

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

BUILDING INDUSTRY ASSOCIATION OF LOUISVILLE BUILDING • 1000 N. HURSTBOURNE PARKWAY • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223
(502) 426-6688 • WWW.BARDLAW.NET

PROPOSED FINDINGS OF FACT REGARDING COMPLIANCE WITH ALL APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

Applicant/Owner: SJE, LLC c/o Scott Eberle

Location: 13913 and a small portion of 14001
Shelbyville Road

Proposed Use: Orthodontics Office

Engineers, Land Planners and
Landscape Architects: Evans/Griffin, Inc.

Request: Change in Zoning from R-4 to OR

The Louisville Metro Planning Commission, having heard testimony before its Land Development & Transportation Committee, in the Public Hearing held on February 15, 2018 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

INTRODUCTION

WHEREAS, the property owner/applicant have been practicing dentistry and orthodontics at this location since 2006 under the name "Eberle Orthodontics"; in 2006 this site received a Conditional Use Permit in Docket No B-54-06 (the "CUP") allowing the orthodontist's office to operate; however, the CUP Condition of Approval #3 limited this orthodontics office to only one dentist and #5 limited the square footage of the improvements to 2260 sf; and as Dr. Eberle's practice has grown, he now needs additional space to accommodate the increase in patients, additional parking to accommodate his staff and increased patient load, as well as the ability to allow another orthodontist to serve the patients; and

GUIDELINE 1 – COMMUNITY FORM

WHEREAS, the subject property is located in a Neighborhood Form District which contemplates the location of "civic uses and neighborhood centers with a mixture of uses, such as offices, retail shops, restaurants and services"; the orthodontist's office will provide additional office space near the thriving commercial area and adjoining the densely populated residential area which it will serve; this office is located on a major arterial (Shelbyville Road) and is surrounded by a church to the east which is not adversely impacted by the use, and by residences to the west, which will be served by the business and not materially adversely impacted, but which will be further mitigated through landscape screening and other improvements being made to the property; this type of service and office is ideally suited for the Neighborhood Form District as a type of low intensity commercial use, and it will provide a "stub" for future potential connectivity with the church property, as well as a walkway/sidewalk to the building and bike racks to encourage pedestrian and bicycle access; ultimately, this project will allow for the continued operation of the existing orthodontic business to continue to serve the neighborhood,

rather than move to another area, opening the site to more intensive possible uses or deterioration of the property; and

GUIDELINE 2 – CENTERS

WHEREAS, the application complies with the applicable Intents and Policies 2, 4, 5, 7 and 16 of this Guideline because it is located in an established section of eastern Metro Louisville, where through a combination of design measures and the nature of the use itself, will not create any nuisances for surrounding residential properties; where office and residential uses are frequently located adjacent to each other and encouraged to do so because of the relatively low intensity and to reduce traffic by placing services and employment in close proximity to the residential areas; and

WHEREAS, this Guideline also encourages mixed land uses organized around compact activity centers that are existing, proposed or planned in order to promote efficient use of land and investment in existing infrastructure; the proposed project is located on Shelbyville Road, between the intersections with S. English Station Rd./Lake Forest Pkwy. and N. Beckley Station Rd.; this property was formerly a single family home with a driveway onto Shelbyville Road before being granted the CUP in 2006, and not connected to any other residential property before being converted to an orthodontists' office; retail, office, and other more intense uses are immediately across Shelbyville Road from this site; and the infrastructure is already in place for the changes to this property to slightly increase the square footage of the building and to increase parking; and

WHEREAS, Policy 2 of this Guideline is met as this is a non-residential development in what is already an orthodontist's office; Policy 4 and 5 are met as it is a more compact development resulting in efficient land use mixing compatible uses; Policy 7 is met by the slight expansion of the office use; and Policy 16 is met as it is easily utilized by bicycle use, with bike racks being added; by automobile utilizing Shelbyville Road; and by pedestrian traffic because of its close proximity to residential areas and through the walkway being proposed; and

