

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.

1. **Explain how the variance will not adversely affect the public health, safety or welfare.**

See attached.

2. **Explain how the variance will not alter the essential character of the general vicinity.**

See attached.

3. **Explain how the variance will not cause a hazard or a nuisance to the public.**

See attached.

4. **Explain how the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.**

See attached.

Additional consideration:

1. **Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity (please specify/identify).**

See attached.

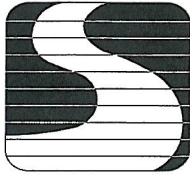
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2. **Explain how the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship.**

See attached.

3. **Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought?**

See attached.



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VARIANCE JUSTIFICATION
Old Henry Crossing Lot 11C & D
APPLICANT: OREO 2, LLC
LDC CHAPTER 5.3.1.C.5.

September 12, 2014
 Case # _____

Old Henry Crossing is a mixed use office, retail and residential development located just east of the Old Henry Parkway and I-265 Interchange. Several parcels have been developed over the years with the completion of Jewish Medical Center Northeast, two medical office buildings along Bush Farm Road, retail shops at the southwest corner of Terra Crossing Boulevard and Old Henry Parkway, a mixed use building on the south side of Old Henry Parkway on High Wickham Place, nine residential units at Hamilton Springs and currently under construction is a mixed use building adjacent to the subject property. The subject property is located in the southern corner of the property with the quarry to the east, Stopher Elementary School to the south, and Lake Forest Highlands to the east. (See Exhibit 'A' below)

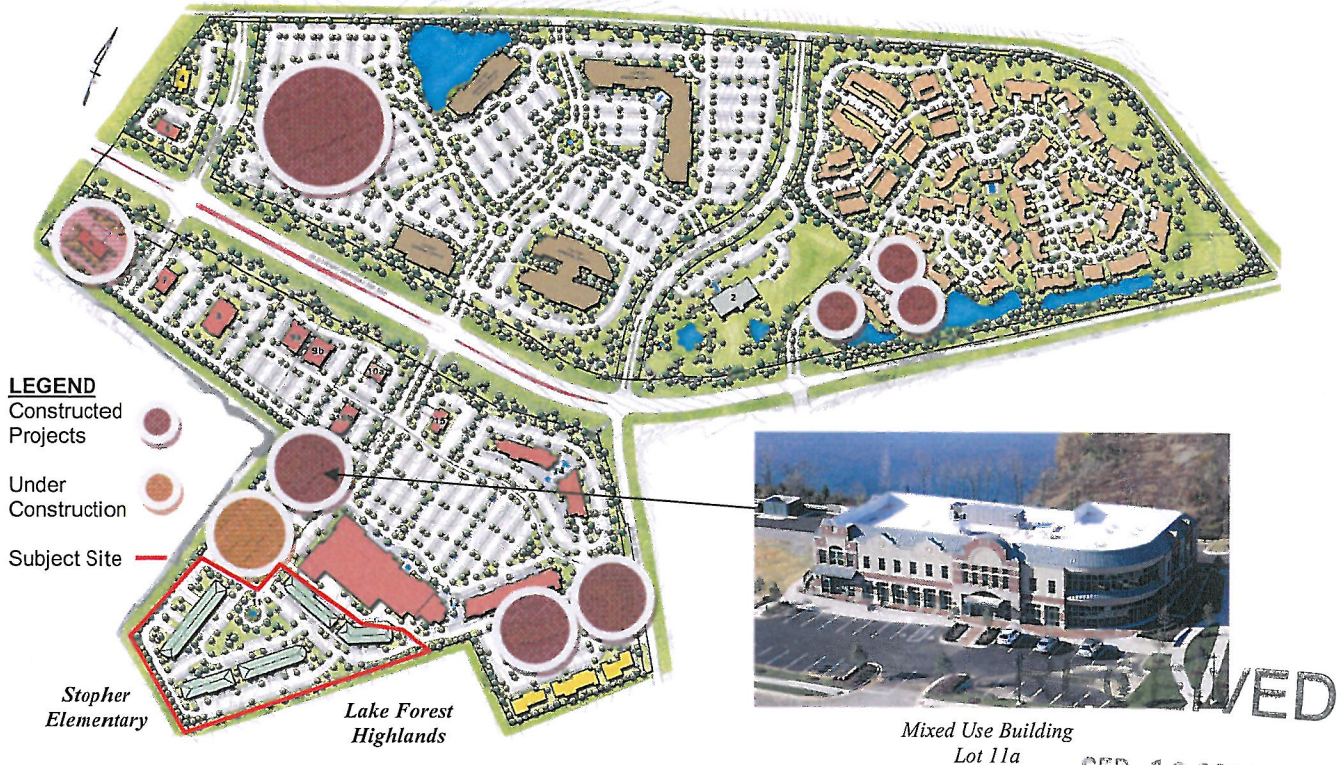


Exhibit 'A' - Old Henry Crossing General Plan.

