

Docket No. 17ZONE1027

Proposed change in zoning from R-4 to OR, variance and waivers to allow additional parking and small expansion of the existing Eberle Orthodontics office building located at 13913 Shelbyville Road and a small portion of 14001 Shelbyville Road

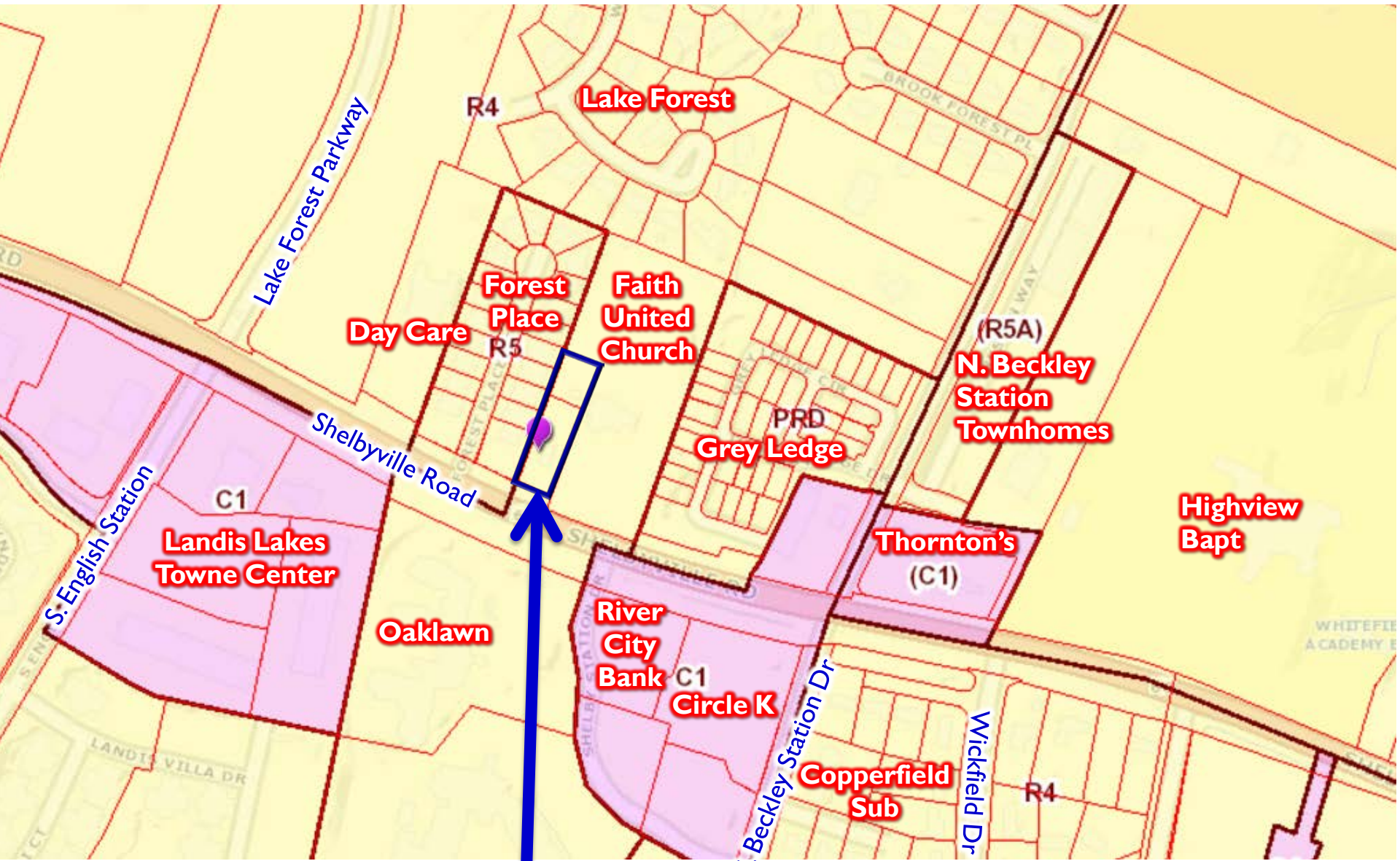


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Tab I
LOJIC Zoning Map



Site location



Tab 2

Aerial photograph of the site and surrounding area



R4

Lake Forest

Lake Forest Parkway

Forest Place Day Care

Faith United Church

Grey Ledge PRD

R1A

N. Beckley Station Townhomes

Shelbyville Road

C1

Landis Lakes Towne Center

Thornton's (C1)

