

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 to waive the 15 ft LBA and all planting/screening materials along the south lot line of Building A; to waive the 5 ft VUA/LBA and all planting/screening materials along the north & west lot lines of Building A; to waive the 5 ft VUA/LBA and all planting/screening materials along the north, south and west lot lines of Building B; waiver of all required ILA and planting on Buildings A and B.

RECEIVED

OCT 06 2014

PLANNING &
DESIGN SERVICES

Explanation of Waiver:

1. The waiver will not adversely affect adjacent property owners because this is a mixed use location surrounded by a large apartment complex and a variety of intense commercial users, and neither these proposed uses nor the existing others will be benefited by the provisions of these LBAs.
2. The waiver will not violate the Comprehensive Plan because for all the set forth in the Detailed Statement of Compliance with all applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan filed with the rezoning application.
3. The extent of waiver of the regulation the minimum is necessary to afford relief to the applicant because this is an already built location that the applicant is seeking to better utilize and improve, and this is the only way without making reuse impractical or impossible.
4. Strict application of the provisions of the regulation will not deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because this is an already built site that the applicant is seeking to better utilize. Denial of these waivers would make adaptive reuse impractical or impossible.

BARDENWERPER, TALBOTT & ROBERTS PLLC

ATTORNEYS AT LAW

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

Applicant: Three Winks LLC

Owner: First Capital Bank of Kentucky

Location: 317 & 321 Winker Avenue &
2621 South Fourth Street

Existing Use: Residential/Multi-Family

Proposed Use: Retail/Restaurant & Apartments

Engineers, Land Planners and
Landscape Architects: Milestone Design Group

Request: Change in Zoning from M-2 to EZ-1

SUMMARY STATEMENT

This property is a mostly under utilized and somewhat run-down site which happens to adjoin a brand new student housing complex which the applicant's attorney, Mr. Bardenwerper, recently represented in obtaining rezoning to the EZ-1 District for that site as well. As a consequence, this site seems appropriate for the same rezoning, given that the EZ-1 District is readily evident in the area and also provides the kind of flexibility necessary for a site like this which could end up being used for a multiplicity of different purposes. The plan, however, is to put retail on the first floor of these two buildings with apartments above, most likely for University of Louisville students. This is a redeveloping area, and this proposal will contribute to other properties in need of redevelopment being considered for renovation and re-tenanting as well.

The University of Louisville and ancillary facilities are expanding to the south and west of the existing campus because the University is otherwise hemmed in to the east by I-65 and to the north by the Old Louisville neighborhood which does not seem to want student housing or other university related facilities. Old Louisville residents want to remain a traditionally residential neighborhood. Thus, with the new Papa John's Cardinal Stadium, Patterson Baseball Stadium, Central Station retail center anchored by a Kroger, and Churchill Downs, the south area of the campus is an emerging redevelopment area. Thus, the reason for this applicant's proposal at this site. Plus, this applicant has also done other rehabilitation projects in this area and finds this a good area for its continued reinvestment.

GUIDELINE 1: COMMUNITY FORM

The community form for this area is the Traditional Workplace Form District. As such, it contemplates a mixture of uses, which the EZ-1 District allows. Commercial, industrial and multi-family housing is deemed appropriate. By virtue of the proximity of this site to the U of L Belknap Campus, this site is especially appropriate for the intended uses, which are retail student housing.

GUIDELINE 2: CENTERS

This application complies with this Guideline of the Comprehensive Plan because it addresses the Intents of this Guideline to promote the efficient use of land and investment in existing infrastructure, lowering utility costs by reducing need for utility extensions, by providing an opportunity for a mixture of residential development with other land uses, by providing an opportunity for the growth and enhancement of neighborhood centers, by encouraging vitality and a sense of place in neighborhoods and by encouraging commercial revitalization in redeveloping areas. As said, this application is in an already developed area where the infrastructure already exists, where utilities are already located, where students can live in close proximity to the University of Louisville Belknap Campus, where a mixture of uses exist, and this site also includes a possibility of retail and restaurant combined with student housing, where an existing activity center is evident at this corner, and where the end result is a serious contribution to the continuing revitalization of this redeveloping area.

This application also complies with Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 for these reasons. This proposal is an activity center located within a form district that is appropriate for activity center uses. It is also a combination of non-residential and residential use which the Comprehensive Plan highly commends. It involves the location of more commercial use in an area where commercial activity already exist. It also involves compact mixed development, because residential is proposed above the commercial uses on the lower floors. The uses that are proposed are compatible with the commercial and student housing uses located within the area. Multi-family is already located next door in the brand new U of L-affiliated student housing building. Also, this redevelopment of the corners of Fourth Street and Winkler Avenue are consistent with the kind of development that is already occurring nearby. Utilities exist at this site along the existing streets. Transit and sidewalks are also available in the area.

