

**PLANNING COMMISSION MINUTES  
MAY 10, 2018**

**PUBLIC HEARING**

**CASE NO. 17ZONE1054**

Request: Change in zoning from R-2 & R-4 to OR-3, setback and height variances, landscape waiver, and a Detailed District Development Plan.

Project Name: Advanced ENT

Location: 2944 Breckinridge Lane

Owner: Advanced ENT Holdings of St. Matthews, LLC

Applicant: Advanced ENT Holdings of St. Matthews, LLC

Representative: Frost Brown Todd, LLC

Jurisdiction: Louisville Metro

Council District: 26 – Brent Ackerson

**Case Manager: Joel Dock, Planner II**

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

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

**Agency Testimony:**

01:49:06 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.) He noted that Commissioner Brown had had some concerns about pedestrian connectivity at the LD&T meeting; this plan has been reflects changes and improvements to the pedestrian connectivity.

01:55:20 Mr. Dock noted that some changes to binding elements had been proposed, and the applicant can address that. Binding element #2 regarding temporary banner prior to the installation of a permanent attached sign; possibly the addition of a BE related to freestanding signage.

**The following spoke in favor of this request:**

Glenn Price, Frost Brown Todd LLC, 400 West Market Street Suite 3200, Louisville, KY 40202

Kevin Burns, 222 South First Street, Louisville, KY 40202 (available to answer questions)

Joe Ackerman, 4004 Dupont Circle #220, Louisville, KY 40207 (available to answer questions)

**The following spoke neither for nor against this request:**

Connie Wharton, Mayor of Meadowview Estates, 3018 Meadowview Circle, Louisville, KY 40220

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**Summary of testimony of those in favor:**

01:56:54 Glenn Price, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.)

02:04:27 Mr. Prices's proposed changes to binding elements:

Proposed change to Binding element #2: Except for a banner that may be located on the face of the office building on Tract 2 immediately prior to the installation of an attached sign for a period of time not to exceed 90 days, no outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

Binding elements on the last page of the staff report – remove last 3 binding elements, proposed four binding elements, to read as follows:

- Office hours for patient visits shall be limited to 6:00 a.m. to 10:00 p.m.
- Landscaping and screening will be provided on the subject site adjacent to the Royal Oaks Condominium property as required by Chapter 10 of the Land Development Code. A 6 ft tall privacy fence and the required quantity of trees required by Chapter 10 shall be installed on the subject site in the rear property line Landscape Buffer Area.
- *Signs shall conform to the Land Development Code and free-standing signs shall be shown on the approved development plan. **agreed to remove this proposed binding element per conversation, below.***
- Outdoor lighting shall be directed down and away from residential areas. Lighting fixtures shall have a 90-degree cut-off.

Mr. Price added that staff has requested no binding element regarding signage [proposed binding element #3, above.]

02:09:48 Connie Wharton, Mayor of Meadowview Estates, asked why staff wanted to remove a proposed binding element regarding signage. Mr. Dock said the additional sign binding elements, outside of what the Land Development Code requires, can cause unnecessary delays for simple sign permit applications. An applicant might have to submit extra information and fees to Planning and Design Services for very minor changes. He told Ms. Wharton that she is in a Neighborhood form district, so the sign will be monument or columnar style signage, and will not be large.

02:11:32 Mr. Price answered some questions about the binding element numbering.

02:14:39 In response to a question from Commissioner Carlson, Mr. Price discussed a binding element regarding lighting. In response to another question, Mr. Price said no elevations were available for the 6,000 square foot building, because it is not proposed to be built yet. He said the applicant is willing to submit elevations to staff for approval. After some

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discussion, he proposed a binding element stating that, at the time of Tract 1 development, elevations need to be submitted.

02:18:20 In response to a question from Paul Whitty, legal counsel for the Planning Commission, Mr. Price said uses for Tract 1 is not limited to use as a medical office building. It could be any use that is permitted in the zone that meets the number of parking spaces the applicant has provided.

02:19:36 Commissioner Jarboe raised some concerns about the difficulty of making a left turn from the access drive. Mr. Price referenced the second traffic study (included in the applicant's exhibits) and discussed alternatives to making a left turn.

