

PLANNING COMMISSION MINUTES
November 15, 2018

PUBLIC HEARING

CASE NO. 18ZONE1045

Request: Change in zoning from R-4 to OR-3 with detailed district development plan, setback variances, height variance, and sidewalk waiver

Project Name: L&N Federal Credit Union

Location: 9101 and 9104R Lantana Drive

Owner: L&N Federal Credit Union

Applicant: L&N Federal Credit Union

Representative: Bardenwerper, Talbott, & Roberts, PLLC

Jurisdiction: Louisville Metro

Council District: 23 – James Peden

Case Manager: Joel Dock, AICP, Planner II

Notice of this public hearing appeared in The Courier Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

02:26:26 Mr. Dock discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

John Talbott, Bardenwerper, Talbott and Roberts, PLLC, 1000 North Hurstbourne Parkway, Louisville, Ky. 40223

Chris Brown, BTM Engineering, 3001 Taylor Springs Drive, Louisville, Ky. 40220

Summary of testimony of those in favor:

02:32:17 Mr. Talbott presented on behalf of the applicant.

02:47:10 Mr. Chris Brown provided some details about the proposed drainage plan for the development.

02:49:34 Mr. Talbott resumed testimony and showed elevations of the proposed building. Commissioner Carlson said at LD&T he asked for a binding element regarding the times the generator would be tested. Mr. Talbott said a binding element was not

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done, but it's used once a week at 8:15 a.m. to 8:45 a.m. (as a maximum time). A binding element will be fine for this committed time. Commissioner Carlson said the 2nd binding element deals with larger caliper evergreens being planted. Mr. Talbott said they committed to the trees being 8 to 10 feet in height, but the caliper was not discussed. Also, the bigger the tree, the more undergrowth has to be removed and a lot of the neighbors wanted to keep the undergrowth.

The following spoke in opposition to this request:

Leslie Weller, 9110 Satinwood Court, Louisville, Ky.

Summary of testimony of those in opposition:

02:57:42 Ms. Weller stated she is concerned about the vagueness of the binding elements in regards to maintenance and preservation of the trees. Also, the buffering needs to provide as much privacy from the development as possible.

Deliberation

03:00:18 Commissioner Howard said the proposal will not have an adverse impact on the neighborhood.

Commissioner Carlson said normally sidewalks are good for safety reasons, but not in this case. The applicant has agreed to specific testing times for the generators as well as 8-10 feet evergreens and buffering. Mr. Dock read the binding elements as follows: 1. Evergreen plantings at the rear of the subject site shall be installed at a height of no less than 8 to 10 feet. 2. Generator testing shall not occur prior to 8:00 a.m. and no later than 10:00 a.m. Monday through Friday. No testing shall be permitted on the weekends and all testing shall be in accordance with the manufacturer's guidelines and any applicable codes.

Commissioner Brown stated he agrees with the sidewalk waiver. At some point pedestrian accommodations will need to be provided at the interchange but will be done as a whole project, not this one site.

Commissioner Lewis said it's a beautiful development plan and building.

Commissioners Peterson, Robinson and Daniels agree with the other commissioners.

Chair Jarboe agrees and the binding elements will be added onto the development plan.

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An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Zoning Change from R-4 to OR-3

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Cornerstone 2020 Staff Analysis, testimony heard today and the Applicant's Justification was adopted.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal expands an existing area of commercial and office center; the district requested is limited in intensity; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because the proposal will not create a new center and is located in the Neighborhood form district; the proposal demonstrates an efficient use of land through the provision of minimum parking requirements, drainage facilities, and office user; the existing center including this expansion has a variety of zoning districts promoting mixed-use; the proposed office district allows for a variety of services to be provided for an individual or multiple entities within an area of commercial and office activity; the proposal would be the largest development in this small activity area and includes outdoor features for employees, landscaping, and compatible architecture with the area; 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; the proposal is designed to share utility hookups and service entrances with adjacent developments, and utility lines are placed underground in common easements; the proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities as connections are made to an existing pedestrian network and cross-connectivity is provided for multiple modes; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because the proposed building materials increase the new development's compatibility as the proposed rendering indicates a variation of material and heights that provide character to the small activity center; the proposal does not constitute a non-residential expansion into an existing residential area as it is located at the intersection of an expressway and collector level roadway and connected with adjacent non-residential uses; the proposal does not appear to have any significant odors or emissions; traffic will not impact existing communities given the proximity to a major interstate along a collector road; Lighting will be complaint with LDC 4.1.3; the