Highview Baptist

Oaklawn

River City Bank

Circle K

C1

Copperfield Sub

R4

C1

DR

YNDL DR

VILLAY DR

S. English Station

LAWA CT

BARCELONA DR

SHELBY STATION DR

S. Beckley Station Dr RD

WICKFIELD DR

GABLEWOOD CIR

60

WAKEFIELD

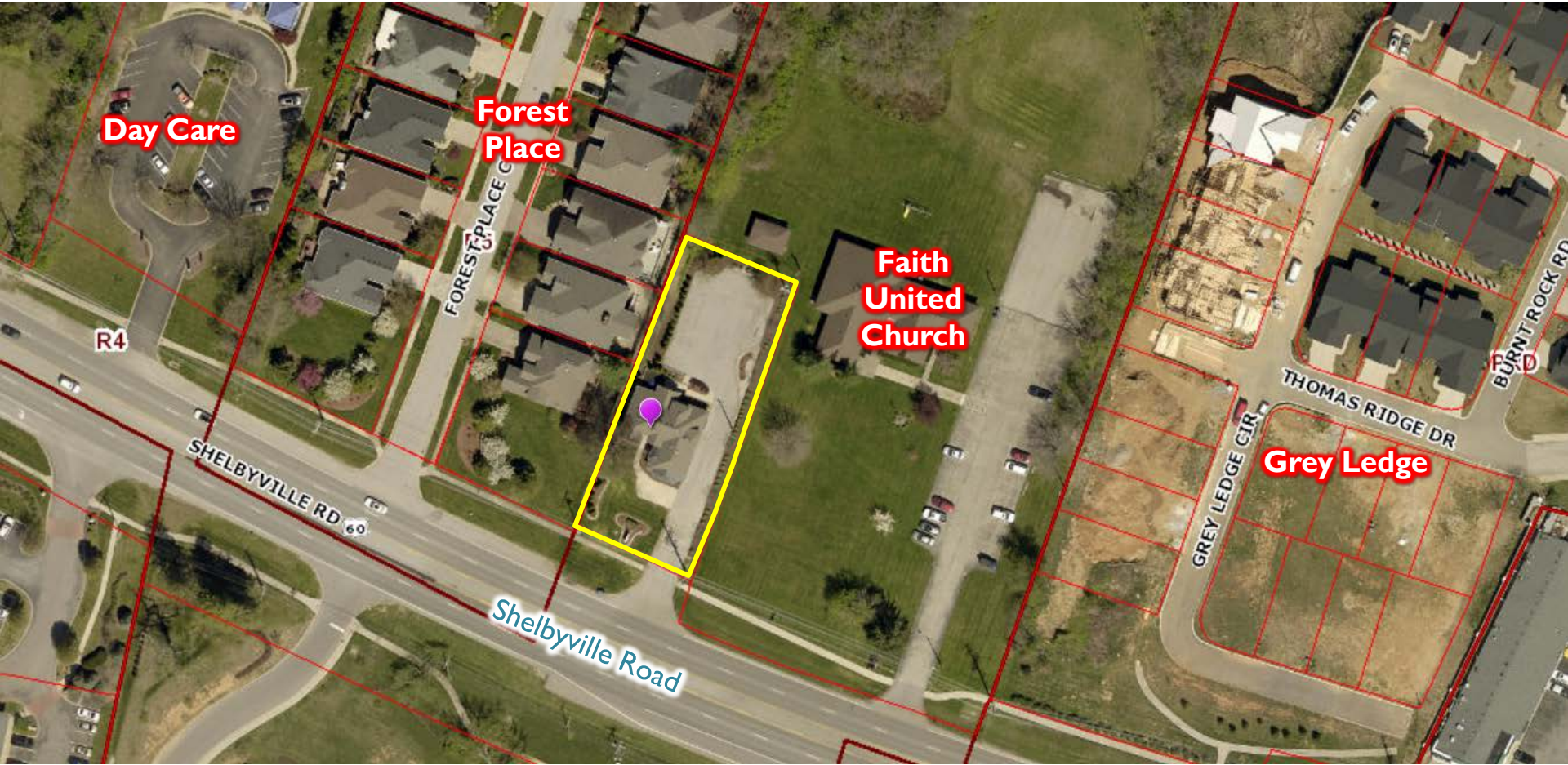
CROSSBRANCH CT

BROOK FOREST PL

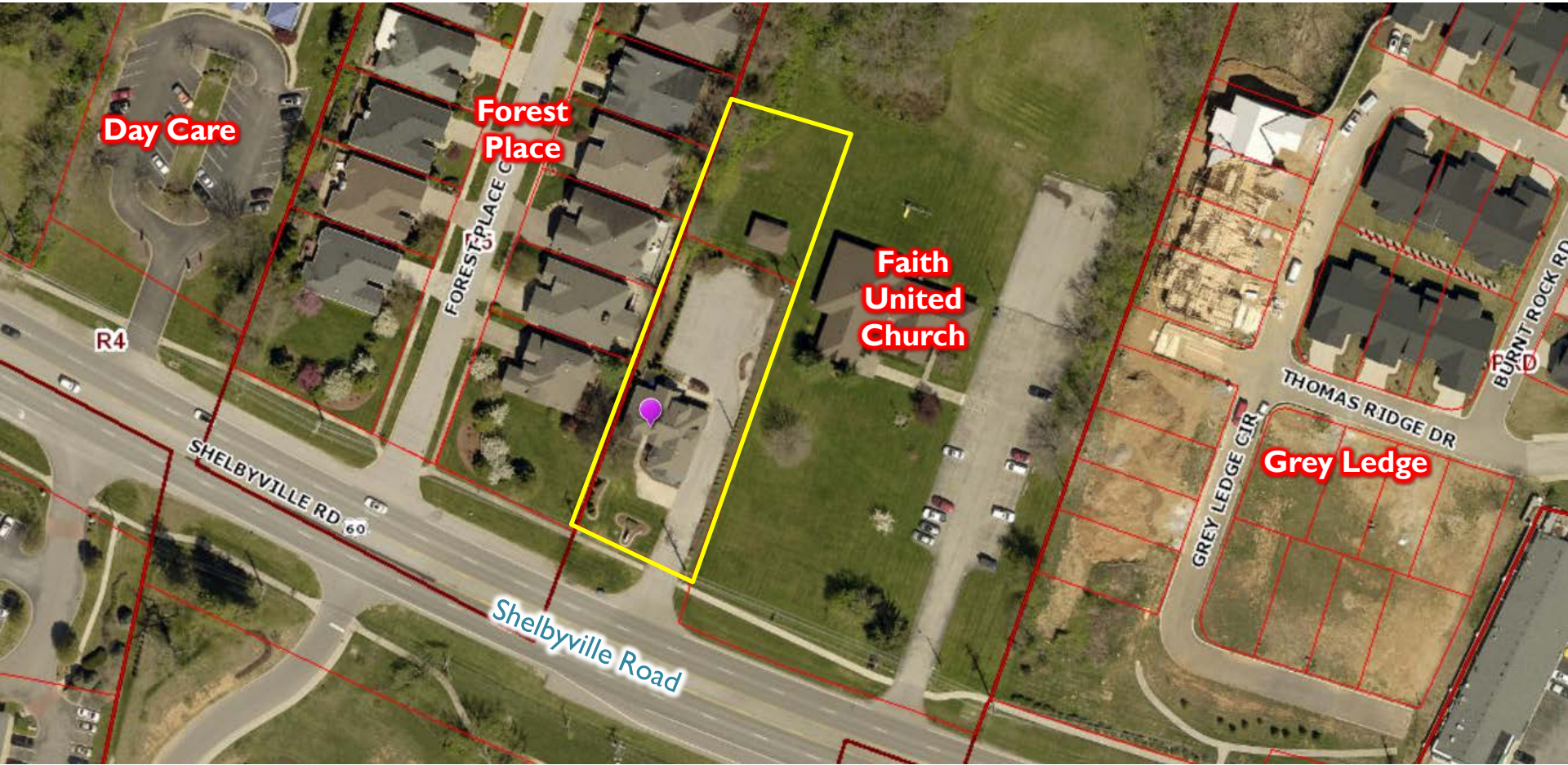
N. BECKLEY STATION RD

GREY LEDGE CIR

RIDGE DR



Current property lines



Property lines after expansion



Tab 3

Ground level photographs of the site and surrounding area



SITE

Shelbyville Road

View of existing Eberle Orthodontics office.



Shelbyville Road

View of Shelbyville Road looking east. Site is to the left.



SITE

Shelbyville Road

View of existing Shelbyville Road looking west. Site is to the right.



Tab 4

Neighborhood Meeting notice list map, letter to neighbors inviting them to the meeting and summary of meeting

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John C. Talbott
Direct dial: 426-0388, ext. 133
Email: JOHN@BARDLAW.NET

June 14, 2017

Dear Neighbor,

RE: Proposed change in zoning from R-4 to OR to allow additional parking and small expansion of the existing Eberle Orthodontics office located at 13913 Shelbyville Road and a portion of 14001 Shelbyville Road

We are writing to invite you to a meeting we have scheduled to present neighbors with our rezoning plan for the existing Eberle Orthodontics office located as above. The property is currently zoned R-4 which received, in 2006, a Conditional Use Permit in Docket No B-54-06, however Condition of Approval #3 limited this orthodontics office to only one dentist and #5 limited the square footage to 2260 sf. As Dr. Eberle's practice has grown, he now needs an additional dentist and space to accommodate them as well as patients. The applicant is proposing to add 27 parking spaces as well as 881 additional square feet to the existing building.

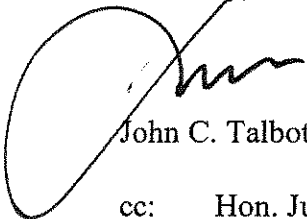
Accordingly, we have filed a plan for pre-application review on Monday, June 12th with the Division of Planning and Design Services (DPDS) that has been assigned case number **17ZONE1027** and case manager **Joel Dock**. We would like to show and explain to neighbors this plan so that we might hear what thoughts, issues and perhaps even concerns you may have.