**The following spoke in opposition to this request:**

No one spoke.

**Deliberation:**

02:21:40 The Commissioners concur that the proposal is justified.

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

**Change in Zoning**

02:24:24 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard today, and the applicant's findings of fact, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the Proposal to change the applicable zoning district on the Subject Properties from R-2 and R-5 to OR-3 Office/Residential District to allow for two medical office buildings conforms to KRS 100.213 because it is in agreement with the Comprehensive Plan, as detailed in these Findings of Fact; and

**WHEREAS**, The Commission further finds that the proposal conforms to Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy 1.B.3. because the site lies within the Neighborhood Form District and the Proposal is consistent therewith; because the proposal is adjacent to a large activity center and directly abuts office uses and multi-family uses and zones; because the proposed scale of the development is appropriate for the area in that the activity center contains a mixture of scales supporting large and small retail uses; and because Breckenridge Lane is a minor arterial roadway; and

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**WHEREAS,** The Commission further finds that the proposal conforms to Centers Guideline 2 and all applicable Policies adopted thereunder, including Policies 2, 3, 4, 5, 6, 13, 15 and 16 because the Proposal is adjacent to a large activity center, and it abuts an office development and multi-family uses and zones; because the Subject Properties are in the Neighborhood Form District and an adjacent activity center is in the Regional Center Form District; because the vicinity of this Proposal has a sufficient population base for the development; because residential neighborhoods surround the existing activity center; because the proposed land uses are compact, and they utilize most of the land for parking, structures and detention; because appropriate landscape buffers will be provided; and because the proposed parking facilities will be shared; and

**WHEREAS,** The Commission further finds that the proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 1, 2, 4, 5, 6, 7, 8, 9, 12, 21, 22, 23, 24 and 28 because building materials for the medical office building will be brick, glass and EIFS; because these building materials will be compatible with other buildings on Breckenridge Lane and will be compatible with residential areas generally to the west of the Subject Properties; because the Proposal will have a minimal impact on abutting residential areas and the residential area across Breckenridge Lane behind the Old K-Mart building; because landscaping will be employed as required by Land Development Code Chapter 10; because; because all site lighting will conform to Land Development Code ("LDC") Part 4 and will be directed away from adjacent residential areas; because Breckenridge Lane is a transit corridor and is served by Transit Authority of River City ("TARC") Route 53 Express and Route 62; because landscaping will be provided as required by LDC Article 10; because except for the variance requests, the Proposal conforms to all setback requirements; and because free-standing signs will be monument in style and there will be no changing-image signs; and

**WHEREAS,** The Planning Commission Further Finds That the Proposal conforms to Open Space Guideline 4 because the Proposal does not require open space; and

**WHEREAS,** The Commission further finds that the proposal conforms to Natural Areas and Scenic and Historic Resources Guideline 5 and all applicable Policies adopted thereunder, including Policies 1, 2, 3, 4, and 6, because the site is not located in an area with natural, cultural or historic features and it has no soils or slopes that would make development difficult or otherwise be prone to soil erosion; and

**WHEREAS,** The Commission further finds that the proposal conforms to Economic Growth and Sustainability Guideline 6 and all applicable Policies adopted thereunder, including Policy 6 because the development will provide medical services in office buildings in or adjacent to an activity center; and

**WHEREAS,** The Commission further finds that the Proposal conforms to Circulation Guideline 7 and all applicable Policies adopted thereunder, including Policy 1, 2, 3, 6, 9, 10, 13 and 16 because the site can accommodate traffic generated to and from the site; because pedestrian facilities are provided to accommodate walkers and transit riders; because bicycle storage facilities will be provided on-site; and because a pedestrian connection is proposed through the parking lot to connect the office buildings; and



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**WHEREAS,** The Commission further finds that the Proposal conforms to Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policy 1, 2, 3 and 4 because sidewalks are located along Breckenridge Lane and are proposed to connect the office buildings; because bicycle storage facilities will be provided on both Tract 1 and Tract 2; and because Breckenridge Lane is a transit route, on which TARC provides service for Route 53 Express and Route 62; and

