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DESIGN SERVICES**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 building to encroach into the 15 ft setback along the west property line.

1. 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. 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.
2. The variance will not alter the essential character of the general vicinity for all the reasons set forth in #1 above.
3. The variance will not cause a hazard or a nuisance to the public for all the reasons set forth in #1 above. Moreover, variance being requested again will eliminate 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.
4. The variance will not allow an unreasonable circumvention of the requirements of the zoning regulations for all the reasons set forth in #1 above.

**Additional consideration:**

1. 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 in #1 above, notably the pre-existing footprint of the current, as-built building, and the resulting necessity to continue that line of the building. Moreover, this plan prevents further encroachment into the rear (north) part of the site and the east side of the site.
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 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. The fact that the variance will allow the privacy of the neighbor most impacted is a good balance to the issue

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where both affected parties mutually benefit.

3. 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.

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**General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

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.

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Explanation of Waiver:

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

2. 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, which states that the "Public Works Director or designee . . . may waive any of these required contents." 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 have overflow parking available to it. 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.

3. 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

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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. 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.

4. 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 orthodontists 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.

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**General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

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

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Explanation of Waiver:

1. 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.
2. 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.
3. 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.
4. 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 to the low intensity use. The fact that the waiver will allow the privacy of the neighbor most impacted by the waiver is a good balance to the issue where both affected parties mutually benefit.

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**General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

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

Explanation of Waiver:

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1. 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.
2. 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.
3. 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.
4. 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 costly without any material benefit. Also the drainage of the site cannot be changed in a feasible manner, and including this area in the LBA benefits both the neighbors by shielding their viewing of the site and benefits the owner by allowing the necessary parking to be placed on the site.

**General Waiver Justification:**

In order to justify approval of any waiver, the Planning Commission or Board of Zoning Adjustment considers four criteria. Please answer all of the following questions. Use additional sheets if needed. A response of yes, no, or N/A is not acceptable.

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

Explanation of Waiver:

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1. 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 the residential landowners on the west side of the property.
2. 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.
3. 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 be provided 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 the residential homes, and screened by the applicant's building.
4. 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.