

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30 A.M. on Monday, November 2, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

David Proffitt, Chairperson
*Mike Allendorf, Vice Chairperson
Rosalind Fishman, Secretary
Lester Turner
Paul Bergmann

Members absent:

Betty Jarboe
Dean Tharp

Staff members present:

John Carroll, Legal Counsel
Joe Reverman, Planning Manager
Steve Hendrix, Planning Supervisor
Jon Crumbie, Planner II
Sherie' Long, Landscape Architect
Joel Dock, Planner I
Laura Mattingly-Humphrey, Planner I
Beth Stevenson, Management Assistant

Others present:

Mike Wilcher, Louisville Metro Zoning Enforcement
Robert Roby, Louisville Metro ABC Officer

*Member Allendorf left the meeting at 12:16 p.m.

The following cases were heard:

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

APPROVAL OF MINUTES

OCTOBER 19, 2015 BOARD OF ZONING ADJUSTMENT MINUTES

On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on October 19, 2015.

YES: Members Fishman, Allendorf, Bergmann and Turner.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: Member Proffitt.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

BUSINESS SESSION:

CASE NO. 15VARIANCE1072

Request: Variances from the Land Development Code to allow a proposed addition to encroach into the side yard setback; and to allow a reduction in the rear private yard area.

Project Name: 1239 Hull Street Home Addition

Location: 1239 Hull Street

Owner: Fante Living Trust
Scott Wilson, Trustee
1219 Hull Street
Louisville, KY 40204

Applicant: Scott Wilson
1219 Hull Street
Louisville, KY 40204

Jurisdiction: Louisville Metro

COUNCIL DISTRICT: 4—David Tandy
Staff Case Manager: Laura L. Mattingly-Humphrey, Planner I

The staff report prepared for this case was incorporated into the record. The Board members 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 at Planning and Design Services offices, 444 South 5th Street.)

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact customer service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 2, 2015 public hearing proceedings.

DISCUSSION:

The Board had questions regarding the addition and if the second floor would be converted into an apartment. Ms. Humphrey said the second floor has a den,

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

BUSINESS SESSION:

CASE NO. 15VARIANCE1072

kitchen and bathroom; and was told it would be used as an entertainment area for the family. Steve Hendrix, Planning Supervisor, said the Board could add a condition of approval that the house remains single family residential.

Variances—To allow a proposed addition to encroach into the side yard setback and a reduction in the private yard area:

On a motion by Board Member Fishman, seconded by Member Turner, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.2 of the Land Development Code to allow a proposed addition to encroach into the southwest side yard to 0 feet (requirement 3 feet or a variance of 3 feet); and a variance from Section 5.4.1.D of the Land Development Code to allow a reduction in the rear private yard area to be 320 square feet (requirement 398 square feet or a variance of 78 square feet); and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposed addition is located at the rear of the parcel; and because adjacent neighbors have no objection to the reduction in private yard area or the zero foot side yard setback; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because there are several lots which do not have adequate private yard area or the required side yard setbacks due to the size and shape of the lots which are typical of traditional neighborhoods; and because the addition is in the rear and will not impact the character of the home from the public right-of-way; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the building addition is located at the rear of the property; and because there will still be 320 square feet of the lot dedicated to private rear yard space; and because the adjacent property owners have no objection to the reduction in private yard area or the zero foot side yard setback; and

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

BUSINESS SESSION:

CASE NO. 15VARIANCE1072

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the private rear yard reduction is a reasonable amount at 78 square feet; and although the applicant is asking for a 0 foot side yard setback, it is a continuation of the existing home and are allowing a 4 foot setback on the other side of the home; and because the lot is very narrow as are others in the neighborhood; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is very narrow and located in an established residential neighborhood; and because the size and configuration of the lot limits the area for construction of an addition; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the design of the addition would have to be significantly altered; and

WHEREAS, the Board 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 because the lot is narrow as are most in the neighborhood;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances **ON CONDITION** that the house remain single family residential as defined by the Land Development Code.