In that regard, a meeting will be held on **Thursday, June 29th at 7:00 p.m. at Faith United Church of Christ** located at **14001 Shelbyville Road**, adjacent to the existing orthodontics office.

If you cannot attend the meeting but have questions or concerns, please call me at 426-6688 or our land planning and engineering firm representative John Miller at 636-5501.

We look forward to seeing you.

Sincerely,



John C. Talbott

cc: Hon. Julie Denton, Councilwoman, District 19
Joel Dock, Case Manager with Division of Planning & Design Services
Jim Griffin, land planners with Evans/Griffin, Inc.
Dr. Scott Eberle, SJE, LLC, applicant/owner

Neighborhood Meeting Summary

A neighborhood meeting was held on Thursday, June 29th at 7:00 p.m. at Faith United Church of Christ located at 14001 Shelbyville Road. Those in attendance included the applicant's attorney, John Talbott, land planner and engineer, Jim Griffin and the applicant.

The meeting began with John Talbott introducing the applicant and engineer, and then showing the Power Point presentation of the area and nearby development. He did this so that everyone present was fully familiar with exactly the properties being considered and impacted. He described the need for the change from an R-4 Conditional Use Permit to OR zoning. He also showed the site plan for this site, its perimeter buffers and setbacks, the location of parking, the changes to the footprint of the building, and the architectural drawings of the building changes.

Mr. Talbott emphasized that the applicant was interested in their concerns so they could be best addressed and to make this a good plan. He also explained how the DPDS "Case Management Review Process" works, how agencies such as those mentioned above, will review the submitted plan and how those agencies' preliminary stamps of approval are required prior to this application being docketed for public meetings and hearings. He said that those attending this meeting, and who have received notice thus far, will receive official notice of those meetings so that they can appear to comment on the application finally filed.

Many of the neighbors wanted to understand the need for the extra parking, which was explained because there are currently 11 staff and it is likely to increase to 14, with the current and future need for space for clients of the orthodontist office. The major concern was how the parking would be buffered from the homes. Some neighbors wanted the current vegetation to remain as much as possible, while others thought it was weeds and wanted it replaced. It was explained that the applicant was required to provide a landscape buffer, and that we would do as much as possible to reduce any negative impact to the homeowners. One neighbor, who was closest to Shelbyville Road requested that current landscaping be moved to hide the sign from her back porch. This particular neighbor seemed pleased that the new addition could reduce the amount of windows facing her home. Another resident in Lake Forest who's home backs up to the church property was concerned about drainage. He acknowledged that this site would have little impact, but he hoped this plan could get the attention of MSD to address some of his current problems.

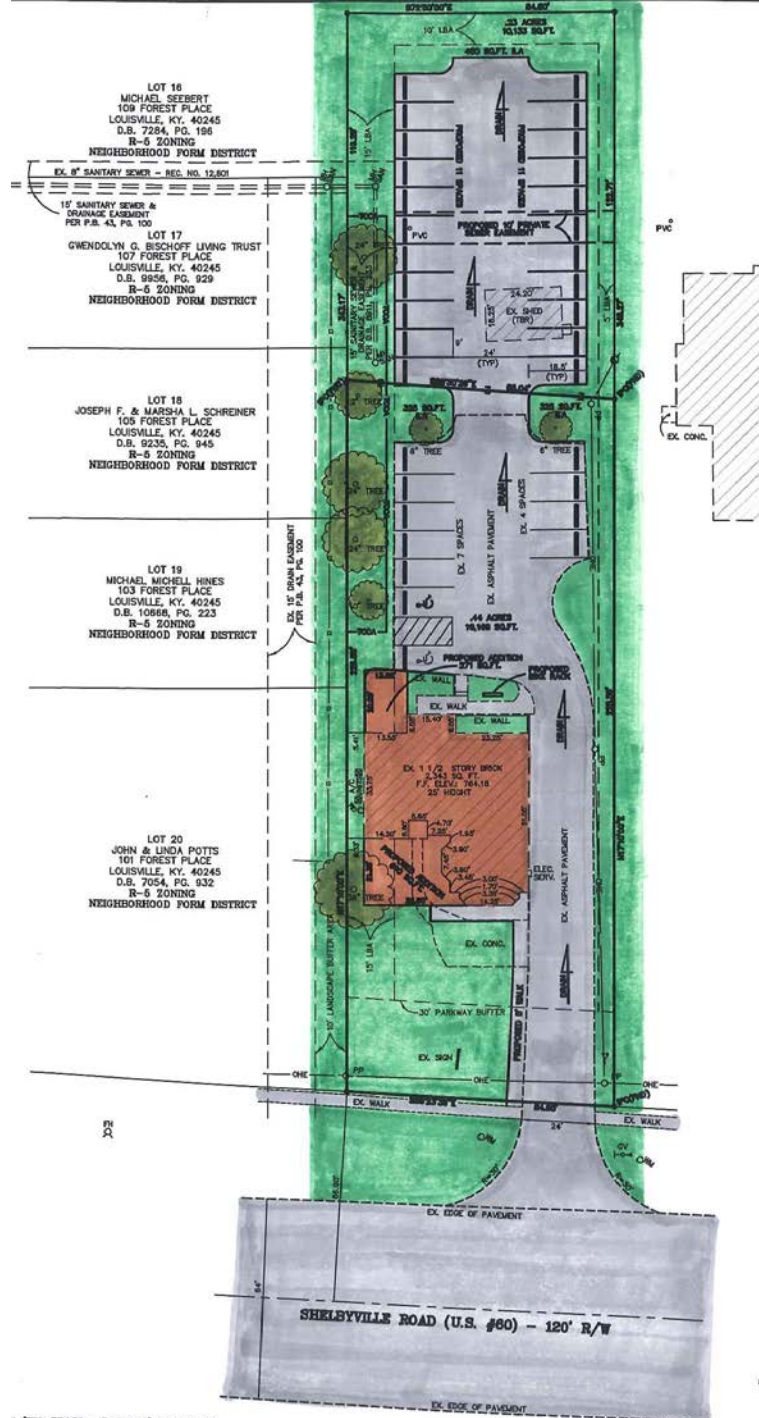
After the meeting, Mr. Talbott and the applicant walked the western property line with several of the neighbors to see the current trees and to have a better idea who the plan would impact and affect them.