**WHEREAS,** The Commission further finds that the Proposal conforms to Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 1, 3, 6, 7, 10 and 11 because surface water management has been analyzed using a watershed-wide model; because impervious surfaces have been minimized wherever possible; because a large detention area to the rear of the site has been provided; because the Metropolitan Sewer District has approved the development, which indicates, among other things, that stormwater run-off has been adequately accommodated, that "through" drainage systems have been accommodated, and that peak stormwater run-off rates or volumes after development will be consistent with regional or watershed plans or are being mitigated on-site; and

**WHEREAS,** The Commission further finds that the Proposal conforms to Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 1, 2, 3 and 8 because the Louisville Air Pollution Control District has approved the Proposal, which indicates that sufficient measures have been taken to reduce the impacts of air pollution, including the use of alternate modes of transportation such as walking and biking; and

**WHEREAS,** The Commission further finds that the Proposal conforms to Landscape Character Guideline 13 and all applicable Policies adopted thereunder, including Policies 2, 5 and 6 because the site will be landscaped pursuant to the requirements of LDC Article 10; because native plant species will be utilized for buffering and screening; and because an adequate tree canopy will be provided; and

**WHEREAS,** The Commission further finds that the Proposal conforms to Infrastructure Guideline 14 and all applicable Policies adopted thereunder, including Policies 2, 3, 4, 6 and 7 because an adequate supply of potable water and water for fire-fighting purposes will be provided; because sewer service will be provided by the Metropolitan Sewer District; and because utilities and utility service will be provided for in easements as designated by each utility; and

**WHEREAS,** The Commission further finds that the Proposal conforms to Community Facilities Guideline 15 and all applicable Policies adopted thereunder, including Policy 9, because the Subject Properties will be adequately served by fire-fighting services of the McMahan Fire Department; and

**WHEREAS,** the Commission further finds that the proposal meets the intents of Guideline 1 – Community Form because The proposal is adjacent to a large activity center, and directly abutting office, commercial, and multi-family uses and zones. The scale is appropriate for the area as the center contains a mixture of scales supporting large and small retail uses; grocery;

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professional offices that stand-alone or are contained in strip centers; restaurants with or without drive-thru; and a variety other services; and Breckenridge lane is a minor-arterial roadway; and

**WHEREAS**, the Commission further finds that the request meets the intents of Guideline 2 – Centers because the proposal is adjacent to a large activity center, and directly abutting office, commercial, and multi-family uses and zones; the subject site is in the NFD, while the adjacent center is in the RCFD; the proposed use provides for medical offices; the area has sufficient permanent population and population in transit to support the use; residential neighborhoods surround the existing activity center; the land uses are relatively compact and utilize the majority of the land for parking, structures, and detention, while maintaining appropriate landscape buffers; the inclusion of medical offices on the subject site adds to the diversity of uses in surrounding areas; the inclusion of medical offices on the subject site adds to the diversity of uses in surrounding areas; the land uses are relatively compact and utilize the majority of the land for parking, structures, and detention, while maintaining appropriate landscape buffers; parking facilities are being shared and access for both pedestrians and vehicles are provided between the two sites to balance safety, traffic, transit, pedestrian, environmental and aesthetic concerns; utilities will be located to serve the development; pedestrian access to the site is provided along with vehicular access. Public sidewalk provides for access from TARC stop. TARC stop improvements will be made at the time of construction of Tract 1; and

**WHEREAS**, the Commission further finds that the request meets the intents of Guideline 3 – Compatibility because the proposed building materials increase the new development's compatibility as the building poses architectural creativity in a manner consistent with materials in the area; the proposal does not constitute a non- residential expansion into an existing residential area as the prior use was non- residential and the subject site is located along a minor arterial directing abutting a large regional center; the proposal does not appear to create any additional odor or emissions beyond that which is normally expected; Breckenridge Lane is a minor arterial roadway which is intended to serve non-residential development. There will inherently be traffic.; lighting will be in compliance with the LDC ; Breckenridge lane is a transit corridor served by TARC route 53X and 62; landscaping appears to be appropriate for the development and abutting uses; setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet form district standards; landscaping and setbacks are provided; landscaping appears to be appropriate for the development and abutting uses; and signs will be in compliance with the LDC; and