The variances allow:

1. The proposed addition to be 0 feet from the southwest property line.
2. The rear private yard area to be 320 square feet.

BE IT FURTHER RESOLVED, that this action be effective immediately.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1054

Request: Variances to allow a proposed house to encroach into the front and side infill yards; and a waiver to not provide the entrance on the front façade and oriented toward the primary street.

Project Name: New House

Location: 553 Wainwright Avenue

Owners: Frank S. & Brenda Mosser
553 Wainwright Avenue
Louisville, KY 40217

Applicants: Same as Owners

Attorney: Taylor M. Hamilton
Morgan & Pottinger, P.S.C.
601 West Main Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 15—Marianne Butler

Staff Case Manager: Sherie' Long Landscape Architect

(THIS CASE WAS PREVIOUSLY REMOVED BY STAFF ON SEPT. 21, 2015)

The applicant has requested a change in the public hearing date to November 16, 2015; and the Board will need to make a general consensus action for this request.

Agency Testimony:

Staff Case Manager, Sherie Long, stated that the applicant is requesting a change in the public hearing date to November 16, 2015 so they have time to complete a survey, consolidate the property and change the design

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1054

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 2, 2015 public hearing proceedings.

On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **NOVEMBER 16, 2015**.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1071

Request: Variances from the Land Development Code to allow a proposed freestanding sign to exceed the maximum size and height.

Project Name: Kroger Freestanding Sign

Location: 2200 Brownsboro Road

Owner: Dahlem Enterprises, Inc.
Charles J. Dahlem
1531 Ormsby Station Court
Louisville, KY 40223

Applicant: The Kroger Company
Joe Hamilton
1600 Ormsby Station Court
Louisville, KY 40223

Representative: Heritage Engineering
John Campbell
642 South 4th Street, Suite 100
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 9—Bill Hollander

Staff Case Manager: Jon Crumbie, Planner II

Notice of this public hearing was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicant.

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

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1071

Agency Testimony:

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing to remove the existing Dixie Dry Cleaners and Kroger signs along Brownsboro Road and replace it with a new freestanding sign. Member Bergmann said the proposed new sign won't be as tall as the existing.

The following spoke in favor of this request:

John Campbell.

Danny Leftco, Kroger Real Estate Manager (didn't sign in).

Summary of testimony of those in favor:

John Campbell, the applicant's representative, said the sign will be lower than the existing sign. He said Kroger is updating their store adding a wine and spirits store which has prompted the request. He said the new sign will give them more visibility and are sharing it with other tenants in the plaza. He said the base will be brick; and sign will be backlit.

Danny Leftco said he is the real estate manager for Kroger, and that they are upgrading this store and will combine two of the existing signs.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1071

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 2, 2015 public hearing proceedings.

Variances—To allow a proposed freestanding sign to exceed the maximum size and height

After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Turner, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances from the Land Development Code to allow a proposed freestanding sign to be 18 feet 9 inches in height (requirement 6 feet tall) and 80 square feet in area (requirement 48 square feet); and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposal will allow the number of signs to be reduced and allow multi-tenant identification; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the proposed sign will be compatible in style with the existing structure on site; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the proposed sign will not be located near a sight triangle; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because there are numerous other signs in the area with varying heights and sizes; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1071

because of the location of the existing sign and that parking for the shopping plaza fronts Brownsboro Road; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because it would limit the ability to place the sign on site in a location that provides safe visibility from the public right-of-way; and because it would limit the ability to identify multi-tenant services provided at the Clifton Plaza;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

The variances allow:

1. The proposed sign to be 80 square feet in area.
2. The proposed sign height to be 18 feet 9 inches.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1070

Request: Variance from the Land Development Code to allow a proposed building addition to exceed the maximum height.

Project Name: Heritage Plastics Building Addition

Location: 6700 Enterprise Drive

Owner: Liberty Plastics
Scott Happel
6700 Enterprise Drive
Louisville, KY 40214

Applicant: Same as Owner

Representative: J L. McCoy & Company
Jon McCoy
426 Watt Street, Suite B
Jeffersonville, IN 47130

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 13—Vicki Aubrey Welch

Staff Case Manager: Sherie' Long, Landscape Architect

Notice of this public hearing was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicant.

