Report**
June 16, 2014



Case No:	14CUP1004
Project Name:	Clarity Pointe
Location:	13700 English Villa Dr. and 101 English Station Wy.
Owner(s):	BDCD – BrightPointe, LLC.
Applicant:	GBS Engineering
Representative(s):	Bill Bardenwerper, Bardenwper, Talbott & Roberts
Jurisdiction:	Louisville Metro and Middletown
Council District:	19 – Jerry Miller 20 – Stuart Benson
Case Manager:	Latondra Yates, Planner II

REQUEST

- Conditional Use Permit (CUP) under Sec. 4.2.36 of the Land Development Code adopted by the City of Middletown to allow a nursing home.
- Variance of Sec. 5.3.1.C.5. of the LDC to allow the proposed structure to encroach into the required 50-ft. east side yard. The requested setback is 32.84 ft., at its closest point, a variance of 17.16. ft.
- Variance of Sec. 5.3.1.C.5. of the LDC to allow parking, maneuvering, a transformer pad and penetrator pad to encroach into the required 50-ft. west side yard. The requested setback is 30 ft., a variance of 20 ft.
- Variance of Sec. 5.3.1.C.5. of the LDC to allow the proposed structure, to encroach into the required 50-ft. rear yard. The requested setback is 38.04 ft., at its closest point, a variance of 11.96 ft.
- Variance of Sec. 5.3.1.C.5. of the LDC to allow the proposed dumpster and pavement to encroach into the required 50-ft. rear yard. The requested setback is 36 ft., a variance of 14 ft.
- Waiver of Sec. 10.2.4.B. of the LDC to allow more than a 50% encroachment of an LBA onto a utility easement along English Villa Dr.

Variances

Location	Requirement	Request	Variance
Side yard (east property line)	50 ft.	32.84	17.16 ft.
Side yard (west property line)	50 ft.	30 ft.	20 ft.
Rear yard (structure)	50 ft.	38.04 ft.	11.96 ft.
Rear yard (dumpster and pavement)	50 ft.	36 ft.	14 ft.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The CUP, variances and waiver are for construction of a 45,000 sf., 1-story, 60-room dementia care facility on 3.75 acres. The plan indicates that there will be 60 rooms. The proposed 43 parking spaces is close to the 39-space minimum. The maximum allowed is 108 spaces. There are existing utility easements along English Willa Dr. that will encroach by more than 50% into the required 10-ft. VUA LBA.

The site is zoned R-5A in the Neighborhood Form District (NFD). To the north, across English Villa Dr., is property zoned C-1 and C-N. To the south, east and west are property zoned R-5A (Landis Lakes Patio Homes and Condominiums).

A Revised Detailed District Development Plan will also be reviewed by the Development Review Committee June 18. The site was previously approved as the Villages of English Station for condominium duplexes under dockets No. 9-65-05 and 10-41-05.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<i>Subject Property</i>			
Existing	Vacant	R-5A	NFD
Proposed	Dementia care facility	R-5A	NFD
<i>Surrounding Properties</i>			
North	Commercial	C-1	NFD
South	Multi-family residential	R-5A	NFD
East	Multi-family residential	R-5A	NFD
West	Multi-family residential	R-5A	NFD

PREVIOUS CASES ON SITE

9-65-05 and 10-41-05, Change in zoning from R-4 and C-1 to R-5A, C-1 and OR-3 and a subdivision (Villages of English Station II) for multi-family, office, bank, retail and veterinary office.

INTERESTED PARTY COMMENTS

No comments received.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020 – See checklist attached.
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

1. Is the proposal consistent with the applicable policies of the Comprehensive Plan?

STAFF: The plan meets the applicable policies of Cornerstone 2020. See checklist attached.

2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc?

STAFF: The proposal appears to be compatible with surrounding uses. There is a mix of single and multi-family residential in the area as well as commercial and office uses across the street.

3. Are necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use?

STAFF: Transportation Planning, MSD, Addressing and the Fire Department have reviewed the plan and given preliminary approval.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

- Fill in appropriate conditions here

4.2.36 Nursing Homes and Homes for the Infirm or Aged

Nursing Homes and Homes for the Infirm or Aged may be permitted in any district upon the granting of a Conditional Use Permit and compliance with the listed requirements.

A. All buildings shall be located at least 30 feet from any property line.

STAFF: – Form district dimensional standards require a 50-ft. residential to non-residential setback, when no loading. Variances have been requested to allow the proposed building to encroach into the required 50-ft. side and rear setbacks. See variance requests.

B. One sign, not to exceed 60 square feet and six feet in height, may be placed at each of the major entrances, except in districts where larger signs are allowed.

STAFF: The monument sign detail on the plan indicates that it will comply with this requirement. Details of any additional proposed signage should also be provided.

C. The Board of Zoning Adjustment shall add any restrictions to mitigate nuisances or adverse effects.

STAFF: The Board should determine whether additional restrictions are necessary.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

- Variance of Sec. 5.3.1.C.5. of the LDC to allow the proposed structure to encroach into the required 50-ft. east side yard. The requested setback is 32.84 ft., at its closest point, a variance of 17.16. ft.
- Variance of Sec. 5.3.1.C.5. of the LDC to allow parking, maneuvering, a transformer pad and penetrator pad to encroach into the required 50-ft. west side yard. The requested setback is 30 ft., a variance of 20 ft.

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The variances will not adversely affect the public health, safety or welfare because the proposed structures, parking and maneuvering will be located in a manner that provides for the appropriate screening as well as access and fire protection.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The variances will not alter the essential character of the general vicinity because the proposed setbacks appear to be compatible with other structures in the area.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variances will not cause a hazard or nuisance to the public because the proposed structures, parking and maneuvering will be located in a manner that allows for the required landscape screening.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variances will not allow an unreasonable circumvention of the zoning regulations because the 30-ft. setbacks of the CUP standards, at a minimum, will be observed on all sides. A significant amount of the 50-ft. setbacks will also be observed.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The variances arise from the size of the proposed nursing home and need to provide the required parking.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict provision of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because of the nursing home could be designed in a manner that observes more of the required setbacks.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are the result of the request for construction of a nursing home.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

- **Variance of Sec. 5.3.1.C.5. of the LDC to allow the proposed structure, to encroach into the required 50-ft. rear yard. The requested setback is 38.04 ft., at its closest point, a variance of 11.96 ft.**
- **Variance of Sec. 5.3.1.C.5. of the LDC to allow the proposed dumpster and pavement to encroach into the required 50-ft. rear yard. The requested setback is 36 ft., a variance of 14 ft.**

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The variances will not adversely affect the public health, safety or welfare because the structures and pavement will be screened by the required landscape and tree canopy screening.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The variances will not alter the essential character of the general vicinity because the proposed setbacks appear to be compatible with other structures in the area.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The variances will not cause a hazard or nuisance to the public because the proposed setbacks will allow for the required access and fire protection. The plan is also subject to the safety standards of construction review.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variances will not allow an unreasonable circumvention of the zoning regulations because the 30-ft. minimum setback required by the CUP standards, at a minimum, will be observed. The majority of the rear setback will be observed.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The variances arise from the proposed construction of the nursing home.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict provision of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the site could be designed in a manner that observes the required setbacks.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are the result of the request for construction of a nursing home.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS

- **Waiver of Sec. 10.2.4.B. of the LDC to allow more than a 50% encroachment of an LBA onto a utility easement along English Villa Dr.**

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

STAFF: The waiver will not adversely affect adjacent property owners because the required screening will still be provided within the LBA.