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PATRICK R. DOMINIK, Landscape Architect • DAVID J. SEDLAR, Civil Engineer • DENNIS L. KRAUS, Land Surveyor
 ERIC W. PENLAND, Civil Engineer • JOSEPH S. MARSHALL, Civil Engineer

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The intent of this proposal is to continue the development of the Old Henry Crossing general plan which began over 14 years ago. The property was rough graded and infrastructure installed to lure development but with the collapse of the economy the property has sat vacant. Now development is picking up and the applicant has renewed interest from businesses in the development. As Exhibit 'A' above shows there were five buildings situated around a central green in this area creating a campus like feel with both parking in front and behind the buildings. The applicant has maintained the campus like feel with the proposed plan (see Exhibit 'B' below) but consolidated the five buildings into three buildings and situated them around a central green with parking distributed around the buildings. The buildings were pulled away from the residential community and school to the eastern and southern boundaries of the property. The internal roadway that leads from Bush Farm Road to this area of the development has been shifted north to allow better distribution of parking among the buildings, to allow building-five to move north and better balance the entry drive with the new building to the west, and create a strong terminus for the internal roadway onto the new building, which is under construction.

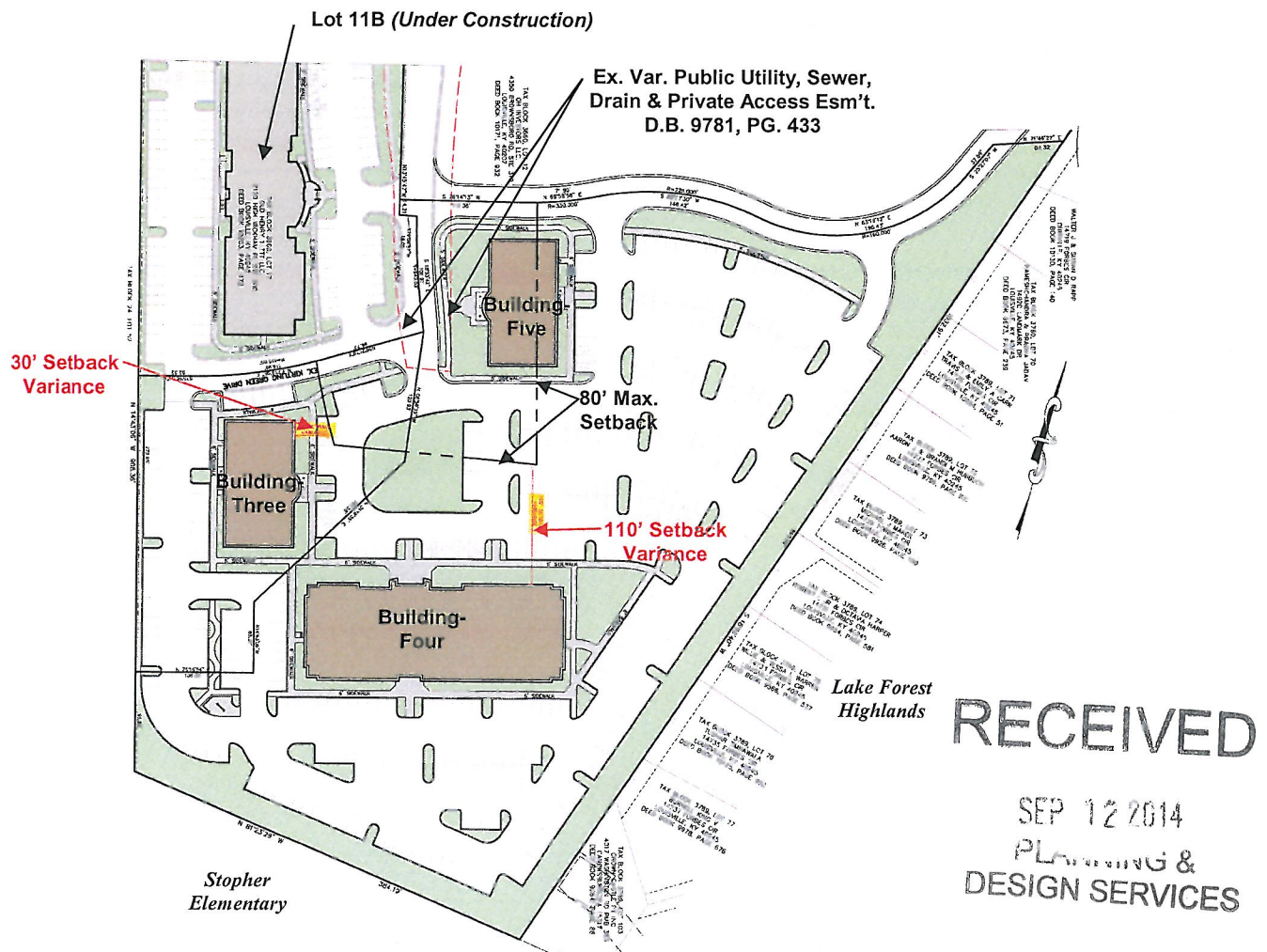


Exhibit 'B' – Proposed Development Plan & Setbacks.

