

Docket Nos. 14CUP1004  
and 14DEVPLAN1057  
Conditional Use Permit  
and related Revised  
Detailed District  
Development Plan to  
allow a dementia care  
facility on property  
located at  
13700 English Villa Drive  
and 101 English Station  
Way

Louisville Metro  
Board of Zoning Adjustment  
June 16, 2014



Attorneys:  
Bardenwerper Talbott & Roberts, PLLC

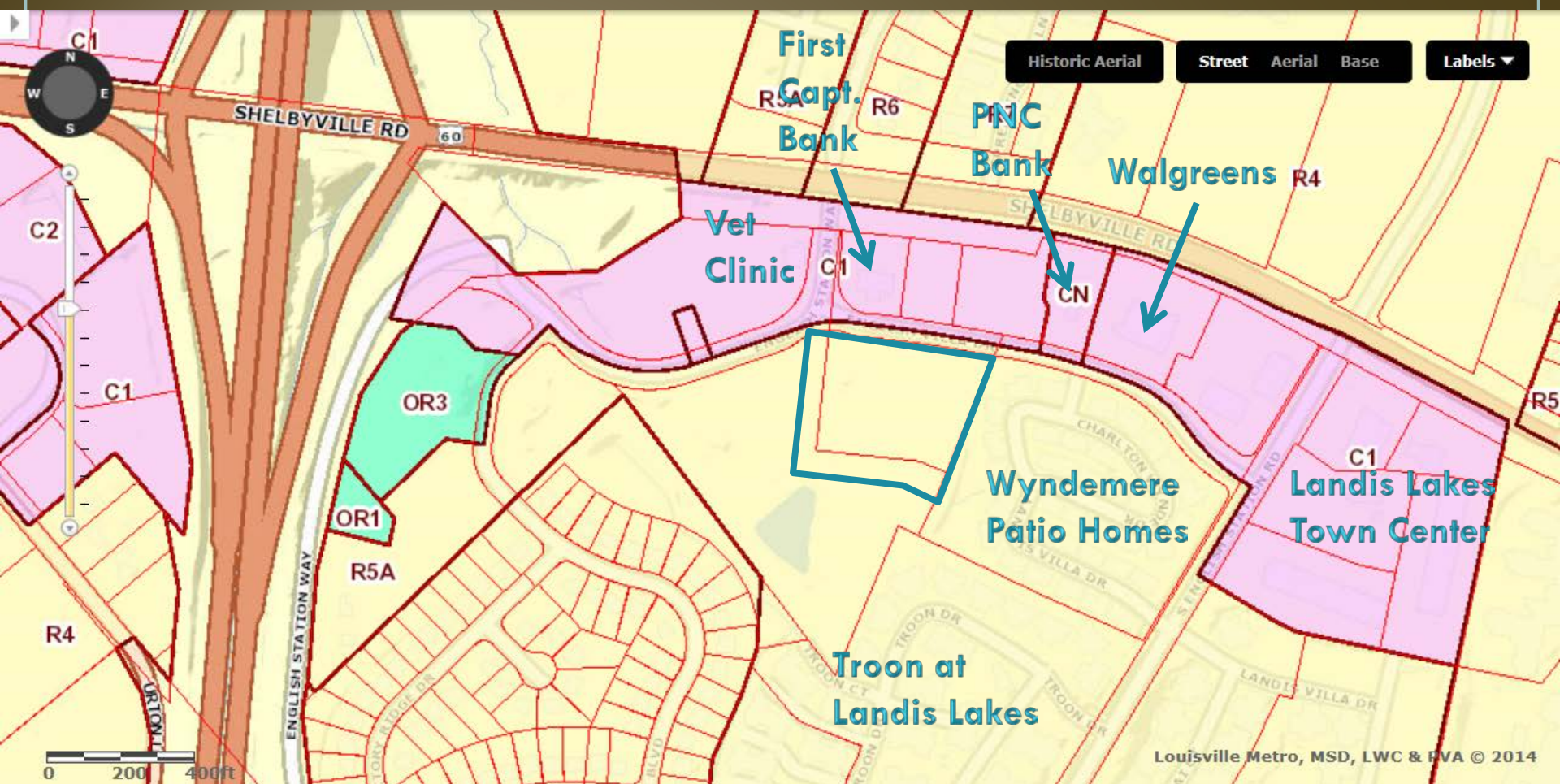
Land Planners, Landscape Architects &  
Engineers:  
GBS Engineering and  
Land Design & Development Inc.

# Index

1. LOJIC Zoning Map
2. Aerial photographs of the site and surrounding area
3. Ground level photographs of the site and surrounding area
4. Color Development Plan
5. Building elevations
6. Detailed Statement of Compliance with the Applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan and Variance Justification
7. Proposed Findings of Fact Evidencing Compliance with the Applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan and Variance criteria