Respectfully submitted,

John C. Talbott
Bardenwerper, Talbott & Roberts, PLLC
Building Association of Greater Louisville Building
1000 N. Hurstbourne Parkway, Second Floor
Louisville, KY 40223
(502) 426-6688



Tab 5 Development Plan



LOT 16
MICHAEL SEBERT
109 FOREST PLACE
LOUISVILLE, KY, 40245
D.B. 7284, PG. 198
R-6 ZONING
NEIGHBORHOOD FORM DISTRICT

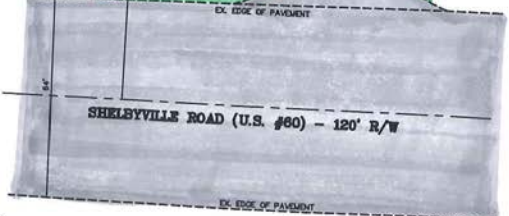
EX. 8" SANITARY SEWER - REC. NO. 12,601
15' SANITARY SEWER & DRAINAGE EASEMENT FOR P.B. 43, PG. 100

LOT 17
GWENDOLYN G. BISCHOFF LIVING TRUST
107 FOREST PLACE
LOUISVILLE, KY, 40245
D.B. 9856, PG. 929
R-6 ZONING
NEIGHBORHOOD FORM DISTRICT

