

Louisville Metro Board of Zoning Adjustment
June 16, 2014

Docket No. 14CUP1010

Conditional Use Permit to allow a
Personal Care Facility on property located at
9107, 9109 and 9113 Taylorsville Road

Turtle Creek Management, Inc.
(c/o Basic American Industries and American Senior
Communities)

Attorneys: Bardenwerper Talbott & Roberts, PLLC

Land Planners, Landscape Architects And Engineers: Land Design & Development, Inc.

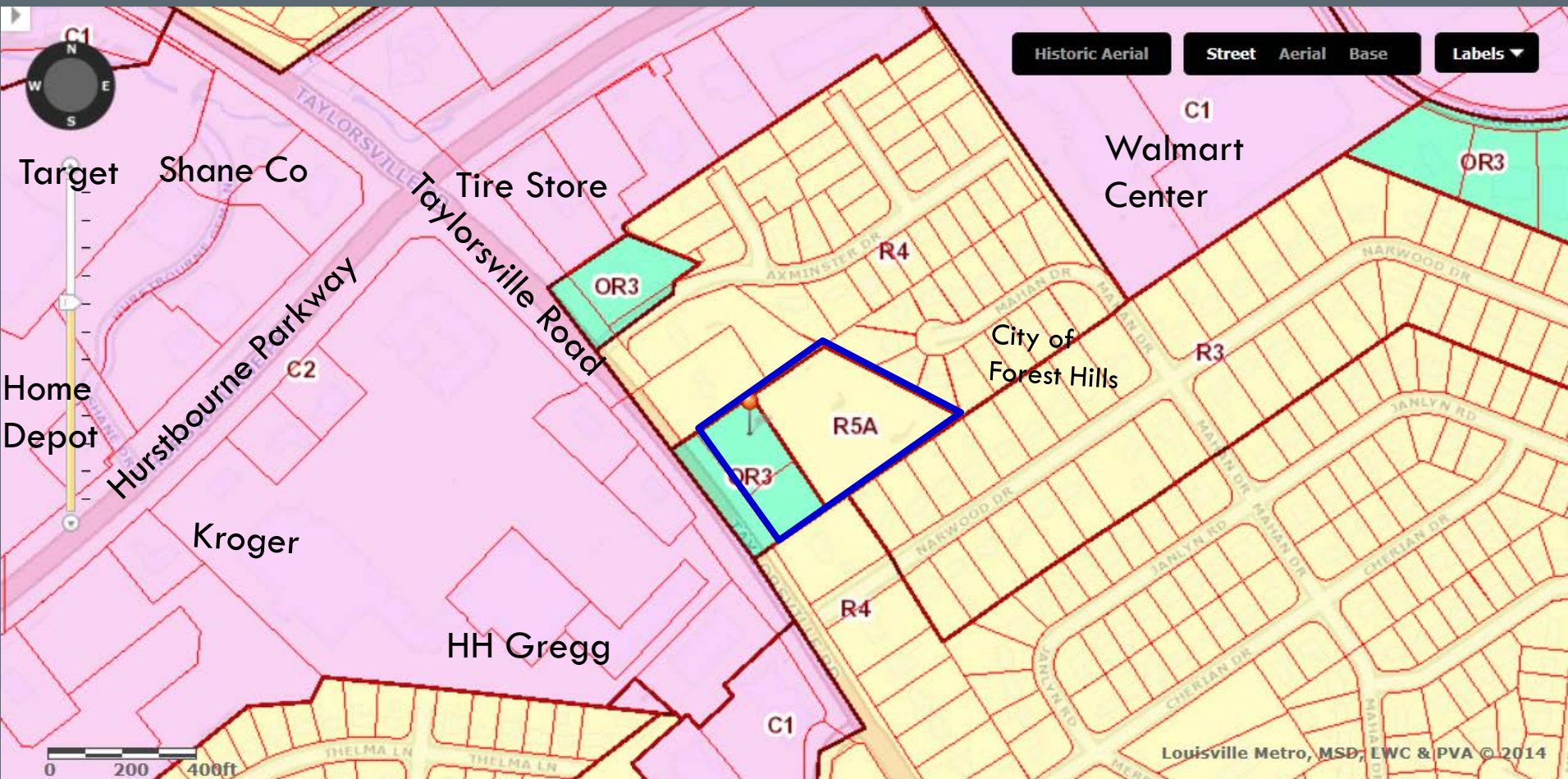
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Tab 1

LOJIC Zoning Map





Tab 2

Aerial photograph of the site and surrounding
area





Tab 3

Ground level photographs of the site and
surrounding area



View of the site across Taylorsville Road



View of the site across Taylorsville Road



Adjacent property just southeast of site.



Entrance to City of Forest Hills between two homes just southeast of site.



Looking southeast down Taylorsville Rd. Site is to the left.



Looking at commercial property just southeast of site down Taylorsville Rd.



Taylorsville Rd.

Commercial property across Taylorsville Rd. from site.



Taylorsville Rd.

Commercial property across Taylorsville Road south of site looking from entrance to Forest Hills.
Six Mile Ln. to far left of photograph.



Looking northwest from same entrance to Forest Hills down Taylorsville Rd.



Commercial property across Taylorsville Rd. from site.



Commercial property across Taylorsville Rd. from site.



Commercial property across Taylorsville Rd. from site.



Site

Looking northwest down Taylorsville Rd.



Taylorsville Rd.

Commercial property across Taylorsville Rd. just northwest of site at corner of southwest quadrant of Taylorsville Rd. and Hurstbourne Pkwy.



Adjacent property just northwest of site.