# Tab 1

## LOJIC Zoning Map





Tab 2

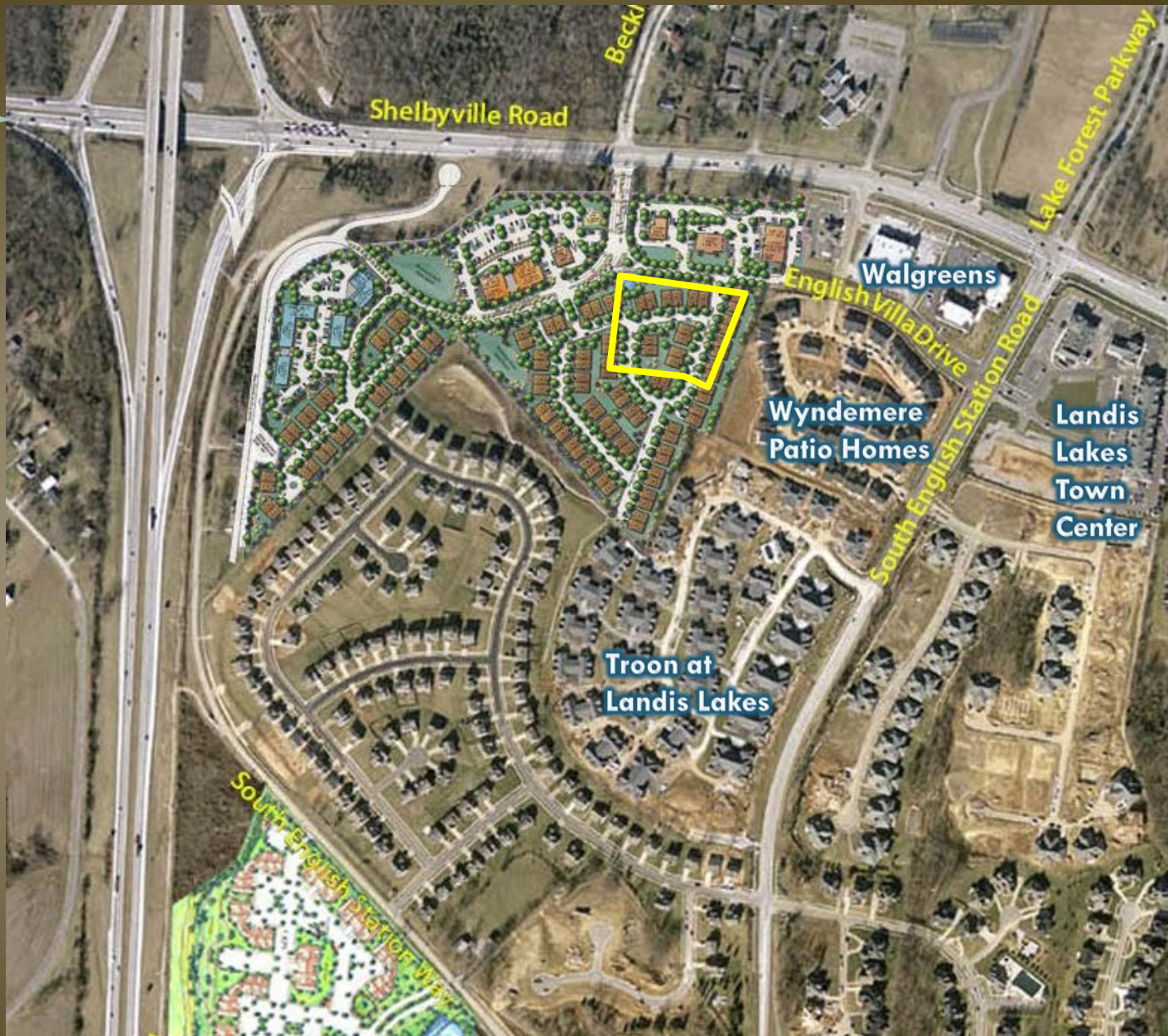
Aerial photographs of the site and  
surrounding area





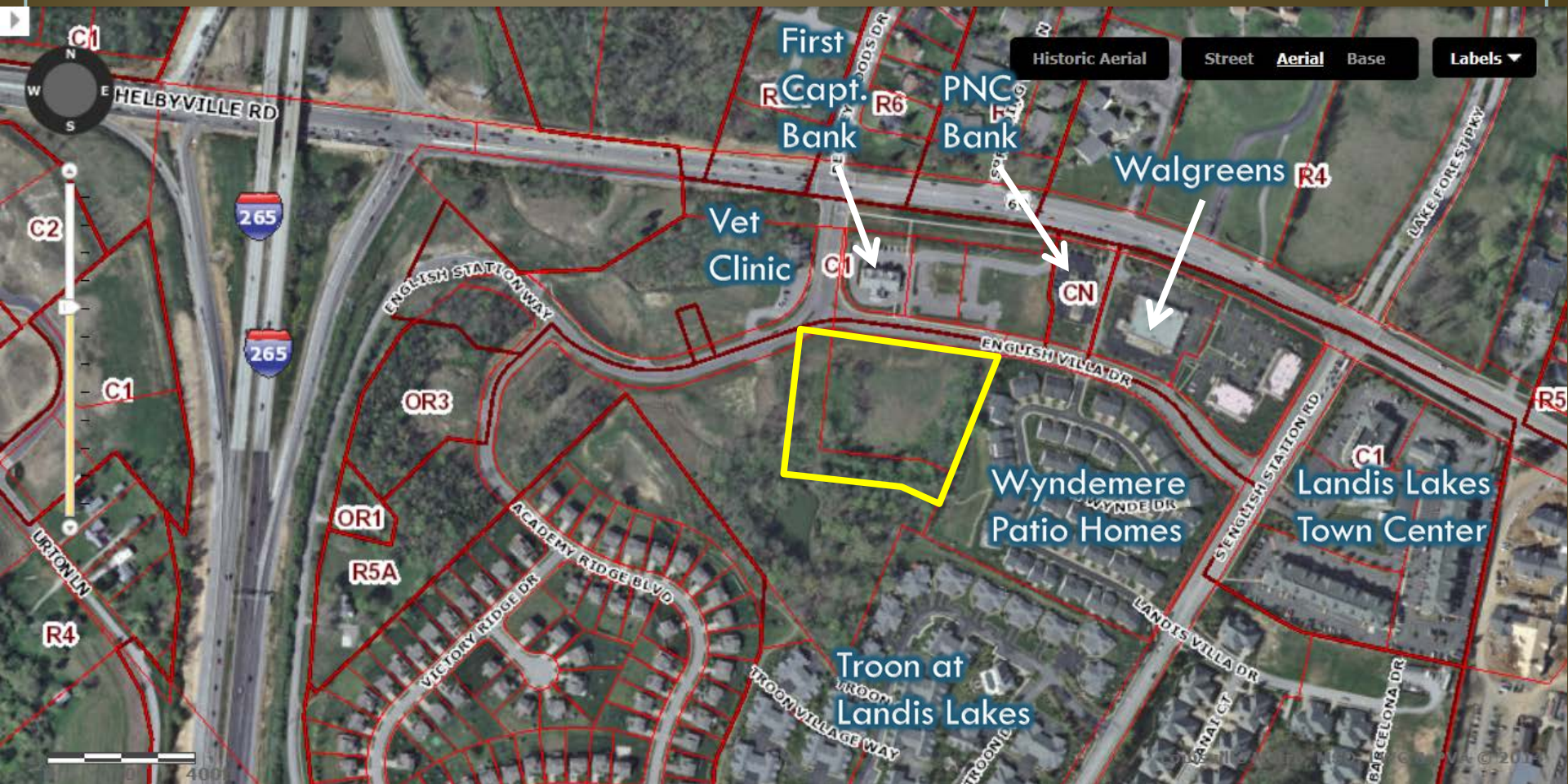
Clarity Pointe replaces a portion of a previously approved, multi-family zoned patio home community on this site. This aerial photograph shows the previously approved development on this site and on others along the Snyder Freeway and I-64 that have since been changed.





Clarity Pointe replaces a portion of a previously approved, multi-family zoned patio home community on this site.









Tab 3

Ground level photographs of the  
site and surrounding area



Looking at site from vacant parcels located between site and Shelbyville Road.





Wyndemere  
Patio Homes

Site

Looking at site from vacant parcels in between site and Shelbyville Road.





Looking at site from vacant parcels in between site and Shelbyville Road.





Looking at site from vacant parcels in between site and Shelbyville Road.



Looking at site from vacant parcels in between site and Shelbyville Road.





PNC Bank northeast of site. Vacant outparcel between two bank sites.





First Capital Bank northwest of site; vet clinic to west of that.





Looking west down Shelbyville Rd. toward Gene Snyder Freeway. Vet clinic to far left of photo.



