

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

| | |
|--------------------|---|
| Project Name: | Eberle Orthodontics |
| Location: | 13913 Shelbyville Road |
| Owner(s): | SJE, Inc.; Faith Community Church UCC, Inc. |
| Applicant: | SJE, Inc |
| Representative(s): | Bardenwerper, Talbott, & Roberts, PLLC |
| Project Area/Size: | 0.70 acres |
| Jurisdiction: | Louisville Metro |
| Council District: | 19 – Julie Denton |
| Case Manager: | Joel P. Dock, Planner II |

Notice of this public hearing appeared in The Courier-Journal, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

Agency Testimony:

00:12:56 Joel Dock discussed the case summary, standard of review and staff analysis from the staff report.

The following spoke in favor of this request:

John Talbott, 1000 N Hurstbourne Pkwy., Louisville, KY 40223

Summary of testimony of those in favor:

00:19:25 John Talbott summarized the applicant's proposal and showed a presentation. He responded to questions from the Commissioners.

The following spoke in opposition to this request:

No one spoke.

Deliberation:

00:34:06 The Commissioners concur that the proposal is justified.

An audio/visual recording of the Planning Commission hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Change in Zoning from R-4 to OR

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

00:38:46 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Cornerstone 2020 Checklist, the applicant's findings of fact, and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the proposal meets the Community Form guideline because the proposal is located along a major transportation corridor and surrounded by a mixture of single-family and multi-family residential uses (R-4, R-5, PRD, R-6, and R-7), as well as a variety of commercial uses (C-1 and CN) providing goods and service to the surrounding population. The area consists of many existing structures, structures under construction, and proposed development. The proposed use is an existing low intensity use. The improvements/expansion requiring the CIZ is being proposed in the lowest intensity office zoning district to permit the proposed use along a major arterial, and

WHEREAS, the Commission further finds that the proposal meets the Centers guideline because the proposal does not create a new center. It includes the reuse of an existing structure. Population surrounding and to come in the future would appear to support the neighborhood service provided by the expanded use. The proposed use is compact. All parking facilities are located to the rear of the existing structure. The proposed development supports alternative modes of transport. Bicycle parking and pedestrian connections to public ways will be provided. The proposal is an office use and is adequately supported by surrounding retail and residential uses. Future cross-access will be provided upon the redevelopment of the abutting religious grounds for any other non-residential use. MSD comments have been addressed. Any other provisions to provide service to the subject site and facilitate future services to abutting uses will be provided at time of construction. The proposal is designed to support easy access by bicycle, car and transit and by pedestrians and persons with disabilities. Bicycle parking and pedestrian connection to public ways have been provided. The required number of handicap space will be provided at a convenient location at the rear of the building, and

WHEREAS, the Commission further finds that the proposal meets the Compatibility guideline because the proposal does not constitute a non-residential expansion into an existing residential area as the abutting use is "religious grounds" or non-residential. Furthermore, the use is appropriately located in a mixed use area and would have minimal impact on abutting residential uses to the West and appropriate landscaping will be provided. Proposed building materials are consistent with exiting materials and surrounding neighborhood. There would not appear to be any nuisances created by odor or emissions, as the site is a low intensity office use. The subject site is located along a major transportation corridor. The impact of this low intensity office use upon exiting traffic patterns is minimal. Lighting will be no more than required to provide safety and security. The proposed low-intensity office use is located along an arterial level roadway and within proximity of nearby commercial and medium to high density uses. Appropriate transitions between uses that are substantially different in scale and intensity or density of development will be provided. Landscape buffers and tree canopy will be provided along the Western property line. Expansions to the parking areas comply with required setbacks. The proposal mitigates the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers. Landscape buffers and tree canopy will be provided along the Western property line. Expansions to the parking areas comply with

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

required setbacks. Setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards. Minimal changes are being made to the existing structure. All changes being made are consistent with the integrity of the existing structure and surrounding property. Parking, loading and delivery areas located adjacent to residential areas have been designed to minimize adverse impacts of lighting, noise and other potential impacts, and that these areas are located to avoid negatively impacting motorists, residents and pedestrians. The parking areas are located to the rear of the lot away from Shelbyville Road which is a designated parkway. Tree canopy and landscape buffering will be provided along the Western line adjacent to residential homes and buffers will be provided along property lines shared with the abutting religious grounds. The proposal includes screening and buffering of parking and circulation areas adjacent to the street. Shelbyville Road is a designated parkway and planting and buffers will be provided to comply with parkway standards. It does not appear that any changes are being requested to the existing dimensions of signage, and

