

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

DECEMBER 15, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, December 15, 2014, 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
Betty Jarboe
*Frederick Liggin
Paul Bergmann

Members absent:

Dean Tharp

Staff members present:

John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
Sherie Long, Landscape Architect
Jon Crumbie, Planner II
Latondra Yates, Planner II
Beth Stevenson, Management Assistant

Others present:

April Robbins, Code Enforcement Supervisor

*Member Allendorf arrived at 8:41 a.m. and Member Liggin left the meeting at approximately 1:00 p.m.

The following cases were heard:

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APPROVAL OF MINUTES

DECEMBER 1, 2014 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

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

RESOLVED, that the Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on December 1, 2014.

YES: Members Proffitt, Bergmann, Jarboe and Fishman.

NO: No one.

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

ABSTAINING: Member Liggin.

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BUSINESS SESSION

CASE NO. 14CUP1036

Request: Modification of an approved Conditional Use Permit to allow two additional mini-warehouse structures.

Project Name: Stor-All

Location: 4100 Cane Run Road

Owner: Stor All Cane Run Road, Inc.
253 Womstead Drive
Louisville, KY 41143

Applicant: Same as owner

Attorney: Weber & Rose, PSC
James T. Lobb
471 W. Main Street
Louisville, KY 40202

Representative: Power of Design
Mark Patterson
4500 Old Lagrange Road
Buckner, KY 40010

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 1—Attica Scott

Staff Case Manager: Jon Crumble, Planner II

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:

Jon Crumble said the request is to add two additional warehouses and will go to the Development Review Committee for review. Chair Proffitt asked if there were any concerned citizens. Mr. Crumble said no.

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The following spoke in favor of this request:

Mark Patterson.

Summary of testimony of those in favor:

Mark Patterson said he's the engineer; and that the original plan had 10 buildings from 1997, but will be reducing to 9 with this request.

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:

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 December 15, 2014 public hearing proceedings.

Modified Conditional Use Permit to allow two additional mini-warehouse structures:

On a motion by Member Liggin, 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, testimony and discussion at the public hearing that the applicant is requesting a Modified Conditional Use Permit to allow two additional mini-warehouse structures for Stor All located at 4100 Cane Run Road; and

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WHEREAS, the Board finds that the proposed buildings will consist of 31,500 square feet; and because the original rezoning and Conditional Use Permit were approved under Docket No. 9-72-96 for 119,200 square feet of mini-storage area; 85,500 square feet has been constructed; and because the total square feet of the buildings will consist of 118,800 square feet;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Modified Conditional Use Permit to allow two additional mini-warehouse structures on the site **SUBJECT** to the previously approved Conditions of Approval:

YES: Members Proffitt, Bergmann, Jarboe, Fishman and Liggin.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 14VARIANCE1104

Request: Variances to allow a reduction in the required private yard and allow the proposed detached garage to encroach into the required rear yard.

Project Name: Residential Property

Location: 1034 Everett Avenue

Owners: Christopher and Milamaria Songer
1034 Everett Avenue
Louisville, KY 40204

Applicants: Same as owners

Representative: Charlie Williams Design
Charlie Williams
1626 Windsor Place
Louisville, KY 40204

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

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).

Agency Testimony:

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the proposal was approved by the Historic Landmarks and Preservation Districts Commission on

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September 23, 2014. He said the applicant will need to verify the gutter location and flow.

The following spoke in favor of this request:

Charlie Williams.

Summary of testimony of those in favor:

Charlie Williams, the applicant's representative, said they went before the Landmarks Commission twice for the garage and screened porch; and now just need two variances for the setback and reduction in the private yard area.

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:

Member Fishman questioned the variances. Mr. Crumbie said the applicant has stated it's for 1 ½ story addition. Member Jarboe asked if there will be bathroom facilities.

BACK INTO PUBLIC HEARING:

Mr. Williams said there will be a bathroom and wet bar, and the 2nd floor will just be for recreational use or for overnight guests. He said it will not be rented out for profit.

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 December 15, 2014 public hearing proceedings.