Wyndemere Patio Homes east of site.





Looking east down English Villa Drive.





Entrance to Wyndemere Patio Homes at English Villa Drive just east of site.





Wyndemere Patio Homes at S. English Station Rd. & English Villa Dr.



Site

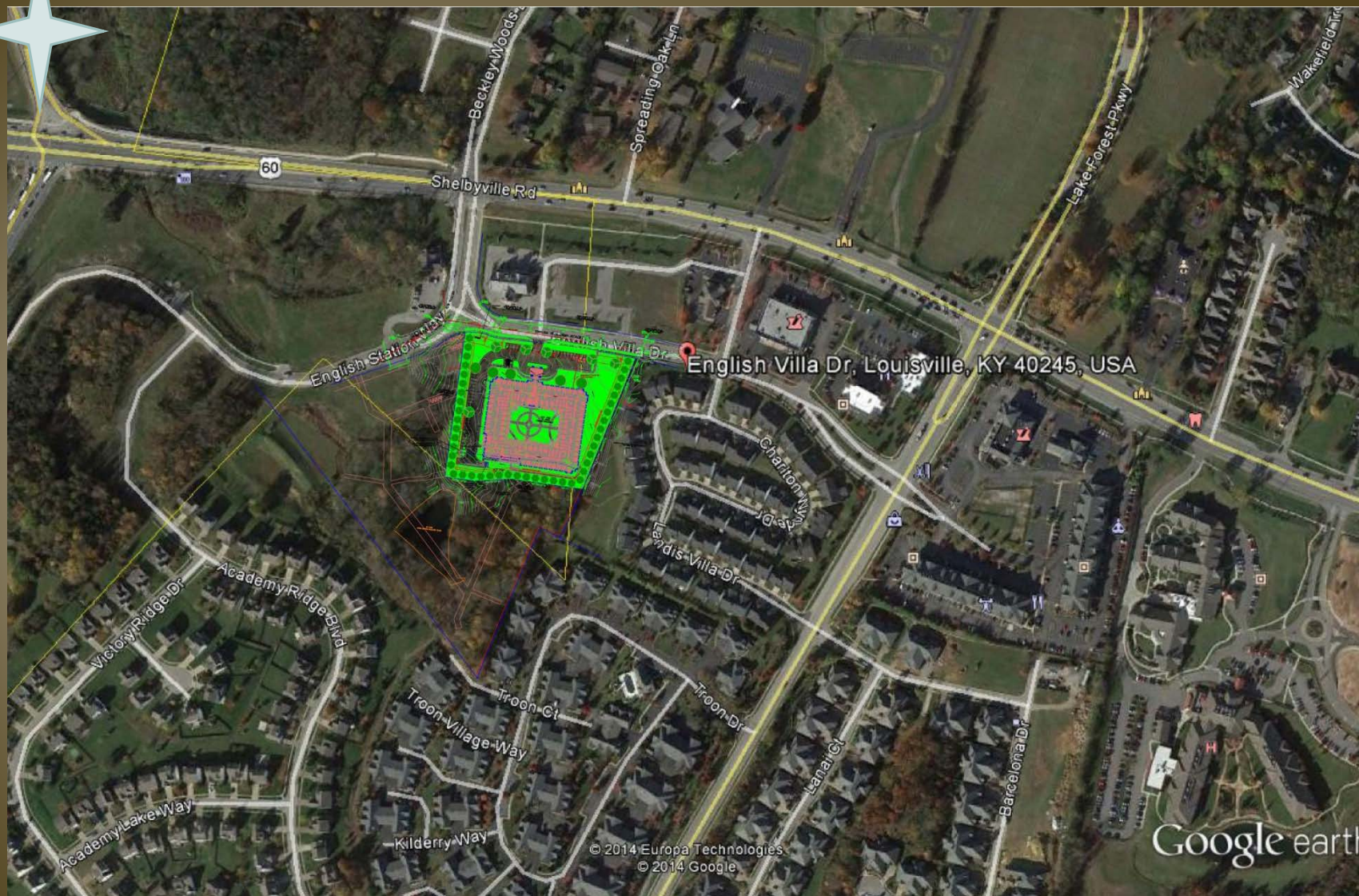
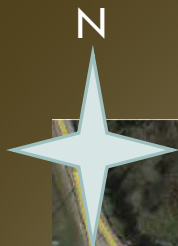
Looking west down English Villa Drive.





## Tab 4

# Color Development Plan



© 2014 Europa Technologies  
© 2014 Google

Google earth





# Tab 5

## Building Elevation





North Elevation



South Elevation



East Elevation



West Elevation





## Tab 6

Detailed Statement of Compliance  
with the Applicable Guidelines and  
Policies of the Cornerstone 2020  
Comprehensive Plan and Variance  
Justification

# BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

1000 N. HURSTBOURNE PARKWAY • BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BLDG. • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223  
(502) 426-6688 • (502) 425-0561 (FAX) • WWW.BARDLAW.NET

## **STATEMENT OF COMPLIANCE WITH APPLICABLE GUIDELINES AND POLICIES OF THE CORNERSTONE 2020 COMPREHENSIVE PLAN**

<u>Applicant:</u>	BCDC-BrightPoint, Louisville LLC
<u>Owners:</u>	Otte Patters, LLC and Hogan Holdings 15, LLC
<u>Location:</u>	13700 English Villa Dr. & 101 English Station Way
<u>Existing Uses:</u>	Vacant
<u>Proposed Use:</u>	“Clarity Pointe” Dementia Care Facility with Revised Detailed District Development Plan (RDDDP)
<u>Engineering Firm:</u>	Land Design & Development, Inc.
<u>Request:</u>	Conditional Use Permit to allow a Dementia Care Facility

### **SUMMARY STATEMENT**

The overall site that this particular lot was part of an initial rezoning of some 30 acres. This approximately 30-acre zoning followed on the heels of what was a series of rezoning and development applications mostly represented by this legal counsel for a series of developers on properties stretching from US 60 on the north to I-64 on the south along both sides of what became South English Station Road. This became a very popular development destination after the large Christian Academy was originally constructed at the southwest corner of this area near the intersection of the Snyder Freeway and I-64. When Christian Academy was developed, it had no decent public access to it, so it was the result of the work of these private developers in this area, also including the referenced Hogan entity for the Walgreens center, to construct (with a grant as well from KTC) English Station Road south which opened this area to development.