WHEREAS, the Commission further finds that the proposal meets the Open Space guideline because open space is not required for this application and the site is being developed in a manner to make the improvements as compact as possible. The proposal integrates natural features into the pattern of development as tree canopy credit areas are being provided along the Western property line to preserve existing tree masses, and

WHEREAS, the Commission further finds that the proposal meets the Natural Areas and Scenic and Historic Resources guideline because no significant changes appear to be made to the site that will result in environmental degradation as the site does not appear to contain sensitive features. The property is not recognized as historic and does not appear to have any features of historical significance. The building is currently a repurposed single family residence and expansions are consistent with exiting conditions. There do not appear to be any significant environmental issues related to soils, and

WHEREAS, the Commission further finds that the proposal meets the Economic Growth and Sustainability guideline because the proposal is not a retail commercial use. Parking indicates that it may, however, generate significant traffic. It is located on an arterial level roadway, and

WHEREAS, the Commission further finds that the proposal meets the Circulation guideline because no roadway improvements or work within the right-of-way will be conducted with the exception of sidewalk connectivity to the facility. Bicycle parking and pedestrian connection to public ways will be provided. The proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands as no new work is being done within the right-of-way and future access will be provided in the event of non-residential development to the East. No dedication of right-of-way will be required. A parking waiver to exceed the maximum number required by the proposed use has been requested. Based upon site specific studies conducted by the applicant, reviewed by staff, and further elaborated upon in the standard of review the parking spaces requested appear to be sufficient to provide for employees and customers of this orthodontic practice, and

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

WHEREAS, the Commission further finds that the proposal meets the Transportation Facility Design guideline because future cross access will be provided in the event of non-residential development to the East. Access to the subject site is immediately obtained from an arterial level roadway. Appropriate linkages have been made to facilitate vehicular users of public streets and maintain hierarchy, and

WHEREAS, the Commission further finds that the proposal meets the Bicycle, Pedestrian and Transit guideline because the proposal provides, where appropriate, for the movement of pedestrians, bicyclists and transit users around and through the development, provides bicycle and pedestrian connections to adjacent developments and to transit stops, and is appropriately located for its density and intensity. Bike parking will be provided, pedestrian connection has been indicated, and future access will be provided if needed to adjacent lands, and

WHEREAS, the Commission further finds that the proposal meets the Flooding and Stormwater guideline because all MSD comments have been addressed, and

WHEREAS, the Commission further finds that the proposal meets the Air Quality guideline because the proposal has been reviewed by APCD and found to not have a negative impact on air quality, and

WHEREAS, the Commission further finds that the proposal meets the Landscape Character guideline because no natural corridors are impacted by the proposal, and

WHEREAS, the Commission further finds that the proposal meets the Infrastructure guideline because the proposal is located in an area served by existing utilities or planned for utilities. The proposal has access to an adequate supply of potable water and water for fire-fighting purposes. The proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams, and

WHEREAS, the Commission further finds that 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

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

WHEREAS, the Commission further finds that 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, the Commission further finds that 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, the Commission further finds that 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

WHEREAS, the Commission further finds that 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

WHEREAS, the Commission further finds that 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

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

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

WHEREAS, the Commission further finds that 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

WHEREAS, the Commission further finds that 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

WHEREAS, the Commission further finds that 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

WHEREAS, the Commission further finds that 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

WHEREAS, the Commission further finds that 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

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

WHEREAS, the Commission further finds that 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

WHEREAS, the Commission further finds that 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

WHEREAS, the Commission further finds that 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; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning from R-4, Single-Family Residential to OR, Office-Residential on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Brown, Lindsey, Lewis, Ferguson, Smith, and Carlson

NOT PRESENT: Peterson, Jarboe, Howard, and Tomes

Variance

00:39:33 On a motion by Commissioner Brown, seconded by Commissioner Smith, the following resolution, based on the Standard of Review and Staff Analysis, the applicant's findings of fact, and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that the requested variance will not adversely affect public health safety or welfare as the proposed building additions do not impact site lines for vehicular or pedestrian traffic or create conflict with the provisions of appropriate drainage and buffering from abutting uses, and

WHEREAS, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the proposed building additions are consistent with style and material of the existing structure and conform to the existing setback established by the current Western sidewall of the structure, and