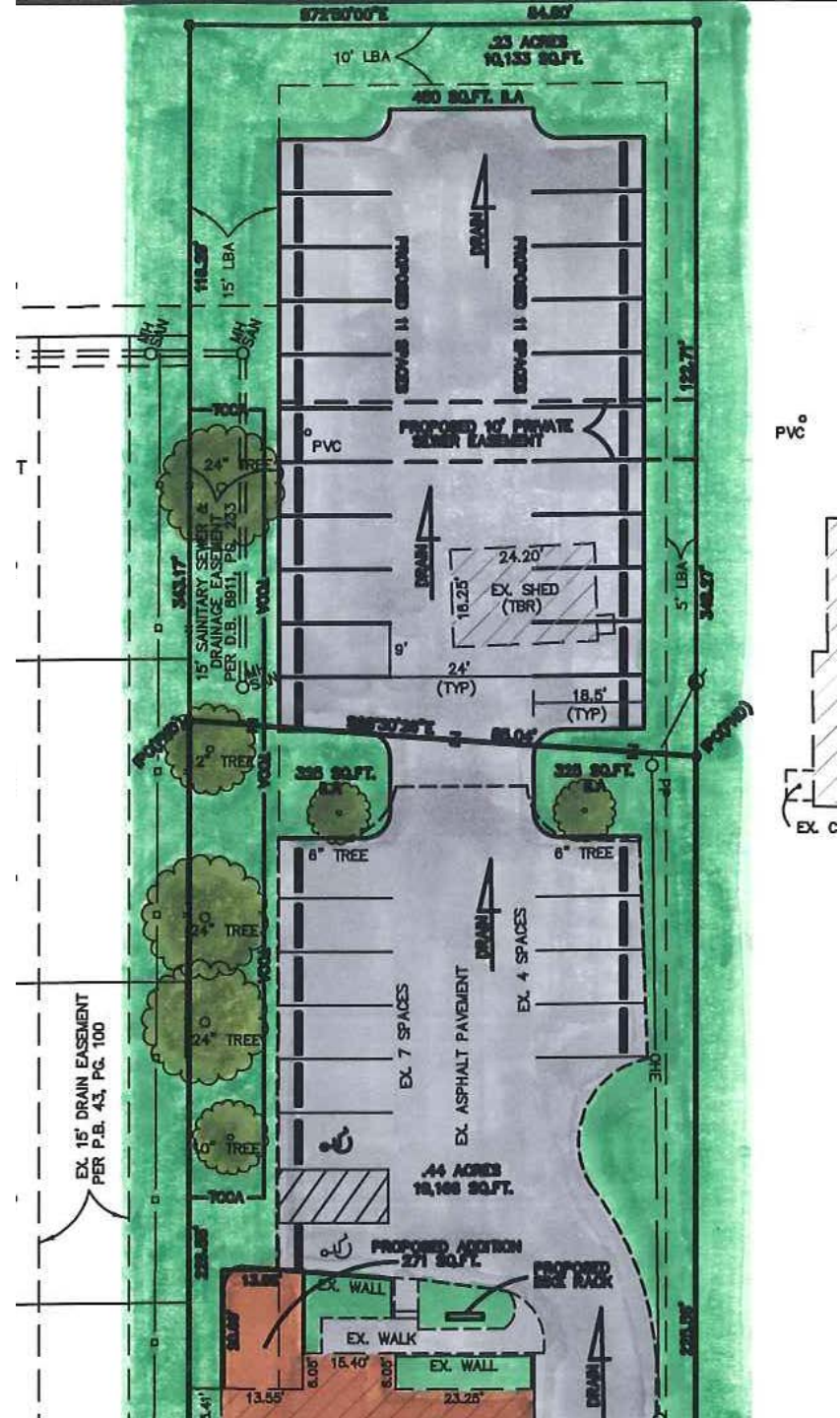
LOT 18
JOSEPH F. & MARSHA L. SCHREINER
106 FOREST PLACE
LOUISVILLE, KY, 40245
D.B. 9236, PG. 945
R-6 ZONING
NEIGHBORHOOD FORM DISTRICT

LOT 19
MICHAEL MICHELL HINES
103 FOREST PLACE
LOUISVILLE, KY, 40245
D.B. 10868, PG. 223
R-6 ZONING
NEIGHBORHOOD FORM DISTRICT

LOT 20
JOHN & LINDA POTTS
101 FOREST PLACE
LOUISVILLE, KY, 40245
D.B. 7054, PG. 932
R-6 ZONING
NEIGHBORHOOD FORM DISTRICT



