

REVISED LDC WAIVER JUSTIFICATION STATEMENT

LAND DEVELOPMENT CODE SECTION 6.3.5.I SUBMITTED IN CONJUNCTION WITH 18MINORPLAT1136 7505 BARDSTOWN ROAD (AKA 9803 WINGFIELD ROAD)

February 18, 2019

To address a very unique situation with a distinct factual history, the applicant, Southpointe Partners LLC, is requesting a waiver of Section 6.3.5.I of the Land Development Code (LDC) to alleviate the limitation on length of a street name assigned to a private street, thereby permitting the applicant to name the principal accessway to its regional commercial center – a private street – a name that unequivocally identifies with the subject regional commercial center, Southpointe Commons. Suffice it to say, this is *not* a precedent-setting waiver request.

While the applicant fully believes the waiver being requested is justified, as set forth herein, the applicant hereby sets forth and preserves its position that LDC Section 6.3.5, including subsections 6.3.5.G and 6.3.5.I, does not apply in this specific instance because this matter involves the naming of a private street, which does not require strict adherence to LDC 6.3.5. LDC 6.3.5.A states that, “[a]ll public streets shall be named *in accordance with the provisions of this section.*” In the very next sentence, LDC 6.3.5.A further states, “[a]ll private streets ... providing the principal means of access to ... commercial ... *shall be named.*” Clearly, the LDC distinguishes between the naming of public and private streets, stating that private streets must be named, *but not* named in accordance with the provisions of this section, as it does for public streets. Indeed, the LDC makes a distinction for naming public streets versus naming private streets. As such, applicant reserves its argument that the naming of private streets in Louisville Metro does not require strict compliance with LDC section 6.3.5, including the limitation of a street name to sixteen characters. Nevertheless, considering the unique circumstances associated with this matter, applicant believes the waiver request to name its private street “Southpointe Commons Boulevard” meets the applicable criteria and warrants approval.

LDC Section 6.3.5.I instructs that new street names should not be longer than 16 characters, excluding direction and street type (drive, BLVD, etc.). To eliminate confusion and potential delay of emergency response time, LDC Section 6.3.5.G disallows duplications of existing street names to occur. In 2010, under Case #11640, the subject property was rezoned to C2, Commercial and Regional Center Form and the associated general development plan approved alongside the zoning request depicted “Southpointe Boulevard” as the assigned name to the primary access into the regional commercial center, which is located in the southeastern node of the Bardstown Road and Gene Snyder Freeway interchange. Moreover, through the zoning approval process, eight (8) of the thirty-four (34) binding elements attached to the approved development plan directly referenced (and still do) “SouthPointe Boulevard” as the name of the primary street serving the regional center. Another street on the approved

development plan is depicted as "Access Road A," which, when completed, will be a connector road to Brentlinger Lane and serve as secondary access to Bates Elementary. As part of zoning approval, developer was responsible for dedication of land for Access Road A as well as its construction from SouthPointe Boulevard to the southern property line of Bates Elementary. Unlike SouthPointe Boulevard, however, "Access Road A" was depicted on the development plan because the street name for that road had yet to be identified. Following Metro Council's approval of that zoning case, Council's zoning ordinance was appealed and held up in litigation for a number of years until it was eventually dismissed by the Kentucky courts.

More recently, on November 15, 2017, the Development Review Committee (DRC) of the Planning Commission, under CASE 17DEVPLAN1155, approved general/detailed district development plan for Phase 1 of Southpointe Commons, whereon said plan "Southpointe Boulevard" was again depicted as the street name for principal means of access to the regional commercial center. On January 3, 2018, the DRC once again took action on CASE 17DEVPLAN1155 to approve changes to the general/detailed district development plan for Phase 1 of Southpointe Commons. Throughout agency reviews of both CASE 17DEVPLAN1155 requests, Louisville Metro Planning and Design Services and Louisville Metro Public Works referenced Southpointe Boulevard in their respective comments. Unless mistaken, there is no separate application to request street name approval as part of a submittal for approval of a general or detailed development plan. In fact, no specific process is provided within the LDC as to how an applicant seeks street name approval in conjunction with submittal of a general or detailed development plan. Given this particular history of numerous parties referencing the subject street as Southpointe Boulevard and having numerous development plans depicting Southpointe Boulevard as said subject street, in what applicant believed was in accordance with LDC 6.3.5, it was reasonable for the applicant to believe that Southpointe Boulevard was indeed the approved street name.