GUIDELINE 3: COMPATIBILITY

This application complies with this Guideline of the Comprehensive Plan because it addresses the Intents of this Guideline which are to allow a mixture of land uses and densities as long as they are designed to be compatible one with the other, to prohibit the location of sensitive land uses where noise, lighting, odors or similar nuisances are violated or visual quality is significantly diminished, and to preserve the character of existing neighborhoods. This application addresses these Intents of this Guideline because there are multiple uses proposed in this application (retail with student housing); also these uses are already evident in the area so they will not violate acceptable standards for noise, lighting, odors, etc which are already evident on properties adjoining this site. Furthermore, redevelopment of this kind helps to preserve and revitalize in a neighborhood, as it will this one.

This application also complies with Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 20, 21, 22, 23, 24 and 28 of this Guideline for these reasons.

As to the issue of building type and building materials, this application involves a reuse of existing buildings. The buildings will be rehabilitated in the process, such that this is not an introduction of something new but rather of something better. Building materials will be consistent with those already evident in the area. As to the residential uses, the small number of apartments proposed above the retail are compatible with the large student housing complex under construction directly to the north. And the non-residential uses proposed are consistent with the restaurants and retail also located next door and close by. Although odors are common in restaurants, and noise are not unfamiliar in student housing situations, the neighbors to this property already involve those circumstances. Of course noise will be limited by virtue of any noise ordinance, plus the fact that the owners of this property will be able to manage who lives in these facilities. If residents do not abide by the owners' rules and regulations, they will be evicted. Lighting will be compatible with the Land Development Code Regulations in this regard. Visual quality will be improved because the buildings are being rehabilitated. The apartments will be utilized probably by students, thus the apartments will not necessarily be of interest to the elderly or people with disabilities, although they will need to meet, in design, any laws with respect to same. This is an existing activity center. Because the property is going to be rezoned EZ-1 (or possibly commercial if the Planning Commission or Metro Council prefer that instead) significant buffers against similar uses are not required. However, the setbacks are appropriate and on-site parking is provided.

**GUIDELINES 4; 5; NATURAL AREAS & HISTORIC RESOURCES &
GUIDELINE 13: LANDSCAPE CHARACTER**

This application complies with these Guidelines and the Intents relating thereto to the extent that there are applicable. This site will not require open space given its location and the form district. To the extent that the buildings being rehabilitated as part of this application are older, especially the eastern most building, one could consider that a renovation of an historic resource. To the extent required, landscaping will be provided where none is presently evident.

This application also complies with Policies 2 and 4 of Guideline 5 and Policies 1, 2 and 4 of Guideline 13. That is to say that this application does involve the rehabilitation of an older building that has historic characteristics. Those will be preserved and rejuvenated. There are interesting architectural features on the eastern-most building that are in a state of decay and will become more evident as they are rebuilt and restored. Landscaping will meet requirements of the Land Development Code.

GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY

This application complies with this Guideline of the Comprehensive Plan in that the Intents of it are to ensure the availability of necessary usable land to facilitate commercial, industrial and residential development; to reduce public and private cost for land development; and to ensure that people have access to goods and services. This application meets these Intents of this Guideline in that this is a under-utilized piece of land in a redeveloping portion of Metro Louisville where infrastructure already exists and does not need to be extended. Also, by promoting the idea of retail use on portions of this property and proximity to existing housing, that will provide for the possibility of pedestrian access.

This application also complies with Policies 2, 3, 4, 5, 6, and 11 of this Guideline for these reasons. This site has good access along Third and Fourth Streets at Winkler. Investment in this case is in an older neighborhood. If any of this site is industrially utilized, again, industry already exists in this area, as evident, among other things, by the EZ-1 zoning that exists nearby and as is proposed for this site. This does involve a redevelopment of an existing under-utilized site and somewhat depilated buildings. This is already an activity center evident at Third and Fourth Streets and Winkler Avenue. What is proposed is very much an adaptive reuse.

GUIDELINES 7: CIRCULATION & 8:TRANSPORTATION FACILITY DESIGN

This application complies with these two Guidelines of the Comprehensive Plan because it addresses the Intents which are to provide for safe and proper functioning of the local street networks, to ensure that new developments do not exceed the traffic carrying capacity of those streets, to ensure that internal and external circulation for the proposed development works, to address air quality, and provide an efficient and safe attractive system of roadways, transit and sidewalks.