**WHEREAS**, the Commission further finds that the request meets the intents of Guideline 4 – Open Space because the front entrance to the facility provides a landscaped amenity for aesthetic purposes; open space not required for this development; and there do not appear to be any natural resources on the subject site; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 5 - Natural Areas and Scenic and Historic Resources because there do not appear to be any natural resources on the subject site; there are no structures of historical significance on the subject site; and the site does not appear to contain wetlands, floodplain or other hydric features; and

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**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 6 - Economic Growth and Sustainability because the site is located along a minor arterial adjacent to a large regional center; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 7: Circulation because the proposal will contribute its proportional share of the cost of roadway improvements and other services and public facilities made necessary by the development through physical improvements to these facilities, contribution of money, or other means; TARC improvements will be made along the frontage, public walks will be provided and interconnectivity between the uses will be made available; the proposal's transportation facilities are compatible with and support access to surrounding land uses, and contribute to the appropriate development of adjacent lands; pedestrian facilities are provided to accommodate walkers and transit riders; sufficient parking is being provided; and the proposal provides for joint and cross access through the development; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 8: Transportation Facility Design because stub streets are not required; access is provided from an arterial roadway intersecting an interstate and an activity center; and no streets are proposed or required; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 9: Bicycle, Pedestrian and Transit because TARC improvements will be made along the frontage, public walks will be provided and interconnectivity between the uses will be made available; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 10: Flooding and Stormwater because the proposal's drainage plans have been approved by MSD; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 12: Air Quality because The proposal has been reviewed by APCD and found to not have a negative impact on air quality; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 13: Landscape Character because no natural corridors are present; and

**WHEREAS**, the Commission further finds that the proposal meets the intents of Guideline 14 - Infrastructure because existing utilities would appear to be available; the proposal has access to an adequate supply of potable water and water for fire- fighting purposes; and the proposal has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams; now, therefore be it

**RESOLVED**, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the Louisville Metro Council that the requested Change-in-Zoning from R-2/R-5, Single-Family Residential to OR-3, Office-Residential on property described in the attached legal description be **APPROVED**.

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**The vote was as follows:**

**YES: Commissioners Brown, Howard, Smith, Carlson, Peterson, Ferguson, Jarboe, Tomes.**

**NOT PRESENT: Commissioner Lewis.**

**Variances:**

1. **Variance** of LDC, section 5.1.12.B.2.a to vary the infill established front setback.
2. **Variance** of LDC, section 5.3.1.C.5 to encroach upon the 30' non-residential to residential setback
3. **Variance** of LDC, section 5.3.1.C.5 to exceed the maximum height

02:25:19        On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard today, and the applicant's justification, was adopted:

**(Variance #1) WHEREAS**, the Louisville Metro Planning Commission finds that a Variance is requested from Land Development Code §5. 1.12.B.2.a to vary the Breckenridge Lane Infill Front Setback to allow the medical office building on Tract 2 to be situated 10 feet back from the front (Breckenridge Lane) right-of-way line, as opposed to being situated a distance between (1) the adjacent office building to the south, which is 25-feet from the Breckenridge Lane right-of-way, and (2) the Royal Oaks Condominiums building to the north, which is 40-feet from the Breckenridge Lane right-of-way; and

**WHEREAS**, the Commission further finds that the variance will not adversely affect the public health, safety or welfare because the infill setback would be between 25 and 40 feet from Breckenridge Lane as established by the adjacent office building in "The Point" [the Andrew Jacobs Partnership property shown on the development plan] and the adjacent Royal Oaks Condominium building, which is 40 feet from Breckenridge Lane. The proposed variance will have no effect on the public health, safety or welfare because the distance the proposed building lies from Breckenridge Lane poses no issues affecting the public health, the public safety or the general welfare of the public. Moreover, placing the building as close to Breckenridge Lane as possible means that it will be located as far away from the Royal Oaks Condominium development as possible, which promotes the public welfare; and

**WHEREAS**, the Commission further finds that the variance will not alter the essential character of the general vicinity because much of the existing vicinity, including the office complex to the south is used for non-residential purposes; and

**WHEREAS**, the Commission further finds that the variance will not cause a hazard or a nuisance to the public because the building will be setback a typical distance from the street; and