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant is proposing to construct a new building addition to the rear of the existing building

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1070

which will accommodate equipment used for the operation of the facility. She said the large area of trees will remain to buffer the single family residential. The addition will be 63 feet in height which matches the existing storage tanks.

The following spoke in favor of this request:

Jim Dixon, Heritage Plastics, Maintenance Manager.

Summary of testimony of those in favor:

Jim Dixon said he is the maintenance manager for the business, and that the proposal will house the equipment they use to manufacture their product and allow the business to grow. Member Turner had concerns with environmental impacts. Mr. Dixon said there is no hazardous material being used and explained the transfer of material.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 2, 2015 public hearing proceedings.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1070

Variance—To allow a proposed building addition to exceed the maximum height:

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, Section 5.3.4.D.4.a, to allow a proposed building addition to exceed the maximum height to 63 feet (requirement 50 feet or a variance of 13 feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the new addition will be located at the rear of the property; and because an existing vegetative buffer is located between the new addition and the residential property to the northwest; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are currently three storage tanks/structures which are similar in height to the proposed new addition; and because the construction materials will be similar to materials already being used in the vicinity; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the existing vegetation is located between the new addition and the residential properties providing a sufficient buffer; and because surrounding properties are either industrial or manufacturing which is similar to the subject property; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the existing storage tanks are similar in height to the proposed building addition; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the height request is directly linked to the requirements of the equipment necessary for the operation of the facility; and

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1070

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the proposed addition would not be tall enough to accommodate the equipment necessary for the facility operations; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant since the applicant is requesting a variance prior to beginning any construction;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building addition to be 63 feet in height.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

Request: Variances from the Land Development Code to allow parking to encroach into the front yard setback and to allow the drive aisle to encroach into the side yard; design and landscape waivers from the Land Development Code; and a Category 3 Development Plan.

Project Name: Portland Avenue Presbyterian Church

Location: 3126, 3128, 3108 & 3106 Portland Avenue

Owner: Portland Avenue Presbyterian Church
Grace P. Jenks, Clerk of Session
700 Marquette Drive
Louisville, KY 40207

Applicant: Same as Owner

Representative: Blomquist Design Group, LLC
Marv Blomquist
10529 Timberwood Circle, Suite D
Louisville, KY 40223

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 5—Cheri Bryant Hamilton

Staff Case Manager: Sherie' Long, Landscape Architect

Notice of this public hearing was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicant.

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

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the requests are a continuation of upgrading the site for the church. Approval of the Category 3 Plan will allow the applicant to remove a large portion of existing pavement to reconfigure the existing parking lot and allow for large areas of green space including trees and landscaping for aesthetics and control water runoff. Ms. Long said that the third waiver listed on the staff report is no longer needed; and concluded that some of the requests don't meet the standard of review.

The following spoke in favor of this request:

Marv Blomquist submitted a handout to the Board which included a landscape plan and presented a PowerPoint presentation.

Summary of testimony of those in favor:

Marv Blomquist, the applicant's representative, said the church is utilizing the old Kroger site and has had issues with semi-trucks parking on their property without consent. He said the city is contributing for sidewalks and curbing; and that their proposal will add more green space and underground retention. Mr. Blomquist explained the need for the requests due to various existing conditions on the property (access etc.).

Chair Proffitt asked if Mr. Blomquist would agree to a condition of approval that the landscape plan will be enhanced and reviewed and approved by staff. Mr. Blomquist said yes.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

Deliberation:

The Board discussed the way they would vote and adding the condition of approval for enhanced landscaping toward the front of the property.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 2, 2015 public hearing proceedings.