Under the current Metropolitan Land Development Code this area is in a Neighborhood Form District. The Neighborhood Form District allows a maximum building setback for buildings of this size not exceed 80' from the right of way or access easement. In this case a private access easement terminates at green turn-around area. The setback requirements are not conducive to creating a campus like setting for office buildings without placing easements or public roadways within the campus which reduces the flexibility for placement of buildings. As Exhibit 'B' illustrates two of the buildings are beyond the 80' setback from this easement. The applicant is requesting a variance from LDC 5.3.1.C.5, to allow Building-three to exceed the maximum setback by 30' and to allow Building-four to exceed the maximum setback by 110'. As mentioned above, the proposed plan follows the approved general plan but the current setback requirements prevent the development of a campus like office development without the request for such distances from the maximum allowable setback. Per Comprehensive Plan – Guideline 3.1 the proposed plan is compatible with the surrounding development and approved general plan and per Guideline 6.6 is an investment in the continued development of an already approved and partially built mixed use activity center. The applicant's proposal provides the 25' Landscape Buffer that will be constructed along the residential and school property lines per Guideline 3.9 & LDC 10.2.4. The applicant proposes to install Type A trees at a rate of 1 tree per 20 linear feet of buffer and a variable height berm to create a 8' height screen between the subject property and the adjacent residential and school properties. In addition, the applicant has shifted the buildings further away from the adjacent properties and exceeds the requirements for interior landscape areas.

In order to meet the intent of the design for this retail development, the applicant is requesting the following variance:

1. Explain how the variance:

a) Will not adversely affect the public health, safety or welfare.

This variance is internal to the development and there are no through roads so it will have no bearing on adjacent property owners. Allowing the buildings to exceed the maximum setback would follow the intentions of the approved general plan for Old Henry Crossing.

b) Will not alter the essential character of the general vicinity.

No. As stated above, this is an approved planned mixed use center and the applicant's proposal follows that plan. The applicant's proposal is compatible with the established pattern and is mitigating the additional setback & parking lot from the adjacent residential and school properties by shifting the buildings further away from these property lines and constructing a 25' Landscape Buffer that will include a variable height berm and large type A trees to create a screen between the two uses.

c) Will not cause a hazard or a nuisance to the public.

This variance will not cause a hazard or nuisance to the public. The intent of the regulations will still be met and a means for safe pedestrian and vehicular circulation is provided.

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d) Will not allow an unreasonable circumvention of the requirements of the zoning regulations.

No. The applicant is mitigating this variance by:

- Shifting the buildings further to the west and north away from the adjacent properties.
- Providing a 25' Landscape Buffer and proposes to install Type A trees at a rate of 1 tree per 20 linear feet of buffer and a variable height berm to create a 8' height screen between the subject property and the adjacent properties.
- Providing more interior landscape area than what is required.
- Providing a safe pedestrian connection from the overall development sidewalk to the principal structures.

Therefore, this variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

2. Additional consideration.

a) Explain how the variance arises from special circumstances, which do not generally apply to land in the general vicinity; (Please specify/identify)

This site is part of an approved general plan which is in the Neighborhood Form District. As Exhibit 'A' above illustrated much of the general plan included campus like office developments on both sides of Old Henry Parkway with retail along the southern frontage of Old Henry Parkway. The current Form District setbacks would cause many of these sites to request a variance of the maximum setback. See what the setback is for Lot 1a. The two buildings to the north of the subject site are setback 80' from the access easement but the lots are much smaller and constrained by their depth. The subject site is a much larger lot than these two adjacent lots to the north which allows the developer the opportunity to create the campus like feel the general plan intended for this area of the development. In order to provide the campus like office development the new buildings must setback from the maximum allowable setback of 80'.

b) Explain how 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.

The strict application of the regulation would:

- Cause the applicant to lose square footage and possible future tenants in order to provide the 80' maximum setback.
- Cause the applicant to lose the needed parking distribution surrounding the buildings that is desired by tenants leasing office space.
- Cause the applicant to redesign the site so that it is no longer consistent with the approved general plan.

Any of these would be an unnecessary hardship on the applicant.

c) Are the circumstances the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought.

This circumstance is due to a code requirement that is meant for smaller parcels and not conducive to larger parcels that are trying to create campus like office developments. These circumstances are in no way the result of actions taken by the applicant.

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