Tab 4

Previous Approved Development Plan and
Elevations

[illegible]

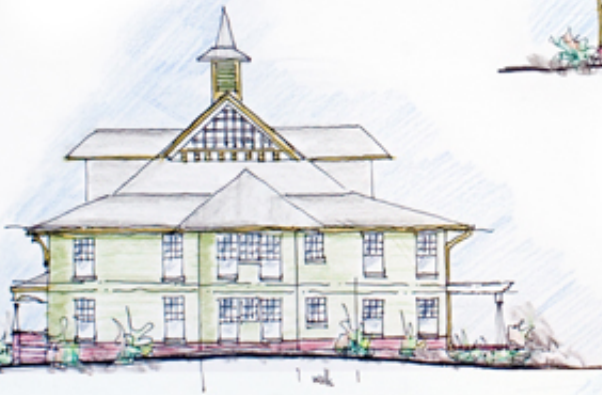


FRONT

10 UNIT CONDOMINIUM BUILDING



REAR



SIDE

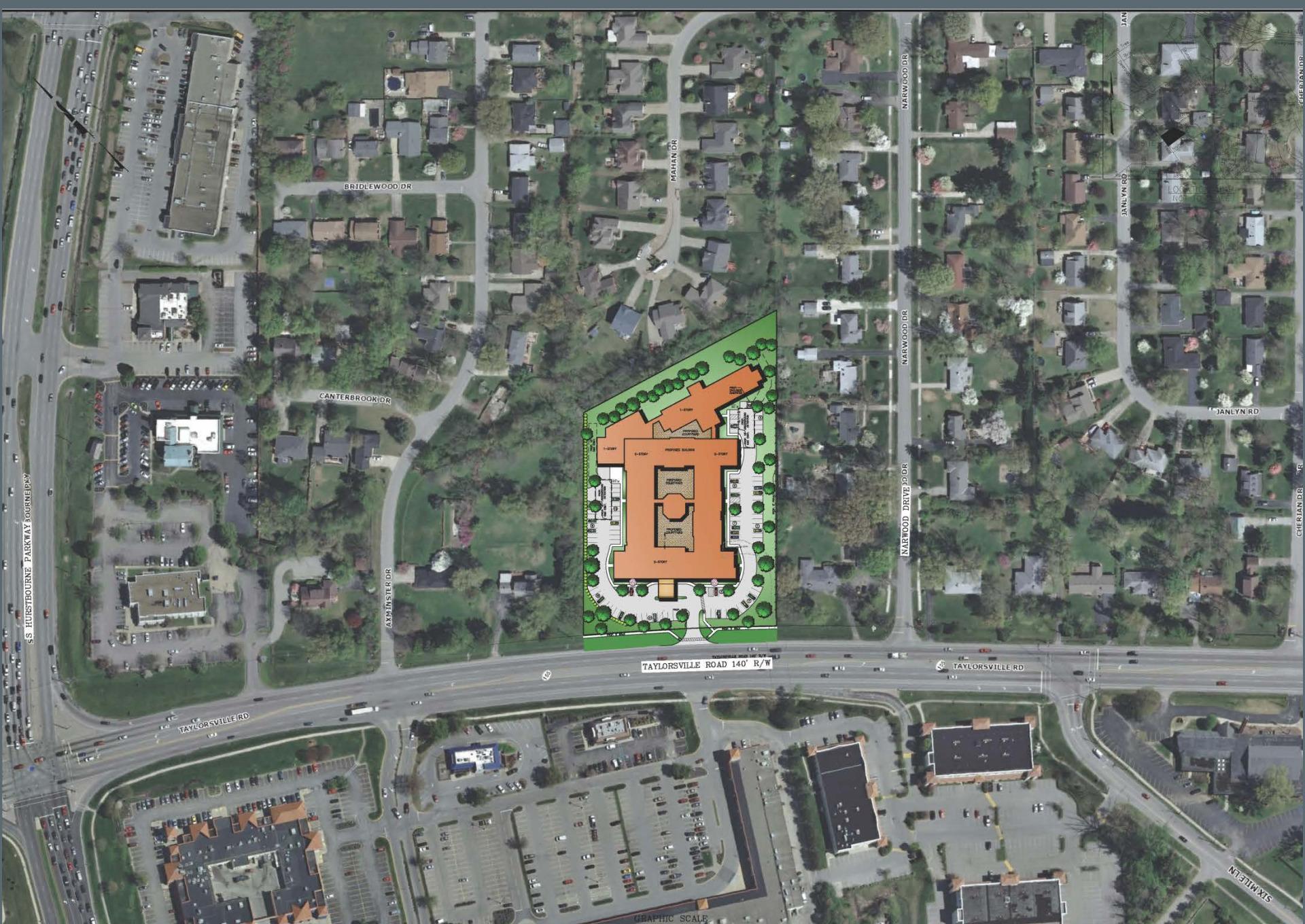
2' 8' 1/2'
 0 4' 16'
 SCALE: 1/8" = 1'-0"

