

**PROPOSED FINDINGS OF FACT FOR A ZONE CHANGE FROM R-4 TO OR-3; FOR A VARIANCE FROM CHAPTER 5, PART 3 - SECTION 5.3.1.C.5 – TABLE 5.3.2 OF THE LAND DEVELOPMENT CODE; FOR A VARIANCE FROM CHAPTER 5, PART 3 - SECTION 5.3.1.C.5 – TABLE 5.3.1 OF THE LAND DEVELOPMENT CODE; AND A WAIVER REQUEST FROM CHAPTER 10, PART 3, SECTION 10.3.5.A.1 – TABLE 10.3.1 OF THE LAND DEVELOPMENT CODE**

**FOR PROPERTY LOCATED ON  
1025 Dorsey Lane  
Louisville, Kentucky 40223**

**DOCKET NO. 16Zone1039**

**DECEMBER 15, 2016**

**DISCUSSION:**

A transcript of the public hearing is on file in this docket.

In business session subsequent to the public hearing on this request, the Commission took the following action:

On motion by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the following resolutions were adopted:

WHEREAS, the Planning Commission finds that the proposal conforms with KRS 100.213 because it agrees with the Comprehensive Plan of Metro Louisville and Jefferson County, its goals, objectives, guidelines and policies (sometimes called “Cornerstone 2020”) as further detailed in these Findings; and

WHEREAS, the Planning Commission finds that the existing zoning classification is inappropriate and the proposed zoning classification is appropriate as further detailed in these findings; and

WHEREAS, the Planning Commission finds that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of the area as further detailed in these findings; and

WHEREAS, the Planning Commission further finds that the property lies in the Neighborhood Form Area as identified by Core Graphic 1, and is consistent with Guidelines for development within this Form Area, because Neighborhood Form may contain open space and, at appropriate locations, a mixture of uses such as offices, because the proposal is at a scale that is appropriate for nearby

neighborhoods, because the proposal provides for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit, because the proposal is characterized by an office use where the building is set back from the street; because this proposal will contain a smaller-scale use consisting of one structure; because adequate transportation access to, from, and throughout the proposal has been designed in accordance with Guidelines 1 and 2; because significant buffering from abutting uses is provided naturally and as shown on the proposal; because the development is located at the intersection of a major arterial (Hurstbourne Parkway) and a primary collector (Dorsey Lane), as identified in the Core Graphics of Cornerstone 2020, and is of a scale that is appropriate for the nearby neighborhoods, businesses and industrial uses, all as shown on the Detailed District Development Plan prepared by Heritage Engineering, Inc. and last updated and provided to the Land Design and Transportation Committee on November 10, 2016 (“Development Plan”); and

WHEREAS, the Planning Commission further finds that the proposal complies with Compatibility Guidelines 3 and 4 and all applicable Policies adopted thereunder, because the proposed development is of a scale and site design compatible with adjacent development in the Campus Form District and with the pattern of development as defined appropriate within the Neighborhood Form District; because the type of building materials is appropriate for the character of the area and surrounding structures; because any adverse impact on adjacent residential uses, including traffic, parking, signs, and lighting, will be mitigated through the design and construction phase and the binding elements that have been proposed and agreed upon by the applicant; because appropriate transitioning from residential to non-residential uses will be provided through the use of natural vegetative buffers and landscaping, landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and set backs, which will also protect the character of residential areas, roadway corridors, and public spaces from visual intrusions; because the proposed development is designed to provide accessibility to people with disabilities; because the parking, loading and delivery areas are adequate for the proposed uses and are designed to minimize any adverse impact on adjacent residential areas, with the parking and circulation areas adjacent to the street screened and buffered; because the proposed signage is compatible with the adjacent Campus Form Area and with the pattern of development as defined appropriate within the Neighborhood Form Area; and

WHEREAS, the Planning Commission further finds that the proposal complies with Natural Areas and Scenic and Historic Resources Guideline 5 and all applicable Policies adopted thereunder including 5.1, 5.2, 5.3 and 5.6 because there are no known cultural or historic resources located on this site; because the proposal respects the natural features of the site through sensitive site design, avoids substantial changes to the topography and avoids property damage and environmental degradation resulting from disturbance of natural systems; and because the proposal is not locating in a regulatory floodplain; and because the proposal includes the preservation, of sites, and landscapes that are recognized as having a beneficial purpose and value; and