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intensity of the proposed district is consistent with adjacent commercial and office development; the proposal provides appropriate transitions between uses that are substantially different in scale and intensity as required setbacks and buffers are provided at the rear; the proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another as required setbacks and buffers are provided at the rear and the architecture of the proposed develop is attractive and enhances the aesthetic character of the area; setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards as the proposed development as demonstrated in the applicant's rendering shows a variation of material and heights that benefits to the character of the area; parking, loading and delivery areas located adjacent to residential areas are designed to minimize adverse impacts as required setbacks and buffers are provided at the rear; 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 as ILA is provided and the required parkway buffer is being provided; signs will be in compliance with LDC Ch. 8; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Open Space guideline because Highview neighborhood plan calls for public/private open space to be integrated into a development site. Terraces on the second and third floors of the development have been indicated on the development plan that conforms to this recommendation; Highview neighborhood plan calls for public/private open space to be integrated into a development site. Terraces on the second and third floors of the development have been indicated on the development plan that conforms to this recommendation; the proposal integrates natural features into the pattern of development as required TCCA is being provided; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Natural Areas and Scenic Historic Resources guideline because the proposal respects the natural features of the site through the provision of TCCA at the perimeter of the property; the site is vacant; The development appears to avoid wet or highly permeable soils, severe, steep or unstable slopes with the potential for severe erosion; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Economic Growth and Sustainability guideline because the subject site is located at the intersection of a collector and limited access highway; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation guideline because 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,

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contribution of money, or other means; the proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation as pedestrian and cross-connectivity is provided; the proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands as cross-connectivity is provided; the proposal includes the dedication of rights-of-way for street, transit corridors, bikeway and walkway facilities within or abutting the development; the proposal includes adequate parking spaces to support the use; the proposal provides for joint and cross access through the development and to connect to adjacent development sites; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Transportation Facility Design guideline because no stub roadways are needed; access to the site is form a collector roadway; the site appropriately links to the abutting development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development as pedestrian connections are being made; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding and Stormwater guideline because the proposal's drainage plans have been approved by MSD; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because the proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because no natural corridors appear to be present; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Infrastructure guideline because the proposal is located in an area served by existing utilities or planned for utilities; the proposal has access to an adequate supply of potable water and water for fire-fighting purposes; the proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams.

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets Community Form guideline because this application complies with this Guideline because the Suburban Neighborhood Form District is characterized by *predominantly*

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residential uses but that also includes, at appropriate locations, a mixture of uses, such as offices, retail shops, restaurants and services to serve the residential areas; the proposed use is at a scale appropriate for the area, with significant landscaping buffers and other screening for the adjacent residential areas; the detailed district development plan (the “DDDP”) is in an appropriate location along the major Smyrna Parkway corridor; this office development is precisely what is contemplated by the Neighborhood Form District, which will provide much improved buffering from the higher intensity use and the busy Smyrna Parkway corridor; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Centers guideline because this application complies with the Intents and applicable Policies 1, 2, 4, 5, 7, 9, 11, 13, 14 and 15 of the Guideline as follows. The overall site subject of this rezoning looks and feels very much like the balance of the existing CN and OR3 zoned properties to the south which are the current corporate offices and branch bank for the applicant, L&N Federal Credit Union to compliment and complete its corporate campus; it creates a focal point in the area, connecting the corner of the Gene Snyder Freeway and the collector, Smyrna Parkway, with pedestrian connections to the residential areas, while at the same time provided appropriate buffers to mitigate any impacts; utilities are available at property lines and this has proven to be a good location for offices because of its location on a primary collector immediately adjacent to the Gene Snyder Expressway, with significant intensity of residential uses and commercial uses south of the site. Locating this corporate office building as proposed on this site reduces vehicle miles traveled and further improves the vitality of the area, particularly on the undeveloped lots next to the Gene Snyder Expressway; and the proposed development serves to revitalize a portion of the Smyrna Parkway and immediate surroundings that are presently underutilized and in need of rejuvenation; and it conforms to a “neighborhood center” in that this area along Smyrna Parkway acts currently and will continue to compliment the area of intensity for the commercial “center” where it belongs along Smyrna Parkway; and further it is appropriately located on a primary collector and the Gene Snyder Expressway; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Compatibility guideline because this application complies with the Intents and applicable Policies 1, 2, 4, 5, 6, 7, 8, 9, 11,12, 21, 22, 23, 24, 28 and 29 of this Guideline as follows. As referenced above, the overall site subject of this rezoning looks and feels very much like the balance of the existing CN and OR3 zoned properties to the south which are the current corporate offices and branch bank for the applicant, L&N Federal Credit Union, to compliment and complete its corporate campus in a compatible style, the only difference being that the style upgrades the quality by a significant degree; the proposed building is residential in style and design, two stories in height of brick construction. In addition to these aesthetic factors, office building does