Proposed additional parking to rear of site

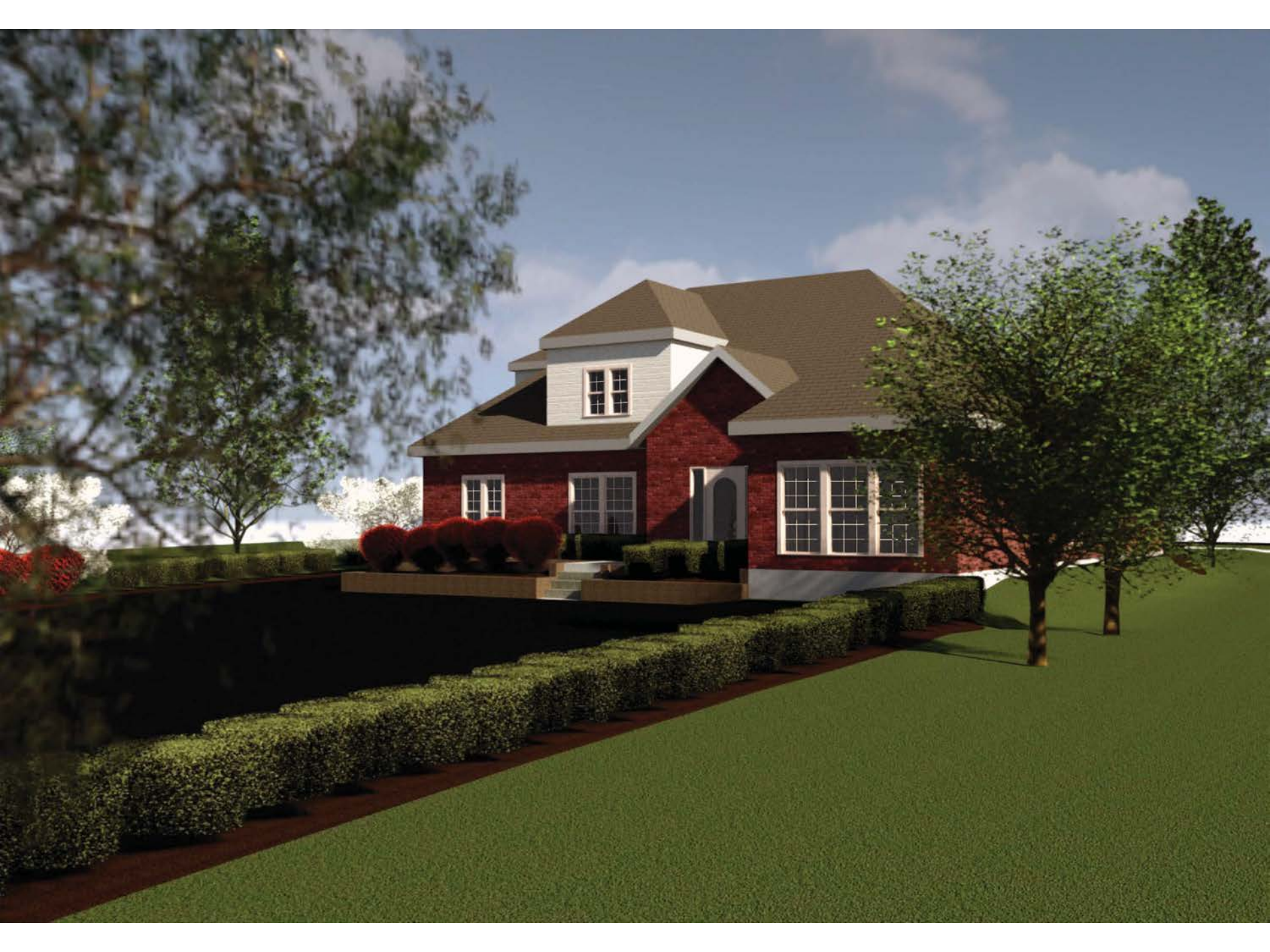





Tab 6

Building Elevations







Tab 7

Parking Study Counts

**EBERLE ORTHODONTICS – PARKING STUDY
NOVEMBER 6, 2017**

Currently only 11 parking spaces available on site

TIME	CUSTOMER VEHICLES	Staff vehicles parked off site	TOTAL VEHICLES
12:00 pm	7	12	19
4:00 pm	12	12	24

**EBERLE ORTHODONTICS – PARKING STUDY
NOVEMBER 13, 2017**

Currently only 11 parking spaces available on site

TIME	CUSTOMER VEHICLES	Staff vehicles parked off site	TOTAL VEHICLES
12:00 pm	8	12	20
4:00 pm	11	12	28

EBERLE ORTHODONTICS EXPECTED PARKING NEEDS

**ADDITIONAL 22 SPACES
(33 TOTAL)**

TIME	CUSTOMER VEHICLES	Staff vehicles parked ON site	TOTAL VEHICLES
12:00 pm	11	14	25
4:00 pm	16	14	30

NOVEMBER 6, 2017 (11 PARKING SPACES)

TIME	TOTAL VEHICLES
12:00 pm	19
4:00 pm	24

NOVEMBER 13, 2017 (11 PARKING SPACES)

TIME	TOTAL VEHICLES
12:00 pm	20
4:00 pm	28

EXPECTED PARKING NEEDS MET WITH ADDITIONAL 22 SPACES (33 TOTAL)

TIME	CUSTOMER VEHICLES	Staff vehicles parked ON site	TOTAL VEHICLES
12:00 pm	11	14	25
4:00 pm	16	14	30

Problems solved by additional parking:

- Allow staff to park ON site
 - Allows 2 handicapped spaces
 - Allow 1 vacant space for child swap/carpool and vendor use
 - Allows orthodontics office to remain in the area to serve the residences
 - Improves safety for the staff
-



Tab 8

Statement of Compliance filed with the original zone change application with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan, Variance and Waiver Justification

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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STATEMENT OF COMPLIANCE WITH APPLICABLE GUIDELINES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN

<u>Applicant/Owner:</u>	SJE, LLC c/o Scott Eberle
<u>Location:</u>	13913 and a small portion of 14001 Shelbyville Road
<u>Proposed Use:</u>	Orthodontics Office
<u>Engineers, Land Planners and Landscape Architects:</u>	Evans/Griffin, Inc.
<u>Request:</u>	Change in Zoning from R-4 to OR

INTRODUCTION

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. As Dr. Eberle’s practice has grown, he now needs additional space to accommodate the increase in patients, as well as the ability to allow another orthodontist to serve the patients.

GUIDELINE 1 – COMMUNITY FORM

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 office will provide additional office space nearby the thriving commercial area and adjoining a densely populated residential area which it will serve. This office is located on a major arterial (Shelbyville Road). It 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 adversely impacted by the use of 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 the type of low intensity commercial use, and it will provide a “stub” for future potential connectivity with the church property, as well as 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’s 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.