WHEREAS, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as the encroachments are to facilitate improvements to a low-intensity office use and zone, and

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

WHEREAS, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the setback is in keeping with the established setback of the existing structure, and

WHEREAS, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the property was originally a single-family residence and maintained setbacks common to single-family residential properties. The current and expanded use maintains those previously established setbacks, and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as front and rear setbacks, along with parkway buffers are being complied with and the encroachments are in keeping with the currently established side setback, and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no improvements have been made on the site that create conflict with the current regulations, and

WHEREAS, the Commission further finds that 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 Commission further finds that the variance will not alter the essential character of the general vicinity for all the reasons set forth above, and

WHEREAS, the Commission further finds that 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 Commission further finds that 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 Commission further finds that the variance arises from special circumstances, which do not generally apply to land in the general vicinity because the variance is the result of

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

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, the Commission further finds that 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 Commission further finds that 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 be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the variance of LDC, section 5.3.1.C.5 to reduce the required 15 foot non-res to res setback to 5 feet for proposed building additions.

The vote was as follows:

YES: Brown, Lindsey, Lewis, Ferguson, Smith, and Carlson
NOT PRESENT: Peterson, Jarboe, Howard, and Tomes

Waivers

00:40:12 On a motion by Commissioner Brown, seconded by Commissioner Smith, the following resolution, based on the Standard of Review and Staff Analysis, the applicant's findings of fact, and testimony heard today, was adopted:

Landscape Waiver of LDC, section 10.2.4 to reduce the required 15 foot Landscape Buffer Area (LBA) to 5 feet for proposed building additions

WHEREAS, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners as adjacent property owners are accustomed to the existing buffering along this section of the property that has existed with the current conditions. The expansion allows for the structure to remain compatible with the existing conditions. Any screening or material will be provided as required, and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

rural areas. The waiver will not violate these specific guidelines as the proposed encroachment is in keeping with the established buffer of the existing structure and does not encroach beyond that point. No intrusions upon public spaces or streets are created and the proposed encroachment allows the structure to be developed in a compatible manner with existing conditions, and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as an expansion to the East would conflict with drive lanes, expansion out the rear would conflict with parking facilities, and the expansion is in line with existing structures, and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as the encroachments allow for the structure to remain compatible with the existing conditions and surrounding neighborhood while facilitating the growth of the operation, and

WHEREAS, the Commission further finds that 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 Commission further finds that 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 Commission further finds that 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, the Commission further finds that 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, and

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

Landscape Waiver of LDC, section 10.2.4 and 10.2.10 to reduce the required 10 foot LBA/VUA LBA to 5 feet

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as the adjacent use is religious grounds/non-residential and significant open spaces exist on the abutting property, and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The waiver will not violate these specific guidelines as the encroachments are located to the rear of existing parking away from the street and public views, are in line with existing facilities, and the abutting users is non-residential, and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the application of the full LBA on this side of the property would result in the inability to provide for adequate vehicular circulation and parking demand, and may result in the applicant requesting to reduce the LBA on the opposite side which contains single-family residential uses that are more susceptible to nuisances than the property to the East, and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as provision of adequate parking and circulation will be adversely impacted by the full application of the LBA, and

WHEREAS, the Commission further finds that 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 Commission further finds that 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 Commission further finds that 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

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

Road preserving the visual aesthetics from the arterial, and screening the parking with the applicant's building, and

WHEREAS, the Commission further finds that 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, and

Landscape Waiver of LDC, section 10.2.4.B.3 to allow a utility easement and LBA to overlap for a width that is greater than 50%

WHEREAS, the Commission further finds that the waiver will not adversely affect adjacent property owners as all screening and planting material is being provided as required, and

WHEREAS, the Commission further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. The waiver will not violate these specific guidelines as all screening and planting material is being provided as required, and

WHEREAS, the Commission further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as all screening and planting material is being provided as required, and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant as all screening and planting material is being provided as required, and

WHEREAS, the Commission further finds that 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 Commission further finds that 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

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

WHEREAS, the Commission further finds that 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, the Commission further finds that 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, and

Parking Waiver to exceed the 25 space maximum parking requirement and provide 33 spaces