Taylor Village



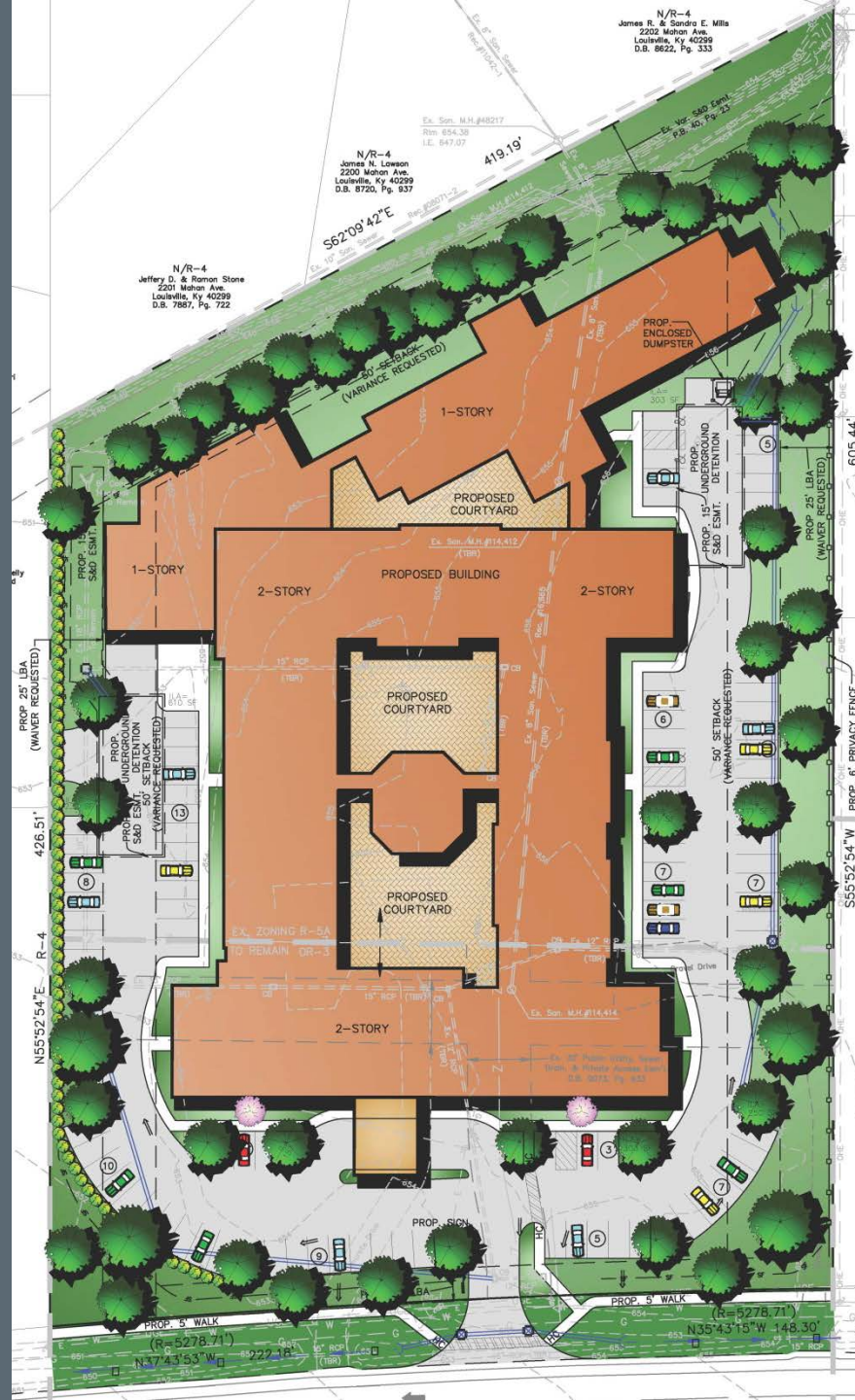
Tab 5

Current Development Plan



Current proposed plan

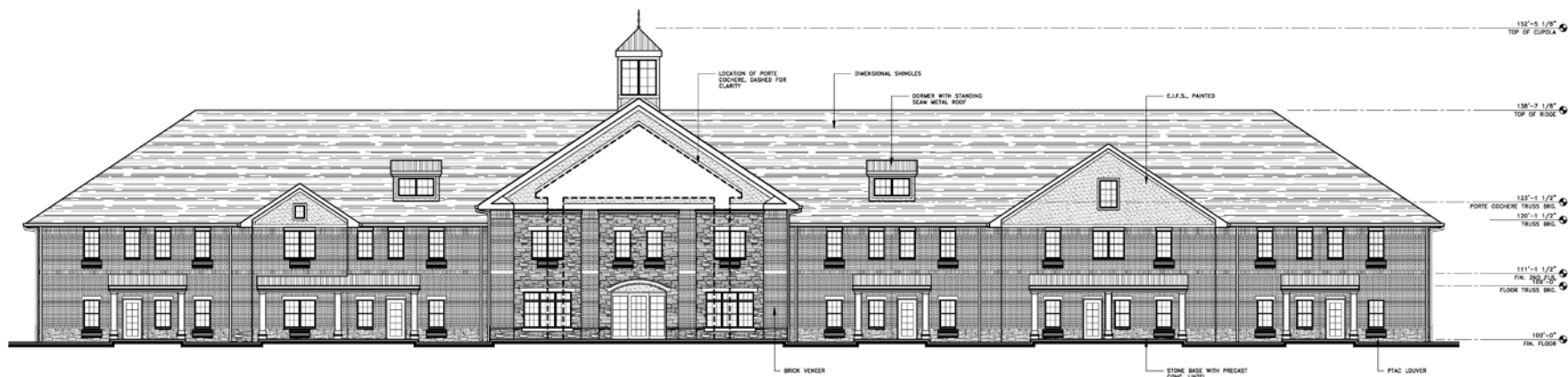
Current proposed plan





Tab 6

Building Elevation and Photographs of Similar
Developments



MEMORY CARE/ASSISTED LIVING LOUISVILLE

TURTLE CREEK MANAGEMENT

ARCHITURA CORPORATION

1/8" = 1'-0"

APRIL 11, 2014



Allisonville
Meadows
Assisted Living

Welcome

American
Communities













Tab 7

Detailed Statement of Compliance with the
Applicable Guidelines and Policies of the
Cornerstone 2020 Comprehensive Plan and
Variance Criteria