WHEREAS, the Planning Commission further finds that the proposal complies with Economic Growth and Sustainability Guideline 6 and all applicable Policies thereunder including 6.1, 6.4, and 6.8 because the development is appropriately located in the Neighborhood Form Area and adjacent to the Campus Form Area to meet the needs of these Form Area's its residents and employees; because the proposed development has chosen to locate on a site that will enable primary creation in close proximity to existing social and economic infrastructures; because the proposed development adheres to the policies designed to promulgate the intentions of this Guideline; because the development will help keep dollars in the immediate community; because the development will have the ability to shoulder some of the tax burden for public facilities maintenance and neighborhood programs; because the development will attract new investment dollars; because the development will provide management level and entry-level positions; because the development will offer flexible working hours; because the development will assist in preserving existing standards of living over time; and

WHEREAS, the Planning Commission further finds that the proposal complies with Circulation Guideline 7 and all applicable Policies thereunder including 7.1, 7.2, 7.3, 7.5, 7.6, 7.9, 7.10, 7.14, and 7.15 because the proposed design provides good internal circulation as well as a connections to major thoroughfare and adjacent roadway networks; because it has been demonstrated that the development will not cause adverse impacts to the traffic-carrying capacity of Dorsey Lane and Hurstbourne Parkway or other nearby roads and intersections by installing a designated turning lane and reconstructing a new south bound thru-lane on Dorsey Lane; because, the aforesaid improvements will be located on roadways with ample right of way, pavement width and carrying capacity; because sidewalks constructed along Dorsey Lane and Hurstbourne Parkway and throughout the development will facilitate pedestrian access to, from and throughout the development; because on-site parking is sufficient to serve the development and is set back and screened away from nearby existing residential areas; because the access point is located as reviewed and approved by the Louisville and Jefferson County Metro Department of Public Works and the City of Lyndon Engineer, and will not pose any safety hazards, as the Department's approval indicates; and because the Applicant has agreed to future requirements to consider joint and cross access through the development and to connect to adjacent development sites where appropriate; and

WHEREAS, the Planning Commission further finds that the proposal complies with Transportation Facility Design Guideline 8 and all applicable Policies adopted thereunder including Policies 8.8, 8.9 and 8.10 because primary access to the site can be had off Dorsey Lane will lessen any traffic through areas of lower intensity; because the primary access point has adequate sight distance and shall be constructed and approved by the Louisville and Jefferson County Metro Department of Public Works; because the system of internal traffic circulation as shown on the plan will be constructed after being reviewed and approved by the Department, and has appropriate linkages between parking areas which have been located so as to avoid creating nuisances to surrounding

uses; and

WHEREAS, The Planning Commission finds that the proposal complies with Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder including Policies 9.1 and 9.2 because the location of the site has transit (“TARC”) service; because sidewalks connections will be provided along Dorsey Lane and Hurstbourne Parkway; and because bicycle racks will be located where appropriate; and

WHEREAS, The Planning Commission further finds that the proposal complies with Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder including Policies 10.1, 10.2, 10.5, 10.6 and 10.7 because the Development does not impact any streams and is not proposing construction in the 100 year regulatory floodplain; because the proposed plan has been approved by the Metropolitan Sewer District (“MSD”); because preliminary drainage facility plans on file have been approved and future plans will meet or exceed MSD requirements as determined in the construction plan design process; because the detention and drainage facilities should they be needed will be constructed in dedicated sanitary sewer and drainage easements and will ensure that stormwater runoff is management according to MSD rules and policies; and

WHEREAS, The Planning Commission finds that the proposal complies with Water Quality Guideline 11 and all applicable Policies adopted thereunder including Policy 11.3 because prior to any construction activity on site, a soil erosion and sediment control plan shall be submitted to and approved by MSD. See Erosion Prevention and Sediment Control Notes on the Development Plan (MS4 Note 12).

WHEREAS, The Planning Commission finds that the proposal complies with Air Quality Guideline 12 and all applicable Policies adopted thereunder including Policies 12.1, 12.3, 12.4 and 12.8 because the plan was reviewed by and approved by the Louisville and Jefferson County Metro Air Pollution Control; and because mass transit service is available and sidewalks are provided as appropriate; and

WHEREAS, The Planning Commission finds that the proposal complies with Landscape Character Guideline 13 and all applicable Policies adopted thereunder including Policies 13.1, 13.2, 13.5 and 13.6 because landscaping in compliance with Chapter 10 will be provided as required, and construction fencing shall be erected prior to any construction activities on site to prevent compaction of the root systems of trees to be preserved by enclosing the areas beneath the drip lines; and

WHEREAS, The Planning Commission finds that the proposal complies with Infrastructure Guideline 14 and all applicable Policies adopted thereunder including Policies 14.2, 14.3 and 14.4 because the site is served by all necessary utilities including water and sewerage facilities by lateral extension to an

approved MSD Treatment Plant, because the Health Department has no issues with the proposal; and