When the rezoning application that involved this property was finally brought forward, it was for most of the Shelbyville Road frontage from English Station Road west to the Snyder Freeway, and it involved a planned development for a mixture of retail and multi-family residential. Some of the retail has been built (for example, First Capital Bank) but much of it remains still to be developed, partly slowed down by the great real estate Recession of 2007 to nearly the present, and partly by virtue of the fact that the large multi-state residential developer which was going to develop the property that is the subject of this particular application, plus more, returned to its roots in St. Louis, departing Metro Louisville as far as added development was concerned. So this particular property, once part of a larger planned multi-family (at that time condominium)



rezoning and development, has sat vacant. Fortunately, these property owners have now found another residential use, although more “institutional” in nature, given that it will include dementia patients who are anticipating to reside here for their remaining years unless and until they need to enter a more skilled type nursing home facility. This one that is proposed, while requiring licenses from the state, is not a skilled nursing home facility. It will provide the level of service that is necessary for patients suffering from dementia.

As a consequence, the particular application now proposed for this particular lot requires a Conditional Use Permit (CUP) under the category that our Land Development Code (LDC) terms “homes for the aging and infirm.” It will be a one-level facility that obviously, therefore, does not overwhelm the nearby patio home style condominium homes. The only reason that it requires setback variances is because of what appears to be a relatively recent interpretation of the regulations that the CUP requirement for a 30-foot setback is trumped in favor of the 50-foot setback found elsewhere in the LDC which pertains to nonresidential uses abutting residential ones. Even though this is a residential care facility, apparently it has been interpreted by DPDS staff as an “institutional” one. But the justification filed with the variance applications explains that the setback for this facility from the nearby residential properties is nevertheless greater than if a single-family subdivision was developed here with 25-foot rear yards that allowed structures to encroach five feet from their rear yards into 30% of any required rear yard. Side yards would be even less if this site were developed as single-family residential. Consequently, the consistent 30-foot yard setback proposed with this use is far greater than would otherwise be if this were developed in a single-family residential manner with two-story, instead of as proposed here, one-story buildings.

### **GUIDELINE 1: COMMUNITY FORM – SUBURBAN NEIGHBORHOOD**

The Suburban Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibility into the existing landscape and neighborhood areas. High density uses are limited in scope to minor and major arterials and to areas that have limited impact on the low to moderate density residential areas. This form district contains diverse housing types in order to provide housing choice for differing ages and incomes. The Suburban Neighborhood Form may contain open space and should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit.

The proposed dementia care facility, generally described above, fits within the Suburban Neighborhood Form for all of the reasons set forth within the Comprehensive Plan description of this form. After all, the proposal is for a residential type use, with residents living in a congregate care setting, with certain services and activities provided for in group or common settings.

Also, as shown on the development plan, this site includes sidewalks which connect this lot and this specific type of senior living facility to other developments already planned or built nearby. The result is good connectivity in terms of driving and walking. It is also anticipated that bike facilities can be accommodated. Open space is also evident on the plan, both in the form of interior courtyard space for the secure comfort and aesthetic enjoyment of residents.

## **GUIDELINE 2: CENTERS**

The Intents of this Guideline are to promote the efficient use of existing infrastructure, to lower utility costs by reducing the need for extensions, to reduce commuting time and resulting transportation-related pollution, to provide an opportunity for a mixture of residential housing types and designs, and to encourage vitality and a sense of place in neighborhoods and the community. The proposed dementia care facility complies with the Intents of this Guideline because this is now considered an infill site where road, sewer and drainage infrastructure already exist. Also, this dementia care facility obviously brings to this area an enhanced level of elderly care where an existing support population already exists. And when you look at the larger Landis Lakes/Villages of English Station development (known by various other names as well) to the south and east of this, it is easy to see how this proposed dementia care facility adds to the already diverse and interesting mix of various forms of development, especially housing, leading to an even more vital, larger community than already exists. In fact, the larger area within which also includes the Elmcroft “Oaklawn” senior living facilities just east of this location, are and will be located is one of the most diverse housing and neighborhood serving mixed use areas within Metro Louisville.

Policies 1 and 2 of this Guideline recommend locating “activity centers” within Suburban Neighborhoods at street intersections with at least one of the intersecting streets classified as collector or above. Shelbyville Road is an arterial road, and South English Station Road is a collector road. This dementia care facility has its principal access off English Station Way very near S. English Station and Shelbyville Road, in accordance with these Policies of this Guideline.

Policies 4, 5, 8 and 9 of this Guideline pertain to compact, mixed, compatible and desirable uses, especially when in the midst of mostly residential areas. This proposed dementia care facility complies with these Policies and Guidelines because there already are a lot of nearby compatible residential and neighborhood-serving commercial uses, including land for expansion. The residential development that exists around it is of a diverse nature, some single-family and a number of styles and designs of residential condominium communities. Also, immediately to the north, west and east are retail and office developments in various stages of development. These commercial developments will be of added benefit to this dementia care facility. Also, being located in such close proximity to another senior living facility, Oaklawn, and to such a large residential population base will make this an even more attractive location for what is proposed.

Policies 10 and 13 of this Guideline pertain to parking. The proposal assures that parking is sufficient to meet employee and visitor needs. Residents will not drive.

Policies 11 and 12 of this Guideline pertain to the design of centers and inclusion of focal points. This proposal complies with these Policies because it is laid out in a way so that the one-story building is located near taller buildings and itself surrounds an interior courtyard for the safety and aesthetic enjoyment of facility residents. So the transitions from this dementia care facility to the single-family condominium homes next door is a natural progression, sensitive to nearby and adjoining land uses.



### **GUIDELINE 3: COMPATIBILITY**

The Intents of this Guideline are to allow a mixture of land uses and densities near each other and to prohibit the location of sensitive land uses in areas where accepted standards for noise, lighting, odors or similar nuisances are violated or visual quality is significantly diminished – in other words to preserve the character of existing neighborhoods.

The proposed dementia care facility complies with the Intents of this Guideline because, as stated above, various forms of senior living on this property and nearby contribute to a mix of uses in this area at varying levels of intensity. Furthermore, these types of uses do not involve nuisances such as noise, unusual lighting or odors, and, visually speaking, they are very attractive.

Policies 1, 2 and 3 of this Guideline pertain to compatibility from the standpoint of site design, building scale, building materials, densities, transitions, buffers, open spaces, landscaping and so on. The proposed dementia care facility is very compatible in terms of what is proposed and located, as noted above, at the front of the site and to the east and west of a size and scale bigger or at least similar to the proposed new dementia care facility. The existing residential condominiums nearby are not overwhelmed by this building which maintains decent setbacks and buffers. Building materials are proposed to be similar to those evident in the area, mostly durable hardy plank.

Policies 5, 7, 8 and 9 of this Guideline pertain to nuisances, none of which should be a problem at this facility. Odors will be contained and minimal anyway. And this being a senior living facility, noise for sure won't be a problem. Lighting fixtures with the Land Development Code, and neighbor concerns, if any, will be addressed to assure lighting they find acceptable. Visual impacts, as described above, are addressed mostly through building materials and architecture, but also, in appropriate areas, with vegetative buffers and, especially, new landscaping.

Policy 6 of this Guideline is addressed at Guidelines 7 and 8 below.