GUIDELINE 2: CENTERS

The application complies with the applicable Intents and Policies 2, 4, 5, 7 and 16 of this Guideline as follows.

The proposed orthodontist office complies with these Intents and Policies of Guideline 2 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. 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 close to the residential areas.

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. intersection and N. Beckley Station Rd. intersection. 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. The infrastructure is already in place for the changes to this property to slightly increase the square footage and to increase parking.

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. Policy 16 is met as it is easily accessible by bicycle, with bike racks being added, by car being on Shelbyville Road, and by pedestrians being close to residential areas with the walkway being proposed.

GUIDELINE 3: COMPATIBILITY

The application complies with the applicable Intents and Policies 1, 2, 4-9, 12, 21, 22, 23 and 24 of this Guideline as follows.

The proposed orthodontist's office complies with these Intents and Policies of Guideline 3 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 or at least minimal. 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, some parking is being positioned on the east side of the property, which is adjacent to a church, in order to reduce and limit any potential adverse impacts to the residential properties to the west. Additionally, appropriate landscape screening will be utilized to make the property compatible and reduce unwanted impacts. Offices, being neighborhood serving uses, are often appropriate transitions to higher intensity uses (such as exist south of this site) and they provide a good transition.

GUIDELINE 4 – OPEN SPACE

The application complies with the applicable Intents and Policies 1, 3 and 7 of this Guideline as follows.

The proposed development complies with these Intents of Guideline 4 because of the large amount of open space on 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 impact of the “open space” as a benefit 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.

GUIDELINE 6 – ECONOMIC GROWTH AND SUSTAINABILITY

The application complies with the applicable Intents and Policies 2 and 6 of this Guideline as follows.

The proposed orthodontist office complies with these Intents and Policies of Guideline 6 because the proposed orthodontist’s office will also provide opportunities for employment at the orthodontist’s office close to the residential properties and nearby population. Also, it is located on a major arterial, providing good access, where nuisances and activities will not adversely affect adjacent areas. Potential users will be users that are compatible with the area, such as families with children.

GUIDELINE 7 – CIRCULATION

The application complies with the applicable Intents and Policies 1, 2, 6, 9, 10 and 16 of this Guideline as follows.

The proposed orthodontist office complies with these Intents and Policies of Guideline 7 because it provides adequate parking while at the same time providing pedestrian connections and good access. 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 significant compared to the present traffic on the major arterial of Shelbyville Road. 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.

GUIDELINE 8 – TRANSPORTATION FACILITY DESIGN

The application complies with the applicable overall Intents of this Guideline 8, and the specific and Policy 8 of this Guideline, as follows.

The proposed development complies with the Intents and Policies of Guideline 8 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.

GUIDELINE 9 – BICYCLE, PEDESTRIAN AND TRANSIT

The application complies with the applicable Intents and Policies 1, 2, and 4 of this Guideline as follows.

The proposed development complies with the Intents and Policies of Guideline 9 because TARC sidewalks will be added, and the property will be accessible by bicycle, with bike racks being added. 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.

GUIDELINE 10 – FLOODING AND STORMWATER

The application complies with the applicable Intents and Policies 7 and 11 of this Guideline as follows.

The proposed office complies with the Intents and Policies of Guideline 10 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. The water will drain to the adjacent church property, the owners of which are agreeable to accepting this additional run off volume.

GUIDELINE 11 – WATER QUALITY

The application complies with the applicable Intents and Policy 3 of this Guideline as follows.

The proposed office complies with the Intents and Policies of this Guideline, as it will comply with all soil erosion and sedimentation control regulations.

GUIDELINE 12 – AIR QUALITY

The application complies with the applicable Intents and Policies 1, 7, and 8 of this Guideline as follows.

The proposed office complies with the Intents and Policies of Guideline 12 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. Because of these improvements, the proposed development will have zero adverse impact on air quality.

GUIDELINE 13 – LANDSCAPE CHARACTER

The application complies with the applicable Intents and Policies 1, 2, 5, 6 of this Guideline as follows.

The proposed office complies with the Intents and Policies of Guideline 13 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.

* * * * *

For all the reasons set forth hereinabove, on the detailed district development plan accompanying this application and in testimony and other evidence to be presented at LD&T and at the full public hearing, this application complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

Respectfully submitted,

John C. Talbott
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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:

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:

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.

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.

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

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 orthodontist's 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.

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

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.

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

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.



Tab 9

Proposed findings of fact pertaining to compliance with the Comprehensive Plan, Variance and Waiver criteria

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

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

<u>Applicant/Owner:</u>	SJE, LLC c/o Scott Eberle
<u>Location:</u>	13913 and a small portion of 14001 Shelbyville Road
<u>Proposed Use:</u>	Orthodontics Office
<u>Engineers, Land Planners and Landscape Architects:</u>	Evans/Griffin, Inc.
<u>Request:</u>	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

* * * * *

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.