

**Board of Zoning Adjustment  
Staff Report**  
December 1, 2014



<b>Case Number(s):</b>	14Devplan1134
<b>Project Name:</b>	J.D. Nichols Parking Garage
<b>Location:</b>	220 S. Preston Street
<b>Owner(s):</b>	Nucleus: Kentucky's Life Science and Innovation Center, LLC.
<b>Applicant:</b>	Same
<b>Representative:</b>	Glenn Price, Frost Brown Todd LLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	4 – David Tandy
<b>Case Manager:</b>	<b>Latondra Yates, Planner II</b>

**REQUEST**

- Variances of Sec. 5.2.1.C.6 of the Land Development Code (LDC) that requires all corner lots within the Downtown Form District (DFD) to maintain a zero setback from the street wall for at least 50 feet from the intersection of S. Preston and E. Jefferson Streets. The requested setbacks are 24.5 ft., variances of 24.5 ft.
- Waiver of Section 5.5.1.B.1.b.iii. of the LDC to not provide the required 50% of the first floor façade to be developed for retail or office uses along S. Preston and E. Jefferson Streets.
- Revised Category 3 Plan for construction of a parking garage.

<b>Location</b>	<b>Requirement</b>	<b>Request</b>	<b>Variance</b>
<b>S. Preston St.</b>	0 ft.	24.5 ft.	24.5. ft.
<b>E. Jefferson St.</b>	0 ft.	24.5 ft.	24.5.ft.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

This case was continued at the November 17 and November 3 BOZA meetings.

The variances, waivers and Revised Category 3 Plan are for Phase II of what was previously called the Haymarket Research Park, then Nucleus Innovation Park- now, J. D. Nichols Campus for Innovation and Entrepreneurship - for construction of a 6-story, 122-ft. tall parking garage with approximately 832 spaces and a building footprint of approximately 49,416 sf.

The variance requests are to allow a decorative feature to be located at the corner. In lieu of retail or office, car charging stations and long and short-term bicycle storage are proposed near the corner along S. Preston St. The applicant has submitted elevations of the proposed building. The elevations meet building design standards that require vertical and horizontal rhythm, including use of columns, piers and window design/placement of similar architectural features no less than every 20 ft, no greater than 40 ft. to create vertical breaks at regular intervals; and a clear visual distinction between the ground floor and upper level floors using cornice lines, windows or similar architectural elements, varying in elevation no more than 36' from one building to the next. Principal entry doors are oriented toward the street and clearly identifiable through the use of architectural design elements.

There is no tree canopy requirement as there is a 100% reduction for developments in traditional form districts with FARs greater than 1.0. There is also no landscaping requirement as property perimeter LBAs are not required in the Downtown Form District, and there is no exposed vehicular use area requiring screening. The plan has a note stating that it will comply with the applicable LDC signage standards.

The Category 3 Plan, variances of the 0' setbacks along E. Market and S. Floyd Streets and waiver of the required 50% retail or office for Phase I were originally approved by BOZA under case Nos. 03-15364-11 and B-15370-11 for a mixed-use office building with parking garage, with a related DDRO review (Case No. 15363-EWD). Revisions to the Category 3 plan were approved under case No. 03-16271-11.

## **PREVIOUS CASES ON SITE**

### **14DDRO1012**

Downtown Development Review Overlay (DDRO) review of revisions including the proposed parking garage. Reviewed and approved with conditions by the DDRO Committee October 29.

### **Case Nos. 03-15364-11 and B-15370-11**

Category 3 plan, variance to allow the building to not observe the 0 corner setbacks from S. Floyd and E. Market Streets, waiver to not provide the required 50% first floor façade for retail or office uses and waiver to not construct the sidewalks from the back of curb to new street wall for construction of an 8-story, 115-ft. tall, mixed-use office building including a 300-350-space parking garage, Phase I of the project. Approved by BOZA March 21, 2011 with adoption of the conditions of approval from the DDRO.

### **Case No. 15363-EWD**

DDRO review associated with 03-15364 for office building and parking garage. Approved by the DDRO in a joint meeting of the DDRO and BOZA March 9, 2011.

### **03-16271-11**

Revised Category 3 Plan to eliminate the previously-approved parking garage portion of the building, enlarge the area of the office/research building, a reduction of the overall square footage from 297,000 sf. to 200,000 sf., and revisions of the façade to be similar to the front of the building. Elimination of the parking

garage portion of the building resulted in a possible shift of the pedestrian plaza to the north of where it was shown on the previously-approved plan.

- Case No. 15474**                      Minor Plat to create lot for Phase I
- Case No. 15366**                      Alley Closure, Floyd Street Alley Between Floyd St. and Preston St. in Ea, Plat Book 23, Page 94
- Plat Book 8, Page 28**                      Preston’s Enlargement Subdivision

**SITE CONTEXT**

Phase II is proposed at the corner of S. Preston and E. Jefferson Streets. The site is zoned C-3 and in the Downtown Form District (DFD). At completion, the development would be located between S. Floyd and Preston Streets going east, and E. Jefferson and Market Streets, going north. Mercantile Gallery Lofts, retail and a hotel are located to the north, across E. Market St. Nulu is located to the northeast, past Preston St. To the south, across E. Jefferson St. is the interstate. There is retail located to the east, across S. Preston St., and west, across S. Floyd St.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b><i>Subject Property</i></b>			
<b>Existing</b>	Mixed Use/Parking	C-3	DFD
<b>Proposed</b>	Parking garage	C-3	DFD
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Hotel	C-3	DFD
<b>South</b>	Vacant	C-3	DFD
<b>East</b>	Retail	C-2	DFD
<b>West</b>	Retail	C-3	DFD

**INTERESTED PARTY COMMENTS**

Staff has received inquiries from several interested parties wanting to know the nature of the development.

**APPLICABLE PLANS AND POLICIES**

Land Development Code  
 Cornerstone 2020 Comprehensive Plan (attached).

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

- **Variances of Sec. 5.2.1.C.6 of the Land Development Code (LDC) that requires all corner lots within the Downtown Form District (DFD) to maintain a zero setback from the street wall for at least 50 feet from the intersection of S. Preston and E. Jefferson Streets. The requested setbacks are 24.5 ft., variances of 24.5 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 and welfare because the proposed setbacks are compatible with those of some of the surrounding structures. The decorative feature serves as some mitigation for the variance requests.

(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 there are other structures in the area that have similar setbacks. The variances are for the corner only and allow for a decorative feature that helps mitigate the setback. The majority of the building will observe the required setback and appears to be compatible with others 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 site is being redeveloped in a manner that is consistent and compatible with the surrounding area.

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

STAFF: The variances will not allow an unreasonable circumvention of the zoning regulations because the proposed setbacks are consistent with other structures in the area. The variances are also mitigated by compatibility of the proposed height and building materials.

### 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 applicant's request to set the building back to allow a decorative feature at the corner.

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 application of the provisions 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 developed in a manner that observes the required setbacks. However, the variances are mitigated by the proposed decorative feature.

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 not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVERS

**Waiver of Section 5.5.1.B.1.b.iii. of the LDC to allow less than 50% of the first floor façade to be developed for retail or office uses along E. Jefferson and S. Preston Streets.**

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

STAFF: The waivers will adversely affect adjoining property owners because the overall development, of which the parking garage is part, occupies an entire city block. There are various developments, including residential and NULU, in the area that could potentially interact with this site. Not providing the required retail or office will not contribute to the lively and active pedestrian environment that includes a variety of uses intended by the Downtown Form District. A waiver of the retail and office was also granted for the first phase of the development, the existing Nucleus building.