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

STAFF: The waiver meets the applicable guidelines of Cornerstone 2020.

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

STAFF: The waiver is the minimum necessary to afford relief to the applicant in order to provide the required LBA given the location of the existing utility easements.

- (d) Either:

(i) 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**

(ii) 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: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because of the need to provide the required landscaping in the area of the existing utility easements.

TECHNICAL REVIEW

No outstanding technical review items.

STAFF CONCLUSIONS

The CUP and waiver meet 17 of the applicable guidelines of the Comprehensive Plan. Four additional guidelines, including submittal of lighting and any additional sign details that may be proposed, can be addressed during construction review.

Staff's analysis of the standards of review support the granting of the CUP, variances and waiver.

Based upon the information in the staff report, the testimony and evidence provided, the Development Review Committee must determine if the proposal meets the standards for approval of a CUP, variances and waiver as established in the Land Development Code.

NOTIFICATION

Date	Purpose of Notice	Recipients
6/2/2014	BOZA Hearing	1 st and 2 nd tier adjoining property owners
5/30/2014	Sign Posting	On property

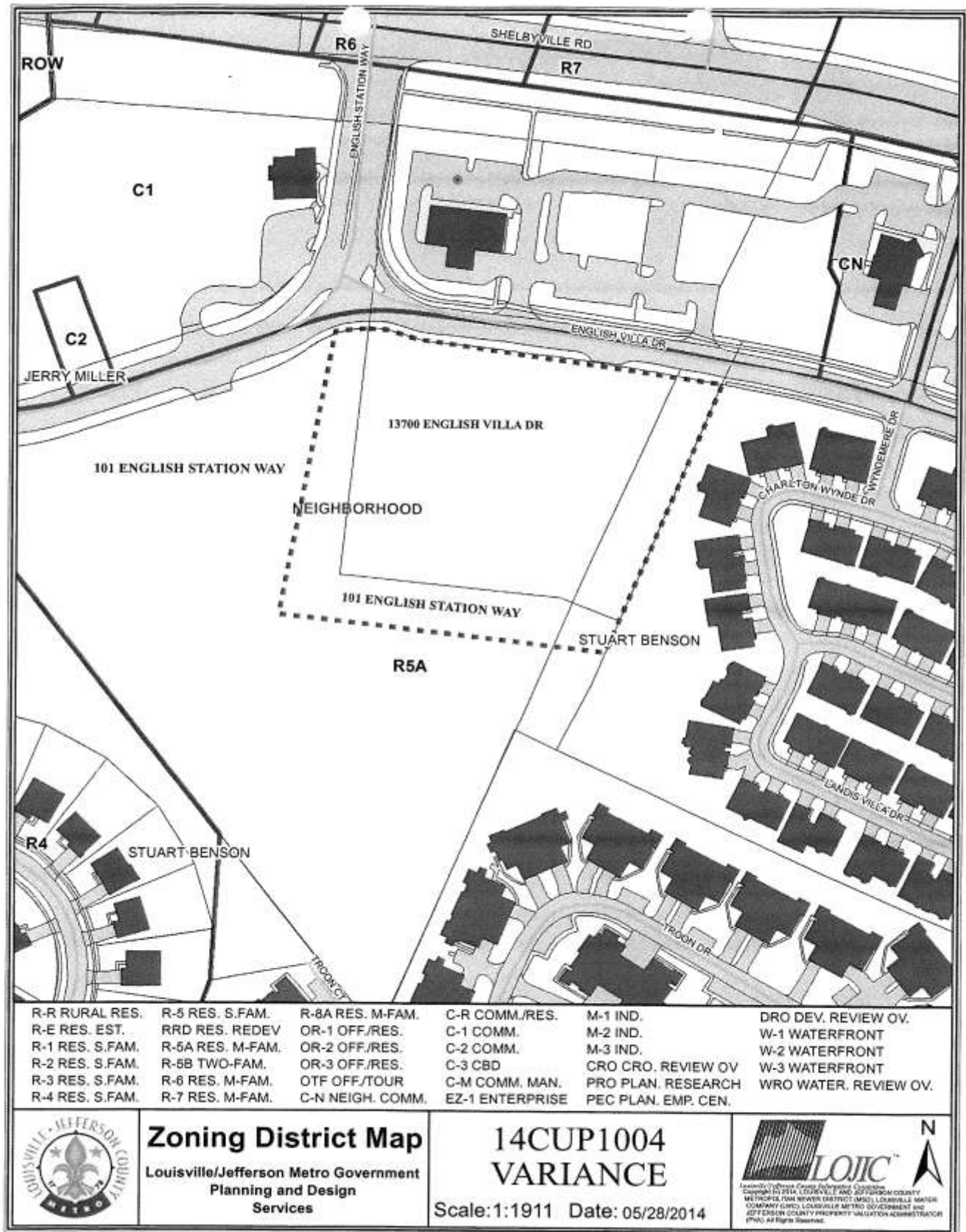
ATTACHMENTS

1. Zoning Pre-App. Tax Map
2. Aerial Map
3. Site Plan
4. Elevations
5. Neighborhood meeting documents
6. Cornerstone 2020 Comprehensive Plan Checklist
7. Applicant's justification statements

Proposed Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a potentially hazard or nuisance use without further review and approval by the Board.