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BLDG • 1000 N. HURSTBOURNE PARKWAY • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223
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DETAILED STATEMENT OF COMPLIANCE WITH THE APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

<u>Applicant:</u>	Turtle Creek Management, Inc. (affiliated with Basic American Industries, Inc., American Senior Living, Inc. and Jackson Construction Co.)
<u>Owner:</u>	9107 Taylorsville Road, LLC
<u>Location:</u>	9107, 9109 and 9113 Taylorsville Road
<u>Proposed Use:</u>	Home for Aging and Infirm
<u>Engineers, Land Planners and Landscape Architects:</u>	Land Design and Development, Inc.
<u>Request:</u>	Revised Detailed District Development Plan and Conditional Use Permit for a home for the aging and infirm

SUMMARY STATEMENT

The subject property and others to the east and west along Taylorsville Road have long been the subject of considerable speculation as to how they will ultimately develop. Properties on the opposite side of Taylorsville Road are now nearly completely developed for uses and rezoned other than single family. Indeed, the properties involved in this application were rezoned in 2006 by the same lawyer and land planner involved in this CUP application. That rezoning was to OR-3 office and R-5A multi-family zoning districts that could work for this applicant and its use but for its desire to offer nursing services in its proposed assisted living and memory care home in order to help seniors in taking medications. Assisted living residences that are not state regulated health care facilities (i.e., no nurses dispensing medications) can operate within existing zoning without a CUP. Because of this minor level of care, this use falls within this CUP category despite no visible or felt impacts of the outside.

The previously approved plans for this site collapsed with the real estate Recession, from which the community is still struggling to recover.

This new use brings to Louisville the largest senior housing developer/operator in the state of Indiana. American Senior Living and its affiliated companies referenced above have 60 facilities in Indiana caring for 8,000 senior citizens, delivering 24,000 meals daily. With this kind of experience and track record of success, in a second generation company which builds for its own use, the applicant knows the demand and is able to understand market demographics. It has determined that this site is a good one for its senior living services.

In that regard, its principals, Wess and Mark Jackson, have walked the site, understand the adjoining properties, the proximity thereto, the small intermittent or ephemeral stream to the rear (north) of the site and the impacts that this could have on neighbors. Accordingly, on the east side where houses back up, they propose a solid screen of a six-foot high solid vinyl maintenance free fence. On the north side, they intend to clean up around the creek where it appears that MSD had begun creek repairs but never completed them. And along this rear (north) side of the site, its proposed building will be one-story, rather than two stories as with the balance (about two-thirds to three-quarters) of the rest of the building.

The previous applicant in the original rezoning of this property proposed a single point of access between the two previously existing buildings, eliminating a driveway in favor of just one.

On that prior approved development plan, behind the two previously approved office buildings were to be located several multi-family residential buildings, which were intended to serve as a transition between the office use along Taylorsville Road and the standard single-family subdivision that otherwise encompasses most of the small city of Forest Hills. The current proposed development plan continues with a “transitional” form of use, but with likely less traffic or activity impacts of the area or on Taylorsville Road.

GUIDELINE 1 - COMMUNITY FORM

The subject property is located near a Suburban Marketplace Corridor but still within the Suburban Neighborhood Form. This form district is characterized by a variety of forms of development, including retail, office and residential, with high density residential recommended along major arterials. Taylorsville Road is a major arterial. The proposed development is for a Personal Care Facility (aka a home for the aging and infirm), which is appropriate for the Suburban Neighborhood Form and for an arterial roadway such as Taylorsville Road, a very typical location for a development of this kind. The proposed development will include sidewalks along the frontage, sidewalks within the development, good perimeter screening and buffering, despite the need for side setbacks from the standard single-family subdivision of Forest Hills, safe access and a style and design that is compatible with the adjoining Forest Hills subdivision/small city.

GUIDELINE 2 - CENTERS

Guideline 2, Policies 1, 2, 4, and 5 pertain to the location of “activity centers” and the development of mixed uses that are compatible within compact developments. This development complies with these Policies of this Guideline because it is proposed for a very mixed use corridor across from a large shopping center. This development also complies with Policy 8 of this Guideline because, as compatibly designed, it is allowed within the Neighborhood Form because it serves the day-to-day needs of nearby residents who look to “retire” to a facility of this kind close to where they live, worship and shop and/or where friends or family live who are likely to come visit. As explained, the Personal Care Facility is a good transition from commercial to the south to residential to the north and with nice screening and buffering along the perimeters of this site, as explained above and as promised residential neighbors, and because of the style, design and choice of building materials, also as explained to neighbors. Policy 16 of this Guideline encourages alternative transportation modes, which is addressed because this is along a TARC route, and sidewalks internally and externally are also provided.

GUIDELINE 3: COMPATIBILITY

Policies 1, 2, 3 and 4 address the issues of compatible design, including building materials, vegetative buffers, open space, interior landscaping, minimization of parking lot lighting and so forth. As the development plan accompanying this application shows, and as otherwise explained above and within the elevation renderings of buildings submitted with this application, the proposed project is compatible in terms of use, style and design with the adjoining Forest Hills subdivision/small city. The transition from low intensity Personal Care Facility to standard single-family is a good one, particularly when this project fronts along a very busy arterial – Taylorsville Road. The styles and designs of the building are evident on the accompanying building photographs and elevation renderings. These have been discussed with neighbors, and thus far the response has been positive. Good perimeter landscaping and fencing are also included to lessen the impact on smaller adjoining single-family homes. Policies 5, 6, 7, 8 and 9 address what might become nuisances (odor, traffic, noise, lighting and visual impacts), but for the special attention given to assure that these obstacles to compatibility do not occur. Because of the use proposed, odors will not be an issue. Because of the low traffic generating effect, air quality will not be a problem. Few residents will even have cars. Also, guests of the residents in the facility are anticipated to arrive and depart at various hours of the day instead of all at the beginning or all at the end, which is when the greatest impact on peak hour traffic volumes occurs. Lighting will be residential in style and design and of low intensity, or directed down and away from nearby residential properties. Visual impacts are mitigated with good screening and buffering, retention of some existing perimeter trees, and a style and design of buildings that is compatible with that nearby, especially those within the adjoining Forest Hills subdivision/small city.