(b) The waiver will not violate specific guidelines of Cornerstone 2020.

STAFF: The waivers violate some of the Community Form, Centers and Compatibility guidelines of Cornerstone 2020 (see checklist attached).

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

STAFF: The waivers are not the minimum necessary to afford relief to the applicant because the required retail or office could be provided.

(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 not deprive the applicant of the reasonable use of the land or create unnecessary hardship on the applicant because the required retail or office could be provided.

## TECHNICAL REVIEW

1. The plan previously approved by BOZA and the DDRO Committee included a significantly-larger pedestrian plaza. This plaza was a significant component of the development as previously discussed by the DDRO committee that would engage and invite the public in keeping with the former Haymarket theme. BOZA adopted the condition of approval of the overlay permit at the March 21, 2011 meeting. Conditions of Approval Numbers 10 and 11 contained language specific to the intent for the pedestrian plaza. Pages 17 – 21 of this packet (Pages 4-8 of the actual March 21 BOZA minutes) contain the discussion and conditions of approval, as well as the variances granted for the first building. The current conditions of the DDRO approval also address these issues.
2. Landmarks staff has reviewed the plan and determined that it has a high probability of impacting unidentified cultural resources. The site is located on property that historically contained a dense urban neighborhood per Sanborn Maps. Significant historic archaeological artifacts would be expected to be yielded. In accordance with the Cornerstone 2020 Comprehensive Plan guidelines, Preservation staff requests that an archaeological survey be conducted by a qualified professional archaeologist prior to ground disturbance and excavation. Documentation and/or summary reports prepared by the qualified archaeologist shall be submitted to Urban Design/Historic Preservation staff, if archaeological resources are encountered on the site. The applicant is working with staff on addressing these issues.
3. TARC has reviewed the plan and made the following comments:

Transfers between 17/40 and 18 occur at this location. Bus stops have been relocated and temporarily moved to accommodate construction related to the bridges project in the vicinity of this development plan. Please work with TARC during the construction of the parking garage to accommodate TARC customers. TARC recommends that the owner/developer install shelter and trash receptacle at the Preston at Jefferson stop. TARC encourages the owner/developer to incorporate the transit stop into any building features such as canopies or overhangs from the parking garage to provide some shelter and shade for transit customers. TARC requests the addition of a binding element or a note on the plan: "The owner/developer will maintain the transit stop on an as needed basis."

## STAFF CONCLUSIONS

The waivers to not provide the required 50% retail or office along E. Jefferson and S. Preston St. meet 17 of the applicable guidelines of the Comprehensive Plan. The proposed is an infill development that will be compatible with the pattern of development in the downtown with respect to scale, height and building materials. The proposed development is well-served by mass transit and supports it through providing sidewalks, bicycle parking and working with TARC on transit amenities, as well as through working with Landmarks staff to address archaeological issues.

The applicant should address 6 of the guidelines related to Community Form, Centers and Compatibility. The Community Form guidelines encourage development in the downtown that includes predominantly office, commercial, civic, medical, high-density residential and cultural uses. The proposed is redevelopment of the former Haymarket site, which could be considered a cultural use. The initial Category 3 and DDRO approvals were intended to develop the site in a manner that respected the Haymarket theme. The conditions of approval of both the DDRO and BOZA included language addressing the plaza and the building creating an inviting area for pedestrians. The current DDRO conditions of approval also have language to this effect.

The Centers guidelines encourage retail development in an area that has sufficient population to support it. They also state that proposed development should be compact and result in efficient land use pattern, be mixed use and multi-purpose. The Compatibility guidelines state that parking garages should be integrated into their surroundings and provide an active, inviting street-level appearance. The overall development, of which the parking garage is part, occupies an entire city block. There are various developments, including residential and NULU, in the area that could potentially interact with this site. Not providing the required retail or office will not contribute to the lively and active pedestrian environment that includes a variety of uses intended by the Downtown Form District. A waiver of the retail and office was also granted for the first phase of the development, the existing Nucleus building.

Seven guidelines require additional information. Lighting and signage details should be provided when known. There is no parking requirement in the Downtown Form District. However, the applicant should provide more information on who the parking garage will serve.

Staff's analysis of the standards of review support the granting of the variances. The variances are for the corner only and allow for a decorative feature that helps mitigate the setback. The majority of the building will observe the required setbacks and appears to be compatible with others in the area.

Staff's analysis of the standards of review do not support the granting of the waivers to not provide the required 50% retail or office along S. Preston & E. Jefferson Streets.

Based upon the information in the staff report, testimony and evidence provided, the Development Review Committee must determine if the proposal meets the standards for approval of variances, waivers and a Category 3 Plan as established in the Land Development Code.



The applicant is working Urban Design staff on the DDRO aspects of the case, including the archeological survey required, as well as TARC on addressing any outstanding technical issues. Therefore, approval on the plan may need to be conditioned upon addressing these issues.