WHEREAS, The Planning Commission finds that the proposal complies with Community Facilities Guideline 15 and all applicable Policies adopted thereunder, including Policy 15.9 because the site is located within the Middletown Fire Protection District and the Applicant has agreed to the installation of a NFPA13 Automatic Fire Suppression System (Sprinkler System) and the placement of a remote FDC and Hydrant to be placed directly in front of the building; and

WHEREAS, The Planning Commission finds that it can approve a variance from Chapter 5, Part 3 - Section 5.3.1.C.5 – Table 5.3.2 of the Land Development Code; because the requested variance from the maximum allowable building height of 30' to 47' will not adversely affect adjacent property owners, as properties to the North and West are in the Campus Form Area and currently have taller building heights, and properties to the East and South are buffered by existing heavily treed areas containing trees in excess of 60 feet in height; because the requested variance will not adversely affect the public health, safety or welfare; because granting of the variance will allow the proposed building to be built on a site more suitable for development at the intersection of a major arterial and primary collector; because the variance will not alter the essential character of the general vicinity as the proposed building abuts the campus form district which contains buildings with similar and taller building heights; because this requested variance will provide for a transition between the 6-story adjacent office buildings west of Dorsey Lane and the proposed 3-story Senior Living Facility north of Hurstbourne Parkway; because the placement of the proposed office building will minimize any impacts to the residentially zoned property to the east and Maryhurst to the south, who has written a letter to Metro Government supporting the development; and

WHEREAS, The Planning Commission further finds that the approval of this variance will not cause a hazard or a nuisance to the public as the proposed office building will be placed onsite in a manner that provides visual interest along the roadway while minimizing impacts to the adjacent residential properties; and

WHEREAS, The Planning Commission further finds that the approval of this variance, will not allow for an unreasonable circumvention of the zoning regulations as it will allow for the development of the property to occur vertically while protecting a large portion of the site buffering adjacent residential properties; and

WHEREAS, The Planning Commission further finds that the approval of this variance alleviates special site circumstances, which are not a result of actions taken by the applicant, including topography, proximity to a 100 year flood plain, and the adjacent Campus Form Area; and

WHEREAS, The Planning Commission further finds that the approval of this variance provides reasonable relief from a strict application of the provisions which would limit the ability to develop the property in a way that provides protection of open space and natural resources adjacent to the Maryhurst property and residential properties, and because this variance is supported by Staff; and because the variance is the minimum necessary to allow the proposed building to remain in compliance with other sections of the Land Development Code; and because where relief is sought from the LDC, the applicant has sufficiently attempted to comply with the LDC and has not attempted to circumvent the requirements; and

WHEREAS, The Planning Commission finds that it can approve this variance from Chapter 5, Part 3 - Section 5.3.1.C.5 – Table 5.3.1 of the Land Development Code allowing proposed parking and a retaining wall to encroach a maximum of 10-ft within the required 30-ft non-residential to residential (no loading) setback; because the variance will not adversely affect the public health, safety or welfare; because granting of the variance will allow the proposed parking and retaining wall to be constructed while providing the necessary landscape plantings to ensure a property buffer to adjoining properties as required by code; because the variance will not alter the essential character of the general vicinity as the proposed building setback will fully comply with the setback requirement with only the proposed parking and retaining wall being permitted within the setback area; because the variance will not cause a hazard or a nuisance to the public as the proposed parking will serve the needs of the office users within the development with any perceived impacts to the adjoining property owner being offset with landscape plantings as required by code and proper construction methods and practices will be adhered to; because the variance will not allow for an unreasonable circumvention of the zoning regulations; and

WHEREAS, The Planning Commission further finds it can approve this variance because it will not cause a hazard or a nuisance to the public; because the subject property is impacted by special circumstances such as limited accessibility, changes in grade and proximity to a 100 year flood plain, which are not a result of actions taken by the applicant, and for which the applicant has provided proof and facts that such circumstances will be mitigated through excellent design, community involvement and construction practices; and

WHEREAS, The Planning Commission further finds it can approve this variance because it will not create an unreasonable circumvention of the zoning regulations as it will allow for the development of the property to occur vertically and include the proposed parking and a retaining wall which affords for the installation of landscape plantings to comply with code and offer protection for other sensitive areas onsite; and