This application is in the heart of South Louisville where sidewalks and street systems are designed to accommodate development of these kinds. Access points already exist. Sidewalks are available throughout the area. Transit is located nearby.

This application also complies with Policies 2, 3, 4, 10, 11, 12, 13, 14 ,15 and 16 of Guideline 7 and Policies 4, 7, 9, 10 11 and 12 of Guideline 8. That is because this is a reuse of an existing site which involves two buildings with shared access points and shared parking. Sidewalks exist. Road capacity is not over-utilized. The types of uses at these sites will encourage pedestrian access because they are located near the University of Louisville Belknap Campus where tenants of these apartments are likely to spend much of their time as students. And any retail and restaurants located in these buildings are likely to be frequented by U of L students, especially those residing in these buildings and in the new student housing complex under construction directly to the north. Also, access to this site and circulation through it must be approved by the Metro Transportation Planning staff, which, prior to docketing of this proposal for LD&T and full Planning Commission review, must stamp this development plan as preliminarily approved based on its design criteria for access, internal circulation, site distances and so on.

GUIDELINE 9: BICYCLE, PEDESTRIAN AND TRANSIT

This application complies with this Guideline of the Comprehensive Plan because it addresses the Intents and Policies 1, 2, 3, 4 and 5 of this Guideline in that sidewalks are located along adjoining streets. Furthermore, students who reside in the proposed apartments are likely to walk to school at U of L. Also U of L students living here and nearby in the student housing complex to the north are likely to frequent by foot and bicycle the retail proposed for this site. Transit is available along Third and Fourth streets.

**GUIDELINE S 10: STORMWATER MANAGEMENT;11: WATER QUALITY;
AND 12: AIR QUALITY**

This application complies with these environmental Guidelines of the Comprehensive Plan because the Intents of these Guidelines are addressed by virtue of the fact that this application involves rehabilitation of existing buildings where storm water is already handled through existing storm water systems, where water quality guidelines will be met as required, and where air quality is taken into account by virtue of the fact that students will be able to locate within walking distance of University of Louisville Belknap Campus.

Specifically, this application complies with Policies 7, 10 and 11 of Guideline 10, Policies 3 and 5 of Guideline 11 and Policies 1, 2, 3, 6 and 8 of Guideline 12. That is because, as stated, storm water in an already developed area like this is handled through the existing drainage system. Whatever added improvements are needed will be provided. Water quality measures will be addressed also as required by local regulation. Air quality is addressed by virtue of the fact that people who live here, notably students, are able to live in close proximity to the University of Louisville, the school where residents of these apartments are likely to attend.

For these and other reasons set forth herein and as further explained at the LD&T Committee and in public hearing, this application complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

Respectfully submitted,

William B. Bardenwerper
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Counsel for Applicant/Property Owners

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

<u>Applicant:</u>	Three Winks LLC
<u>Owner:</u>	First Capital Bank of Kentucky
<u>Location:</u>	317 & 321 Winker Avenue & 2621 South Fourth Street
<u>Existing Use and Proposed Use:</u>	Residential/Multi-Family
<u>Engineers, Land Planners and Landscape Architects:</u>	Milestone Design Group
<u>Request:</u>	Change in Zoning from M-2 to EZ-1

The Louisville Metro Planning Commission, having heard testimony before its Land Development & Transportation Committee, in the Public Hearing held on November 20, 2014 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

SUMMARY STATEMENT

WHEREAS, this property is a mostly under utilized and somewhat run-down site which happens to adjoin a brand new student housing complex which the applicant's attorney, Mr. Bardenwerper, recently represented in obtaining rezoning to the EZ-1 District for that site as well; as a consequence, this site seems appropriate for the same rezoning, given that the EZ-1 District is already evident in the area and also provides the kind of flexibility necessary for a site like this which could end up being used for a multiplicity of different purposes; the plan, however, is to put retail on the first floor of these two buildings with apartments above, most likely for University of Louisville students; this is a redeveloping area, and this proposal will contribute to other properties in need of redevelopment being considered for renovation and re-tenanting as well ; and

WHEREAS, the University of Louisville and ancillary facilities are expanding to the south and west of the existing campus because the University is otherwise hemmed in to the east by I-65 and to the north by the Old Louisville neighborhood which does not seem to want student housing or other university related facilities; Old Louisville residents want to remain a traditionally residential neighborhood; thus, with the new Papa John's Cardinal Stadium, Patterson Baseball Stadium, Central Station retail center anchored by a Kroger, and Churchill

Downs, the south area of the campus is an emerging redevelopment area; thus, the reason for this applicant's proposal at this site; plus, this applicant has also done other rehabilitation projects in this area and finds this a good area for its continued reinvestment; and