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not create odors or noise. Lighting will be directed down and away from nearby residential properties and will be in compliance with lighting restrictions of the Land Development Code (LDC); and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Economic Growth and Sustainability guideline because this application complies with the Intents and applicable Policies 2, 3, 6, and 7 of this Guideline as follows. As referenced above, this is a vacant site; Smyrna Parkway has proven to be a great location for the corporate office building because it is a center of fairly intense residential and commercial activity. Therefore, redeveloping this overall site will lead to a continuing revitalization of Smyrna Parkway, south of the Gene Snyder; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Circulation; Transportation Facility Design; and Bicycle, Pedestrian and Transit guidelines because this application complies with the Intents and applicable Policies 1, 2, 3, 4, 6, 10, 11, 12, 13, 14, 16 and 18 of Guideline 7; Policies 7, 9, 10 and 11 of Guideline 8; and Policies 1, 2, 3 and 4 of Guideline 9 as follows. The office development will have a shared point of access from the existing curb cut for the existing L&N Federal Credit Union branch bank and office from the adjoining site to the south. It provides for excellent cross-connectivity and helps address issues of traffic congestion at peak hours. Furthermore, the detailed district development plan (DDDP) accompanying this zoning application must receive the preliminary stamps of approval from Metro Transportation Planning and Public Works, prior to docketing of this application for any Planning Commission public review. Those agency reviews will look at the proposed points of access and connections as well as corner clearances, site distances, median opening and adequacy of parking. Transit is available in the area and sidewalks will be provided where required; also bicycle parking will be accommodated; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Flooding, Stormwater guideline because this application complies with Intents and applicable Policies 1, 3, 6, 7, 10 and 11 of Guideline 10 as follows. Post-development rates of runoff will not exceed pre-development conditions. Additionally, because area residents have advised the applicant of drainage problems in the area, the applicant has promised to have his engineer review these drainage conditions and advise MSD of them so as to determine whether reasonable repairs and/or mitigation measures can be made to existing storm water systems in association with this proposed office development; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Water Quality guideline because this application complies with the Intents and applicable Policies 1, 3 and 5 of this Guideline as follows.

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At time of construction, the developer of this site will be required to comply with MSD's soil erosion and sedimentation control regulations. Also, new water quality standards have been implemented by MSD which must be addressed as well at time of construction plan approval; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Air Quality guideline because this application complies with the Intents and applicable Policies 1, 2, 3, 6, 7, 8 and 9 of this Guideline as follows. As referenced above, this proposed corporation office is basically an expansion of the existing branch bank, call center and offices located south of this proposed site. Thus reducing vehicle miles traveled for people already engaged in commerce and residing in this area. Reduced miles traveled leads to improved air quality; and

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Landscape Character guideline because this application complies with the Intents and applicable Policies 1, 2, 4, 5 and 6 of this Guideline as follows. The LDC requires tree canopies as well as both perimeter and interior landscaping of all sites. This application will comply with LDC standards, and will provide screening and buffering as promised nearby residents as explained above.