WHEREAS, The Planning Commission further finds it can approve this variance because this variance provides reasonable relief from a strict application of the provisions which would limit the ability to develop the property in a reasonable

and responsible manner; because this variance is supported by Staff; because the variance is the minimum necessary to allow the proposed development to remain in compliance with other sections of the Land Development Code; and because where relief is sought from the LDC, the applicant has sufficiently attempted to comply with the LDC and has not attempted to circumvent the requirements; and

WHEREAS, The Planning Commission finds that it can approve a waiver request from Chapter 10, Part 3, Section 10.3.5.A.1 – Table 10.3.1 of the Land Development Code to allow the proposed drive lane and retaining wall to encroach a maximum of 5-ft into the required 15' Parkway Buffer along Dorsey Lane; because the requested waiver will not adversely affect adjacent property owners; because granting of the waiver will allow the proposed drive lane and retaining wall to be constructed while providing the necessary landscape plantings to ensure a visual buffer to the adjoining Dorsey Lane right-of-way as required by code; because the waiver requested will not violate the Comprehensive Plan as it will not alter the essential character of the general vicinity; and

WHEREAS, The Planning Commission further finds that it can approve a waiver request from Chapter 10, Part 3, Section 10.3.5.A.1 – Table 10.3.1 of the Land Development Code because the waiver is the minimum necessary to afford relief to the applicant as the proposed drive lane and retaining wall encroachment will still allow for the property to respect the setbacks and landscape buffer areas along Hurstbourne Parkway; and

WHEREAS, The Planning Commission finds that it can approve a waiver request from Chapter 10, Part 3, Section 10.3.5.A.1 – Table 10.3.1 of the Land Development Code because the development as proposed with the requested waiver will allow for the proposed drive lane to provide access to the walk-out lower level parking that would otherwise not occur due to the general location of the property and its special circumstances; and

WHEREAS, The Planning Commission finds that it can approve a waiver request from Chapter 10, Part 3, Section 10.3.5.A.1 – Table 10.3.1 of the Land Development Code because the strict application of the provisions would limit the ability to provide adequate access to the lower level parking and would potentially impact other areas of the property currently being preserved as greenspace; and because this waiver is supported by Staff; and

WHEREAS, the Planning Commission further finds that the proposal complies with all other applicable Guidelines and Policies of the Jefferson County Cornerstone 2020 Comprehensive Plan;

**NOW, THEREFORE, IT IS RESOLVED**, that the Louisville Metro Planning and Design Services does hereby **RECOMMEND** to the Louisville Metro Council that the change in zoning **from R4 Residential to OR-3 Office Residential** be **APPROVED**; and

**RESOLVED**, that the Louisville Metro Planning and Design Service does hereby **APPROVE** the requested landscape waiver to allow the landscape buffer area to be reduced in size as shown on the Detailed District Development Plan and detailed in these Findings of Fact, because the adjacent properties will not be adversely affected, the granting of the waivers will not violate the Comprehensive Plan, the requested waiver is the minimum necessary to afford relief to the applicant and adjacent property owners, and the strict application of the regulations would deprive the applicant of the reasonable use of the land; and

**RESOLVED**, that the Louisville Metro Planning and Design Service does hereby **APPROVE** the requested variance from required setbacks to allow parking and a retaining wall to encroach a maximum of 10-ft into the required 30-ft non-residential to residential (no loading) setback as shown on the Detailed District Development Plan and for the detailed reasons contained in these Findings of Fact; and

**RESOLVED**, that the Louisville Metro Planning and Design Service does hereby **APPROVE** the requested variance for a maximum building height of 47', from the maximum allowable height of 30' as written in Chapter 5, Part 3 - Section 5.3.1.C.5 – Table 5.3.2 of the Land Development Code, as shown on the Detailed District Development Plan and for the detailed reasons contained in these Findings of Fact; and

**RESOLVED**, that the Louisville Metro Planning and Design Service does hereby **APPROVE** the Detailed District Development Plan for Docket No. **16Zone1039** **SUBJECT** to the following binding elements:

**PROPOSED BINDING ELEMENTS:**  
**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 and to the City of Lyndon for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 24,000 square feet of gross floor area.
3. No outdoor advertising signs, small freestanding signs,



pennants, balloons, or banners shall be permitted on the site.

4. 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.
5. 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 Develop Louisville, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways as needed.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
6. 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.
7. 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.
8. The property owner agrees to participate a cross over access easement agreement if the property to the east is ever developed

for a nonresidential use; and such easement agreement is deemed reasonable and beneficial to the public health, safety and welfare. A copy of the signed easement agreement shall be provided to Planning Commission staff upon request.

9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the December 15, 2016 Planning Commission meeting.

All binding elements stated in this report are accepted in total without exception by the entity requesting approval of these development items.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date