1. **Zoning Map**

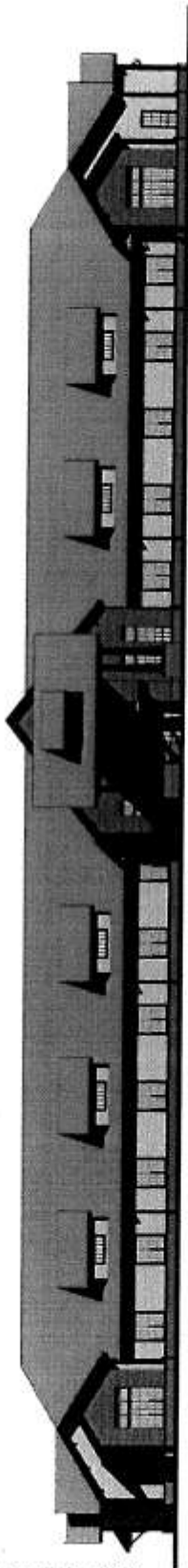


2. Aerial Photo

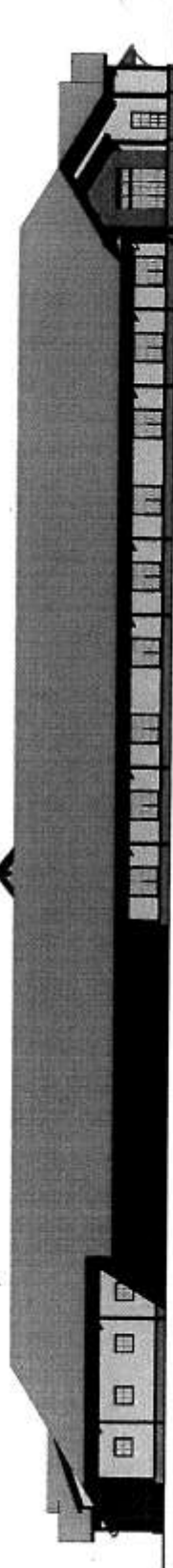




4. Elevations



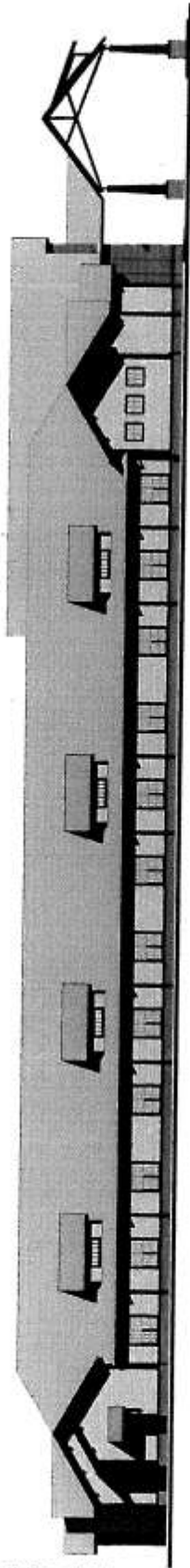
North Elevation



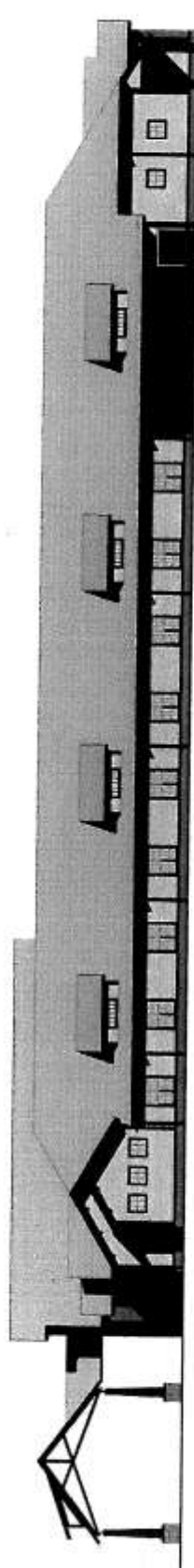
South Elevation

Received: April 21, 2014

14cup1004



East Elevation



West Elevation

Received: April 21, 2014

14cup1004

5. Neighborhood Meeting Documents

Clarity Pointe
c/o BCDC BrightPointe, LLC
5170 Sanderlin Avenue
Memphis, TN 38117

March 28, 2014

**RE: Conditional Use Permit to allow a dementia care facility on property located
13700 English Villa Drive south of First Capital Bank and west of the
Villages of English Station patio homes**

Dear Neighbor,

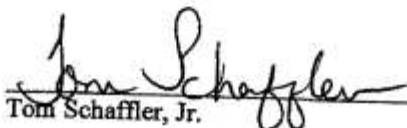
We are writing to invite you to a meeting we have scheduled to present interested neighbors with our preliminary plan for a Conditional Use Permit to allow a dementia care facility on property located at 13700 English Villa Drive, which is located directly west of the Villages of English Station patio homes and south of the First Capital Bank branch.

Following our pre-application conference with agency staff, we are holding this neighbor meeting on **Tuesday, April 8th at 7:00 p.m.** at the **Lakewood Baptist Church** located at **13803 Shelbyville Road**.

If you cannot attend the meeting or have preliminary questions or concerns, please call our local attorney Bill Bardenwerper at 426-6688 or local land planner Ann Richard at 426-9374.

We look forward to seeing you then to show you our plan and discuss this with you, if you have an interest.

Sincerely,


Tom Schaffler, Jr.

Cc: Hon. Byron Chapman, Mayor, City of Middletown
Hon. Jerry Miller, Metro Councilman, District 19
Hon. Stuart Benson, Metro Councilman, District 20
Latondra Jones, case manager, Louisville Metro Planning & Design Services
Mark Bialik, GBS Engineering, Knoxville, TN
Ann Richard, Land Design & Development, Inc., Louisville, KY

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Received: April 21, 2014

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Developer's Neighborhood Meeting

Meeting Date and Time April 8, 2014 @ 7:00 pm **Developer's Name** BCDC BrightPointe, LLC

Location of Meeting Lakewood Baptist Church, 13803 Shelbyville Road, Louisville, KY

Description of Proposal Conditional Use Permit (CUP) to allow dementia care facility

Subject Site Location 13700 English Villa Drive, Louisville, KY

NEIGHBORS IN ATTENDANCE

NAME	ADDRESS	ZIP CODE	PHONE # (OPTIONAL)
WALTER BISS	14404 TROON DR	40245	245-8128
STIMOTHY ANDERSON	14216 ACADEMY RIDGE BLVD	40245	805-1483
BRIAN O'LEARY	208 CHARLTON WYDE	40245	245-6674
JOHN ZINK	305 KIDDERRY WAY	40245	491-6932
STUART BENSON	METRO COUNCIL #20		
Scott Harrington	601 W Jefferson St	40202	574-1119
Byron Chapman	13200 Urton	40243	639-9240
Hilda Chapman	13200 Urton Lane	40243	" "

Neighborhood Meeting Summary
April 8, 2014

A neighborhood meeting was called by Bill Bardenwerper, local counsel for the applicant, with Ann Richard of the local land planning and engineering firm, Land Design & Development, also present.