GUIDELINE 1: COMMUNITY FORM

WHEREAS, the community form for this area is the Traditional Workplace Form District; as such, it contemplates a mixture of uses, which the EZ-1 District allows; commercial, industrial and multi-family housing is deemed appropriate; by virtue of the proximity of this site to the U of L Belknap Campus, this site is especially appropriate for the intended uses, which are retail student housing; and

GUIDELINE 2: CENTERS

WHEREAS, this application complies with this Guideline of the Comprehensive Plan because it addresses the Intents of this Guideline to promote the efficient use of land and investment in existing infrastructure, lowering utility costs by reducing need for utility extensions, by providing an opportunity for a mixture of residential development with other land uses, by providing an opportunity for the growth and enhancement of neighborhood centers, by encouraging vitality and a sense of place in neighborhoods and by encouraging commercial revitalization in redeveloping areas; also, this application is in an already developed area where the infrastructure already exists, where utilities are already located, where students can live in close proximity to the University of Louisville Belknap Campus, where a mixture of uses exist, and this site also includes a possibility of retail and restaurant combined with student housing, where an existing activity center is evident at this corner, and where the end result is a serious contribution to the continuing revitalization of this redeveloping area; and

WHEREAS, this application also complies with Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15 and 16 for these reasons: this proposal is an activity center located within a form district that is appropriate for activity center uses; it is also a combination of non-residential and residential use which the Comprehensive Plan highly commends; it involves the location of more commercial use in an area where commercial activity already exist; it also involves compact mixed development, because residential is proposed above the commercial uses on the lower floors; the uses that are proposed are compatible with the commercial and student housing uses located within the area; multi-family is already located next door in the brand new U of L-affiliated student housing building; also, this redevelopment of the corners of Fourth Street and Winkler Avenue are consistent with the kind of development that is already occurring nearby; and utilities exist at this site along the existing streets; transit and sidewalks are also available in the area; and

GUIDELINE 3: COMPATIBILITY

WHEREAS, this application complies with this Guideline of the Comprehensive Plan because it addresses the Intents of this Guideline which are to allow a mixture of land uses and densities as long as they are designed to be compatible one with the other, to prohibit the location of sensitive land uses where noise, lighting, odors or similar nuisances are violated or visual quality is significantly diminished, and to preserve the character of existing neighborhoods; this application addresses these Intents of this Guideline because there are multiple uses proposed in this application (retail with student housing); also these uses are already evident in the area so

they will not violate acceptable standards for noise, lighting, odors, etc which are already evident on properties adjoining this site; furthermore, redevelopment of this kind helps to preserve and revitalize in a neighborhood, as it will this one; and

WHEREAS, this application also complies with Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 20, 21, 22, 23, 24 and 28 of this Guideline for these reasons; and

WHEREAS, as to the issue of building type and building materials, this application involves a reuse of existing buildings; the buildings will be rehabilitated in the process, such that this is not an introduction of something new but rather of something better; building materials will be consistent with those already evident in the area; as to the residential uses, the small number of apartments proposed above the retail are compatible with the large student housing complex under construction directly to the north; and the non-residential uses proposed are consistent with the restaurants and retail also located next door and close by; although odors are common in restaurants, and noise are not unfamiliar in student housing situations, the neighbors to this property already involve those circumstances; of course noise will be limited by virtue of any noise ordinance, plus the fact that the owners of this property will be able to manage who lives in these facilities; if residents do not abide by the owners' rules and regulations, they will be evicted; lighting will be compatible with the Land Development Code Regulations in this regard; visual quality will be improved because the buildings are being rehabilitated; the apartments will be utilized probably by students, thus the apartments will not necessarily be of interest to the elderly or people with disabilities, although they will need to meet, in design, any laws with respect to same; this is an existing activity center; because the property is going to be rezoned EZ-1 (or possibly commercial if the Planning Commission or Metro Council prefer that instead) significant buffers against similar uses are not required; however, the setbacks are appropriate and on-site parking is provided; and

**GUIDELINES 4; 5; NATURAL AREAS & HISTORIC RESOURCES &
GUIDELINE 13: LANDSCAPE CHARACTER**

WHEREAS, this application complies with these Guidelines and the Intents relating thereto to the extent that there are applicable; this site will not require open space given its location and the form district; to the extent that the buildings being rehabilitated as part of this application are older, especially the eastern most building, one could consider that a renovation of an historic resource; and to the extent required landscaping will be provided where none is presently evident; and