Policies 10, 11, 12, 13, 14 and 15 all deal with the variety of housing types, accessibility, appropriateness of higher density in appropriate areas and so forth. As explained, the proposed Personal Care Facility is not multi-family and office as previously approved. Yet the style and design of the proposed facility is attractive at first glance. Of course, requirements for accessibility imposed by federal and state law will also be assured, and price points will be such that this form of senior living will be comparable to others in the larger community.

Policies 21, 22 and 23 of this Guideline address transitions, buffers and setbacks, which have all been largely addressed above. Around the buildings will be trees, both retained and added, plus other landscaping both on the perimeter and interior to provide for a comfortable, landscaped setting. Good transition buffers to the adjoining standard single-family residential community of Forest Hills are assured. The architectural style and design of the building has been shown to neighbors and seem to be acceptable.

GUIDELINE 4 – OPEN SPACE

Policies 1, 5, 6 and 7 of this Guideline all pertain to the provision of open spaces, appropriately designed and maintained. Every residential community needs some form of open space, although the smaller the residential community, the less naturally provided or obviously available. Nevertheless, a small interior courtyard, as shown on the development plan accompanying this application can serve that purpose, thus enhancing the quality of the living environment.

GUIDELINES 7 (CIRCULATION), 8 (TRANSPORTATION FACILITY DESIGN), AND 9 (BICYCLE, PEDESTRIAN AND TRANSIT)

Policies 1, 2, 4 and 6 of Guideline 7 all pertain to addressing the traffic impacts of the proposed development and to assure that transportation services and facilities are always available, plus access to surrounding land uses. The development plan accompanying this application, including the notes shown on that plan, together with a previous traffic study that was prepared to assess the impacts of what was approved as a more intense use than this one on Taylorsville Road all demonstrate that this project will not cause a deterioration of the current traffic-carrying capacity of Taylorsville Road. Further, there will be adequate gaps in traffic along Taylorsville Road to accommodate traffic exiting and entering the proposed development. The center turn lane along Taylorsville Road will especially provide for left-hand turning movements into the development and will also assure that traffic turning left out of the proposed development can move into the center turning lane to await an opportunity to enter traffic moving toward Jeffersontown. Right-hand turns are normally not problematic and should not be at this location. As further noted above, an easement for future access to any development occurring on the adjoining properties to the west will be provided.

Policies 10, 11, 13, 14, 15, 16 and 17 all pertain to parking, joint and cross access, and access and circulation design. The single point of access along Taylorsville Road to the development will assure that traffic access is managed in a way that will have minimal impact on Taylorsville Road and also on the nearby local streets of Axminster and Norwood Roads. There will not be cross access to the adjoining properties to the east and west, although an easement can be provided if these properties ever developed. The location of the point of access and the width of same, plus circulation through the overall mixed use development have all been designed with input from Metro transportation planners.

Policies 4, 5, 7, 8, 9, 10 and 11 of Guideline 8 all address many of the same policies addressed in Guideline 7 – notably provision of traffic facility improvements along Taylorsville Road, if required, the adequacy of the Taylorsville Road street infrastructure, stub connections to adjoining properties and access to those if ever developed, internal circulation and the design of the point of access. The development plan accompanying this application, like all other development plans, is reviewed by Metro transportation planners. The land planners and engineers involved in designing this project are familiar with the requirements of those transportation planners, such that the development plan accompanying this application has taken into account and assured that access and circulation to and within this development have all addressed the requirements of these government agencies.

Policies 1, 2, 3 and 4 of Guideline 9 all pertain to alternative forms of transportation, notably pedestrian, bicycle and transit. Sidewalks are included along the Taylorsville Road frontage and within the proposed development. Bicycle access and parking facilities are provided. TARC service is available along Taylorsville Road.

GUIDELINES 10 (FLOODING AND STORMWATER), 11 (WATER QUALITY) AND 12 (AIR QUALITY)

These Guidelines all pertain to the environmental issues that every project needs to address. For example, post development rate of stormwater runoff cannot exceed predevelopment conditions, and they won't on this development site either. Normally, that is assured through on-site detention, as anticipated to be provided here through vault detention. As to water quality, the development will be required during the construction stage to show compliance with the local Sedimentation and Soil Erosion Control Ordinance and also new water quality regulations. As to

air quality, this form of development is a low peak hour traffic generator, thus air quality impacts are not anticipated. In a development of this kind, employees and guests of the residents are not likely to all enter and exit at the same time, thus mitigating the impacts of large traffic generators, because all will not utilize the street system or single points of access at the same time, but rather will be dispersed over the course of the day.

GUIDELINE 13 – LANDSCAPE CHARACTER

As the development plan accompanying this application shows, good perimeter screening and buffers are provided even if, for reasons set forth in the accompanying setback variance justifications, regulatory side setbacks cannot be fully provided, even though they would very nearly be but for the inclusion of nurses in this facility, which takes it, oddly enough, from a residential classification to an institutional one. Landscaping will be assured along the frontage on Taylorsville Road in order to assure separation and mitigation impacts and also along the property perimeters in order to minimize the impacts of this larger building on adjoining single-family homes. Within the development itself, there will be a high level of landscaping in order to assure a very livable residential community.