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**WHEREAS**, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because a typical setback from Breckenridge Lane will be observed; and

**WHEREAS**, the Commission further finds that the variance arises from special circumstances, which do not generally apply to land in the general vicinity because the location of the proposed medical office building has been determined, in large part, by the desire to keep the primary medical office building of the development as far as possible away from residences in the immediate vicinity; and

**WHEREAS**, the Commission further finds that the strict application of the regulation would prevent the Applicant from locating a medical office building at this location, which would both deprive the Applicant of sufficient parking area for patients of the Applicant. As such, this would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant [because it would prevent having adequate number of parking spaces on-site]; and

**WHEREAS**, the Commission further finds that the circumstances giving rise to the variance application are the result of the necessity to have a sufficient number of parking spaces on the site for medical patients, and to keep the primary medical office building as far away from adjacent residential uses as possible. These circumstances do not arise as a result of actions of the Applicant taken subsequent to the adoption of the regulations; and

**WHEREAS**, the Commission further finds that the requested variance will not adversely affect public health safety or welfare as the proposed setback does not impact the safe movement of vehicles or pedestrians; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the building will be closer to the road which enhances its pedestrian presence in the area; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as no impact on site lines for vehicles or pedestrians are being impacted; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the minimum requirement in a non-infill context is the setback proposed; and

**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as much development in the area has been developed in a non-infill context; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as requested variance

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matches the minimum requirements in a non- infill context and enhances the pedestrian presence of the building; and

**WHEREAS**, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the site has not been developed and relief is being sought; and

**(Variance #2) WHEREAS**, the Commission further finds that Variances are requested from Land Development Code §5.3.1.C.5 Table 5.3.2 to vary the 30-foot non-residential-to-residential setback for (1) the encroachment of the pavement adjacent to 2936 Breckinridge Lane on the north side of the property, and (2) the encroachment of the pavement and dumpster enclosure adjacent to the Ty Haskell LLC property [2903 Lighthouse Road]; and

**WHEREAS**, the Commission further finds that the variance will reduce the 30-foot setback by only about 10 feet to accommodate the driveway of the development. Tract 2. The variance will reduce the 30-foot setback by only about 10 feet to accommodate the dumpster enclosure and pavement. The reduced setback will abut a rear parking area on the Ty Haskell LLC property. Because of where they are situated these proposed variances will have no effect on the public health, safety or welfare because the smaller setback does not present any issue affecting public health, safety or the general welfare of the public; and

**WHEREAS**, the Commission further finds that the variances will not alter the essential character of the general vicinity because the variances are not of sufficient magnitude to alter the essential character of the general vicinity; and

**WHEREAS**, the Commission further finds that variance will not cause a hazard or a nuisance to the public because the reduced setbacks are not of a sufficient magnitude to create a hazardous circumstance or a nuisance to the public.; and

**WHEREAS**, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the encroachment into the setbacks do not impact adjacent property owners and they are minimal encroachments; and

**WHEREAS**, the Commission further finds that the variances arise from special circumstances, which do not generally apply to land in the general vicinity. The location of the proposed medical office building has been determined, in large part, by the desire to keep the primary medical office building of the development as far as possible away from residences in the immediate vicinity. This requires the placement of the dumpster enclosure at a location away from residential neighbors and away from public view. The variance on Tract 1 is not substantial. As such, the variances arise from special circumstances which do not apply to land in the general vicinity; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create unnecessary hardship because the strict application of the regulation would prevent the Applicant from locating a medical office building at this location, which would both deprive

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the Applicant of sufficient parking area for patients of the Applicant. As such, this would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant [because it would prevent having adequate number of parking spaces on-site]; and

**WHEREAS**, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought. The circumstances giving rise to the variance application are the result of the necessity to have a sufficient number of parking spaces on the site for medical patients, and to keep the primary medical office building as far away from adjacent residential uses as possible. These circumstances do not arise as a result of actions of the Applicant; and

**WHEREAS**, the Commission further finds that the requested variance will not adversely affect public health safety or welfare as the proposed setback does not impact the safe movement of vehicles or pedestrians; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as building setbacks and drive lane setbacks are comparative to conditions in the area; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as no impact on site lines for vehicles or pedestrians are being impacted; and