WHEREAS, this application also complies with Policies 2 and 4 of Guideline 5 and Policies 1, 2 and 4 of Guideline 13; that is to say that this application does involve the rehabilitation of an older building that has historic characteristics; those will be preserved and rejuvenated; there are interesting architectural features on the eastern-most building that are in a state of decay and will become more evident as they are rebuilt and restored; and landscaping will meet requirements of the Land Development Code; and

GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY

WHEREAS, this application complies with this Guideline of the Comprehensive Plan in that the Intents of it are to ensure the availability of necessary usable land to facilitate commercial, industrial and residential development; to reduce public and private cost for land development;

and to ensure that people have access to goods and services; this application meets these Intents of this Guideline in that this is a under-utilized piece of land in a redeveloping portion of Metro Louisville where infrastructure already exists and does not need to be extended; also, by promoting the idea of retail use on portions of this property and proximity to existing housing, that will provide for the possibility of pedestrian access; and

WHEREAS, this application also complies with Policies 2, 3, 4, 5, 6, and 11 of this Guideline for these reasons: this site has good access along Third and Fourth Streets at Winkler; investment in this case is in an older neighborhood; if any of this site is industrially utilized, again, industry already exists in this area, as evident, among other things, by the EZ-1 zoning that exists nearby and as is proposed for this site; this does involve a redevelopment of an existing under-utilized site and somewhat depilated buildings; this is already an activity center evident at Third and Fourth Streets and Winkler Avenue; and what is proposed is very much an adaptive reuse; and

GUIDELINES 7: CIRCULATION & 8:TRANSPORTATION FACILITY DESIGN

WHEREAS, this application complies with these two Guidelines of the Comprehensive Plan because it addresses the Intents which are to provide for safe and proper functioning of the local street networks, to ensure that new developments do not exceed the traffic carrying capacity of those streets, to ensure that internal and external circulation for the proposed development works, to address air quality, and provide an efficient and safe attractive system of roadways, transit and sidewalks; and

WHEREAS, this application is in the heart of South Louisville where sidewalks and street systems are designed to accommodate development of these kinds; access points already exist; sidewalks are available throughout the area; transit is located nearby; and

WHEREAS, this application also complies with Policies 2, 3, 4, 10, 11, 12, 13, 14 ,15 and 16 of Guideline 7 and Policies 4, 7, 9, 10 11 and 12 of Guideline 8; that is because this is a reuse of an existing site which involves two buildings with shared access points and shared parking; sidewalks exist; road capacity is not over-utilized; the types of uses at these sites will encourage pedestrian access because they are located near the University of Louisville Belknap Campus where tenants of these apartments are likely to spend much of their time as students; and any retail and restaurants located in these buildings are likely to be frequented by U of L students, especially those residing in these buildings and in the new student housing complex under construction directly to the north; also, access to this site and circulation through it must be approved by the Metro Transportation Planning staff, which, prior to docketing of this proposal for LD&T and full Planning Commission review, stamp this development plan as preliminarily approved based on its design criteria for access, internal circulation, site distances and so on; and

GUIDELINE 9: BICYCLE, PEDESTRIAN AND TRANSIT

WHEREAS, this application complies with this Guideline of the Comprehensive Plan because it addresses the Intents and Policies 1, 2, 3, 4 and 5 of this Guideline in that sidewalks are located along adjoining streets; furthermore, students who reside in the proposed apartments are likely to walk to school at U of L; also U of L students living here and nearby in the student housing complex to the north are likely to frequent by foot and bicycle the retail proposed for this site; and transit is available along Third and Fourth streets; and

**GUIDELINES 10: STORMWATER MANAGEMENT; 11: WATER QUALITY;
AND 12: AIR QUALITY**

WHEREAS, this application complies with these environmental Guidelines of the Comprehensive Plan because the Intent of these Guidelines are addressed by virtue of the fact that this application involves rehabilitation of existing buildings where storm water is already handled through existing storm water systems, where water quality guidelines will be met as required, and where air quality is taken into account by virtue of the fact that students will be able to locate within walking distance of University of Louisville Belknap Campus; and

WHEREAS, specifically, this application complies with Policies 7, 10 and 11 of Guideline 10, Policies 3 and 5 of Guideline 11 and Policies 1, 2, 3, 6 and 8 of Guideline 12; that is because, as stated, storm water in an already developed area like this is handled through the existing drainage system; whatever added improvements are needed will be provided; water quality measures will be addressed also as required by local regulation; and air quality is addressed by virtue of the fact that people who live here, notably students, are able to live in close proximity to the University of Louisville, the school where residents of these apartments are likely to attend; and

WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books and 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 approves the detailed district development plan and recommends to the Louisville Metro Council that it rezone the subject property from M-2 to EZ-1.