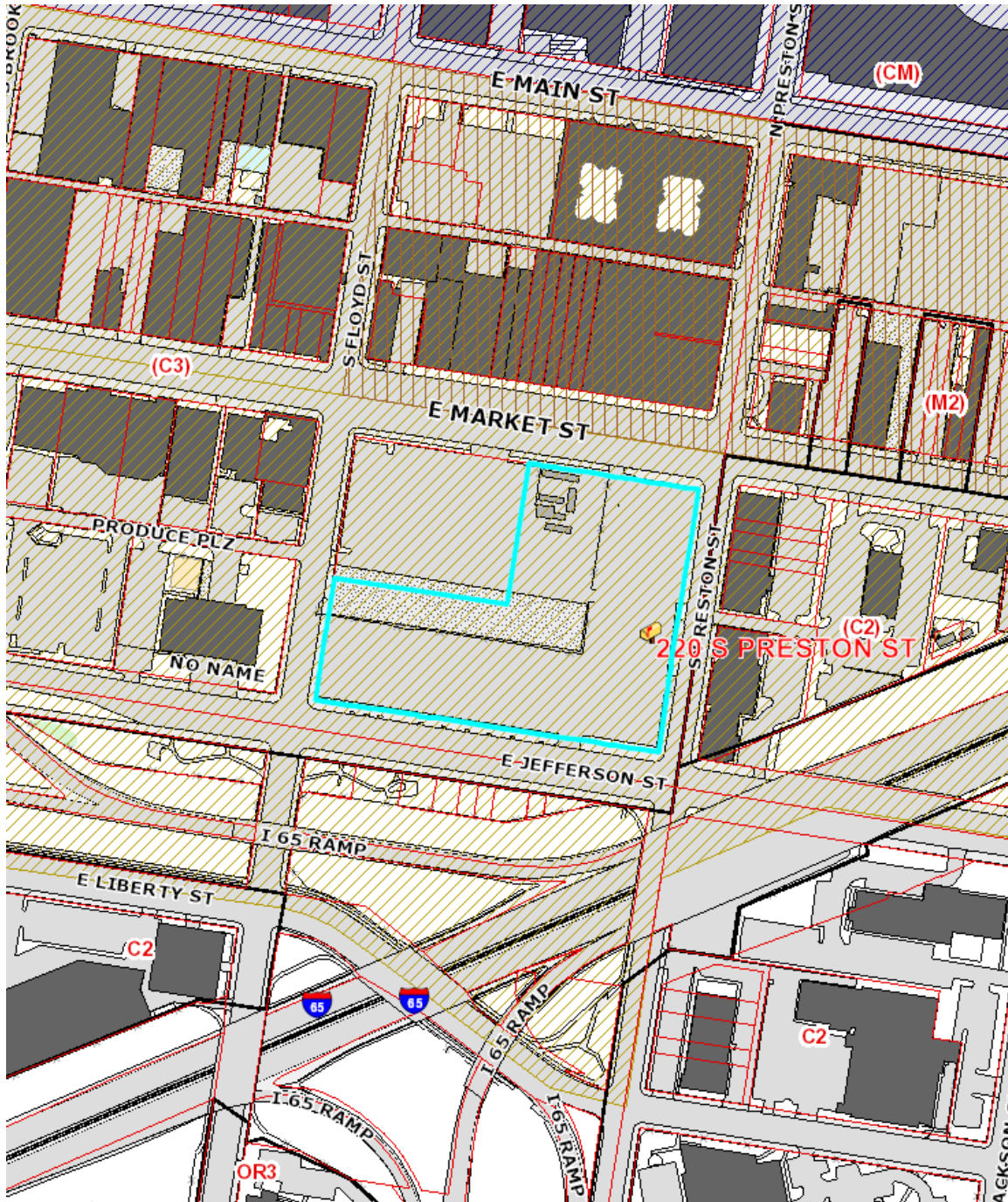
### NOTIFICATION

Date	Purpose of Notice	Recipients
10/16/2014	Neighborhood Notification	Registered groups
10/16/2014	Adjoining Property Owner Notification	Adjoining Property Owners

### ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Elevations
5. Conditions of approval from the October 29, 2014 DDRO Meeting
6. Minutes from the March 21, 2011 BOZA meeting
7. Cornerstone 2020 Comprehensive Plan Staff Checklist
8. Applicant's Justification Statements