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council the change in zoning from R-4, Single Family Residential to OR-3, Office Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Peterson, Robinson and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes

On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the standard of Review and Staff Analysis, testimony heard today and the Applicant's Justification was adopted.

Variances

- 1. Variance from Land Development Code (LDC), section 5.3.1.C.5 to allow parking encroachments into 30' non-res to res setback (north P/L) as shown on the development plan**

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WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the encroachment does not impact sight lines for pedestrian or vehicular traffic or impact natural features; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the encroachment is minimal is does not impact surrounding uses; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the encroachment does not impact sight lines for pedestrian or vehicular traffic or impact natural features; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the variance is minimal and needed to meet minimum parking requirements; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the encroachment is necessitated by the full application of the setback along the frontage and rear of the property and the variance at this location does not impact abutting users; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as they would not be able to meet parking minimums without the requested relief; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred; and

WHEREAS, the variance will not adversely affect the public health, safety or welfare because only a very small portion of the pavement in this area encroaches into the setback and there is still a very large distance between this proposed pavement and the neighboring residence along Lantana Drive; and

WHEREAS, the variance will not alter the essential character of the general vicinity because the pavement is located along the rear portion of the property, away from Smyrna Parkway and will not cause a negative impact with the neighbor to the north. Screening and buffering will be preserved and/or provided through plantings or a fence; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because it will not cause any unsafe condition and the impact of the variance will be mitigated through screening and buffering; and

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WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this is the minimal amount required for the proposed office to fit on the site and provide vehicular maneuvering; and

WHEREAS, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because of the very small portion of the site in the area requested. Additionally, the encroachment is in large part caused by the non-uniform shape of the property as it approaches the entrance to the Gene Snyder Expressway; and

WHEREAS, the Louisville Metro Planning Commission finds, 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 applicant is providing the minimum number of parking spaces allowed and the variance is necessary because of the unique shape of the lot in this area; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation because this is the only potential use of this site at this time, the commercial office use is appropriate at this area Smyrna Pkwy where it is next to the Gene Snyder Expressway, and because of the unique shape of the property.

2. Variance from LDC, section 5.3.1.C.5 to allow building to exceed maximum 95' setback as shown on the development plan

WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the increased setback does not impact sight lines for pedestrian or vehicular traffic and allows for necessary buffers to be met along the parkway and minimum parking standards; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the area displays a variation in setback; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the required rear buffer and setback adjacent to residential uses is being provided; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the variance is the minimum needed to allow for the parking and the application of more significant setback and buffering requirements; and

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WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the increased setback is necessitated by the parkway buffer and minimum parking standards, and the variance at this location does not impact abutting users; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as they would not be able to meet parking minimums without the requested relief; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred; and

WHEREAS, the variance will not adversely affect the public health, safety or welfare because it will allow for the last parcel to be developed in this small corridor to be developed in the same pattern as the first, it will allow for the access easement that benefits both the existing office and branch bank to the south and the proposed office building to the north to continue in force while allowing this property to be developed in a way that complies with the parkway buffer requirements as well. Moreover, the development is largely dictated by the unique shape of the property and the multiple differing uses on each side of the property; and

WHEREAS, the variance will not alter the essential character of the general vicinity because for the reasons mentioned above and because this area is not residential being along the primary collector of Smyrna Pkwy. and abutting the Gene Snyder Expressway; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because the variance request is slight, it will allow the proposed office building to comply with the intent of the required parkway buffer and it will allow sufficient parking and maneuvering in front of the office building in a practical and rational way. If the variance is not granted, the site cannot be developed in the pattern proposed and would significantly detract from the significant design applications incorporated into the project, which will be an asset to the area and greatly improve the aesthetics of along Smyrna Parkway next to the Gene Snyder Expressway; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because in this case, context, including legally binding easement agreements, limits the pattern of development on the subject property so that development can either occur with the requested variance or not occur at all due to the unique shape and configuration of the property and limitations because of surrounding property; and