**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as vicinity as building setbacks and drive lane setbacks are comparative to conditions in the area; and

**WHEREAS**, the Commission further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the zoning regulations apply to all property in the area; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as the request on the Eastern property line is adjacent to non-residential uses in a residential zoning district and the encroachment on the western side is minimal; and

**WHEREAS**, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the site has not been developed and relief is being sought; and

**(Variance #3) WHEREAS**, the Commission further finds that a variance is requested from Land Development Code §5.3.1.C.5 Table 5.3.2 to vary the building height of the medical office building on Tract 2 to allow the peak of the building to be 45-feet tall instead of the prescribed maximum of 30-feet tall; and

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**WHEREAS**, the Commission further finds that the proposed building's architectural elements will not substantially exceed the maximum height. Moreover, the building is set back from Breckinridge Lane and from adjacent residential areas. In addition, the architecture and height add to the visual interest of the building and allows space for necessary medical-related mechanical facilities; and

**WHEREAS**, the Commission further finds that the variances are not of sufficient magnitude to alter the essential character of the general vicinity; and

**WHEREAS**, the Commission further finds that the variances will not cause a hazard or nuisance to the public because the height variance is insubstantial, and the building is not located near other buildings; and

**WHEREAS**, the Commission further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the height variance will be insubstantial; and

**WHEREAS**, the Commission further finds that it is difficult to design and build a medical office building without providing a *per-floor* height of 15.5 feet. Typical ceiling heights are 10-feet. Typical interstitial space for mechanical, electric, and structural to accommodate typical VAV requirements will require a *per floor* height of 14'-6" to 15'-6". Because this building is the primary medical office building in the vicinity this situation constitutes a special circumstance not generally applying to land in the general vicinity; and

**WHEREAS**, the Commission further finds that the strict application of the regulation would prevent the Applicant from constructing its medical office building at this location, which would both deprive the Applicant of its ability to construct the building. This would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant; and

**WHEREAS**, the Commission further finds that the circumstances giving rise to the variance application are the result of the necessity to have sufficient height for a modern medical office building. These circumstances do not arise as a result of actions of the Applicant; and

**WHEREAS**, the Commission further finds that the requested variance will not adversely affect public health safety or welfare as the proposed setback does not impact the safe movement of vehicles or pedestrians; and

**WHEREAS**, the Commission further finds that the requested variance will not alter the essential character of the general vicinity as the building is architecturally interesting and aesthetically pleasing and will enhance the quality of design in the area; and

**WHEREAS**, the Commission further finds that the requested variance will not cause a hazard or nuisance to the public as no impact on site lines for vehicles or pedestrians are being impacted; and



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**WHEREAS**, the Commission further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations as the building is architecturally interesting and aesthetically pleasing and will enhance the quality of design in the area; and

**WHEREAS**, the Commission further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as much development in the area has been developed in an on-infill context; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as the building is architecturally interesting and aesthetically pleasing and will enhance the quality of design in the area; and

**WHEREAS**, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the site has not been developed and relief is being sought; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested **Variance** of LDC, section 5.1.12.B.2.a to vary the infill established front setback; the **Variance** of LDC, section 5.3.1.C.5 to encroach upon the 30' non-residential to residential setback; and the **Variance** of LDC, section 5.3.1.C.5 to exceed the maximum height.

**The vote was as follows:**

**YES: Commissioners Brown, Howard, Smith, Carlson, Peterson, Ferguson, Jarboe, and Tomes.**

**NOT PRESENT: Commissioner Lewis.**

**Waiver of LDC, section 10.2.44.B.3 to allow utility easement/LBA overlap to exceed 50%**

02:26:23 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis, evidence and testimony heard today, and the applicant's justification, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that the waiver will not adversely affect adjacent property owners because the only property affected by this request is the adjacent property owned by Colston, Inc. [DB 4872, P 915], which has one residential condominium building and a tennis court. This property is presently being held for sale for commercial purposes; and