Category 3 Development Plan:

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the site plan, the PowerPoint presentation(s); the renderings, the evidence and testimony submitted at the public hearing, that the applicant is requesting a Category 3 Development Plan review for improvements to the church which will include the removal of a large portion of existing pavement to allow for the reconfiguration of an existing parking lot; and

WHEREAS, the Board finds that the proposal conserves and reuses an existing building on the subject site (former Kroger); and because the existing parking lot pavement is being removed and the parking lot is being reconfigured to create additional green space to eliminate storm water runoff, improve the appearance and enhance the streetscape; and because additional trees will be planted to reduce the heat island effect; and

WHEREAS, the Board finds that the provisions for safe and efficient vehicular and pedestrian transportation are provided within the development along with connections to the surrounding community; and because Transportation Planning has preliminarily approved the development plan; and

WHEREAS, the Board finds that the proposal provides sufficient open space within the development by eliminating existing pavement and adding additional tree canopy and landscaping; and

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

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

WHEREAS, the Board finds that the overall site design and land uses are compatible with the existing and future development of the area; and because the Portland Neighborhood Plan recommends "adding attractive efficient design for streetscapes and parking"; and because landscape buffering and screening will be provided to screen the parking area from adjacent properties and roadways with the exception of the waiver requests; and

WHEREAS, the Board finds that the development plan conforms to the applicable guidelines and policies of the Comprehensive Plan and the requirements of the Land Development Code with the exception of the waivers and variances being requested

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **APPROVE** the Category 3 plan for improvements to the church which will include the removal of a large portion of existing pavement to allow for the reconfiguration of an existing parking lot.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

Waiver #1—To allow parking in front of the building adjacent to Portland Avenue:

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.5.1.A.3.a

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

of the Land Development Code to allow parking to be located in front of the building adjacent to Portland Avenue; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the existing parking lot is located in front of the building; and because the proposal will reduce the amount of pavement and add screen plantings and trees in front of the proposed spaces which will reduce the impact; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the location of the parking is an existing condition; and because the reduction of pavement along with the addition of green space and plantings will enhance the property; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since green space, screen plantings and trees are to be provided between the building and the street to lessen the impact of the parking in front of the building; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimum of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) because the proposal reduces the pavement and provides additional green space;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow parking to be located in front of the building adjacent to Portland Avenue.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

Waiver #2—To not provide the 3 ft. tall masonry wall:

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.5.1.A.3.a of the Land Development Code to not provide the required 3' masonry wall across the front of the parking adjacent to the street; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since screen plantings will be provided along the parking lot adjacent to the street which will reduce the impact of the parking lot adjacent to residential properties; and

WHEREAS, the Board finds that the waiver will not violate Guideline 3 (Compatibility) of Cornerstone 2020, because it calls for the protection of roadway corridors and public areas from visual intrusions for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered; and because the purpose of the wall is to improve the appearance of vehicular use areas, reduce the impact of the parking area on the adjacent residential property and other property abutting public rights-of-way while extending the building façade along the street frontage; and because the applicant, in place of the wall, will be providing 3' tall screen plantings along with additional trees; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since a 3' tall screen planting along with trees will be provided between the street and the parking lot; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); and because the proposal provides 3' tall plantings as an alternative to the wall to screen the parking area; plus, the proposal reduces the amount of existing pavement and adds additional green space;

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to eliminate the required 3 ft. tall masonry wall.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

Waiver #3—Not needed

Waiver #4—To eliminate the required 5' Landscape Buffer Area (LBA) along the access drive to Bank Street and the rear of the site adjacent to the alley:

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.10 of the Land Development Code to eliminate the required 5' LBA along the access drive to Bank Street and the rear of the site adjacent to the alley; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the access drive is existing; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the access road pavement width and location are an existing condition and the pavement width is necessary for safe access to the site; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant since the access drive pavement location is an existing condition; and

WHEREAS, the Board finds that the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

hardship because the access drive pavement is an existing condition and needed for safe access to the site; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the existing access drive would not be wide enough to accommodate traffic;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to eliminate the 5' Landscape Buffer Area along the access drive to Bank Street.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