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WHEREAS, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because among other reasons, the subject property is sandwiched between the Gene Snyder Expressway to the north, the existing L&N branch bank and office to the south, residential to the east and Smyrna Parkway to the west. The existing branch bank and office development to the south both contain parking in the front of the buildings on site. The pattern of parking in the front of buildings has therefore been set in this area and this project attempts to create consistency with while also improving the character of the area. Also, there is a 30' parkway buffer required between the right of way of Smyrna Parkway and the parking area and a 30' shared access easement that benefits both the existing branch bank and office center, which, when combined with the pattern of development in the area makes contextually compatible development impossible without the requested variance; and

WHEREAS, the Louisville Metro Planning Commission finds, 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 applicant would create a development that would preclude the location of the corporate offices at the very least and break a well-defined pattern of development in this area; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather, the applicant is attempting to develop in accordance with the pattern created by the unique shape and location of the property and the surrounding development.

3. Variance from LDC, section 5.3.1.C.5 to allow building to exceed maximum height of 30'

WHEREAS, the requested variance will not adversely affect the public health, safety or welfare as the increased height does not impact sight lines for vehicle or pedestrian traffic in the area; and

WHEREAS, the requested variance will not alter the essential character of the general vicinity as the proposed rendering indicates a variation of material and heights that provide character to the small activity center. The subject site is located in an existing activity center/node. A clear boundary between residential and non-residential development is defined and the proposed development orients itself to the higher classification roadway which is at the intersection of the expressway; and

WHEREAS, the requested variance will not cause a hazard or nuisance to the public as the proposed renderings display a variation of material, heights, and amenities and all

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required setbacks and buffers are being provided to the rear of the subject site adjacent to residential districts; and

WHEREAS, the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed height is accompanied by attractive architecture that provides character to the small activity center; and

WHEREAS, the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the site is located at the intersection of an expressway and collector level roadway and the user demands the office space proposed which cannot be spread across the parcel due to its size; and

WHEREAS, the Louisville Metro Planning Commission finds, the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the proposed building material are compatible with the area; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred; and

WHEREAS, the variance will not adversely affect the public health, safety or welfare because this is an aesthetic/nuisance issue, not a public health, safety or welfare one. Further, the building is appropriate in the location along the primary collector or Smyrna Pkwy and the property will be significantly buffered to reduce adverse impacts to the residential properties to the east with fencing, landscaping, the retention of a significant 50 foot depth of mature trees already separating the project from the residences; and

WHEREAS, the variance will not alter the essential character of the general vicinity because the significant buffering with a 50 foot buffer of mature trees, addition of landscaping, and incorporation of a fence inside the property line of the project; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because there is no safety issue involved in this height variance. Moreover, this slightly taller than Code-allowed building adjoins the Gene Snyder Freeway to the north, a primary collector of Smyrna Parkway to the west, and the existing L&N office and branch bank to the south, none of which will be adversely impacted by a minor additional height. The height does allow the property to be a tremendous aesthetic asset to the area by improving the architecture of the building and allowing room for the minimum parking and increasing the landscaping buffers with the residential properties; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this is the minimal amount necessary

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for the proposed office to fit on the uniquely shaped site, provide necessary room for vehicular maneuvering, and still permitting the necessary scale of the building; and

WHEREAS, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because this slightly taller than Code-allowed building adjoins the Gene Snyder Freeway to the north, existing L&N office and branch bank south, a primary collector/parkway west, none of which will be adversely impacted by a few additional feet of height, but rather make this property unique and appropriate for the requested variance; and

WHEREAS, the Louisville Metro Planning Commission finds, 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 variance is necessary because of the unique shape of the lot in this area and the surrounding properties and uses, such as the Gene Snyder Expressway and Smyrna Pkwy.; and

WHEREAS, the Louisville Metro Planning Commission further finds the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation, but rather are a result of the practical circumstances of this corporate office's space needs, including height, especially in relationship to a location such as this one adjoining an interstate, another commercial uses and a parkway.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE**
1. Variance from Land Development Code (LDC), section 5.3.1.C.5 to allow parking encroachments into 30 foot non-residential to residential setback (north P/L) as shown on the development plan 2. Variance from LDC, section 5.3.1.C.5 to allow building to exceed maximum 95 foot setback as shown on the development plan and 3. Variance from LDC, section 5.3.1.C.5 to allow building to exceed height allowed of 30 feet and a maximum height of 49.5 feet.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Peterson, Robinson and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes

Waiver of LDC, section 5.8.1 to not provide required sidewalk along Smyrna Parkway

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On a motion by Commissioner Carlson, seconded by Commissioner Howard, the following resolution based on the Standard of Review and Staff Analysis, testimony heard today and the Applicant's Justification was adopted.