Policies 12, 13, 14 and 15 of this Guideline pertain to accessibility to the elderly and people with disabilities, also to the location of housing for the elderly and disabled, and also to appropriate inclusive housing and the need for it throughout this community. This dementia care proposal complies with these Policies of this Guideline because it is all about the provision of housing for the elderly and handicapped. And located as this facility is in an area where other facilities of this kind exist, it is an expanding residential care option for the elderly, in particular, in an area where there is a demonstrated support population.

Policies 21, 22 and 23 of this Guideline pertain to transitions, buffers, setbacks, lot dimensions and building heights. This proposal complies with these Policies of this Guideline because variances are only requested for the reasons mentioned above, while still maintaining good setbacks. Required landscape buffer areas and building setbacks are shown. .

Throughout this small development, more sufficient, attractive landscaping will be installed.

#### **GUIDELINES 4: OPEN SPACE AND GUIDELINE 5: NATURAL AREAS AND SCENIC RESOURCES**

The Intents and Policies of these Guidelines are to insure well designed, permanently protected open space areas and also to protect natural areas and features. The proposed dementia care facility complies with the Intents and Policies of these Guidelines because the main open space will be the internal secure courtyard, which will contribute positively to the overall ambiance of this dementia care living community.

#### **GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY**

The Intents of this Guideline are to ensure the availability of necessary land for various kinds of residential development, to reduce public and private costs of land development and to ensure regional scale workplaces. The Intents as well as related Policies of this Guideline are addressed by the proposal in these ways. This land is now an infill site and is open and thus clearly developable. And so, what better way to develop it than compatibly with other nearby residential, largely empty-nester communities. The overall originally zoned 30-some acres that this is a part of will be a significant source of employment for this community.

#### **GUIDELINES 7: CIRCULATION AND GUIDELINE 8: TRANSPORTATION FACILITY DESIGN**

The Intents of these Guidelines are to provide for the safe and proper functioning of the street network, to ensure that new developments do not exceed the carrying-capacity of streets, to ensure that internal and external circulation of all new development provide safe and efficient travel movements, to address congestion and air quality issues, to provide for the safe and convenient accommodation of the special mobility requirements of the community's elderly and handicapped, and to provide an efficient, safe and attractive system of roadways.

This dementia care facility complies with the Intents of these Guidelines for a number of reasons, as will be explained below. But, in summary, as also generally referred to above, it is again worth noting that the main access to this proposed facility is off English Station Way (a new east-west "connector" road) from South English Station Road off Shelbyville Road, which is a major traffic carrying arterial with adequate traffic-carrying capacity in this specific area, which is a fair distance removed from the US 60 - Snyder Freeway interchange. Also, there are two points of access off Shelbyville Road to English Station Way; thus traffic in and out of this facility can be dispersed at various points. Also, all these internal roads are connected so that, traveling throughout the overall larger development, one can get from one place to the other in multiple, different ways because the proposed component parts are not separated, one from the other, by roads or sidewalk networks. Rather they are connected.

Policies 1, 2, 9, 11, 13, 14, 16 and 17 of Guideline 7 and Policies 5, 6, 7, 9, 10 and 11 of Guideline 8 all pertain to these issues of access, internal circulation, site distance, corner clearances, adequacy of right-of-way and overall impact on the external road systems generally mentioned within the Intent statements of these Guidelines. This dementia care facility proposal



complies with these Policies of these Guidelines largely by virtue of the fact that the engineering of the site plan, including internal circulation and access, plus consideration of the use of the external street system, was done in close consultation with Metro Transportation Planning. In fact, this CUP application, in order to be finally docketed for review by the Board of Zoning Adjustment (BOZA), and this RDDDP to be docketed for review by a Planning Commission committee, must receive the preliminary stamps of approval by the Metro Transportation Planning. And, as a consequence of prior intensive and constantly updated traffic analyses, safe access and the proper functioning of those external street systems are assured.

#### **GUIDELINE 9: BICYCLE, PEDESTRIAN AND TRANSIT**

The Intents and Policies of this Guideline are to assure that other forms of travel are accommodated, not just vehicular. To the extent required, bike access will be provided. Of course, pedestrian access, as explained above, is provided throughout the overall development and along this lot. Lots of sidewalks are shown on the overall larger development plan, and they all connect with each other so that residents anywhere within the much larger development can access residential areas and commercial uses any place else within the large overall development.

#### **GUIDELINE 10: FLOODING AND STORMWATER**

The Intent and Policies of this Guideline is to protect the conveyance zone and maintain the hydraulic capacity of natural drainage systems to ensure that drainage designs minimize damage to streams and property from flooding and stormwater runoff. This overall larger project previously approved took care of stormwater management through construction of two large detention basins, built at 150% anticipated capacity per City of Middletown requirements.

#### **GUIDELINE 11: AIR QUALITY**

The Intents and Policies of this Guideline mostly pertain to the overriding issue of reducing commuting distances. This proposed dementia care facility, by locating it within the midst of a large residential support population base, can help residents who want to locate their elderly parents close to where the children currently reside. And it also allows elderly residents of the area who need to move from their standard single-family homes or condominiums to stay within the community where they may presently shop, worship and have friends and family when it becomes time to enter a senior living facility of this kind. That also helps reduce vehicle miles traveled because friends and family may not have to travel longer distances to visit their elderly loved ones.

### **GUIDELINE 13: LANDSCAPE CHARACTER**

The Intent and Policies of this Guideline are to assure the enhancement of visual quality to new landscaping and buffers. The proposed dementia care facility will include landscaping as required by the Land Development Code.

### **GUIDELINE 14: INFRASTRUCTURE**

The Intents and Policies of this Guideline are to ensure that adequate infrastructure exists to assure the carrying capacity of the land. As described above, this dementia care facility is an infill project that is part of a prior 30-acre zoned site where the essential infrastructure was previously installed.

### **GUIDELINE 15: COMMUNITY FACILITIES**

The Intents and particularly Policy 16 of this Guideline seek to assure that the community has adequate community facilities for a variety of particular uses, in this instance healthcare. This dementia care facility, to some legal extent, is classified as a healthcare facility regulated as a healthcare facility by Kentucky State Government.

\* \* \* \* \*

For all of the above reasons and for reasons provided in this application and other filings on subsequent dates, this application complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan.