Waiver #5—To eliminate the required 5' LBA along the rear of the site adjacent to the alley:

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.10 of the Land Development Code to eliminate the 5' LBA along the rear of the site adjacent to the alley; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the pavement is existing; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the pavement is existing and been in place for several years; and because the applicant will be reducing the amount of pavement on the property and providing green infrastructure for aesthetic purposes; and

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because green space including various plantings and trees will be added to the site for visual appeal; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land because the location of the existing alley and paved access area and their use as drive aisles/lanes are a unique layout issues that existed prior to the church purchasing the property several years ago; and because the applicant will be reducing a large portion of the asphalt and adding more plantings and trees;

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to eliminate the 5' LBA along the rear of the site adjacent to the alley.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

Waiver #6—To eliminate the required 5' LBA along the western perimeter where adjacent to the M-2 property:

On a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.4 of the Land Development Code to eliminate the required 5' LBA along the western perimeter where adjacent to the M-2 property; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the abutting property is a more intense use; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the applicant will be reducing a large amount of

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

asphalt on the property and including more green space including plantings and trees; and because the applicant agreed at today's hearing, to install additional landscaping which will be reviewed and approved at staff level; and

WHEREAS, The Board finds that the waiver is the minimum necessary to provide relief to the applicant because the applicant will be reducing a large amount of asphalt on the property and including more green space including plantings and trees; and because the applicant agreed at today's hearing, to install additional landscaping which will be reviewed and approved at staff level; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the applicant is reducing a large amount of asphalt on the property and including more green space including plantings and trees; and because the applicant agreed at today's hearing, to install additional landscaping which will be reviewed at approved at staff level;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to eliminate the 5' LBA along the western perimeter adjacent to the M-2 property **ON CONDITION** that the landscaping be substantially the same as depicted in the applicant's landscape plan on page 4 of the handout; and that additional landscaping be added to the southwest portion of the site which will be submitted to staff for review and approval.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

Variance #1—To allow parking to encroach into the required 15' front yard setback:

After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.5.1.A.3 of the Land Development Code to allow parking to be 10 feet from the front property line (requirement 15 feet or a variance of 5 feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the parking lot in front of the building is existing; and

WHEREAS, the Board finds that variance will not alter the essential character of the general vicinity because the parking lot in front of the building is existing; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposal will improve the parking lot with the addition of more green space and tree plantings; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the parking lot in front of the building is existing;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow parking to be 10 feet from the front property line.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

Variance #2—To allow the drive aisle to encroach into the required 5' side yard:

After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.2, Table 5.2.2 of the Land Development Code to allow the drive aisle to be 0 feet from the side property line (requirement 5 feet or a variance of 5 feet); and

WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare since the access drive is existing; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the access drive aisle is existing; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the access drive aisle is existing and removing the pavement which is encroaching into the side yard would narrow it making it unsafe for two-way traffic; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulation since the access drive is existing; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the existing access drive width is the minimum allowed for two-way traffic; and because removing the pavement from the setback area would reduce the width of the drive aisle making it unsafe for two-way traffic; also, because the access is unique because it is a private access included as part of the lot area and not the public right-of-way; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant since the existing access drive width is the minimum necessary for two-way traffic; and removing the pavement from the side yard would deprive the applicant use of the access in and out of the site; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1138

which relief is sought because the access drive is existing and the applicant is requesting a variance prior to beginning any work;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the existing drive aisle to be 0 feet from the side property line.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15CUP1034

Request: Conditional Use Permit to allow a potentially hazardous or nuisance use in an M-3 zoning district.

Project Name: Oxbow Fertilizer

Location: 8252 Port Avenue

Owner: Louisville & Jefferson County Riverport
Larry McFall, President
6900 Riverport Drive
Louisville, KY 40268

Applicant: Oxbow Fertilizer, LLC
Charles Montoya
1450 Lake Robbins Drive, Suite 500
The Woodlands, TX 77380

Representative: QK4
Ashley Bartley
1046 East Chestnut Street
Louisville, KY 40204

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 12—Rick Blackwell

Staff Case Manager: Jon Crumbie, Planner II

Notice of this public hearing was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicant.