1. Zoning Map

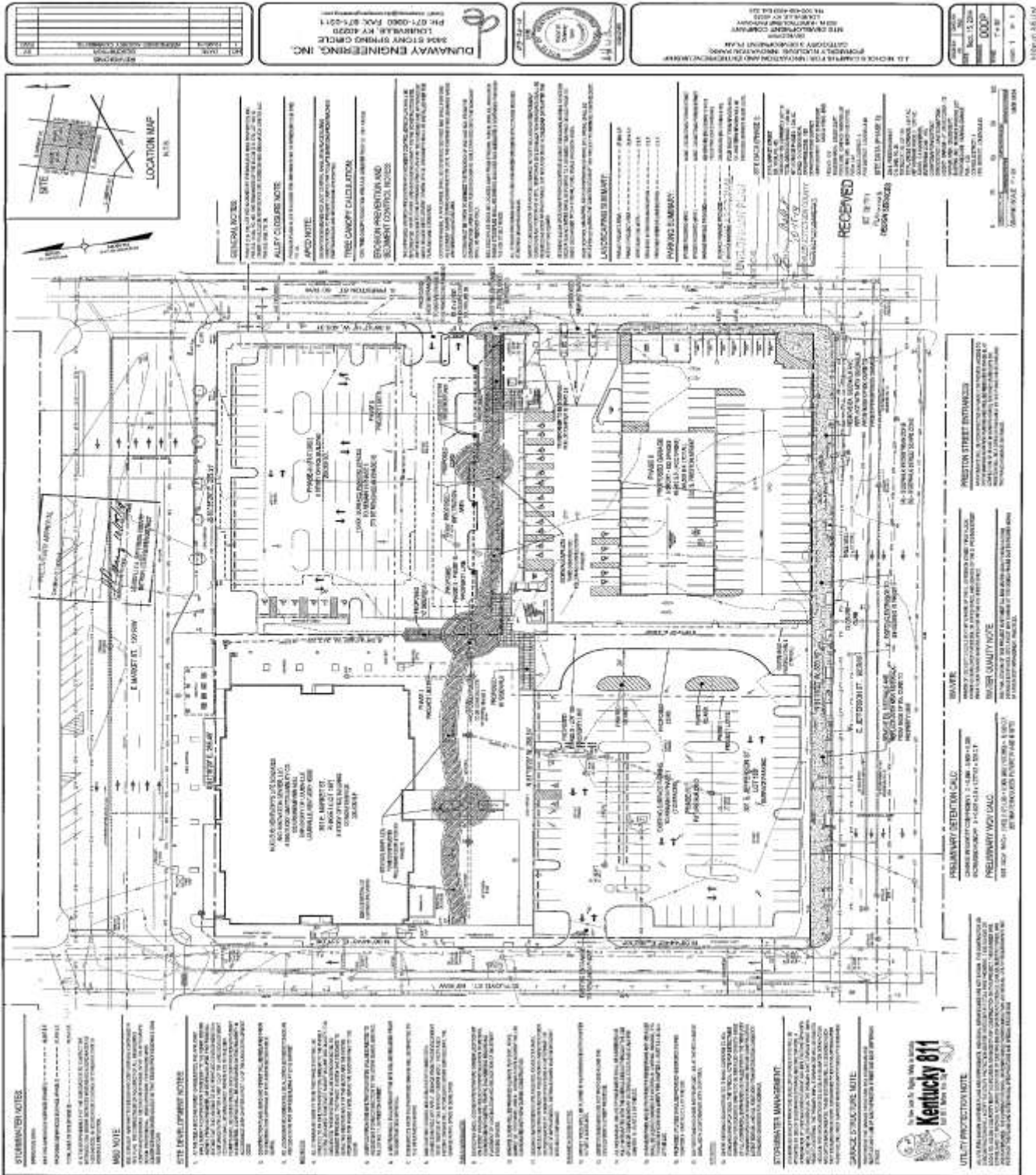




2. Aerial Photo

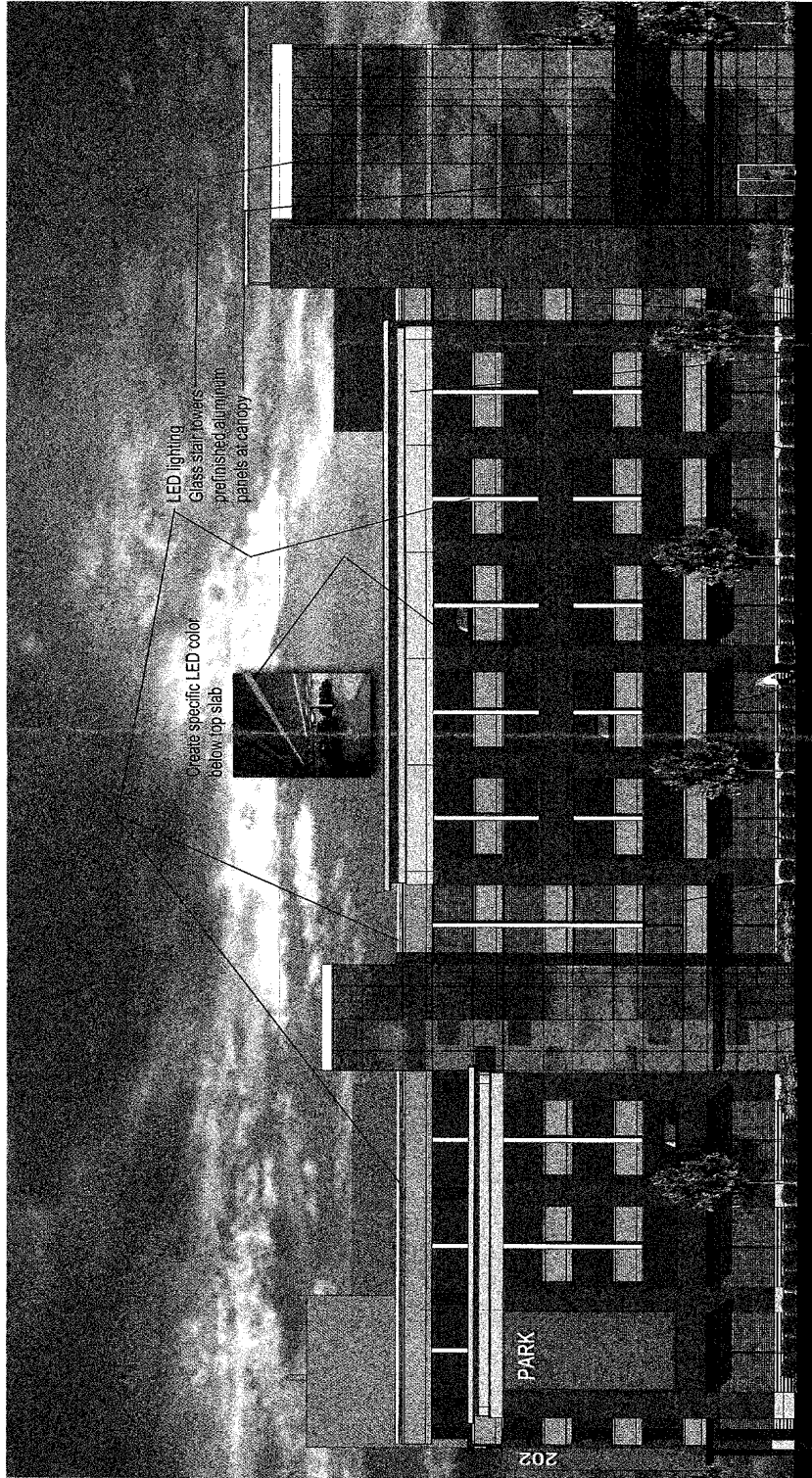


3. Site Plan





# 4. Elevations



Decorative illumination of stair

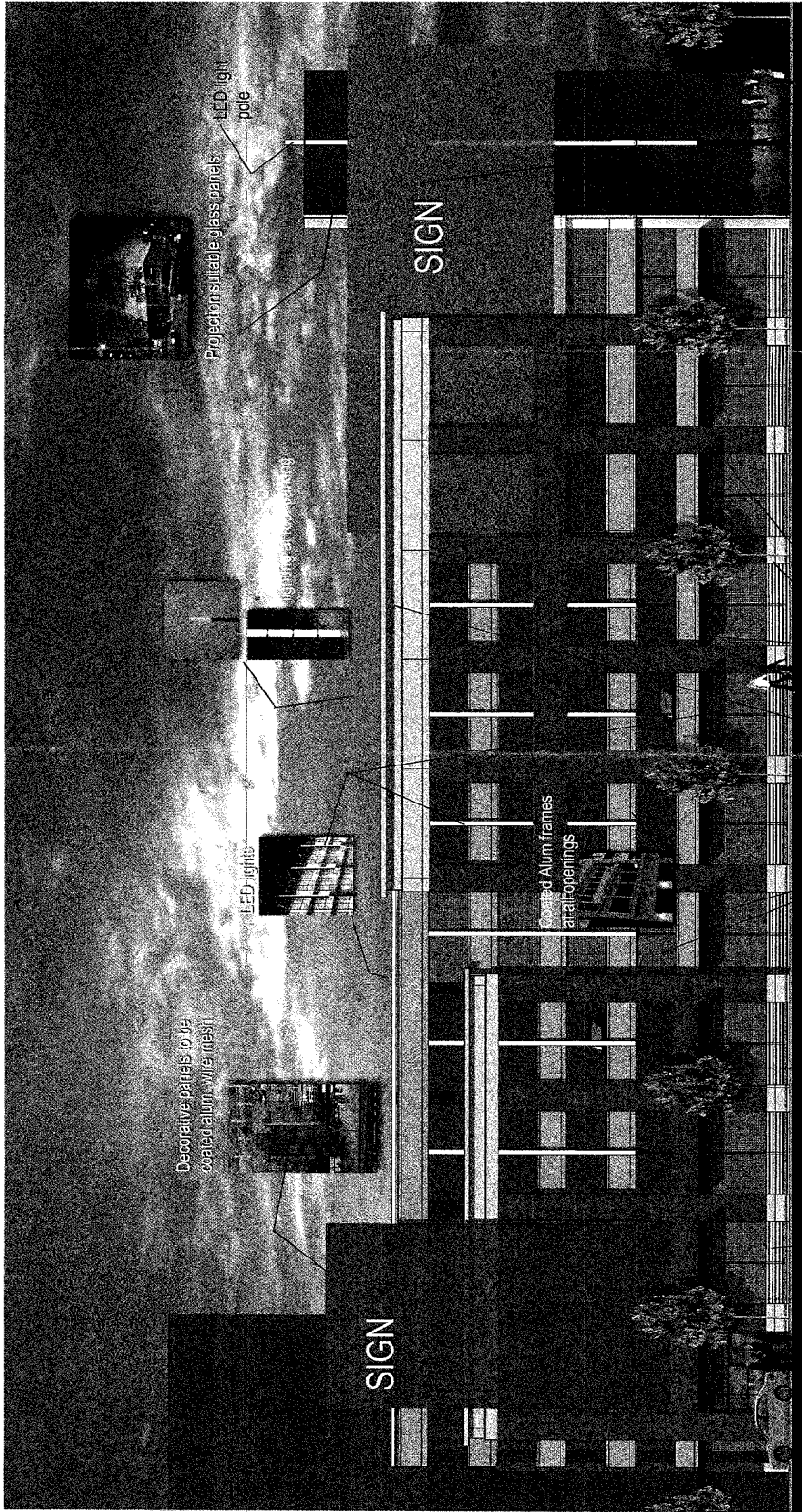
Decorative Security Grating

Glass enclosure at stair

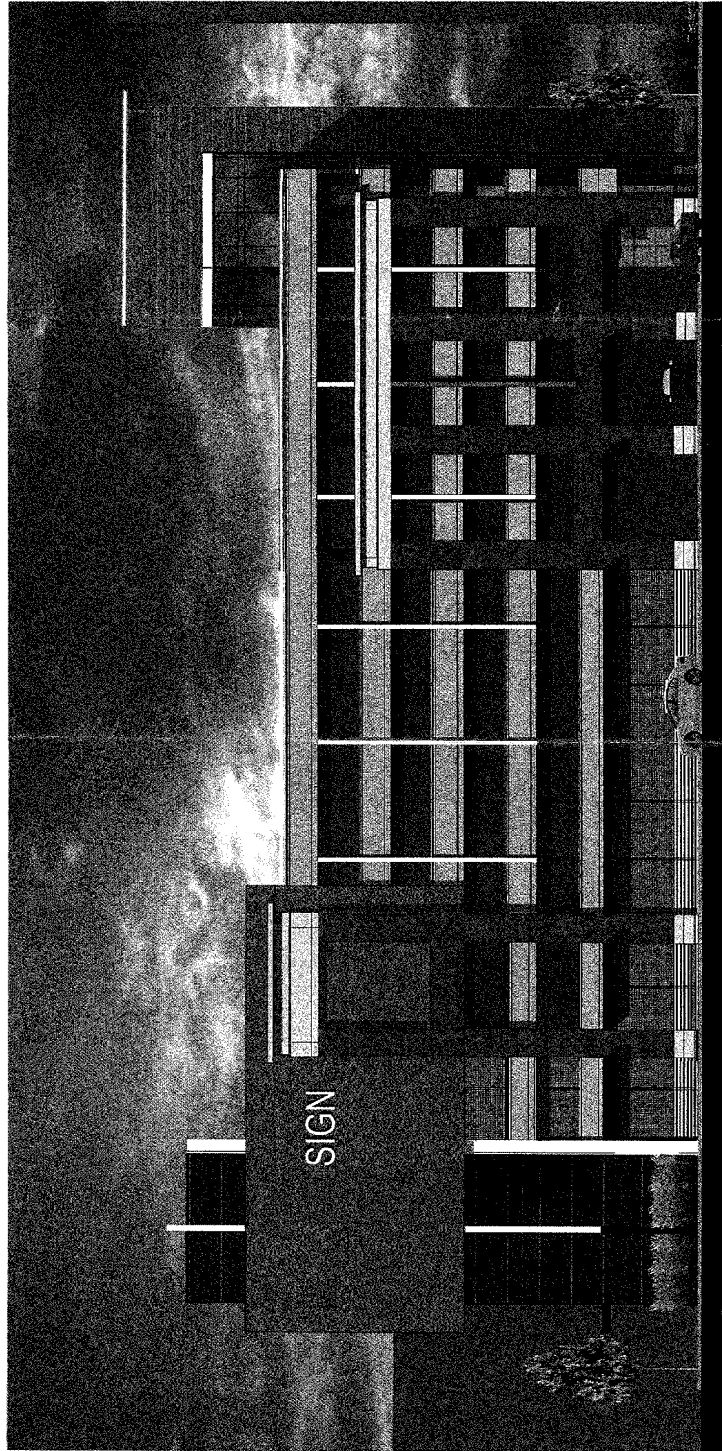
Brick veneer  
Precast concrete  
Concrete slab extension for canopy  
Coated concrete  
EIFS cornice with mtl coping  
Decorative security grating

**RECEIVED**  
SEP 13 2014  
FELIXSON &  
DESIGN SERVICES

ADP&P ARCHITECTS



- Decorative rail
- Illuminated signage (typ)
- RECEIVED
- SEP 15 2014
- PLANNING
- DESIGN SERVICES
- Brick veneer
- Precast concrete
- Concrete slab extension for canopy
- Coated concrete
- EIFS cornice with mtl coping
- Decorative security grating
- Translucent glass panels

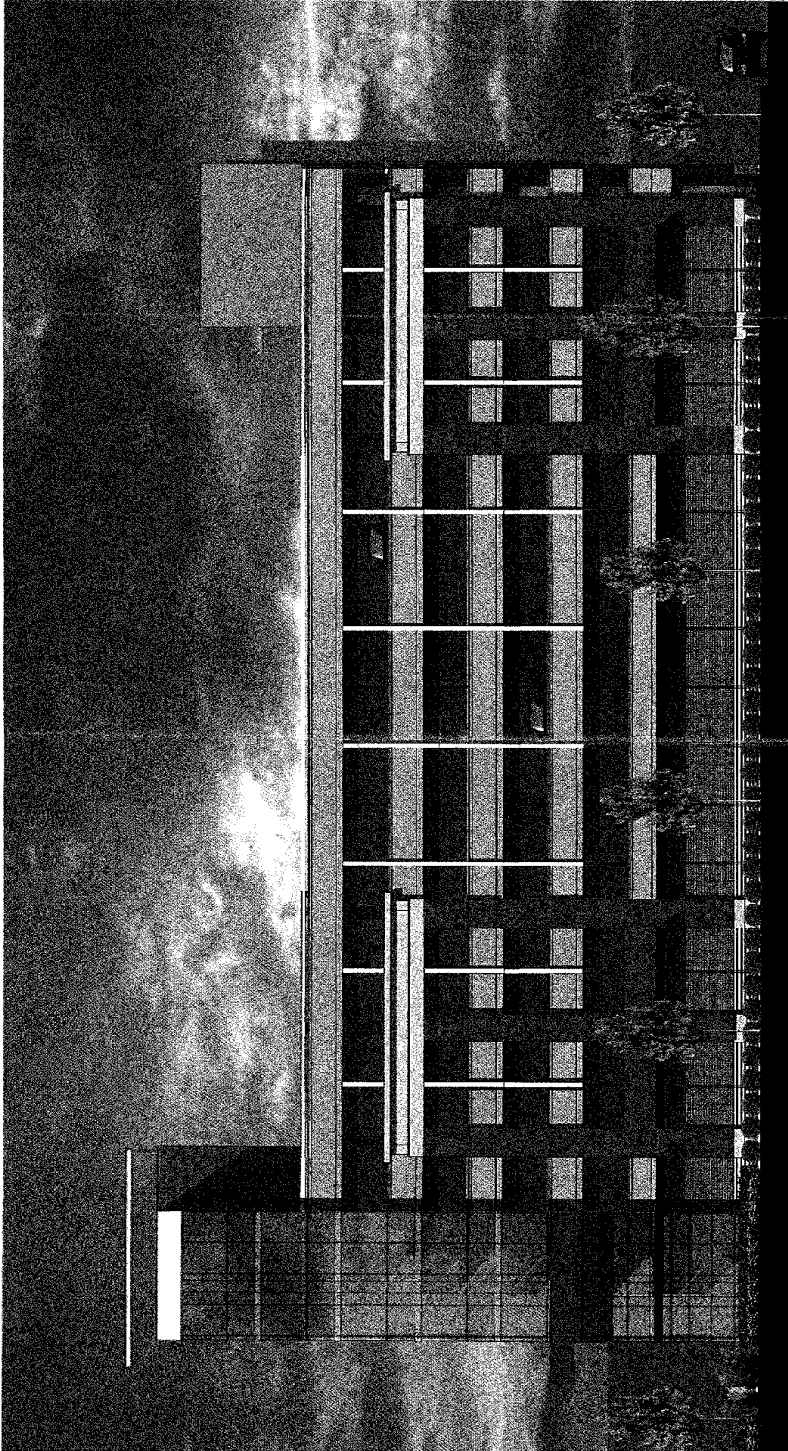


EAST ELEVATION

RECEIVED

SEP 15 2014  
MURPHY &  
DESIGN SERVICES

14DEVPLAN1134



WEST ELEVATION

RECEIVED

SEP 13 2014  
PLANNING &  
DESIGN SERVICES

14IND011114



**5. Conditions of Approval from the October 29, 2014 DDRO Meeting**

**DECISION:**

Considering the information furnished the Urban Design Administrator finds that the proposal substantially complies with the Principles and Guidelines of the Overlay and therefore recommends approval of the application for an overlay permit with the following conditions:

1. All finalized signage and way finding elements shall be submitted to staff for review and approval prior to installation.