Respectfully submitted,

---

William B. Bardenwerper  
**BARDENWERPER, TALBOTT & ROBERTS, PLLC**  
1000 N. Hurstbourne Pkwy., 2<sup>nd</sup> Floor  
Louisville, Kentucky 40223  
(502) 426-6688  
Counsel for Applicant/Property Owners



### **Variance Justification:**

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

Variance of: Section 5.3.1.C.5 to allow the proposed pavement and building to encroach into the rear and side 50 ft setbacks as shown on the development plan to be within 24 ft. on all 3 sides for building encroachments and within 6 ft on the west side and 26 ft on the east side for pavement encroachments. What is important to understand about this is that, were this an “assisted living residence”, which is permitted as a matter of right in the multi-family and office zoning districts, instead of a state licensed/regulated health care facility, this applicant would not need to apply for a CUP as an “institution for the aged and infirmed” which, according to DPDS staff, throws this into the “institutional” as opposed to “residential” use category. It is this distinction that causes the 50 instead of 30 foot setback. In other words, but for the inclusion of this application of nursing care in order to dispense medications to elderly patients, this would not be considered an institutional facility, but rather a residential one, in which event a lesser setback would apply. Furthermore, until recently DPDS staff applied the 30 ft CUP setback to uses of this kind not the 50 ft Section 5.3.1.C.5.

1. The variance will not adversely affect the public health, safety or welfare because the proposed use is really no different than would be an “assisted living residence”, which would impose significantly lesser setbacks. The only difference is the inclusion in this building of nurses, which results in no greater exterior building impacts on adjoining properties which might necessitate, per LDC, the greater 50 ft setbacks.

2. The variance will not alter the essential character of the general vicinity because, as stated above, the current zoning for multi-family doesn’t require this greater setback and neither would this same use without nurses.

3. The variance will not cause a hazard or a nuisance to the public for all the reasons set forth above, which is an LDC anomaly which requires a greater setback for institutional uses, which this is characterized to be because of the state regulation involved when nurses are introduced into the facility in order to dispense medications.

4. The variance will not allow an unreasonable circumvention of the requirements of the zoning

regulations because of the reasons set forth above. In other words, eliminating nurses and the dispensing of medications would eliminate the added setback.

Additional consideration:

1. The Variance arises from special circumstances, which do not generally apply to land in the general vicinity because the requirement for this added setback is that the CUP “home for the aged and infirmed” category, not the residential care use, is what necessitates the added setback because of the DPDS interpretation that this becomes an “institutional” use instead of a residential one.
2. Strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because it could not fit the same facility on this property that it could if it was categorized differently simply by eliminating nursing staff.
3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation, but rather are the result of the recent DPDS interpretation/classification of this residential care facility as an institutional, rather than residential use.





Tab 7

Proposed Findings of Fact  
Evidencing Compliance with the  
Applicable Guidelines and Policies  
of the Cornerstone 2020  
Comprehensive Plan and Variance  
criteria

# BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

1000 N. HURSTBOURNE PARKWAY • BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BLDG. • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223  
(502) 426-6688 • (502) 425-0561 (FAX) • WWW.BARDLAW.NET

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

<u>Applicant:</u>	BCDC-BrightPoint, Louisville LLC
<u>Owners:</u>	Otte Patters, LLC and Hogan Holdings 15, LLC
<u>Location:</u>	13700 English Villa Dr. & 101 English Station Way
<u>Existing Uses:</u>	Vacant
<u>Proposed Use:</u>	“Clarity Pointe” Dementia Care Facility with Revised Detailed District Development Plan (RDDDP)
<u>Engineering Firm:</u>	Land Design & Development, Inc.
<u>Request:</u>	Conditional Use Permit to allow a Dementia Care Facility

The Louisville Metro Board of Zoning Adjustment, having heard testimony in the Public Hearing held on June 16, 2014 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

### SUMMARY STATEMENT

**WHEREAS**, the overall site that this particular lot was part of an initial rezoning of some 30 acres; this approximately large zoning followed on the heels of what was a series of rezoning and development applications for a series of developers on properties stretching from US 60 on the north to I-64 on the south along both sides of what became South English Station Road; this became a very popular development destination after the large Christian Academy was originally constructed at the southwest corner of this area near the intersection of the Snyder Freeway and I-64; and when Christian Academy was developed, it had poor public access to it, so it was the result of the work of these private developers in this area, also including the referenced entity to construct (with a grant as well from KTC) English Station Road south which opened this area to development; and

**WHEREAS**, when the referenced nearby rezoning applications were brought forward, they were for most of the Shelbyville Road frontage from English Station Road west to the Snyder Freeway, and they involved a planned development for a mixture of retail and multi-family residential; some of the retail has been built (for example, Walgreens, PNC bank and First



Capital Bank), but much of it remains still to be developed, partly slowed down by the great real estate Recession of 2007 to nearly the present, and partly by virtue of the fact that the large multi-state residential developer which was going to develop the specific subject property departed Metro Louisville as far as added development was concerned; so this particular property, once part of a larger planned multi-family (at the time condominium) rezoning and development, has sat vacant; these property owners have now found another residential use, although more “institutional” in nature, given that it will include dementia patients who are anticipating to reside here for their remaining years unless and until they need to enter a more skilled type nursing home facility; and

**WHEREAS**, as a consequence, the particular application now proposed for this particular lot requires a Conditional Use Permit (CUP) under the category that our Land Development Code (LDC) terms “homes for the aging and infirm”; it will be a one-level facility that does not overwhelm the nearby patio home style condominium homes; the only reason that it requires setback variances is because of what appears to be a relatively recent interpretation of the regulations that the CUP requirement for a 30-foot setback is trumped in favor of the 50-foot setback found elsewhere in the LDC which pertains to nonresidential uses abutting residential ones; even though this is a residential care facility, apparently it has been interpreted by DPDS staff as an “institutional” one; but the justification filed with the variance applications explains that the setback for this facility from the nearby residential properties is nevertheless greater than if a single-family subdivision was developed here with 25-foot rear yards that allowed structures to encroach five feet from their rear yards into 30% of any required rear yard; side yards would be even less if this site were developed as single-family residential; and consequently, the consistent 30-foot yard setback proposed with this use is greater than would otherwise be if this were developed in a single-family residential manner with two-story, instead of as proposed here one-story, buildings; and

#### **GUIDELINE 1: COMMUNITY FORM – SUBURBAN NEIGHBORHOOD**

**WHEREAS**, the Suburban Neighborhood Form is characterized by predominantly residential uses that vary from low to high density and that blend compatibility into the existing landscape and neighborhood areas; high density uses are limited in scope to minor and major arterials and to areas that have limited impact on the low to moderate density residential areas; this form district contains diverse housing types in order to provide housing choice for differing ages and incomes; and the Suburban Neighborhood Form may contain open space and should provide for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit; and

**WHEREAS**, the proposed dementia care facility, generally described above, fits within the Suburban Neighborhood Form for all of the reasons set forth within the Comprehensive Plan description of this form; and after all, the proposal is for a residential type use, with residents living in a congregate care setting, with certain services and activities provided for in group or common settings; and