For the applicant were Mark Bialik with the engineering firm GBS Engineering and Tom Schaffler, Jr., representative of the owner/developer.

Mr. Bardenwerper presented a PowerPoint showing development in the larger area that had previously occurred, including much through his efforts with this and other property owners. He explained everything that had gone on, prior decisions that had been made, traffic improvements that were assured, and so on. He explained that this is now an infill development, because much has been fully developed around it, except for this lot and some remaining lots to the east which remain undeveloped because of the recent real estate Recession, which was exacerbated when the prior developer of this property, McBride and Son Homes, decided to return to its roots in St. Louis and cease building residential (mostly condo) communities in Louisville.

Following that opening presentation, Mr. Bialik, the engineer, and Mr. Schaffler, the owner/developer, answered questions about the particular 60-room dementia care facility and how it has been designed for this site.

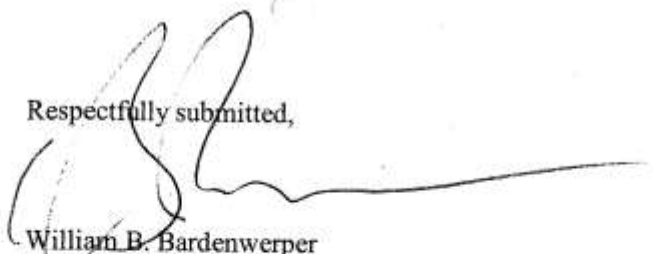
It will include relatively few residents, only for dementia care purposes. The building itself will be one-story, not two-story like other homes within the area. The CUP setback will be satisfied. Landscaping will be provided along perimeters. The open space will be located in an interior courtyard, which will be secure for the dementia care patients.

They also explained their other facilities recently opened in North Carolina and Tennessee.

Most of the questions that were asked had to do with drainage, which was explained by the land owners' representative Bill Carpenter who said that two detention basins were constructed as part of the larger development which was part of the referenced approximately 30-acre rezoning was completed. Those detention facilities were designed to address excess runoff from the site, as there is a 150% detention requirement imposed by the City of Middletown.

Design was explained and rendered elevations were shown. Traffic and parking were explained as minimal.

Respectfully submitted,



William B. Bardenwerper
Bardenwerper, Talbott & Roberts, PLLC
Building Industry Association of Greater Louisville Building
1000 N. Hurstbourne Parkway, 2nd Floor
Louisville, KY 40223

CLIENT/Clarity Pointe/CUP Application – Neighborhood Meeting Summary
JTR Rev. 4/21/2014 10:55 AM

Received: April 21, 2014

14cup1004

6. Cornerstone 2020 Comprehensive Plan Checklist

Neighborhood
Form District

Cornerstone 2020 Checklist

Case No. 14CUP1004
Staff Findings:

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
1	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 1: Community Form	B.3: The proposal is a neighborhood center with a mixture of uses such as offices, retail shops, restaurants and services at a scale that is appropriate for nearby neighborhoods.	NA		NA	
2	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 1: Community Form	B.3: If the proposal is high intensity, it is located on a major or minor arterial or an area with limited impact on low to moderate intensity residential uses.	NA		NA	
3	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.17: The proposal, which will create a new center, is located in the Neighborhood Form District, and includes new construction or the reuse of existing buildings to provide commercial, office and/or residential use.	NA		NA	
4	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.3: The proposed retail commercial development is located in an area that has a sufficient population to support it.	NA		NA	
5	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.4: The proposed development is compact and results in an efficient land use pattern and cost-effective infrastructure investment.	✓	Development proposed in an area already approved for development.	✓	Development proposed in an area already approved for development.
6	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.5: The proposed center includes a mix of compatible land uses that will reduce trips, support the use of alternative forms of transportation and encourage vitality and sense of place.	NA		NA	
7	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.6: The proposal incorporates residential and office uses above retail and/or includes other mixed-use, multi-story retail buildings.	NA		NA	
8	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.12: If the proposal is a large development in a center, it is designed to be compact and multi-purpose, and is oriented around a central feature such as a public square or plaza or landscape element.	NA		NA	

+ exceeds guidelines
✓ meets guidelines
+/- more information needed

- does not meet guidelines
NA not applicable

1

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
9	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.13(15): The proposal shares entrance and parking facilities with adjacent uses to reduce curb cuts and surface parking, and locates parking to balance safety, traffic, transit, pedestrian, environmental and aesthetic concerns.	NA		NA	
10	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.14: The proposal is designed to share utility hookups and service entrances with adjacent developments, and utility lines are placed underground in common easements.	NA		NA	
11	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 2: Centers	A.16: The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities.	+/-	The required bicycle parking should be provided	✓	Bicycle parking provided.
12	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.2: The proposed building materials increase the new development's compatibility.	+/-	Provide building elevations to determine compliance with building and site design standards.	✓	Elevations meet building and site design standards.
13	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.5(16/7): The proposal does not constitute a non-residential expansion into an existing residential area, or demonstrates that despite such an expansion, impacts on existing residences (including traffic, parking, signs, lighting, noise, odor and stormwater) are appropriately mitigated.	✓	Though classified as non-residential, the facility will serve as housing for its residents.	✓	Though classified as non-residential, the facility will serve as housing for its residents.
14	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.5: The proposal mitigates any potential odor or emissions associated with the development.	+/-	Need APCD comments.	✓	Plan has APCD approval.
15	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	✓	Proposed development will decrease traffic from what was previously proposed.	✓	Proposed development will decrease traffic from what was previously approved.
16	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.8: The proposal mitigates adverse impacts of its lighting on nearby properties, and on the night sky.	+/-	Provide lighting details, when known.	+/-	Provide lighting details, when known.

+ exceeds guidelines
✓ meets guidelines
+/- more information needed

- does not meet guidelines
NA not applicable

Cornerstone 2020
Checklist

Case No. 14CUP1004
Staff Findings

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
17	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.11: If the proposal is a higher density or intensity use, it is located along a transit corridor AND in or near an activity center.	NA		NA	
18	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.21: This proposal provides appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements.	✓	The required landscaping and tree canopy will be provided.	✓	The required landscaping and tree canopy will be provided.
19	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.22: The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and/or walls, and that address those aspects of the development that have the potential to adversely impact existing area developments.	✓	The required landscaping and tree canopy will be provided.	✓	The required landscaping and tree canopy will be provided.
20	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.23: Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards.	✓	Setbacks will be compatible with surrounding structures.	✓	Setbacks will be compatible with surrounding structures.
21	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.24: Parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians.	✓	The required screening will be provided.	✓	The required landscaping and tree canopy will be provided.