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

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15CUP1034

Agency Testimony:

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing a building to store fertilizer and another for shop and office use. He said the request meets the standard of review, but the Board may want to ask what chemical compounds are in the fertilizer and if any safety measures will be implemented.

The following spoke in favor of this request:

Ashley Bartley.

Charles Montoya, 1 Waterway Avenue, #2303, The Woodlands, TX 77380.

Summary of testimony of those in favor:

Ashley Bartley, the applicant's representative, said they have been working with the applicant for several months, stating that it will be a fertilizer storage and distribution center. She said fertilizer is not particularly a hazardous material and that the applicant will discuss this further. She said the building is setback 600 feet from Cane Run Road; is not in the floodplain and will not be disturbing any green areas. Ms. Bartley said they are not using the heavily wooded area as part of their Tree Canopy Area and will be planting 47 trees on and around the site. She said they will need to submit a revised site plan since they are changing the configuration of the buildings.

Charles Montoya, explained the types of fertilizer they will be housing and distributing which will not be combustible. He said they will be using front end loaders to transport the fertilizer to trucks and will then be unloaded on barges or the rail system.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one.

The following spoke in opposition to this request:

No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15CUP1034

Summary of testimony of those in opposition:

No one.

Deliberation:

Chair Proffitt said two conditions of approval should be added regarding submittal of a landscape plan and revising the site plan.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 2, 2015 public hearing proceedings.

Conditional Use Permit to allow a potentially hazardous or nuisance use in an M-3 zoning district:

On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow a potentially hazardous or nuisance use in an M-3 Zoning; and

WHEREAS, the Board finds that the proposal is consistent with the applicable guidelines of the Comprehensive Plan; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area as it is located in an industrial area with other existing industrial zoning districts and uses; and

WHEREAS, the Board finds that adequate public facilities will be provided to serve the proposed use, as it is located adjacent to existing industrial zoned and occupied properties to take advantage of special infrastructure that exists; and

WHEREAS, the Board finds that the proposal complies with specific standards required in Section 4.2.42 of the Land Development Code;

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15CUP1034

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a potentially hazardous or nuisance use in an M-3 zoning district on the site **SUBJECT** to the following Conditions of Approval:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a potentially hazardous or nuisance use without further review and approval by the Board.
3. A landscape plan shall be submitted to staff for review and approval.
4. A revised site plan illustrating reconfiguration of the buildings shall be submitted to staff for review and approval.

YES: Members Fishman, Allendorf, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Tharp.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15APPEAL1007

Request: An Appeal of a Notice of Violation issued by the Department of Codes and Regulations concerning non-conforming use rights for outside alcohol consumption in a C-1 zoning district.

Location: 5013 Poplar Level Road

Appellant: Liquor Palace 3, Inc.
Sukhjit Bains
5013 Poplar Level Road
Louisville, KY 40219

Owner: Sam as Appellant

Attorney: Middleton Reutlinger
Kenneth S. Handmaker
401 S. 4th Street, Ste. 2600
Louisville, KY 40219

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 2—Barbara Shanklin
Staff Case Manager: Steve Hendrix, Planning Supervisor
(CONTINUED FROM OCTOBER 5, 2015)

Member Allendorf recused himself due to a conflict of interest with his job as Assistant Chief – Fire Marshal with the Okolona Fire Department.

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

Background:

On October 5, 2015, the Board heard testimony and continued this case to allow staff to find more information regarding the intent of the Board in 1996; and to give the Board time to review all the information that was submitted at the

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15APPEAL1007

hearing. A recording was not found. A citation report was submitted by the appellant on October 20, 2015.