* * * *

For all of the above reasons and others identified on the Detailed Development Plan submitted with this application, including conditions of approval to be addressed with neighbors and presented by the time of Planning Commission review, this application complies with all other relevant and applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

Respectfully submitted,

William B. Bardenwerper
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Building Industry Association of Greater Louisville Building
1000 N. Hurstbourne Parkway, Second Floor
Louisville, KY 40223
(502) 426-6688
Counsel for Applicant

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.

Variance of: Section 5.3.1.C.5 to allow the proposed pavement and building to encroach into the rear and side 50 ft setbacks as shown on the development plan to be within 24 ft. on all 3 sides for building encroachments and within 6 ft on the west side and 26 ft on the east side for pavement encroachments. What is important to understand about this is that, were this an “assisted living residence”, which is permitted as a matter of right in the multi-family and office zoning districts, instead of a state licensed/regulated health care facility, this applicant would not need to apply for a CUP as an “institution for the aged and infirmed” which, according to DPDS staff, throws this into the “institutional” as opposed to “residential” use category. It is this distinction that causes the 50 instead of 30 foot setback. In other words, but for the inclusion of this application of nursing care in order to dispense medications to elderly patients, this would not be considered an institutional facility, but rather a residential one, in which event a lesser setback would apply. Furthermore, until recently DPDS staff applied the 30 ft CUP setback to uses of this kind not the 50 ft Section 5.3.1.C.5.

1. The variance will not adversely affect the public health, safety or welfare because the proposed use is really no different than would be an “assisted living residence”, which would impose significantly lesser setbacks. The only difference is the inclusion in this building of nurses, which results in no greater exterior building impacts on adjoining properties which might necessitate, per LDC, the greater 50 ft setbacks.
2. The variance will not alter the essential character of the general vicinity because, as stated above, the current zoning for multi-family doesn’t require this greater setback and neither would this same use without nurses.
3. The variance will not cause a hazard or a nuisance to the public for all the reasons set forth above, which is an LDC anomaly which requires a greater setback for institutional uses, which this is characterized to be because of the state regulation involved when nurses are introduced into the facility in order to dispense medications.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning

regulations because of the reasons set forth above. In other words, eliminating nurses and the dispensing of medications would eliminate the added setback.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because the requirement for this added setback is that the CUP “home for the aged and infirmed” category, not the residential care use, is what necessitates the added setback because of the DPDS interpretation that this becomes an “institutional” use instead of a residential one.
2. 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 could not fit the same facility on this property that it could if it was categorized differently simply by eliminating nursing staff.
3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation, but rather are the result of the recent DPDS interpretation/classification of this residential care facility as an institutional, rather than residential use.



Tab 8

Proposed Findings of Fact

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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

<u>Applicant:</u>	Turtle Creek Management, Inc. (affiliated with Basic American Industries, Inc., American Senior Living, Inc. and Jackson Construction Co.)
<u>Owner:</u>	9107 Taylorsville Road, LLC
<u>Location:</u>	9107, 9109 and 9113 Taylorsville Road
<u>Proposed Use:</u>	Home for Aging and Infirm
<u>Engineers, Land Planners and Landscape Architects:</u>	Land Design and Development, Inc.
<u>Request:</u>	Revised Detailed District Development Plan and Conditional Use Permit for a home for the aging and infirm

INTRODUCTORY STATEMENT

WHEREAS, the subject property and others to the east and west along Taylorsville Road have long been the subject of considerable speculation as to how they will ultimately develop; properties on the opposite side of Taylorsville Road are now nearly completely developed for uses and rezoned other than single family; indeed, the properties involved in this application were rezoned in 2006 by the same lawyer and land planner involved in this CUP application; that rezoning was to OR-3 office and R-5A multi-family zoning districts that could work for this applicant and its use but for its desire to offer nursing services in its proposed assisted living and memory care home in order to help seniors in taking medications; assisted living residences that are not state regulated health care facilities (i.e., no nurses dispensing medications) can operate within existing zoning without a CUP; because of this minor level of care, this use falls within this CUP category despite no visible or felt impacts of the outside; and

WHEREAS, the previously approved plans for this site collapsed with the real estate Recession, from which the community is still struggling to recover; and

WHEREAS, this new use brings to Louisville the largest senior housing developer/operator in the state of Indiana; American Senior Living and its affiliated companies referenced above have 60 facilities in Indiana caring for 8,000 senior citizens, delivering 24,000 meals daily; with this kind of experience and track record of success, in a second generation company which builds for its own use, the applicant knows the demand and is able to understand market demographics; and it has determined that this site is a good one for its senior living services; and

WHEREAS, in that regard, its principals, Wess and Mark Jackson, have walked the site, understand the adjoining properties, the proximity thereto, the small intermittent or ephemeral stream to the rear (north) of the site and the impacts that this could have on neighbors; accordingly, on the east side where houses back up, they propose a solid screen of a six-foot high solid vinyl maintenance free fence; on the north side, they intend to clean up around the creek where it appears that MSD had begun creek repairs but never completed them; and along this rear (north) side of the site, its proposed building will be one-story, rather than two stories as with the balance (about two-thirds to three-quarters) of the rest of the building; and

WHEREAS, the previous applicant in the original rezoning of this property proposed a single point of access between the two previously existing buildings, eliminating a driveway in favor of just one; and

WHEREAS, on that prior approved development plan, behind the two previously approved office buildings were to be located several multi-family residential buildings, which were intended to serve as a transition between the office use along Taylorsville Road and the standard single-family subdivision that otherwise encompasses most of the small city of Forest Hills; and the current proposed development plan continues with a “transitional” form of use, but with likely less traffic or activity impacts of the area or on Taylorsville Road.