+ exceeds guidelines
✓ meets guidelines
+/- more information needed

- does not meet guidelines
NA not applicable

Cornerstone 2020
Checklist

Case No. 14CUP1004
Staff Findings

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
22	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.24: The proposal includes screening and buffering of parking and circulation areas adjacent to the street, and uses design features or landscaping to fill gaps created by surface parking lots. Parking areas and garage doors are oriented to the side or back of buildings rather than to the street.	✓	The required screening will be provided.	✓	The required landscaping and tree canopy will be provided.
23	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	NA		NA	
24	Form Districts Goals C1-C4, Objectives C1.1-1.2, C2.1-2.7, C3.1-3.7, C4.1-4.7	Community Form/Land Use Guideline 3: Compatibility	A.26: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.		Sign on plan exceeds max. allowed. Will be revised to show LDC compliance.	✓	Proposed sign on plan meets LDC requirements.
25	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 4: Open Space	A.29/7: The proposal provides open space that helps meet the needs of the community as a component of the development and provides for the continued maintenance of that open space.	NA	Non-residential use not required to have open space.	NA	
26	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 4: Open Space	A.4: Open space design is consistent with the pattern of development in the Neighborhood Form District.	NA		NA	
27	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 4: Open Space	A.5: The proposal integrates natural features into the pattern of development.	NA		NA	
28	Livability Goals H3 and H5, all related objectives	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.1: The proposal respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and minimizes property damage and environmental degradation resulting from disturbance of natural systems.	NA		NA	

+ exceeds guidelines
✓ meets guidelines
+/- more information needed

- does not meet guidelines
NA not applicable

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29	Livability Goals H3 and HS, all related objectives	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.24. The proposal includes the preservation, use or adaptive reuse of buildings, sites, districts and landscapes that are recognized as having historical or architectural value, and, if located within the impact area of these resources, is compatible in height, bulk, scale, architecture and placement.	NA		NA	
30	Livability Goals H3 and HS, all related objectives	Community Form/Land Use Guideline 5: Natural Areas and Scenic and Historic Resources	A.6. Encourage development to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion.	NA		NA	
31	People, Jobs and Housing Goal K4, Objective K4.1	Marketplace Guideline 6: Economic Growth and Sustainability	A.3. Encourage redevelopment, reinvestment and rehabilitation in the downtown where it is consistent with the form district pattern.	NA		NA	
32	Marketplace Strategy Goal A1, Objectives A1.3, A1.4, A1.5	Marketplace Guideline 6: Economic Growth and Sustainability	A.4. Encourage industries to locate in industrial subdivisions or adjacent to existing industry to take advantage of special infrastructure needs.	NA		NA	
33	Land Use and Transportation Connection Goal E1, Objectives E1.1 and E1.3	Marketplace Guideline 6: Economic Growth and Sustainability	A.6. Locate retail commercial development in activity centers. Locate uses generating large amounts of traffic on a major arterial, at the intersection of two minor arterials or at locations with good access to a major arterial and where the proposed use will not adversely affect adjacent areas.	NA		NA	
34	Land Use and Transportation Connection Goal E1, Objectives E1.1 and E1.3	Marketplace Guideline 6: Economic Growth and Sustainability	A.8. Require industrial development with more than 100 employees to locate on or near an arterial street, preferably in close proximity to an expressway interchange. Require industrial development with less than 100 employees to locate on or near an arterial street.	NA		NA	

* exceeds guidelines
 ✓ meets guidelines
 +/- more information needed

- does not meet guidelines
 NA not applicable

Cornerstone 2020
Checklist

Case No. 14CUP1004
Staff Findings

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
35	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.1/2: The proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means.	NA		NA	
36	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.3/4: The proposal promotes mass transit, bicycle, and pedestrian use and provides amenities to support these modes of transportation.	✓	The required sidewalks and bicycle parking will be provided. Plan will be revised to show the required bicycle parking.	✓	Bicycle parking provided.
37	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.6: The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands. The proposal includes at least one continuous roadway through the development, adequate street stubs, and relies on cut-de-sacs only as short side streets or where natural features limit development of "through" roads.	NA		NA	
38	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.9: The proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development.	NA		NA	
39	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.10: The proposal includes adequate parking spaces to support the use.	✓	The required parking will be provided.	✓	The required parking will be provided.
40	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 7: Circulation	A.13/16: The proposal provides for joint and cross access through the development and to connect to adjacent development sites.	NA		NA	

+ exceeds guidelines
✓ meets guidelines
+/- more information needed

- does not meet guidelines
NA not applicable

Comerstone 2020
Checklist

Case No.14CUP1004
Staff Findings

#	Comerstone 2020 Guidelines & Policies	Comerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
41	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 8: Transportation Facility Design	A.8: Adequate stub streets are provided for future roadway connections that support and contribute to appropriate development of adjacent land.	NA		NA	
42	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 8: Transportation Facility Design	A.9: Avoid access to development through areas of significantly lower intensity or density if such access would create a significant nuisance.	NA		NA	
43	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 8: Transportation Facility Design	A.11: The development provides for an appropriate functional hierarchy of streets and appropriate linkages between activity areas in and adjacent to the development site.	NA		NA	
44	Mobility Goals A1-A6, B1, C1, D1, E1, E2, F1, G1, H1-H4, I1-I7, all related Objectives	Mobility/Transportation Guideline 9: Bicycle, Pedestrian and Transit	A.12: The proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity.	✓	The required sidewalks and bicycle parking will be provided. Plan will be revised to show the required bicycle parking.	✓	Bicycle parking provided.
45	Livability, Goals B1, B2, B3, B4, Objectives B1.1-1.8, B2.1-2.7, B3.1-3.4, B4.1-4.3	Livability/Environment Guideline 10: Flooding and Stormwater	The proposal's drainage plans have been approved by MSD, and the proposal mitigates negative impacts to the floodplain and minimizes impervious area. Solid baseline streams are protected through a vegetative buffer, and drainage designs are capable of accommodating upstream runoff assuming a fully- developed watershed. If streambank restoration or preservation is necessary, the proposal uses best management practices.	+/-	Subject to construction review.	+/-	Subject to construction review.
46	Livability Goals C1, C2, C3, C4, all related Objectives	Livability/Environment Guideline 12: Air Quality	The proposal has been reviewed by APCD and found to not have a negative impact on air quality.	✓	Plan has APCD approval with dust mitigation note.	✓	Plan has APCD approval with dust mitigation note.