**WHEREAS**, also, as shown on the development plan, this site includes sidewalks which connect this lot and this specific type of senior living facility to other developments already planned or

built nearby; the result is good connectivity in terms of driving and walking; it is also anticipated that bike facilities can be accommodated; and open space is also evident on the plan, both in the form of interior courtyard space for the secure comfort and aesthetic enjoyment of residents; and

## **GUIDELINE 2: CENTERS**

**WHEREAS**, the Intents of this Guideline are to promote the efficient use of existing infrastructure, to lower utility costs by reducing the need for extensions, to reduce commuting time and resulting transportation-related pollution, to provide an opportunity for a mixture of residential housing types and designs, and to encourage vitality and a sense of place in neighborhoods and the community; the proposed dementia care facility complies with the Intents of this Guideline because this is now considered an infill site where road, sewer and drainage infrastructure already exist; also, this dementia care facility obviously brings to this area an enhanced level of elderly care where an existing support population already exists; and when you look at the larger Landis Lakes/Villages of English Station development (known by various other names as well) to the south and east of this, it is easy to see how this proposed dementia care facility adds to the already diverse and interesting mix of various forms of development, especially housing, leading to an even more vital, larger community than already exists; in fact, the larger area, within which is also included the Elmcroft “Oaklawn” senior living facilities just east of this location, is one of the most diverse housing and neighborhood serving mixed use areas within Metro Louisville; and

**WHEREAS**, Policies 1 and 2 of this Guideline recommend locating “activity centers” within Suburban Neighborhoods at street intersections with at least one of the intersecting streets classified as collector or above; Shelbyville Road is an arterial road, and South English Station Road is a collector road; and this dementia care facility has its principal access off English Station Way very near S. English Station and Shelbyville Road, in accordance with these Policies of this Guideline; and

**WHEREAS**, Policies 4, 5, 8 and 9 of this Guideline pertain to compact, mixed, compatible and desirable uses, especially when in the midst of mostly residential areas; this proposed dementia care facility complies with these Policies and Guidelines because there already are a lot of nearby compatible residential and neighborhood-serving commercial uses, including land for expansion; the residential development that exists around it is of a diverse nature, some single-family and a number of styles and designs of residential condominium communities; also, immediately to the north, west and east are retail and office developments in various stages of development; these commercial developments will be of added benefit to this dementia care facility; and being located in such close proximity to another senior living facility, Oaklawn, and to such a large residential population base will make this an even more attractive location for what is proposed; and

**WHEREAS**, Policies 10 and 13 of this Guideline pertain to parking and the proposal assures that parking is sufficient to meet employee and visitor needs; and a few, if any, residents will drive; and

**WHEREAS**, Policies 11 and 12 of this Guideline pertain to the design of centers and inclusion of focal points; this proposal complies with these Policies because it is laid out in a way so that the one-story building is located near taller buildings and itself surrounds an interior courtyard for the safety and aesthetic enjoyment of facility residents; so the transitions from this dementia care facility to the single-family condominium homes next door is a natural progression, sensitive to nearby and adjoining land uses; and

### **GUIDELINE 3: COMPATIBILITY**

**WHEREAS**, the Intents of this Guideline are to allow a mixture of land uses and densities near each other and to prohibit the location of sensitive land uses in areas where accepted standards for noise, lighting, odors or similar nuisances are violated or visual quality is significantly diminished – in other words, to preserve the character of existing neighborhoods; and

**WHEREAS**, the proposed dementia care facility complies with the Intents of this Guideline because, as stated above, various forms of senior living on this property and nearby contribute to a mix of uses in this area at varying levels of intensity; and furthermore, these types of uses do not involve nuisances such as noise, unusual lighting or odors, and, visually speaking, they are very attractive; and

**WHEREAS**, Policies 1, 2 and 3 of this Guideline pertain to compatibility from the standpoint of site design, building scale, building materials, densities, transitions, buffers, open spaces, landscaping and so on; the proposed dementia care facility is very compatible in terms of what is proposed and located, as noted above, at the front of the site and to the east and west of a size and scale bigger or at least similar to the proposed new dementia care facility; the existing residential condominiums nearby are not overwhelmed by this building which maintains decent setbacks and buffers; and building materials are proposed to be similar to those evident in the area, mostly durable hardy plank; and

**WHEREAS**, Policies 5, 7, 8 and 9 of this Guideline pertain to nuisances, none of which should be a problem at this facility; odors will be contained and minimal anyway; and this being a senior living facility, noise for sure won't be a problem; lighting fixtures with the Land Development Code, and neighbor concerns, if any, will be addressed to assure lighting they find acceptable; and visual impacts, as described above, are addressed mostly through building materials and architecture, but also, in appropriate areas, with vegetative buffers and, especially, new landscaping; and

**WHEREAS**, Policy 6 of this Guideline is addressed at Guidelines 7 and 8 below; and

**WHEREAS**, Policies 12, 13, 14 and 15 of this Guideline pertain to accessibility to the elderly and people with disabilities, also to the location of housing for the elderly and disabled, and also to appropriate inclusive housing and the need for it throughout this community; this dementia care proposal complies with these Policies of this Guideline because it is all about the provision of housing for the elderly and handicapped; and located as this facility is in an area where other facilities of this kind exist, it is an expanding residential care option for the elderly, in particular, in an area where there is a demonstrated support population; and



**WHEREAS**, Policies 21, 22 and 23 of this Guideline pertain to transitions, buffers, setbacks, lot dimensions and building heights; this proposal complies with these Policies of this Guideline because variances are only requested for the reasons mentioned above, while still maintaining good setbacks; and required landscape buffer areas and building setbacks are shown; and

**WHEREAS**, throughout this small development, more sufficient, attractive landscaping will be installed; and

#### **GUIDELINES 4: OPEN SPACE AND GUIDELINE 5: NATURAL AREAS AND SCENIC RESOURCES**

**WHEREAS**, the Intents and Policies of these Guidelines are to insure well designed, permanently protected open space areas and also to protect natural areas and features; the proposed dementia care facility complies with the Intents and Policies of these Guidelines because the main open space will be the internal secure courtyard, which will contribute positively to the overall ambiance of this dementia care living community; and

#### **GUIDELINE 6: ECONOMIC GROWTH AND SUSTAINABILITY**

**WHEREAS**, the Intents of this Guideline are to ensure the availability of necessary land for various kinds of residential development, to reduce public and private costs of land development and to ensure regional scale workplaces; the Intents as well as related Policies of this Guideline are addressed by the proposal in these ways; this land is now an infill site and is open and thus clearly developable; and so, what better way to develop it than compatibly with other nearby residential, largely empty-nester communities; and the overall originally zoned 30-some acres that this is a part of will be a significant source of employment for this community; and