**WHEREAS**, the Commission further finds that the waiver will not violate the Comprehensive Plan because the applicable Policy of the Comprehensive Plan in question is Compatibility Guideline 3, Policy 22 "Buffers," which recommends mitigating impacts when incompatible developments occur adjacent to one another. Because the abutting property is likely to be commercial a reduced width buffer on the subject site is appropriate; and

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**WHEREAS**, the Commission further finds that the extent of the waiver is only driven by the necessity to provide vehicular access along the northern portion of the site, and that is the extent of the waiver request; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant. The purpose of the drive aisle along the north side of Tract 1 is to provide access to and from the traffic signal (in front of Tract 1 across from Berkshire Avenue) (a) to provide safe entry and exit for patients and employees of the medical office building on Tract 2, and (b) to provide safe entry and exit for customers and employees of the gas/C-store on Tract 1; and

**WHEREAS**, the Commission further finds that the waiver will not adversely affect adjacent property owners as landscape buffers and planting material is being provided as required; and

**WHEREAS**, the Commission further finds that the waiver will not violate specific guidelines of Cornerstone 2020 as landscape buffers and planting material is being provided as required; and

**WHEREAS**, the Commission further finds that the extent of the waiver of the regulation is not the minimum necessary to afford relief to the applicant as landscape buffers and planting material is being provided as required; and

**WHEREAS**, the Commission further finds that the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant as landscape buffers and planting material is being provided as required; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Waiver of LDC, section 10.2.44.B.3 to allow utility easement/LBA overlap to exceed 50%.

**The vote was as follows:**

**YES: Commissioners Brown, Howard, Smith, Carlson, Peterson, Ferguson, Jarboe, and Tomes.**

**NOT PRESENT: Commissioner Lewis.**

**Detailed District Development Plan and Binding Elements**

02:27:10 On a motion by Commissioner Brown, seconded by Commissioner Carlson, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

**WHEREAS**, the Louisville Metro Planning Commission finds that there are no features of historic significance on the property and no apparent natural resources on the site; and

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**WHEREAS**, the Commission further finds that provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community has been provided as sidewalks, pedestrian connection, TARC improvements, and vehicular connectivity will be provided; and

**WHEREAS**, the Commission further finds that open space is not required as a component of this development; and

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

**WHEREAS**, the Commission further finds that the overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening will be provided to screen adjacent properties and roadways. The building is architecturally interesting and aesthetically pleasing and will enhance the quality of design in the area; and

**WHEREAS**, the Commission further finds that the development plan conforms to applicable guidelines and policies of the Comprehensive Plan as demonstrated in Cornerstone 2020 Staff Analysis for the change in zoning request and to requirements of the Land Development Code; now, therefore be it

**RESOLVED**, the Louisville Metro Planning Commission does hereby **APPROVE** the requested Detailed District Development Plan and Binding Elements, **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan/alternative landscape plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. Except for a banner that may be located on the face of the office building on Tract 2 immediately prior to the installation of an attached sign for a period of time not to exceed 90 days, no outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
3. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is

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completed. No parking, material storage or construction activities are permitted within the protected area.

4. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
  - a. The development plan must receive full construction approval from Louisville Metro Department of Codes and Regulations Construction Permits, Transportation Planning Review, and the Metropolitan Sewer District.
  - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways for all work within the right-of-way.
  - 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 minor plat shall be recorded creating the lots as shown on the development plan.
  - e. A reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel shall be created between the adjoining property owners and recorded. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services.
5. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
6. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
7. Office hours for patient visits shall be limited to 6:00 a.m. to 10:00 p.m.
8. Landscaping and screening will be provided on the subject site adjacent to the Royal Oaks Condominium property as required by Chapter 10 of the Land Development Code. A 6 ft tall privacy fence and the required quantity of trees required by Chapter 10 shall be installed on the subject site in the rear property line Landscape Buffer Area.



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9. Outdoor lighting shall be directed down and away from residential areas. Lighting fixtures shall have a 90-degree cut-off.
10. Elevations for Tract 1 shall be submitted to Planning and Design staff for review and approval prior to issuance of building permits for Tract 1.

**The vote was as follows:**

**YES: Commissioners Brown, Howard, Smith, Carlson, Peterson, Ferguson, Jarboe, and Tomes.**

**NOT PRESENT: Commissioner Lewis.**