WHEREAS, the waiver will not adversely affect adjacent property owners as pedestrian connections are being provided consistently with adjacent development; and

WHEREAS, the Louisville Metro Planning Commission finds, Cornerstone 2020 calls for the provision, 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 proposed development provides appropriate connectivity for pedestrians which are consistent with the development pattern of adjacent development; and

WHEREAS, the Louisville Metro Planning Commission further finds the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the expressway severely restricts pedestrian movement and the full application of the sidewalk requirements would create a disconnected sidewalk form adjacent development.

WHEREAS, the waiver will not adversely affect adjacent property owners because this site is at the corner of Smyrna Parkway and the on-ramp to 1-265 East. Moreover, the area of the requested waiver consists of unsafe pedestrian conditions going toward the 1-265 on-ramp, which is an existing condition, not created by the development; and

WHEREAS, the waiver will not violate the Comprehensive Plan for all the reasons set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the original rezoning application; and

WHEREAS, the Louisville Metro Planning Commission finds, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because sidewalks should only be located where thoughtfully designed with public safety in mind, and the construction of the sidewalks would not serve a useful purpose; and

WHEREAS, the Louisville Metro Planning Commission further finds strict application of the provisions of the regulation would deprive the applicant of a reasonable use of the land or would create an unnecessary hardship on the applicant because it would be building sidewalks in areas where there is no practical possibility of use and which would encourage unsafe conditions where pedestrians could attempt to cross Smyrna Pkwy. at a particularly busy area next to the Gene Snyder Expressway.

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CASE NO. 18ZONE1045

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** a waiver of the Land Development Code, section 5.8.1 to not provide the required sidewalk along Smyrna Parkway.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Peterson, Robinson and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes

Detailed District Development Plan and Binding Elements

On a motion by Commissioner Carlson, seconded by Commissioner Robinson, the following resolution based on the Standard of Review and Staff Analysis and testimony heard today was adopted.

WHEREAS, the proposed development provides tree preservation along its perimeter and does not contain any features of historic significance; and

WHEREAS, provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community are provided as connections are made to an existing pedestrian network and cross-connectivity is provided for multiple modes; and

WHEREAS, the proposal provides open space that helps meet the needs of the proposed development and community, as well as the Highview Neighborhood Plan as terraces on the second and third floors of the development have been indicated on the development plan; and

WHEREAS, the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community; and

WHEREAS, the Louisville Metro Planning Commission finds, the proposed development is compatible with the existing and projected future development of the area as the proposed building materials increase the new development's compatibility. The proposed rendering indicates a variation of material and heights that provide character to the small activity center. Setbacks, lot dimensions and building heights are also compatible. Appropriate transitions are also provided between uses that are

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substantially different in scale and intensity as required setbacks and buffers are provided at the rear; and

WHEREAS, the Louisville Metro Planning Commission further finds the proposed development plan conforms to the Comprehensive Plan as demonstrated in the Staff Analysis for Change in zoning.

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the Detailed District Development Plan **SUBJECT** to the following Binding Elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits and Transportation Planning Review and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining

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property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services

4. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the November 15, 2018 Planning Commission meeting.
7. Generator testing shall not occur before 8:00 a.m. and no later than 10:00 a.m. Monday through Friday and all testing shall be for the minimum time required by the applicable codes and manufacturers recommendations.
8. Evergreen plantings at the rear of the subject site shall be installed at a height of 8-10 feet.

The vote was as follows:

YES: Commissioners Brown, Carlson, Daniels, Howard, Lewis, Peterson, Robinson and Jarboe

NOT PRESENT AND NOT VOTING: Commissioners Smith and Tomes