On June 8, 2015, a Notice of Violation was issued by the Department of Codes and Regulations. An Appeal application was submitted on July 8, 2015; and upon site inspection on September 23, 2015, revealed a new 1,645 SF outside drinking area formed by an 8' 2" tall wooden privacy fence. The consumption of alcohol inside the package liquor store is allowed per Docket No. B-254-96. The appellant is contending that the approval in 1996 included outside consumption as well. The appellant's attorney submitted an affidavit from Ann Gregg, the former owner, who said that customers regularly purchased beer and drank it in the store and outside in the front and rear parking lots.

The description of the 1996 action has been written in various forms (See staff report for text in full).

Agency Testimony:

Staff case manager, Steve Hendrix, explained the details of the case to the Board. He said they could not find an audio/video tape of the hearing in 1996 to better clarify the minutes to determine if outside consumption of alcohol was allowed. Mr. Hendrix said the Board also requested a citation report, which was submitted by the appellant on October 20, 2015. Mr. Hendrix said he feels the Board in 1996 would have designated boundaries outside if this was their intent; and if the Board approves the appeal today will have to be determined. The Board had questions regarding the language in the minutes and how it differed on the permits. Chair Proffitt said if the minutes weren't clear, how ABC determined that drinking was only allowed indoors.

Robert Roby, with the Alcoholic Beverage Control, explained the process of receiving an ABC permit. Chair Proffitt asked who would interpret "on premises" for the permits. Mr. Roby said Chief Watkins, Enforcement Investigator Manager or Robert Kirchdorfer, ABC Administrator. Mr. Roby said they have had complaints about customers walking completely off the premises and into neighborhoods with alcoholic beverages.

The following were opposed to the appeal:

Jared Dearing, District 2 Legislative Assistant, 601 W. Jefferson Street, Louisville, KY 40202.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15APPEAL1007

Summary of testimony of those opposed to the appeal:

Jared Dearing said the Board in 1996 were educated people and believes their intent was to only allow drinking inside the building. He said if they were allowing this outside, would have delineated the area as Mr. Hendrix said. He said if you look at this property even a year ago, you would see the parking stripes and was used as such. Mr. Dearing asked if this would be considered an expansion of the non-conforming use or an increase in the scope of the area for the use.

Chair Proffitt asked Mr. Dearing if he felt the outdoor patio was an improvement considering it would contain the customers. Mr. Dearing said if they put a roof on the patio would be considered an expansion.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one.

The following spoke in favor of the appeal:

Ken Handmaker, the appellant's attorney.

Summary of testimony of those in favor of the appeal:

Ken Handmaker said the definition of "premises" shouldn't be so ambiguous and that the Board should base their decision on the definition passed by the General Assembly of the Common Wealth of Kentucky, (KRS Chapter 381, § 6, 241.010 (24), 1976), which states: "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. It shall not include as a single unit two (2) separate businesses or enterprises of one (1) owner on the same lot or tract of land, in the same or in different buildings." He said the Board should also take into consideration the previous owners' affidavit; and the testimony at the last hearing from numerous customers that have frequented this establishment for many years. Mr. Handmaker said the Board should uphold the appeal and asked that the citations be dismissed.

Discussion:

Member Bergmann questioned whether this is an expansion of the non-conforming use. Chair Proffitt said to consider ABC's concerns about customers

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15APPEAL1007

taking alcoholic beverages completely off the property. John Carroll, the Board's legal counsel, asked Mr. Handmaker if his client would agree to a condition of approval that consumption of alcoholic beverages will only be allowed in the newly fenced area. Mr. Handmaker agreed.

Rebuttal:

Steve Hendrix said the new patio will have to meet parking requirements and possibly other LDC regulations.

Robert Roby said the owner of the business is responsible if anyone leaves the premises with an open container.

Mr. Dearing said amongst all the confusion, the owner agreed to what was on the ABC license which only allowed consuming malt beverages inside the building.