2. The Public Plaza shall be redesigned and a more detailed master plan will be submitted showing a centralized public gathering area or courtyard, seating, landscaping and future proposed buildings and pedestrian connectivity. The plan shall provide pedestrian mid-block access from East Market to East Jefferson and from South Preston Street to South Floyd Street which will enhance pedestrian access while providing open public space. The plan shall be submitted to Staff for review and to the DDRO Committee for approval 60 days after receiving the building permit for the construction of the parking garage.
3. All glazing for storefront windows and stair towers shall be clear glass or glass with a minimal tint to be submitted to staff for review and approval prior to installation.
4. The "Bicycle Hostel Station" and "Electric Car Charging Stations" shall be operational at the time that the garage becomes available for public use.
5. Archeology – According to staff of the Kentucky Archeological Survey this site has archeological potential which should be considered. If possible, provisions should be made for excavation, study, and/or monitoring of the excavated areas for items of archeological significance. This could occur prior to or during normal excavation project phases, in other site areas, and avoid interference with the project schedule.
6. All streetscape master plan requirements for tree planting and landscaping shall be met.
7. Final building artwork / large scale graphics located above the first floor area shall be reviewed and approved by the Public Art Administrator.
8. The applicant shall submit a more developed solution for the Southeast corner including proposed building materials and landscaping which shall be submitted at the same time as submission in condition #2.