WHEREAS, the Commission further finds that Guideline 7 Policy 10 states that parking requirements should take into account the density and relative proximity of residences to businesses in the market area, the availability and use of alternative modes of transportation, and the character and pattern of the form district. Additional considerations including hours of operation and opportunities for shared parking may be factored on a site by site basis. On-site parking standards should reflect the availability of on-street and public parking. Parking standards should include the minimum and maximum number of spaces required based on the land use and pattern of development in the area. Based on site specific information for the current use on-site and projected employment and customer expansions the maximum parking standards restrict the applicant from the providing adequate parking to meet the demand of the proposed use. Due to the nature of the proposed use (orthodontic office), the combination of employees present during work hours, patients being treated, and patients waiting to be treated the peak demand during certain periods can reach thirty vehicles. The application includes provisions for pedestrian connection to public ways and bicycle parking, but the majority of trips generated will be automobile dependent. The parking facilities are compact and compatible with the surrounding area. On-street parking is not available and the location of facility does not allow for accessible parking off-site, and

WHEREAS, the Commission further finds that due to the location of the subject site along a major arterial roadway abutting residential properties and smaller commercial uses on the same side of the street, parking is not conveniently accessible on property under the same ownership or through joint use provisions. ON-street parking is not available, and

WHEREAS, the Commission further finds that the requirements found in Table 9.1.2 do not allow the provision of the number of parking spaces needed to accommodate the parking needs of the proposed use as the combination of employees present during work hours, patients being treated, and patients waiting to be treated results in a peak demand during certain periods of roughly thirty vehicles, and

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

WHEREAS, the Commission further finds that the requested increase is the minimum necessary to provide adequate parking to meet the demand of the proposed use, and

WHEREAS, the Commission further finds that 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 Commission further finds that 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 Commission further finds that 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, the Commission further finds that 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

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

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 be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE (1)** the Landscape Waiver of LDC, section 10.2.4 to reduce the required 15 foot Landscape Buffer Area (LBA) to 5 feet for proposed building additions, **(2)** the Landscape Waiver of LDC, section 10.2.4 and 10.2.10 to reduce the required 10 foot LBA/VUA LBA to 5 feet, **(3)** the Landscape Waiver of LDC, section 10.2.4.B.3 to allow a utility easement and LBA to overlap for a width that is greater than 50%, and **(4)** the Parking Waiver to exceed the 25 space maximum parking requirement and provide 33 spaces.

The vote was as follows:

YES: Brown, Lindsey, Lewis, Ferguson, Smith, and Carlson

NOT PRESENT: Peterson, Jarboe, Howard, and Tomes

Detailed District Development Plan

00:41:26 On a motion by Commissioner Brown, seconded by Commissioner Smith, the following resolution, based on the Standard of Review and Staff Analysis and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Planning Commission finds that tree canopy credit areas to preserve existing tree masses are proposed along the western property line. A parkway buffer is being provided to preserve views along the parkway, and

WHEREAS, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided as pedestrian connection to the public way, bike park, and safe and convenient parking to meet the demands of the proposed use are provided on site, and

WHEREAS, the Commission further finds that open space is not required for this application and the development is compact, and

WHEREAS, the Commission further finds that the Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community, and

WHEREAS, the Commission further finds that the overall site design and land uses are compatible with the surrounding area as the subject site parking areas are located to the rear of existing facilities, expansions to the building are in keeping with materials of the current structure and surrounding area, and landscaping is provided to buffer adjacent single-family uses, and

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

WHEREAS, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan as demonstrated in the Cornerstone 2020 Staff Review Checklist for the change in zoning request contained in Attachment 3 of the staff report; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the detailed district development plan, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Land Development Code, Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

**PLANNING COMMISSION MINUTES
FEBRUARY 15, 2018**

PUBLIC HEARING

CASE NUMBER 17ZONE1027

6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
7. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the February 15, 2018 Planning Commission public hearing.

The vote was as follows:

YES: Brown, Lindsey, Lewis, Ferguson, Smith, and Carlson

NOT PRESENT: Peterson, Jarboe, Howard, and Tomes

Abandonment of Conditional Use Permit (B-54-06)

00:42:09 On a motion by Commissioner Brown, seconded by Commissioner Lindsey, the following resolution, based on the Staff Report and testimony heard today, was adopted:

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the abandonment of conditional use permit (B-54-06) and all conditions of approval, on condition and effective immediately at the time of final action by the Louisville Metro Council approving the change in zoning.

The vote was as follows:

YES: Brown, Lindsey, Lewis, Ferguson, Smith, and Carlson

NOT PRESENT: Peterson, Jarboe, Howard, and Tomes