Deliberation:

Chair Proffitt asked Mr. Carroll to reaffirm what the Board should be voting on. Mr. Carroll said to vote on the questions written in the staff report on page 4. Member Turner said he visited the site a few times and noticed loitering and crowds; and is concerned about the proximity to the school. Member Bergmann said he believes they have non-conforming use rights, but are expanding it. Chair Proffitt said the Board needs to determine what the Board was allowing in 1996; and because the minutes don't specify that no drinking occur outside, feels they could assume either way. He said the Board does have authority to determine the boundaries of where outdoor consumption of alcohol will be allowed.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and Design Services offices. Please contact Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 2, 2015 public hearing proceedings.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15APPEAL1007

Does Non-Conforming Use Rights exist for outside consumption of alcohol?

On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that this appeal concerns a Notice of Violation issued by the Department of Codes and Regulations concerning non-conforming use rights for outside alcohol consumption in a C-1 zoning district; and

WHEREAS, the Board finds that because the minutes from November 18, 1996 didn't specify whether "outdoor" consumption of alcoholic beverages was allowed; also due to various definitions of "on premises", the Board will rely on the definition passed by the General Assembly of the Commonwealth of Kentucky (KRS Chapter 381, § 6, 241.010(24), 1976 which states that the definition of "premises" means: "The land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. It shall not include as a single unit two (2) separate businesses or enterprises of one (1) owner on the same lot or tract of land, in the same or in different buildings." and because based on the testimony of customers at the October 5, 2015 public hearing, said they have frequented this business since the 60's socializing and consuming alcoholic beverages both inside and outside of the building; in addition, the appellant submitted an affidavit from Ann Gregg, the previous owner, who also conceded that customers would drink alcoholic beverages both in the store and outside in the front and rear parking areas;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **ACKNOWLEDGE** that non-conforming use rights exist for the consumption of alcoholic beverages outside of the building located at 5013 Poplar Level Road and was previously approved for the consumption of alcohol inside the building on November 18, 1996.

YES: Members Fishman, Turner and Proffitt.

NO: Member Bergmann.

NOT PRESENT FOR THIS CASE AND NOT VOTING:
Tharp and Allendorf.

Members Jarboe,

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15APPEAL1007

Where is the exact area where the consumption of alcohol can occur outside on the subject property?

On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that since the minutes of the meeting conducted on November 18, 1996 didn't specify whether "outdoor "consumption of alcoholic beverages was allowed that the Board is designating the area for outdoor consumption of alcohol to be in the confines of the newly fenced area and inside the building; and that the fenced area come into compliance with the regulations of the current Land Development Code which includes but is not limited to landscaping, parking, safe ingress and egress into the fenced area, lighting, and noise;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** that outdoor consumption of alcoholic beverages can occur at the subject property located at 5013 Poplar Level Road **ON CONDITION**:

1. The consumption of outdoor alcoholic beverages will be allowed within the confines of the newly fenced area at the rear of the property; and the applicant will submit a site plan to staff illustrating the boundaries. The appellant will also submit the hours of operation to staff.
2. The creation of the fence and fenced area shall come into compliance with the current Land Development Code regulations which includes but is not limited to landscaping, parking, safe ingress and egress into the fenced area; lighting and noise.

YES: Members Fishman, Bergmann, Turner and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe Allendorf and Tharp.

ABSTAINING: No one.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

NOVEMBER 2, 2015

NEW BUSINESS:

CASE NO. 15APPEAL1007

Was the Notice of Violation proper?

On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the Notice of Violation was proper due to the ambiguity in the minutes from November 18, 1996 which didn't specify whether "outdoor" consumption of alcoholic beverages was allowed; also due to various definitions of "on premises" the Board will rely on the definition passed by the General Assembly of the Common Wealth of Kentucky (KRS Chapter 381, § 6, 241.010(24), 1976 which states that the definition of "premises" includes: "The land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. . ."

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby find that the Notice of Violation was **PROPER**; and

BE IT FURTHER RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Appeal.

YES: Members Fishman, Bergmann, Turner and Proffitt.

NO: No one.


NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe, Allendorf and Tharp.

ABSTAINING: No one.


MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT

NOVEMBER 2, 2015

The meeting adjourned at 12:57 p.m.



CHAIRPERSON



~~SECRETARY~~
No chairman