6. Minutes from the March 21 BOZA meeting

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT  
MARCH 21, 2011**

**BUSINESS SESSION:**

**CASE NUMBERS: 15363-EWD (Overlay Number)  
03-15364-11 (Category 3 Review)  
B-15370-11 (Variance/Waiver)**

Haymarket Research Park, Phase I      300 East Market Street  
Louisville, KY 40202

Case #15363-EWD was approved with conditions on March 9, 2011, by the Downtown Development Review Overlay Committee for an overlay permit.

**Category 3 Review:** construction of an 8 story, 160,000 square foot, 115 foot tall mixed-use office building that includes a 300-350 space parking garage, Phase I of the project.

**Variances:**

Variance of Sec. 5.2.1.C.6 of the Land Development Code that requires all corner lots within the Downtown Form District to maintain a zero setback from the street wall for at least 50 feet from the intersection along each street along East Market Street.

Variance of Sec 5.2.1.C.6 of the Land Development Code that requires all corner lots within the Downtown Form District to maintain a zero setback from the street wall for at least 50 feet from the intersection along each street along South Floyd Street.

Location	Requirement	Request	Variance
East Market Street	0'	8.07'	8.07'
South Floyd Street	0'	16.55'	16.55'

**Waiver:**

Waiver of Section 5.5.1.B.1.b.iii. of the LDC to allow less than 50% of the first floor façade to be developed for retail or office uses.

Waiver of Section 5.8.1.C.1 of the LDC to not construct sidewalks from the back of the curb to the new street wall.

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**DISCUSSION:**

8:49:11 Staff case manager, Latondra Yates, explained the Category 3 Review, variance and waiver requests; and said that this is the first phase of the development. She said the requests were reviewed by a joint meeting of the Downtown Development Review Overlay Committee (DDRO) and the Board of Zoning Adjustment (BOZA) on March 9, 2011 and was approved with conditions. She said the requests meet the applicable guidelines of the Comprehensive Plan. Member Grisanti questioned the waiver to allow less than 50% of the first floor façade to be developed for retail or office uses. Ms. Yates said the applicant's justification explains it best, but that the waiver is needed to provide off-street parking via the parking garage, space for service functions of the utilities and a proposed stair tower which are necessary components for the first floor street façade.

8:51:28 Member Fishman said she attended the meeting to represent BOZA; and said the development will be compatible with existing buildings considering the architectural and design features. She said the applicant is working with TARC on the possible relocation of some of the bus stops; and that access to the pedestrian plaza is necessary and needs to be changed on the plan. Member Fishman said Preservation staff is requesting that an archaeological survey be conducted by a qualified professional to be submitted prior to ground disturbance and excavation; and that the applicant is to yield any historic artifacts if discovered. She said there was no need for an exhaust system considering the type of research that will be conducted on site.

**CATEGORY 3 REVIEW:**

8:58:25 After the discussion, on a motion by Member Fishman, seconded by Member Grisanti, the following resolution was adopted:

**WHEREAS**, the Board finds from the files of the cases, the staff report, the presentations and the evidence and testimony provided at the public hearing conducted on March 9, 2011, that the applicant is requesting a Category 3 Review and is associated with the Downtown Development Review Overlay Case No. 15363-EWD for the construction of an 8-story, 115-ft. tall, mixed-use

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office building that includes a 300-350 space parking garage; and that this is Phase I of the project; and

**WHEREAS**, the Board does adopt the conditions of approval of the DDRO; and

**WHEREAS**, the Board finds that the request complies with the applicable guidelines of the Comprehensive Plan;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **APPROVE** the Category 3 Review for the construction of an 8-story, 115 ft. tall, mixed-use office building that includes a 300-350 space parking garage for Phase I of the project; and does also **ADOPT** the **Conditions of Approval** of the DDRO:

**The Conditions of Approval are as follows:**

1. Setback areas between the sidewalk and building setbacks are to be paved and considered as opportunities for pedestrian/public amenity such as benches, bicycle racks, raised planter beds. Landscaping is indicated in some areas and should be carefully considered as to type and design for survival in urban environment.
2. Archeology – According to staff of the Kentucky Archeological Survey, this site has archeological potential which should be considered. If possible, provisions should be made for excavation, study, and/or monitoring of the excavated areas for items of archeological significance. This could occur prior to or during normal excavation project phases, in other site areas, and avoid interference with the project schedule.
3. Dock and garage entry areas on Floyd Street should be closely evaluated for minimizing widths of curb cuts, minimizing vehicular entries in building, screening of dumpster and refuse areas and improving building design and signage to improve the pedestrian experience and safety.
4. Any building lighting should conform to Guideline BP8 and be submitted to staff for review and approval.

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5. All plaza elements should be submitted to staff for review and approval such as landscaping, lighting and seating.
6. The proposal includes replacement of sidewalk and curbing, replacement and/or augmentation of street trees and providing new streetscape elements. These designs have not yet been finalized. Any such improvements should be in accordance with Public Works standards as well as any streetscape plans or standards put in place by the Downtown Development Corporation for this area.
7. All signage shall comply with guidelines and be submitted to staff for review and approval.
8. No Public Art is proposed at this time but opportunities exist for future installations. Such items should conform to Guidelines PA1 thru PA3.
9. The Floyd Street access drives into the loading dock area and parking garage from Floyd Street curb line to the building line shall not be of asphalt but of materials and design to match the pedestrian sidewalk without interruption through these access drives. Additionally, the overhead door screening the dock area shall provide an effective opaque visual screen of the area from the pedestrian viewpoint day and night. This may be achieved with opaque and translucent glazing alone or in combination with perforated panels or other similar design. The door shall be submitted to staff for review and approval.
10. The south and east facades of the parking garage will play an important role in defining and activating the adjacent plaza spaces and providing access to same. The south façade, currently proposed to be painted concrete, shall incorporate additional design elements to provide an engaging and enlivened façade facing the plaza. Both the south façade, currently proposed to be painted concrete, shall incorporate additional design elements to provide an engaging and enlivened façade facing the plaza. Both the south and east facades do not provide direct access to the plaza spaces – these should be re-evaluated to provide direct access

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points to the plaza spaces. These modifications shall be submitted to staff for review and approval.

11. The ground floor of the building should be visually engaging to pedestrians of the ground floor interior spaces. As such the design of the ground floor interior spaces should be carefully considered to provide an attractive and engaging experience. These modifications shall be submitted to staff for review and approval.