GUIDELINE 1 - COMMUNITY FORM

WHEREAS, the subject property is located near a Suburban Marketplace Corridor but still within the Suburban Neighborhood Form; this form district is characterized by a variety of forms of development, including retail, office and residential, with high density residential recommended along major arterials; Taylorsville Road is a major arterial; the proposed development is for a Personal Care Facility (aka a home for the aging and infirm), which is appropriate for the Suburban Neighborhood Form and for an arterial roadway such as Taylorsville Road, a very typical location for a development of this kind; and the proposed development will include sidewalks along the frontage, sidewalks within the development, good perimeter screening and buffering, despite the need for side setbacks from the standard single-family subdivision of Forest Hills, safe access and a style and design that is compatible with the adjoining Forest Hills subdivision/small city.

GUIDELINE 2 - CENTERS

WHEREAS, Guideline 2, Policies 1, 2, 4, and 5 pertain to the location of “activity centers” and the development of mixed uses that are compatible within compact developments; this development complies with these Policies of this Guideline because it is proposed for a very mixed use corridor across from a large shopping center; this development also complies with Policy 8 of this Guideline because, as compatibly designed, it is allowed within the Neighborhood Form because it serves the day-to-day needs of nearby residents who look to “retire” to a facility of this kind close to where they live, worship and shop and/or where friends or family live who are likely to come visit; as explained, the Personal Care Facility is a good transition from commercial to the south to residential to the north and with nice screening and buffering along the perimeters of this site, as explained above and as promised residential neighbors, and because of the style, design and choice of building materials, also as explained to neighbors and as presented at this Public Hearing; and Policy 16 of this Guideline encourages

alternative transportation modes, which is addressed because this is along a TARC route, and sidewalks internally and externally are also provided.

GUIDELINE 3: COMPATIBILITY

WHEREAS, Policies 1, 2, 3 and 4 address the issues of compatible design, including building materials, vegetative buffers, open space, interior landscaping, minimization of parking lot lighting and so forth; as the development plan accompanying this application shows, and as otherwise explained above and within the elevation renderings of buildings submitted with this application, the proposed project is compatible in terms of use, style and design with the adjoining Forest Hills subdivision/small city; the transition from low intensity Personal Care Facility to standard single-family is a good one, particularly when this project fronts along a very busy arterial – Taylorsville Road; the styles and designs of the building are evident on the accompanying building photographs and elevation renderings; these have been discussed with neighbors, and thus far the response has been positive; good perimeter landscaping and fencing are also included to lessen the impact on smaller adjoining single-family homes; and

WHEREAS, Policies 5, 6, 7, 8 and 9 address what might become nuisances (odor, traffic, noise, lighting and visual impacts), but for the special attention given to assure that these obstacles to compatibility do not occur; because of the use proposed, odors will not be an issue; because of the low traffic generating effect, air quality will not be a problem; few residents will even have cars; also, guests of the residents in the facility are anticipated to arrive and depart at various hours of the day instead of all at the beginning or all at the end, which is when the greatest impact on peak hour traffic volumes occurs; lighting will be residential in style and design and of low intensity, or directed down and away from nearby residential properties; and visual impacts are mitigated with good screening and buffering, retention of some existing perimeter trees, a style and design of buildings that is compatible with that nearby, especially those within the adjoining Forest Hills subdivision/small city; and

WHEREAS, Policies 10, 11, 12, 13, 14 and 15 all deal with the variety of housing types, accessibility, appropriateness of higher density in appropriate areas and so forth; as explained, the proposed Personal Care Facility is not multi-family and office as previously approved; yet the style and design of the proposed facility is attractive at first glance; of course, requirements for accessibility imposed by federal and state law will also be assured, and price points will be such that this form of senior living will be comparable to others in the larger community; and

WHEREAS, Policies 21, 22 and 23 of this Guideline address transitions, buffers and setbacks, which have all been largely addressed above; around the buildings will be trees, both retained and added, plus other landscaping both on the perimeter and interior to provide for a comfortable, landscaped setting; good transition buffers to the adjoining standard single-family residential community of Forest Hills are assured; and the architectural style and design of the building has been shown to neighbors and seem to be acceptable.

GUIDELINE 4 – OPEN SPACE

WHEREAS, Policies 1, 5, 6 and 7 of this Guideline all pertain to the provision of open spaces, appropriately designed and maintained; every residential community needs some form of open space, although the smaller the residential community, the less naturally provided or obviously available; and nevertheless, a small interior courtyard, as shown on the development plan

accompanying this application can serve that purpose, thus enhancing the quality of the living environment.

**GUIDELINES 7 (CIRCULATION), 8 (TRANSPORTATION FACILITY DESIGN),
AND 9 (BICYCLE, PEDESTRIAN AND TRANSIT)**

WHEREAS, Policies 1, 2, 4 and 6 of Guideline 7 all pertain to addressing the traffic impacts of the proposed development and to assure that transportation services and facilities are always available, plus access to surrounding land uses; the development plan accompanying this application, including the notes shown on that plan, together with a previous traffic study that was prepared to assess the impacts of what was approved as a more intense use than this one on Taylorsville Road all demonstrate that this project will not cause a deterioration of the current traffic-carrying capacity of Taylorsville Road; further, there will be adequate gaps in traffic along Taylorsville Road to accommodate traffic exiting and entering the proposed development; the center turn lane along Taylorsville Road will especially provide for left-hand turning movements into the development and will also assure that traffic turning left out of the proposed development can move into the center turning lane to await an opportunity to enter traffic moving toward Jeffersontown; right-hand turns are normally not problematic and should not be at this location; as further noted above, an easement for future access to any development occurring on the adjoining properties to the west will be provided; and