GUIDELINE 3 – COMPATIBILITY

WHEREAS, the application complies with the applicable Intents and Policies 1, 2, 4-9, 12, 21, 22, 23 and 24 of this Guideline because it is designed to be compatible with the surrounding land uses through the reuse of an existing house, which consists of durable, residential style building materials, including brick; the property will have an entrance on Shelbyville Road that if approved by traffic and transportation planners where there will be sufficient parking; noise and odors from offices is nonexistent; further, hours of operation will only be during times when area residents are awake; lighting will be designed in accordance with Land Development Code requirements, and, because of the buffers on the east and west side of the property, visual impacts will be minimal, and improved in many instances to what is currently existing; moreover, at the request of DPDS staff, all additional parking is being positioned on the north side of the property, to shield it from view from Shelbyville Road; additionally, appropriate landscape screening will be utilized to make the property compatible and reduce unwanted impacts with the residential properties to the west; and offices, being neighborhood serving uses, are often appropriate transitions to higher intensity uses (such as those that exist south of this site) and offices provide a good transition to the lower intensity residential areas; and

GUIDELINE 4 – OPEN SPACE

WHEREAS, the application complies with the applicable Intents and Policies 1, 3 and 7 of this Guideline because of the large amount of open space in the front of the property, as well as the large amount of open space which is within the Shelbyville Road landscape buffer area and between the improvements; this is not the type of site to utilize open space for actual activities due to the use and location, but the primary benefit of the “open space” to the community would be visual aesthetics from the arterial of Shelbyville Road, which is probably more than 100 feet from the pavement of the road, satisfying this guideline; and

GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

WHEREAS, the application complies with the applicable Intents and Policy 6 of this Guideline because the proposed orthodontist’s office will provide opportunities for employment at the orthodontist’s office close to the residential properties and nearby population; it is located on a major arterial, providing good access, where nuisances and activities will not adversely affect adjacent areas; and potential users will be users that are compatible with the area, such as families with children; and

GUIDELINE 7 – CIRCULATION

WHEREAS, the application complies with the applicable Intents and Policies 1, 2, 6, 9, 10 and 16 of this Guideline because it provides adequate parking while at the same time providing pedestrian connections and good access to the site; the property is easily accessible to and from all of Shelbyville Road and the surrounding area; the parking layout works as far as access and circulation are concerned, and the small office should not generate traffic which is not significant compared to the present traffic on the major arterial of Shelbyville Road; and the plan also includes a stub for possible future connectivity with the parking lot of the church to the east in the event it is ever developed further; and

GUIDELINE 8 – TRANSPORTATION FACILITY DESIGN

WHEREAS, the application complies with the applicable overall Intents of this Guideline 8, and the specific Policies 8, 9, 10 and 11 of this Guideline, because Shelbyville Road is adequate to handle the proposed small amount of added traffic from this office; the changes to the property, with the landscaping and design, will not negatively impact the aesthetics of Shelbyville Road; a stub is also being added to the back of the parking lot to allow for potential future connectivity with the adjacent church to the east; the parking lot addition will allow for appropriate internal circulation; and access and sight distances from Shelbyville Road will not be negatively affected; and

GUIDELINE 9 – BICYCLE, PEDESTRIAN AND TRANSIT

WHEREAS, the application complies with the applicable Intents and Policies 1, 2, and 4 of this Guideline because TARC sidewalks will be added, and the property will be accessible by bicycle, with bike racks being added; and it is not believed that TARC presently serves this property, but the sidewalk from the building will allow easy access if and when TARC accesses the property in the future; and

GUIDELINE 10 – FLOODING AND STORMWATER

WHEREAS, the application complies with the applicable Intents and Policies , 1, 6, 7, 10 and 11 of this Guideline because the downstream system is adequate to handle all stormwater runoff coming from subject property, and the post development rate of run-off will not exceed predevelopment conditions; and the water will drain to the adjacent church property, the owners of which are agreeable to accepting this additional run off volume, if any; and

GUIDELINE 11 – WATER QUALITY

WHEREAS, the application complies with the applicable Intents and Policy 3 of this Guideline as it will comply with all soil erosion and sedimentation control regulations; and