* exceeds guidelines
✓ meets guidelines
+/- more information needed

- does not meet guidelines
NA not applicable

#	Cornerstone 2020 Guidelines & Policies	Cornerstone 2020 Plan Element	Plan Element or Portion of Plan Element	Pre-App Finding	Pre-App Comments	Final Finding	Final Comments
47	Livability, Goals F1 and F2, all related objectives	Livability/Environment Guideline 13: Landscape Character	A.3: The proposal includes additions and connections to a system of natural corridors that can provide habitat areas and allow for migration.	NA		NA	
48	Quality of Life Goal J1, Objectives J1.1- 1.2	Community Facilities Guideline 14: Infrastructure	A.2: The proposal is located in an area served by existing utilities or planned for utilities.	✓	Site served by existing utilities.	✓	Site served by existing utilities.
49	Quality of Life Goal J1, Objectives J1.1- 1.2	Community Facilities Guideline 14: Infrastructure	A.3: The proposal has access to an adequate supply of potable water and water for fire-fighting purposes.	+/-	Subject to construction review	+/-	Subject to construction review.
50	Livability Goal B1, Objective B1.3	Community Facilities Guideline 14: Infrastructure	A.4: The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.	+/-	Subject to construction review	+/-	Subject to construction review.

+ exceeds guidelines
✓ meets guidelines
+/- more information needed

- does not meet guidelines
NA not applicable

7. **Applicant's Justification Statement**

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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**STATEMENT OF COMPLIANCE WITH APPLICABLE GUIDELINES AND POLICIES
OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN**

<u>Applicant:</u>	BCDC-BrightPoint, Louisville LLC
<u>Owners:</u>	Otte Patters, LLC and Hogan Holdings 15, LLC
<u>Location:</u>	13700 English Villa Dr. & 101 English Station Way
<u>Existing Uses:</u>	Vacant
<u>Proposed Use:</u>	"Clarity Pointe" Dementia Care Facility with Revised Detailed District Development Plan (RDDDP)
<u>Engineering Firm:</u>	Land Design & Development, Inc.
<u>Request:</u>	Conditional Use Permit to allow a Dementia Care Facility

SUMMARY STATEMENT

The overall site that this particular lot was part of an initial rezoning of some 30 acres. This approximately 30-acre zoning followed on the heels of what was a series of rezoning and development applications mostly represented by this legal counsel for a series of developers on properties stretching from US 60 on the north to I-64 on the south along both sides of what became South English Station Road. This became a very popular development destination after the large Christian Academy was originally constructed at the southwest corner of this area near the intersection of the Snyder Freeway and I-64. When Christian Academy was developed, it had no decent public access to it, so it was the result of the work of these private developers in this area, also including the referenced Hogan entity for the Walgreens center, to construct (with a grant as well from KTC) English Station Road south which opened this area to development.

When the rezoning application that involved this property was finally brought forward, it was for most of the Shelbyville Road frontage from English Station Road west to the Snyder Freeway, and it involved a planned development for a mixture of retail and multi-family residential. Some of the retail has been built (for example, First Capital Bank) but much of it remains still to be developed, partly slowed down by the great real estate Recession of 2007 to nearly the present, and partly by virtue of the fact that the large multi-state residential developer which was going to develop the property that is the subject of this particular application, plus more, returned to its roots in St. Louis, departing Metro Louisville as far as added development was concerned. So this particular property, once part of a larger planned multi-family (at that time condominium)

Received: April 21, 2014

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rezoning and development, has sat vacant. Fortunately, these property owners have now found another residential use, although more "institutional" in nature, given that it will include dementia patients who are anticipating to reside here for their remaining years unless and until they need to enter a more skilled type nursing home facility. This one that is proposed, while requiring licenses from the state, is not a skilled nursing home facility. It will provide the level of service that is necessary for patients suffering from dementia.

As a consequence, the particular application now proposed for this particular lot requires a Conditional Use Permit (CUP) under the category that our Land Development Code (LDC) terms "homes for the aging and infirm." It will be a one-level facility that obviously, therefore, does not overwhelm the nearby patio home style condominium homes. The only reason that it requires setback variances is because of what appears to be a relatively recent interpretation of the regulations that the CUP requirement for a 30-foot setback is trumped in favor of the 50-foot setback found elsewhere in the LDC which pertains to nonresidential uses abutting residential ones. Even though this is a residential care facility, apparently it has been interpreted by DPDS staff as an "institutional" one. But the justification filed with the variance applications explains that the setback for this facility from the nearby residential properties is nevertheless greater than if a single-family subdivision was developed here with 25-foot rear yards that allowed structures to encroach five feet from their rear yards into 30% of any required rear yard. Side yards would be even less if this site were developed as single-family residential. Consequently, the consistent 30-foot yard setback proposed with this use is far greater than would otherwise be if this were developed in a single-family residential manner with two-story, instead of as proposed here, one-story buildings.

GUIDELINE 1: COMMUNITY FORM – SUBURBAN NEIGHBORHOOD

The Suburban Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibility into the existing landscape and neighborhood areas. High density uses are limited in scope to minor and major arterials and to areas that have limited impact on the low to moderate density residential areas. This form district contains diverse housing types in order to provide housing choice for differing ages and incomes. The Suburban Neighborhood Form may contain open space and should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit.

The proposed dementia care facility, generally described above, fits within the Suburban Neighborhood Form for all of the reasons set forth within the Comprehensive Plan description of this form. After all, the proposal is for a residential type use, with residents living in a congregate care setting, with certain services and activities provided for in group or common settings.

Also, as shown on the development plan, this site includes sidewalks which connect this lot and this specific type of senior living facility to other developments already planned or built nearby. The result is good connectivity in terms of driving and walking. It is also anticipated that bike facilities can be accommodated. Open space is also evident on the plan, both in the form of interior courtyard space for the secure comfort and aesthetic enjoyment of residents.

GUIDELINE 2: CENTERS

The Intents of this Guideline are to promote the efficient use of existing infrastructure, to lower utility costs by reducing the need for extensions, to reduce commuting time and resulting transportation-related pollution, to provide an opportunity for a mixture of residential housing types and designs, and to encourage vitality and a sense of place in neighborhoods and the community. The proposed dementia care facility complies with the Intents of this Guideline because this is now considered an infill site where road, sewer and drainage infrastructure already exist. Also, this dementia care facility obviously brings to this area an enhanced level of elderly care where an existing support population already exists. And when you look at the larger Landis Lakes/Villages of English Station development (known by various other names as well) to the south and east of this, it is easy to see how this proposed dementia care facility adds to the already diverse and interesting mix of various forms of development, especially housing, leading to an even more vital, larger community than already exists. In fact, the larger area within which also includes the Elmcroft "Oaklawn" senior living facilities just east of this location, are and will be located is one of the most diverse housing and neighborhood serving mixed use areas within Metro Louisville.