**The vote was as follows:**

**YES: Members Wagaman, Liggin, Allendorf, Grisanti, Fishman, Proffitt and Jarboe.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**VARIANCES:**

8:58:25 After the discussion, on a motion by Member Fishman, seconded by Member Grisanti, the following resolution was adopted:

**WHEREAS**, the Board finds from the file of this case, the staff report, the presentations and the evidence and testimony provided at the public hearing conducted on March 9, 2011, that the applicant is requesting a variance of Section 5.2.1.C.6 of the Land Development Code that requires all corner lots within the Downtown Form District to maintain a zero setback from the street wall for at least 50 feet from the intersection along each street along East Market Street; and a variance of Section 5.2.1.C.6 of the Land Development Code that requires all corner lots within the Downtown Form District to maintain a zero setback from the street wall for at least 50 feet from the intersection along each street along South Floyd Street; and

**WHEREAS**, the Board finds that the requested variances will not adversely affect the public health, safety and welfare because the proposed setback is compatible

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with that of surrounding structures; and because the landscaped areas in front of the building could also enhance the aesthetic appearance; and

**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity because there are other structure in the area that have similar setbacks; and

**WHEREAS**, the Board finds that the requested variances will not cause a hazard or nuisance to the public because the site is being redeveloped in a manner that is consistent and compatible with the surrounding area; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the proposed setbacks are consistent with other structures in the area; and because the variances are also mitigated by compatibility of the proposed height and building materials; and

**WHEREAS**, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity because it's the applicant's desire to redevelop the site in a manner that they claim respects the former Haymarket motif of the site;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the variances.

**The variances allow:**

1. The proposed building to be 8.07 feet from the East Market Street property line.
2. The proposed building to be 16.55 feet from the South Floyd Property line.



**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

**MARCH 21, 2011**

**BUSINESS SESSION:**

**CASE NUMBERS: 15363-EWD (Overlay Number)  
03-15364-11 (Category 3 Review)  
B-15370-11 (Variance/Waiver)**

**The vote was as follows:**

**YES: Members Wagaman, Liggin, Allendorf, Grisanti, Fishman, Proffitt and Jarboe.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**WAIVER OF SECTION 5.5.1.B.1.b.iii:**

8:58:25 After the discussion, on a motion by Member Fishman, seconded by Member Grisanti, the following resolution was adopted:

**WHEREAS**, the Board finds from the file of this case, the staff report, the presentations and the evidence and testimony submitted at the public hearing conducted on March 9, 2011 that the applicant is requesting a waiver of Section 5.5.1.B.1.b.iii of the Land Development Code to allow less than 50% of the first floor façade to be developed for retail or office uses; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjoining property owners because retail and office space will otherwise be provided within the development; and

**WHEREAS**, the Board finds that the waiver will not violate the specific guidelines of Cornerstone 2020 because the project is an infill development that will be compatible with the pattern of development in the downtown area that will maintain the existing grid street pattern despite the proposed alley closure; and because the proposed development is well-served by mass transit and support it through providing sidewalks, bicycle parking and working with TARC on transit amenities; and because the proposed structures are compatible with other buildings in the area with respect to design, height, setbacks and building materials; and because the applicant is working with Design staff on the DDRO aspects of the case, the Downtown Development Corporation, Landmarks and TARC on addressing outstanding technical issues; and



**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

**MARCH 21, 2011**

**BUSINESS SESSION:**

**CASE NUMBERS: 15363-EWD (Overlay Number)  
03-15364-11 (Category 3 Review)  
B-15370-11 (Variance/Waiver)**

**WHEREAS**, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant in order to provide off-street parking via the parking garage, space for service functions utilities and a proposed stair tower as necessary components for the first floor street façade; and

**WHEREAS**, the Board finds that the applicant is working with Design staff to provide as much retail and office space as possible along the first floor façade as well as other building and site design components;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the waiver to allow less than 50% of the first floor façade to be developed for retail or office uses.

**The vote was as follows:**

**YES: Members Wagaman, Liggin, Allendorf, Grisanti, Fishman, Proffitt and Jarboe.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**WAIVER OF SECTION 5.8.1.C.1**

8:58:25 After the discussion, on a motion by Member Fishman, seconded by Member Grisanti, the following resolution was adopted:

**WHEREAS**, the Board finds from the file of this case, the staff report, the presentations and the evidence and testimony submitted at the public hearing conducted on March 9, 2011, that the applicant is requesting a waiver of Section 5.8.1.C.1 of the Land Development Code to not construct sidewalks from the back of the curb to the new street wall; and

**WHEREAS**, the Board finds that the waiver will not adversely affect adjoining property owners because the landscape area proposed in front of the building will be an identifying feature of the former Haymarket; and

**MINUTES OF THE MEETING  
OF THE  
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

**MARCH 21, 2011**

**BUSINESS SESSION:**

**CASE NUMBERS: 15363-EWD (Overlay Number)  
03-15364-11 (Category 3 Review)  
B-15370-11 (Variance/Waiver)**

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the project is an infill development that will be compatible with the pattern of development in the downtown area that will maintain the existing grid street pattern despite the proposed alley closure; and because the proposed development is well-served by mass transit and support it through providing sidewalks, bicycle parking and working with TARC on transit amenities; and because the proposed structures are compatible with other buildings in the area with respect to design, height, setbacks and building materials; and because the applicant is working with Design staff on the DDRO aspects of the case, the Downtown Development Corporation, Landmarks and TARC on addressing outstanding technical issues

**WHEREAS**, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant in order to provide the landscape amenity in the front of the building; and

**WHEREAS**, the Board finds that 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 because the applicant is working with Design staff on the building and site design components of the development; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the waiver to not construct the sidewalks from the back of the curb to the new street wall.

**The vote was as follows:**

**YES: Members Wagaman, Liggin, Allendorf, Grisanti, Fishman, Proffitt and Jarboe.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.**

**ABSTAINING: No one.**

**7. Cornerstone 2020 Comprehensive Plan Staff Checklist**

1	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	Community Form/Land Use Guideline 1: Community Form	B.1: The proposal is similar to the pattern of development in the Downtown, which includes predominately office, commercial, civic, medical, high-density residential and cultural land uses.	-	The initial Category 3 and DDRO approvals were intended to develop the site in a manner that respected the Haymarket theme. The conditions of approval of both the DDRO and BOZA approvals included language addressing the plaza and the building creating an inviting area for pedestrians. The current DDRO conditions of approval also have language to this effect. The waiver of the retail and office will not contribute to the lively and active pedestrian environment that includes a variety of uses as intended by the Downtown Form District.
2	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	Community Form/Land Use Guideline 1: Community Form	B.1: The proposal includes and respects the grid pattern of streets in the downtown area and includes provisions for on-street and long-term parking of vehicles and supports substantial non-vehicular transportation options.	√	Parking garage proposed. Site will be served by sidewalks, a plaza, bicycle parking and mass transit.
3	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	Community Form/Land Use Guideline 3: Compatibility	A.1: The proposal is generally compatible within the scale and site design of nearby existing development and with the form district's pattern of development.	√	The proposed structure is generally compatible in scale and design with nearby existing development and the DFD. Variance to allow the corner of the building to not observe the 0 setback at E. Jefferson & S. Preston Streets mitigated by the overall site design.
5	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	-	The overall development, of which the parking garage is part, occupies an entire city block. There are various developments, including residential and NULU, in the area that could potentially interact with this site. Not providing the required retail or office will not contribute to the lively and active pedestrian environment that includes a variety of uses intended by the Downtown Form District. A waiver of the retail and office was also granted for the first phase of the development, the existing Nucleus building.
6	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	√	Infill development is proposed.
7	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	-	The waiver of the required retail or office will not contribute to the lively and active pedestrian environment that includes a variety of uses as intended by the Downtown Form District (DFD).
8	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	-	The waiver of the required retail or office will not contribute to the lively and active pedestrian environment that includes a variety of uses as intended by the Downtown Form District (DFD).
9	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	-	A plaza is proposed central to the development, however, the waiver of the required retail or office will not contribute to the lively and active pedestrian environment that includes a variety of uses as intended by the Downtown Form District (DFD).