GUIDELINE 12 – AIR QUALITY

WHEREAS, the application complies with the applicable Intents and Policies 1 and 8 of this Guideline because it will capture traffic otherwise headed to office facilities located at greater distances than this one from the residential population in this area; the plan also encourages the use of bicycles and pedestrian traffic with the addition of the walkway and the bike racks; and because of these improvements, the proposed development will have zero adverse impact on air quality; and

GUIDELINE 13 – LANDSCAPE CHARACTER

WHEREAS, the application complies with the applicable Intents and Policies 1, 2, 4, 5, 6 of this Guideline because the proposed development plan provides adequate landscape buffer areas and utilizes presently existing natural landscape buffers between it and the residential uses to the east, west and north; and

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WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby recommends to the Louisville Metro Council that it rezone the subject property from R-4 to OR and approves the Detailed District Development Plan.

Variance Findings of Fact

Variance of Section 5.3.1.C.5 to allow the proposed building to encroach into the 15 ft setback along the west property line.

WHEREAS, the variance will not adversely affect the public health, safety or welfare because none of the addition to the building will encroach any more than the pre-existing building currently encroaches in the setback; the additional encroachment will simply extend the line of the pre-existing structure slightly further on the front and the back of the building; further, the main addition in the front will significantly benefit the primary and likely only residence affected by the addition because it will eliminate a large window which faces the residence and currently impacts that neighbor's privacy; the new addition will eliminate the window, thereby greatly increasing the privacy for the neighbor on the front of the lot; and the additional encroachment on the back of the building is only very slight, and it will continue to be shielded by the landscaping and fence currently separating the properties; and

WHEREAS, the variance will not alter the essential character of the general vicinity for all the reasons set forth above; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public for all the reasons set forth above, particularly by eliminating the large window which is the primary concern of the most impacted residential neighbor, thereby increasing privacy between the residential and non-residential use as a result of the new encroachment; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations for all the reasons set forth above; and

WHEREAS, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because the variance is the result of what is set forth above, notably the pre-existing footprint of the current, as-built building, and the resulting necessity to continue that line of the building; and moreover, this plan prevents further encroachment into the rear (north) part of the site and the east side of the site; and

WHEREAS, 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 it would significantly increase the cost of adding a modest amount of square footage to continue the usefulness of the site to the low intensity use and require an inefficient use of the added space; and the fact that the variance will allow the privacy of the neighbor most impacted is a good balance to the issue where both affected parties mutually benefit; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather the need for the variance is the result of the current pre-existing, as built footprint of the building, and the resulting practical need to continue on the same building line;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Variance.

Waiver Findings of Fact

Waiver of Section 10.2.10, Table 10.2.4 to reduce the 10 ft LBA on the east property line to 5 ft

WHEREAS, the waiver will not adversely affect adjacent property owners because the immediately adjacent property impacted by this waiver is a church, with very little use except on Sundays, when the applicant's business will not be in use; further, the church is selling the land to the applicant which supports the conclusion that it is not adversely impacted; moreover, the waiver to reduce the LBA on the east side of the property is directly caused by moving some of the parking away from Shelbyville Road and the sight lines therefrom; 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 extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because this waiver will allow the necessary number of parking spaces to permit the proper operation of the applicant's orthodontist's office, while at the same time allowing some of the parking to be positioned away from Shelbyville Road preserving the visual aesthetics from the arterial, and screening the parking with the applicant's building; and

WHEREAS, 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 not allow the necessary number of parking spaces to be included in the project to properly operate the applicant's business and to still allow the necessary space for ingress and egress from the parking lot, which is limited by the existing placement of the building;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Waiver.

Waiver Findings of Fact

Waiver of Section 9.1.3 and 9.1.16 to allow more than the maximum number of parking spaces and waive the parking study.