Policies 1 and 2 of this Guideline recommend locating "activity centers" within Suburban Neighborhoods at street intersections with at least one of the intersecting streets classified as collector or above. Shelbyville Road is an arterial road, and South English Station Road is a collector road. This dementia care facility has its principal access off English Station Way very near S. English Station and Shelbyville Road, in accordance with these Policies of this Guideline.

Policies 4, 5, 8 and 9 of this Guideline pertain to compact, mixed, compatible and desirable uses, especially when in the midst of mostly residential areas. This proposed dementia care facility complies with these Policies and Guidelines because there already are a lot of nearby compatible residential and neighborhood-serving commercial uses, including land for expansion. The residential development that exists around it is of a diverse nature, some single-family and a number of styles and designs of residential condominium communities. Also, immediately to the north, west and east are retail and office developments in various stages of development. These commercial developments will be of added benefit to this dementia care facility. Also, being located in such close proximity to another senior living facility, Oaklawn, and to such a large residential population base will make this an even more attractive location for what is proposed.

Policies 10 and 13 of this Guideline pertain to parking. The proposal assures that parking is sufficient to meet employee and visitor needs. Residents will not drive.

Policies 11 and 12 of this Guideline pertain to the design of centers and inclusion of focal points. This proposal complies with these Policies because it is laid out in a way so that the one-story building is located near taller buildings and itself surrounds an interior courtyard for the safety and aesthetic enjoyment of facility residents. So the transitions from this dementia care facility to the single-family condominium homes next door is a natural progression, sensitive to nearby and adjoining land uses.

GUIDELINE 3: COMPATIBILITY

The Intents of this Guideline are to allow a mixture of land uses and densities near each other and to prohibit the location of sensitive land uses in areas where accepted standards for noise, lighting, odors or similar nuisances are violated or visual quality is significantly diminished – in other words to preserve the character of existing neighborhoods.

The proposed dementia care facility complies with the Intents of this Guideline because, as stated above, various forms of senior living on this property and nearby contribute to a mix of uses in this area at varying levels of intensity. Furthermore, these types of uses do not involve nuisances such as noise, unusual lighting or odors, and, visually speaking, they are very attractive.

Policies 1, 2 and 3 of this Guideline pertain to compatibility from the standpoint of site design, building scale, building materials, densities, transitions, buffers, open spaces, landscaping and so on. The proposed dementia care facility is very compatible in terms of what is proposed and located, as noted above, at the front of the site and to the east and west of a size and scale bigger or at least similar to the proposed new dementia care facility. The existing residential condominiums nearby are not overwhelmed by this building which maintains decent setbacks and buffers. Building materials are proposed to be similar to those evident in the area, mostly durable hardy plank.

Policies 5, 7, 8 and 9 of this Guideline pertain to nuisances, none of which should be a problem at this facility. Odors will be contained and minimal anyway. And this being a senior living facility, noise for sure won't be a problem. Lighting fixtures with the Land Development Code, and neighbor concerns, if any, will be addressed to assure lighting they find acceptable. Visual impacts, as described above, are addressed mostly through building materials and architecture, but also, in appropriate areas, with vegetative buffers and, especially, new landscaping.

Policy 6 of this Guideline is addressed at Guidelines 7 and 8 below.

Policies 12, 13, 14 and 15 of this Guideline pertain to accessibility to the elderly and people with disabilities, also to the location of housing for the elderly and disabled, and also to appropriate inclusive housing and the need for it throughout this community. This dementia care proposal complies with these Policies of this Guideline because it is all about the provision of housing for the elderly and handicapped. And located as this facility is in an area where other facilities of this kind exist, it is an expanding residential care option for the elderly, in particular, in an area where there is a demonstrated support population.

Policies 21, 22 and 23 of this Guideline pertain to transitions, buffers, setbacks, lot dimensions and building heights. This proposal complies with these Policies of this Guideline because variances are only requested for the reasons mentioned above, while still maintaining good setbacks. Required landscape buffer areas and building setbacks are shown.

Throughout this small development, more sufficient, attractive landscaping will be installed.

GUIDELINES 4: OPEN SPACE AND GUIDELINE 5: NATURAL AREAS AND SCENIC RESOURCES

The Intents and Policies of these Guidelines are to insure well designed, permanently protected open space areas and also to protect natural areas and features. The proposed dementia care facility complies with the Intents and Policies of these Guidelines because the main open space will be the internal secure courtyard, which will contribute positively to the overall ambiance of this dementia care living community.

GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY

The Intents of this Guideline are to ensure the availability of necessary land for various kinds of residential development, to reduce public and private costs of land development and to ensure regional scale workplaces. The Intents as well as related Policies of this Guideline are addressed by the proposal in these ways. This land is now an infill site and is open and thus clearly developable. And so, what better way to develop it than compatibly with other nearby residential, largely empty-nester communities. The overall originally zoned 30-some acres that this is a part of will be a significant source of employment for this community.

GUIDELINES 7: CIRCULATION AND GUIDELINE 8: TRANSPORTATION FACILITY DESIGN

The Intents of these Guidelines are to provide for the safe and proper functioning of the street network, to ensure that new developments do not exceed the carrying-capacity of streets, to ensure that internal and external circulation of all new development provide safe and efficient travel movements, to address congestion and air quality issues, to provide for the safe and convenient accommodation of the special mobility requirements of the community's elderly and handicapped, and to provide an efficient, safe and attractive system of roadways.

This dementia care facility complies with the Intents of these Guidelines for a number of reasons, as will be explained below. But, in summary, as also generally referred to above, it is again worth noting that the main access to this proposed facility is off English Station Way (a new east-west "connector" road) from South English Station Road off Shelbyville Road, which is a major traffic carrying arterial with adequate traffic-carrying capacity in this specific area, which is a fair distance removed from the US 60 - Snyder Freeway interchange. Also, there are two points of access off Shelbyville Road to English Station Way; thus traffic in and out of this facility can be dispersed at various points. Also, all these internal roads are connected so that, traveling throughout the overall larger development, one can get from one place to the other in multiple, different ways because the proposed component parts are not separated, one from the other, by roads or sidewalk networks. Rather they are connected.