11	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	√	Utility hookups will be shared and underground.
12	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	√	Site will be served by bicycle parking, and car charging stations, parking garage, sidewalks and mass transit. The required ADA accommodations must be provided.
13	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	Community Form/Land Use Guideline 3: Compatibility	A.2: The proposed building materials increase the new development's compatibility.	√	Proposed building materials appear to be compatible with nearby developments.
15	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	Community Form/Land Use Guideline 3: Compatibility	A.5: The proposal mitigates any potential odor or emissions associated with the development.	√	The plan has the standard APCD note regarding dust mitigation during construction.
16	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	Community Form/Land Use Guideline 3: Compatibility	A.6: The proposal mitigates any adverse impacts of its associated traffic on nearby existing communities.	+/-	See Transportation Planning Review Team comments.
17	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	+/-	Lighting details should be provided, when known.
18	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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.	√	Site is located along a transit corridor and near an activity center.
21	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	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 and building heights are compatible with those of nearby developments.
24	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	Community Form/Land Use Guideline 3: Compatibility	A.25: Parking garages are integrated into their surroundings and provide an active, inviting street-level appearance.	-	There are various developments in the area, including residential and NULU in the area. The waiver of the required retail or office will not contribute to the lively and active pedestrian environment that includes a variety of uses as intended by the Downtown Form District (DFD).
25	Form Districts Goals B1, B2, B3, B4, Objectives B1.1, B2.1-2.9, B3.1-3.2, B4.1-4.3	Community Form/Land Use Guideline 3: Compatibility	A.28: Signs are compatible with the form district pattern and contribute to the visual quality of their surroundings.	+/-	Sign details should be provided, when known.
32	Land Use and Transportation Connection Goal E1, Objectives E1.1 and E1.3	Marketplace Guideline 6: Economic Growth and Sustainability	A.2: Ensure adequate access between employment centers and population centers.	√	Site served by mass transit and sidewalks.

33	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.	√	Infill development is proposed.
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.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.	√	Site has Transportation Planning Team preliminary approval.
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.3/4: The proposal promotes mass transit, bicycle and pedestrian use and provides amenities to support these modes of transportation.	√	Site is served by mass transit and sidewalks.
41	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.	+/-	No minimum parking requirement in the DFD. However, the applicant should provide more information on who the parking will serve.
42	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.	√	
46	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.1/2: 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.	√	Site served by mass transit and sidewalks. Bicycle parking and car charging stations are proposed.
47	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 blue line 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 MSD construction approval.
48	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 on the plan.
49	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.

50	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.	+/-	To be determined during construction review.
51	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.	+/-	To be determined during construction review.

**+ exceeds guidelines**

**√ meets guidelines**

**+/- more information needed**

8. Applicant's Justification Statements

SUPPLEMENTAL INFORMATION SHEET

PROPOSED PARKING GARAGE VARIANCE

A REQUEST FOR A VARIANCE FROM LAND DEVELOPMENT CODE §5.2.1.C.6 TO PERMIT THE PARKING GARAGE NOT TO OBSERVE THE 0-FOOT SETBACK.

Nucleus: Kentucky's Life Sciences and Innovation Center, LLC  
351 East Jefferson Street

1. State the reasons that the granting of the variance:

A. WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE.

The granting of the variance will allow the parking garage to be set back from the right-of-way edge in order to allow for sidewalks along both South Preston Street and East Jefferson Street. The variance to permit sidewalks will enhance, and therefore will not adversely affect, the public health, safety or welfare.

B. WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE GENERAL VICINITY.

The proposed variance will not alter the essential character of the general vicinity because the the variance would allow for the construction of sidewalks along South Preston Street and East Jefferson Street, thereby preserving and enhancing pedestrian-use of these downtown properties.

C. WILL NOT CAUSE A HAZARD OR A NUISANCE TO THE PUBLIC.

The requested variance will not cause a hazard or nuisance to the public because the variance will allow the construction of sidewalks adjacent to the parking garage, which will assist downtown pedestrians to avoid hazards or nuisances that might exist if no sidewalks were present.

D. WILL NOT ALLOW AN UNREASONABLE CIRCUMVENTION OF THE REQUIREMENTS OF THE ZONING REGULATIONS.

The requested variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the variance enables the construction of sidewalks, thereby making this development safely walkable, which is a goal of the Land Development Code. This proposal is therefore not an unreasonable circumvention of the requirements of the zoning regulation.

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2. Additional consideration:

- B. 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 provisions of the regulation would deprive the Owner/Applicant of the reasonable use of its land because it would disallow the construction of sidewalks adjoining the garage.

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**SUPPLEMENTAL INFORMATION SHEET ADDENDUM  
LAND DEVELOPMENT CODE WAIVER SUBMITTAL REQUIREMENTS  
PROPOSED PARKING GARAGE LAND DEVELOPMENT CODE WAIVER**

**Nucleus: Kentucky's Life Sciences and Innovation Center, LLC  
351 East Jefferson Street**

**Request for Waiver of Land Development Code ("LDC") §5.6.2.G.3.**

**Request:** To waive the requirement that at least 50% of the first floor street façade must be developed for retail or office uses.<sup>1</sup>

**Note.** On the side of East Jefferson Street opposite the proposed parking garage there are no retail or office businesses. Due to the configuration of Interstate-65 there will be no retail or office in this area along East Jefferson Street. On the side of South Preston Street opposite the proposed parking garage there is a tavern which does not open until 4 PM daily, and a shoe store. Providing retail or office in the parking garage would not create an opportunity for enhanced retail or office activity on-site or in the vicinity due to existing development at this location. Moreover, as the Nucleus development is built out the need for parking availability will increase.

**1. The requested waiver will not adversely affect adjacent property owners.**

The waiver will allow the use of all parking spaces within the garage to be utilized for parking. The provision of adequate on-site parking will not adversely affect adjacent property owners.

**2. The requested waiver will not violate the Comprehensive Plan.**

The proposed waiver will not violate the Comprehensive Plan because it conforms to Transportation Facility Design Guideline 8 and all applicable Policies adopted thereunder, including Policy 8.1 and 8.7 because the parking garage is intended to accommodate most modes of transportation, including bicycles and an electric car charging station. In addition, the parking garage will be an accessory use to the Nucleus development, providing safe and convenient parking opportunities for users of the J.D. Nichols campus.

**3. The extent of the waiver is the minimum necessary to afford relief to the Applicant.**

<sup>1</sup> Land Development Code §5.6.2.G.3 provides: "At least 50 percent of the first-floor street façade must be developed for retail or office uses. Areas designed to accommodate these uses may be developed at the time of construction, or may be designed for later conversion to such uses."

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The requested waiver is the minimum necessary to afford relief to the Applicant because the request would enable the garage to be utilized for parking purposes. This is a minimal waiver request which will benefit all who utilize the J.D. Nichols campus.

4. **The Applicant has (a) 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 (b) 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.**

The strict application of the provisions of the regulation would deprive the Applicant of the reasonable use of the land **and** would create an unnecessary hardship on the Applicant because both the Comprehensive Plan and the Land Development Code foster the provision of parking facilities in the Downtown Form District.

The purpose of LDC §5.6.2.G.3 is to require parking structures in the Downtown Form District to provide retail or office use within a parking structure (i) where the provision of retail or office would cause a new activity center to emerge in the Downtown, or (ii) to provide consistency of use with an existing activity center providing retail or office in the Downtown. Neither of these conditions prevail at this location, nor will they prevail in the future due to the location of Interstate-65. Therefore, it would deprive the Applicant of the reasonable use of the land **and** would create an unnecessary hardship on the Applicant not to be able to provide parking spaces wherever possible on the first floor of the parking garage (and elsewhere within the garage).

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