WHEREAS, the waiver will not adversely affect adjacent property owners because the residential development immediately to the west of the subject property will not be affected in any way because of the significant landscape screening and buffering which will shield the only homes with yards facing the subject property; the property immediately to the east is a church which is selling the property to the applicant, which is evidence that the church does not believe it will be adversely affected; the homes to the north of the property are sufficiently screened by current natural vegetation, and are still relatively far from any parking; further, the amount of traffic produced by the waiver and additional parking is miniscule to the amount of traffic already flowing on the major arterial of Shelbyville Road and compared to the significant developments in Landis Lakes and other current commercial uses across Shelbyville Road to the south of the property; 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; moreover, waiving the parking study requirement contained in Section 9.1.16 is allowed pursuant to Section 9.1.17 and upon reviewing the “Contents” of the parking study, it is clear that the parking study requirements are neither necessary, helpful, or required; the site use is unique to this business, and it would be very difficult to find effectively the same size orthodontist’s office with the same number of employees, patients, and also having the unique situation of not having overflow parking available to it; and finally requiring three site surveys and “peak parking” analysis would add little to no useful information, when the number of spaces needed is a simple function of the number of employees and patient chairs, with a slight addition for vendors; and

WHEREAS, the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant as an office/residential user operating an orthodontist’s office; currently the office is having severe parking problems, causing many employees to be required to park off site, necessitating a long walk to the office, often made dangerous because of the high volume of traffic on Shelbyville Road as well as having to deal with inclement weather, such as rain, storms and snow at times; much like a pediatrician’s office, an orthodontist’s office primarily serves children who are driven to the office for care by a parent and which has a relatively constant turnover of patients, with one group receiving care, and with another group on site waiting for their turn to receive orthodontic care; and as a result, along with the number of employees needed to serve the patients, the waiver of the parking limit is the minimum necessary to afford relief requested; and

WHEREAS, 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 of the unique type of office use business being operated; unlike many offices, an orthodontist’s office has many patients which come and go, in addition to a relatively high number of employees needing to park to serve those patients; despite the added parking spaces needed, the

orthodontist office use is very much in keeping with the area and purpose as a low intensity office use next to the residences and the church, while at the same time serving the purpose of being a good transition from the residential properties;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Waiver.

Waiver Findings of Fact

Waiver of Section 10.2.4.B.3 to allow more than 50% of the utility, sanitary sewer and drainage easements to overlap in the LBA

WHEREAS, the waiver will not adversely affect adjacent property owners because the utilities and sewer and drainage are as built conditions which will not be changed at all as a result of this development plan; further, the utilities and sewer and drainage will not be adversely affected in any way as a result of the landscaping being utilized in the current easement; in fact, several of the neighbors have complained about the unkempt look of some of the vegetation currently in place, which this waiver will allow the applicant to cure for the neighbors by changing the landscaping to meet their requests where possible; 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 extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because moving the utilities and sewer and drainage would not create any benefit to anyone, but allowing the LBA to be placed with the current as-built condition of the easements will allow the parking necessary to be expanded; and

WHEREAS, 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 the cost of moving the sewer lines would be unnecessarily high without any material benefit; also the drainage of the site cannot be changed in a feasible manner, and including this area in the LBA mutually benefits the neighbors by shielding their view of the site and benefits the owner by allowing the necessary parking to be placed on the site;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Waiver.

Waiver Findings of Fact

Waiver of Section 10.2.4.B.1 to allow the existing structure and proposed additions to encroach into the 15 ft LBA along the west property line

WHEREAS, the waiver will not adversely affect adjacent property owners because none of the addition to the building will encroach any more than the building currently encroaches on the LBA; the additional encroachment will simply extend the line of the building slightly further on the front and the back of the building; further, the main addition in the front will significantly benefit the primary and likely only residence affected by the addition because it will eliminate a large window which faces the residence and currently impacts that neighbor's privacy; the new addition will eliminate the window, thereby greatly increasing the privacy for the neighbor on the front of the lot; the additional encroachment on the back of the building is only very slight, and is and will continue to be shielded by the landscaping and fence currently separating the properties; 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 extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the building cannot be expanded to the west without encroaching on the necessary area for ingress and egress of vehicles and because increasing the square footage vertically on a second floor would be more of an intrusion on the neighbors and much more costly; and

WHEREAS, 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 significantly increase the cost of adding a modest amount of square footage to continue the usefulness of the site for this low intensity use; and the fact that the waiver will allow the privacy of the neighbor most impacted by the requested waiver is a good balance to the issue where both affected parties mutually benefit;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Waiver.