Policies 1, 2, 9, 11, 13, 14, 16 and 17 of Guideline 7 and Policies 5, 6, 7, 9, 10 and 11 of Guideline 8 all pertain to these issues of access, internal circulation, site distance, corner clearances, adequacy of right-of-way and overall impact on the external road systems generally mentioned within the Intent statements of these Guidelines. This dementia care facility proposal

complies with these Policies of these Guidelines largely by virtue of the fact that the engineering of the site plan, including internal circulation and access, plus consideration of the use of the external street system, was done in close consultation with Metro Transportation Planning. In fact, this CUP application, in order to be finally docketed for review by the Board of Zoning Adjustment (BOZA), and this RDDDP to be docketed for review by a Planning Commission committee, must receive the preliminary stamps of approval by the Metro Transportation Planning. And, as a consequence of prior intensive and constantly updated traffic analyses, safe access and the proper functioning of those external street systems are assured.

GUIDELINE 9: BICYCLE, PEDESTRIAN AND TRANSIT

The Intents and Policies of this Guideline are to assure that other forms of travel are accommodated, not just vehicular. To the extent required, bike access will be provided. Of course, pedestrian access, as explained above, is provided throughout the overall development and along this lot. Lots of sidewalks are shown on the overall larger development plan, and they all connect with each other so that residents anywhere within the much larger development can access residential areas and commercial uses any place else within the large overall development.

GUIDELINE 10: FLOODING AND STORMWATER

The Intent and Policies of this Guideline is to protect the conveyance zone and maintain the hydraulic capacity of natural drainage systems to ensure that drainage designs minimize damage to streams and property from flooding and stormwater runoff. This overall larger project previously approved took care of stormwater management through construction of two large detention basins, built at 150% anticipated capacity per City of Middletown requirements.

GUIDELINE 11: AIR QUALITY

The Intents and Policies of this Guideline mostly pertain to the overriding issue of reducing commuting distances. This proposed dementia care facility, by locating it within the midst of a large residential support population base, can help residents who want to locate their elderly parents close to where the children currently reside. And it also allows elderly residents of the area who need to move from their standard single-family homes or condominiums to stay within the community where they may presently shop, worship and have friends and family when it becomes time to enter a senior living facility of this kind. That also helps reduce vehicle miles traveled because friends and family may not have to travel longer distances to visit their elderly loved ones.

GUIDELINE 13: LANDSCAPE CHARACTER

The Intent and Policies of this Guideline are to assure the enhancement of visual quality to new landscaping and buffers. The proposed dementia care facility will include landscaping as required by the Land Development Code.

GUIDELINE 14: INFRASTRUCTURE

The Intents and Policies of this Guideline are to ensure that adequate infrastructure exists to assure the carrying capacity of the land. As described above, this dementia care facility is an infill project that is part of a prior 30-acre zoned site where the essential infrastructure was previously installed.

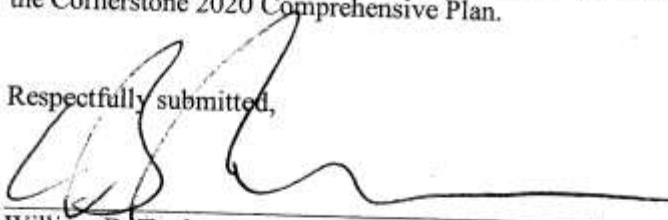
GUIDELINE 15: COMMUNITY FACILITIES

The Intents and particularly Policy 16 of this Guideline seek to assure that the community has adequate community facilities for a variety of particular uses, in this instance healthcare. This dementia care facility, to some legal extent, is classified as a healthcare facility regulated as a healthcare facility by Kentucky State Government.

* * * * *

For all of the above reasons and for reasons provided in this application and other filings on subsequent dates, this application complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

Respectfully submitted,



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Counsel for Applicant/Property Owners

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Variance Justification:

In order to justify approval of any variance, the Board of Zoning Adjustment considers the following criteria. Please answer all of the following items. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Variance of Section 5.3.1.C.5 to reduce the east side yard setback from 50' to 30' and a rear yard variance from 50' to 35'.

1. The variance will not adversely affect the public health, safety or welfare because these are more significant setbacks than would be required if this were a single-family residential development, in which case the rear yard setback would be 25' with the opportunity to encroach into 30% of the overall rear yard up to 5' from the rear property line. A lesser setback would be required along side property lines. And that would be with 2-story residential structures, whereas the proposed dementia care facility is a 1-story residential facility that has been recently interpreted by DPDS staff as an "institutional" use requiring the greater 50' setback than otherwise required by the CUP regulation with a 30' setback.
2. The variance will not alter the essential character of the general vicinity because 50' setbacks were never previously anticipated in the original rezoning under Docket No. 9-65-05 when multi-family rezoning was approved for this site.
3. The variance will not cause a hazard or a nuisance to the public because this proposed dementia care facility is a less intense use of the property than the previous multi-family use permitted by the existing R-5A zoning district which permits up to 12 apartment dwelling units per acre.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because, as stated above, a lesser setback was previously anticipated. It is only because of the "institutional" designation of this particular residential care facility that necessitates the greater 50' setback.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is the only current "institutional" use within the larger area known as "Villages of English Station and Landis Lakes" which essentially comprise nearly all of the developments from the Snyder Freeway on the west, Shelbyville Road on the north, I-64 on the south and Beckley Station Road on the east.
2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the lot would just not be large enough to accommodate this relatively small residential care facility for dementia patients.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather are the result partly of what appears a new DPDS interpretation of the setback requirement for a home for aging and infirmed, designated now as "institution" instead of a residential use, even though this is a residential care facility.

General Waiver Justification:

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

Waiver of LDC Section 10.2.4.B to allow the 50% overlap of required LBA along English Villa Drive, due to existing gas, electric & telecom easement.

Explanation of Waiver: This is a previously zoned, about 30 acre mixed use development in which the infrastructure has already been installed and some of the lots already built. This infill site has been vacant for some time. What is proposed now is a dementia care facility, to be located along English Villa Drive, which is already installed.

1. The waiver will not adversely affect adjacent property owners because, as stated above, this is an infill site with infrastructure already in place and with the ability to provide quality landscaping in the LBAs that otherwise exist.
2. The waiver will not violate the Comprehensive Plan for all of the reasons set forth in the original findings of fact set forth in docket number 9-65-05 and because the only Cornerstone 2020 Comprehensive Plan Guideline affected by this particular utility overlap is the one pertaining to landscape, and this utility overlap will be compensated with adequate landscaping in the balance of that LBA.
3. The extent of waiver of the regulation the minimum necessary to afford relief to the applicant because landscaping will be provided to the maximum extent elsewhere in this LBA and throughout the proposed dementia care facility site.
4. Strict application of the provisions of the regulation will not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because, as said, this is a larger overall development site with infrastructure already installed and lotting patterns already set. To develop this site without this utility overlap would diminish the size of this otherwise low-rise/low-impact residential care facility to the point that this site would not otherwise work for this use.