Today, the applicant has proposed a minor plat for phase one of the regional center property whereon it consolidates and subdivides one tract into three tracts (18MINORPLAT1136). Despite development plan approvals in 2010, 2017 and 2018, the applicant was recently informed that, pursuant to LDC 6.3.5.G, "Southpointe Boulevard" was not an available street name because "Southpoint Drive" had already been assigned to another private street within Louisville Metro. Because applicant has relied on Southpointe Boulevard as the name of its primary accessway to its regional commercial center, especially as it relates to branding of the center that the applicant has negotiated with future tenants, and to remove all future confusion and any delays in emergency response time, the applicant requests narrow relief from LDC Section 6.3.5.I to address a particular private street naming issue, the history of which provides justification for said requested relief, so that "Southpointe Commons Boulevard" can be assigned to the primary private accessway into the Southpointe Commons regional center. As more fully explained herein, the request for a waiver of Section 6.3.5.I of the LDC meets the criteria for granting waivers and, therefore, should be approved.

The requested waiver will only positively affect adjacent property owners because the waiver relief will allow for a street name sign that identifies precisely with the regional commercial center to which it provides principal access. Fire Marshal Joseph Elstone, with the Fire Prevention Bureau of the Fern Creek Fire Protection District – the Division responsible for

providing fire protection to the Property – supports the applicant’s street name request and has written a letter stating the same. If necessary, the applicant will proportionally increase the size of the street sign so that it increases visibility and provides easily readable characters. Thus, clearly identifying the primary accessway into a regional commercial center, especially where the accessway intersects with Bardstown Road – a major arterial, near the on-ramp to the Gene Snyder Freeway – will benefit drivers and emergency response, thereby also benefitting adjacent property owners. Almost identical situations exist at Commerce Crossings Boulevard and Preston Highway, an intersection within sight of the interchange of Preston and the Gene Snyder Freeway, and Brookridge Village Boulevard and Bardstown Road, which, fittingly, is located on the other side of the Gene Snyder Freeway from Southpointe Commons. Like Commerce Crossing BLVD and Brookridge Village BLVD, Southpointe Commons Boulevard is an appropriate street name for the primary accessway into Southpointe Commons lifestyle center, for there will be zero confusion for drivers when looking for the correct direction to take when seeking their respective destination.

There are no goals, objectives nor policies that the applicant’s waiver request will violate. Rather, as explained above, applicant’s waiver request, if approved, will assist in better identifying the accessway to the Southpointe Commons regional center, eliminating confusion for drivers and emergency response. Given that numerous examples of street names longer than sixteen characters currently exist on streets in Louisville Metro, including on the opposite side of the Gene Snyder Freeway from Southpointe Commons, relief from LDC Section 6.3.5.I for the subject property will not run afoul of the Plan 2040, and will not create a visual intrusion along Bardstown Road or on Southpointe Commons Boulevard. Accordingly, the requested waiver will not violate Plan 2040, Comprehensive Plan for Louisville Metro.

Yes, the specific extent of waiver of the regulation being requested here – allowing two additional characters to the private street sign length limitation – is the precise relief necessary to the applicant. Moreover, the strict application of the current zoning regulations would deprive the applicant of the reasonable use of the land and create an unnecessary hardship because the applicant had relied upon previously-approved development plans, the approval processes in which the applicant reasonably believed included the approval of the street name “Southpointe Boulevard” in accordance with LDC 6.3.5.D.5, as “Southpointe Boulevard” was depicted on those three approved development plans, only to be informed years later that said street name was unavailable because “Southpoint Drive” had already been assigned. Given the language of LDC 6.3.5.D, and the void of clear instruction therein, it is reasonable for any applicant who specifically depicts a particular street name on a general/detailed development plan and, subsequently, said plan, replete with binding elements that directly refer to said very street name, is then approved in one iteration or another three different times to expect that that street name was then also approved as part of the development plan approval. Provided that the appellant will increase the size of the private street sign to accommodate two extra characters thereon and be clearly readable, it would be an unnecessary hardship for the applicant if the principal accessway serving a large regional commercial center located at the corner of Bardstown Road and the Gene Snyder Freeway was disallowed from specifically identifying with it by name.