#### **GUIDELINES 7: CIRCULATION AND GUIDELINE 8: TRANSPORTATION FACILITY DESIGN**

**WHEREAS**, the Intents of these Guidelines are to provide for the safe and proper functioning of the street network, to ensure that new developments do not exceed the carrying-capacity of streets, to ensure that internal and external circulation of all new development provide safe and efficient travel movements, to address congestion and air quality issues, to provide for the safe and convenient accommodation of the special mobility requirements of the community's elderly and handicapped, and to provide an efficient, safe and attractive system of roadways; and

**WHEREAS**, this dementia care facility complies with the Intents of these Guidelines for a number of reasons, as will be explained below; but, in summary, as also generally referred to above, it is again worth noting that the main access to this proposed facility is off English Station Way (a new east-west "connector" road) from South English Station Road off Shelbyville Road, which is a major traffic carrying arterial with adequate traffic-carrying capacity in this specific area, which is a fair distance removed from the US 60 - Snyder Freeway interchange; also, there are two points of access off Shelbyville Road to English Station Way; thus traffic in and out of this facility can be dispersed at various points; also, all these internal roads are connected so that,

traveling throughout the overall larger development one can get from one place to the other in multiple, different ways because the proposed component parts are not separated, one from the other, by roads or sidewalk networks; and they are connected; and

Policies 1, 2, 9, 11, 13, 14, 16 and 17 of Guideline 7 and Policies 5, 6, 7, 9, 10 and 11 of Guideline 8 all pertain to these issues of access, internal circulation, site distance, corner clearances, adequacy of right-of-way and overall impact on the external road systems generally mentioned within the Intent statements of these Guidelines; this dementia care facility proposal complies with these Policies of these Guidelines largely by virtue of the fact that the engineering of the site plan, including internal circulation and access, plus consideration of the use of the external street system, was done in close consultation with Metro Transportation Planning; in fact, this CUP application, in order to be finally docketed for review by the Board of Zoning Adjustment (BOZA), and this RDDDP to be docketed for review by a Planning Commission committee, must receive the preliminary stamps of approval by the Metro Transportation Planning; and, as a consequence of prior intensive and constantly updated traffic analyses, safe access and the proper functioning of those external street systems are assured; and

#### **GUIDELINE 9: BICYCLE, PEDESTRIAN AND TRANSIT**

**WHEREAS**, the Intents and Policies of this Guideline are to assure that other forms of travel are accommodated, not just vehicular; to the extent required, bike access will be provided; of course, pedestrian access, as explained above, is provided throughout the overall development and along this lot; lots of sidewalks are shown on the overall larger development plan, and they all connect with each other so that residents anywhere within the much larger development can access residential areas and commercial uses any place else within the large overall development; and

#### **GUIDELINE 10: FLOODING AND STORMWATER**

**WHEREAS**, the Intent and Policies of this Guideline is to protect the conveyance zone and maintain the hydraulic capacity of natural drainage systems to ensure that drainage designs minimize damage to streams and property from flooding and stormwater runoff; this overall larger project previously approved took care of stormwater management through construction of two large detention basins, built at 150% anticipated capacity per City of Middletown requirements; and

#### **GUIDELINE 11: AIR QUALITY**

**WHEREAS**, the Intents and Policies of this Guideline mostly pertain to the overriding issue of reducing commuting distances; this proposed dementia care facility, by locating it within the midst of a large residential support population base, can help residents who want to locate their elderly parents close to where the children currently reside; and it also allows elderly residents of the area who need to move from their standard single-family homes or condominiums to stay within the community where they may presently shop, worship and have friends and family when it becomes time to enter a senior living facility of this kind; and that also helps reduce

vehicle miles traveled because friends and family may not have to travel longer distances to visit their elderly loved ones; and

### **GUIDELINE 13: LANDSCAPE CHARACTER**

**WHEREAS**, the Intent and Policies of this Guideline are to assure the enhancement of visual quality to new landscaping and buffers; and the proposed dementia care facility will include landscaping as required by the Land Development Code; and

### **GUIDELINE 14: INFRASTRUCTURE**

**WHEREAS**, the Intents and Policies of this Guideline are to ensure that adequate infrastructure exists to assure the carrying capacity of the land; as described above, this dementia care facility is an infill project that is part of a prior 30-acre zoned site where the essential infrastructure was previously installed; and

### **GUIDELINE 15: COMMUNITY FACILITIES**

**WHEREAS**, the Intents and particularly Policy 16 of this Guideline seek to assure that the community has adequate community facilities for a variety of particular uses, in this instance healthcare; and this dementia care facility, is legally classified as a healthcare facility regulated as a healthcare facility by Kentucky State Government; and

\* \* \*

**WHEREAS**, for all the reasons explained at the Board of Zoning Adjustment public hearing and also in the public hearing exhibit books, on the approved detailed district development plan, this application also complies with all other applicable Guidelines and Policies of the Cornerstone 2020 Comprehensive Plan;

**NOW, THEREFORE**, the Louisville Metro Board of Zoning Adjustment hereby approves to Conditional Use Permit.



### **Variance Proposed Findings of Fact**

Variance of Section 5.3.1.C.5 to reduce the east side yard setback from 50' to 30' and a rear yard variance from 50' to 35'.

**WHEREAS**, the variance will not adversely affect the public health, safety or welfare because these are more significant setbacks than would be required if this were a single-family residential development, in which case the rear yard setback would be 25' with the opportunity to encroach into 30% of the overall rear yard up to 5' from the rear property line; a lesser setback would be required alongside property lines; and that would be with 2-story residential structures, whereas the proposed dementia care facility is a 1-story residential facility that has been recently interpreted by DPDS staff as an "institutional" use requiring the greater 50' setback than otherwise required by the CUP regulation with a 30' setback; and

**WHEREAS**, the variance will not alter the essential character of the general vicinity because 50' setbacks were never previously anticipated in the original rezoning under Docket No. 9-65-05 when multi-family rezoning was approved for this site; and

**WHEREAS**, the variance will not cause a hazard or a nuisance to the public because this proposed dementia care facility is a less intense use of the property than the previous multi-family use permitted by the existing R-5A zoning district which permits up to 12 apartment dwelling units per acre; and

**WHEREAS**, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because, as stated above, a lesser setback was previously anticipated; and it is only because of the "institutional" designation of this particular residential care facility that necessitates the greater 50' setback; and

**WHEREAS**, the Variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is the only current "institutional" use within the larger area known as "Villages of English Station and Landis Lakes" which essentially comprise nearly all of the developments from the Snyder Freeway on the west, Shelbyville Road on the north, I-64 on the south and Beckley Station Road on the east; and

**WHEREAS**, strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the lot would just not be large enough to accommodate this relatively small residential care facility for dementia patients; and

**WHEREAS**, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather are the result partly of what appears a new DPDS interpretation of the setback requirement for a home for aging and infirmed, designated now as "institution" instead of a residential use, even though this is a residential care facility; and

**NOW, THEREFORE**, the Louisville Metro Board of Zoning Adjustment hereby approves the Variance.