WHEREAS, Policies 10, 11, 13, 14, 15, 16 and 17 all pertain to parking, joint and cross access, and access and circulation design; the single point of access along Taylorsville Road to the development will assure that traffic access is managed in a way that will have minimal impact on Taylorsville Road and also on the nearby local streets of Axminster and Norwood Roads; there will not be cross access to the adjoining properties to the east and west, although an easement can be provided if these properties ever developed; and the location of the point of access and the width of same, plus circulation through the overall mixed use development have all been designed with input from Metro transportation planners; and

WHEREAS, Policies 4, 5, 7, 8, 9, 10 and 11 of Guideline 8 all address many of the same policies addressed in Guideline 7 – notably provision of traffic facility improvements along Taylorsville Road, if required, the adequacy of the Taylorsville Road street infrastructure, stub connections to adjoining properties and access to those if ever developed, internal circulation and the design of the point of access; the development plan accompanying this application, like all other development plans, is reviewed by Metro transportation planners; and the land planners and engineers involved in designing this project are familiar with the requirements of those transportation planners, such that the development plan accompanying this application has taken into account and assured that access and circulation to and within this development have all addressed the requirements of these government agencies; and

WHEREAS, Policies 1, 2, 3 and 4 of Guideline 9 all pertain to alternative forms of transportation, notably pedestrian, bicycle and transit; sidewalks are included along the Taylorsville Road frontage and within the proposed development; bicycle access and parking facilities are provided; and TARC service is available along Taylorsville Road.

**GUIDELINES 10 (FLOODING AND STORMWATER), 11 (WATER QUALITY) AND
12 (AIR QUALITY)**

WHEREAS, these Guidelines all pertain to the environmental issues that every project needs to address; for example, post development rate of stormwater runoff cannot exceed predevelopment conditions, and they won't on this development site either; normally, that is assured through on-site detention, as anticipated to be provided here through vault detention; as to water quality, the development will be required during the construction stage to show compliance with the local Sedimentation and Soil Erosion Control Ordinance and also new water quality regulations; as to air quality, this form of development is a low peak hour traffic generator, thus air quality impacts are not anticipated; and in a development of this kind, employees and guests of the residents are not likely to all enter and exit at the same time, thus mitigating the impacts of large traffic generators, because all will not utilize the street system or single points of access at the same time, but rather will be dispersed over the course of the day.

GUIDELINE 13 – LANDSCAPE CHARACTER

WHEREAS, as the development plan accompanying this application shows, good perimeter screening and buffers are provided even if, for reasons set forth in the accompanying setback variance justifications, regulatory side setbacks cannot be fully provided, even though they would very nearly be but for the inclusion of nurses in this facility, which takes it, from a residential classification to an institutional one; landscaping will be assured along the frontage on Taylorsville Road in order to assure separation and mitigation impacts and also along the property perimeters in order to minimize the impacts of this larger building on adjoining single-family homes; and within the development itself, there will be a high level of landscaping in order to assure a very livable residential community.

* * * *

NOW THEREFORE, based on the foregoing, the testimony and evidence at the public hearing, in the application, in the applicant's public hearing exhibit books, in the applicant's filed Statement of Compliance, and in the DPDS staff report, be it resolved that the Revised Detailed District Development Plan and Conditional Use Permit are hereby approved.

Variance Proposed Findings of Fact

Variance of: Section 5.3.1.C.5 to allow the proposed pavement and building to encroach into the rear and side 50 ft setbacks as shown on the development plan to be within 24 ft. on all 3 sides for building encroachments and within 6 ft on the west side and 26 ft on the east side for pavement encroachments.

WHEREAS, if this were an “assisted living residence”, which is permitted as a matter of right in the multi-family and office zoning districts, instead of a state licensed/regulated health care facility, this applicant would not need to apply for a CUP as an “institution for the aged and infirmed” which, according to DPDS staff, throws this into the “institutional” as opposed to “residential” use category; it is this distinction that causes the 50 instead of 30 foot setback; in other words, but for the inclusion of this application of nursing care in order to dispense medications to elderly patients, this would not be considered an institutional facility, but rather a residential one, in which event a lesser setback would apply; and until recently DPDS staff applied the 30 ft CUP setback to uses of this kind not the 50 ft Section 5.3.1.C.5; and

WHEREAS, the variance will not adversely affect the public health, safety or welfare because the proposed use is really no different than would be an “assisted living residence”, which would impose significantly lesser setbacks; and the only difference is the inclusion in this building of nurses, which results in no greater exterior building impacts on adjoining properties which might necessitate, per LDC, the greater 50 ft setbacks; and

WHEREAS, the variance will not alter the essential character of the general vicinity because, as stated above, the current zoning for multi-family doesn’t require this greater setback and neither would this same use without nurses; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public for all the reasons set forth above, which is an LDC anomaly which requires a greater setback for institutional uses, which this is characterized to be because of the state regulation involved when nurses are introduced into the facility in order to dispense medications; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because of the reasons set forth above; and in other words, eliminating nurses and the dispensing of medications would eliminate the added setback; and

WHEREAS, the Variance arises from special circumstances, which do not generally apply to land in the general vicinity because the requirement for this added setback is that the CUP “home for the aged and infirmed” category, not the residential care use, is what necessitates the added setback because of the DPDS interpretation that this becomes an “institutional” use instead of a residential one; 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 could not fit the same facility on this property that it could if it was categorized differently simply by eliminating nursing staff; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation, but rather are the result of the recent DPDS interpretation/classification of this residential care facility as an institutional, rather than residential use; and

NOW, THEREFORE, the Louisville Metro Board of Zoning Adjustment hereby approves the Variance.