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CASE NO. 14VARIANCE1104

Variance to allow a reduction in the required private yard area:

On a motion by Member Fishman, seconded by Member Liggin, 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 Landmarks Commission approval of the Certificate of Appropriateness (Case No. 14COA1156); the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow a reduction in the private yard area to 1725 square feet (requirement 2030 square feet; a variance of 305 square feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the detached garage is not obstructing views of vehicular or pedestrian traffic; and because it is not encroaching into any easements; plus, properties in the area have similar lot configurations; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are other properties in the neighborhood which have garages at the rear; and because the new garage will use construction materials similar to those used in the neighborhood and the general area; and because the private yard being provided will be screened from the adjacent properties by fencing; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the private yard is separated from the alley by the new garage and separated from the adjacent properties by privacy fencing; and because the new garage will not obstruct any views for motorists or pedestrians; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since there are other lots in the area that have similar private yards between the garage and house; and

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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 there is a proposed 2-story addition and screened porch at the rear of the residence which reduces the private yard area further; 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 since the applicant is requesting this variance prior to construction;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a reduction in the required private yard to 1725 square feet.

YES: Members Proffitt, Bergmann, Jarboe, Allendorf, Fishman and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.

ABSTAINING: No one.

Variance to allow a proposed detached garage to encroach into the required rear yard:

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 and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the Landmarks Commission approval of the Certificate of Appropriateness (Case No. 14COA1156); the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance to allow the proposed detached garage to encroach into the required rear yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the new detached garage will not obstruct any views for motorists or pedestrians; and

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WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are other properties in the neighborhood which have garages at the rear; and because the new garage will use construction materials similar to those used in the neighborhood and the general vicinity; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the new garage will not obstruct any views for motorists or pedestrians; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since there are other structures of this type in the neighborhood with similar rear yard setbacks; and

WHEREAS, the Board finds that the variance arises from special circumstances because there is a proposed 2-story addition and screened porch at the rear of the residence which reduces the private yard area; and because placing the detached garage closer to the rear of the property line allows for a slightly larger private yard; 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 since the applicant is requesting the variance prior to construction;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed detached garage to be 1.6 feet from the rear property line.

YES: Members Proffitt, Bergmann, Jarboe, Allendorf, Fishman and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 14VARIANCE1105

Request: Variance of Section 5.4.1.E.6 of the Land Development Code to allow a carport to encroach into the required 2-foot side yard. The requested setback is 1 foot, 6 inches, a variance of 6 inches.

Project Name: Carport

Location: 123 E. Amherst Avenue

Owner: Truc-Mai T. Tran
123 E. Amherst Avenue
Louisville, KY 40214

Applicant: Same as owner

Representative: Nguyen Investment, LLC
Thinh Nguyen
4705 S. First Street
Louisville, KY 40214

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 21—Dan Johnson
Staff Case Manager: Latondra Yates, 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).

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Agency Testimony:

Staff Case Manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said she received a phone call and e-mail from an adjacent property owner who is opposed. She said the applicant will need to discuss if any water runoff issues will be created. Chair Proffitt asked if there were any similar carports in the area. Steve Hendrix, Planning Supervisor, said he went on site-inspection and said there were other carports in the area, but not sure if there were any as close to adjacent properties as this proposal.

The following spoke in favor of this request:

Thinh Nguyen.

Summary of testimony of those in favor:

Thinh Nguyen said he is representing the owner, and said the carport will not create water runoff problems and will have appropriate gutters and downspouts. He said the owner is elderly and doesn't drive, and the carport would allow him to exit the passenger side, closer to the back door.

DISCUSSION:

Chair Proffitt said if the carport is toward the front, then the plan is incorrect. Mr. Nguyen agreed and said he could correct this.

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:

Bruce Hillberry, 121 E. Amherst Avenue, Louisville, KY 40214

Summary of testimony of those in opposition:

Bruce Hillberry said he lives adjacent to this property, and said the carport will create visual, noise and water runoff nuisances. He said the previous carport amplified noises from cars, planes and rain; and that his windows are elevated so he can see the top of the carport. Chair Proffitt asked Mr. Hillberry if he would be

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okay with a covered path from the existing garage to the house. Mr. Hillberry said yes, as long as it is not too close to his property.

Rebuttal:

Mr. Nguyen explained the request again.

Deliberation:

The Board said the plan is not to scale; and that the applicant should reconsider this proposal since it would be so close to the adjacent neighbor. The Board decided to continue this case to February 2, 2015 to allow the applicant time to make changes to the plan and request.

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 December 15, 2014 public hearing proceedings.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **FEBRUARY 2, 2015**, to allow the owner time to make substantial changes to the plan and submit a plan which is drawn to scale.

YES: Members Proffitt, Bergmann, Jarboe, Allendorf, Fishman and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 14VARIANCE1098

Request: Variances and waivers from the Land Development Code and a Category 2B Review to allow the placement and design of a proposed structure and parking.

Project Name: Etscorn Brothers

Location: 11816 Shelbyville Road

Owner: Etscorn Brothers
Bill Etscorn
3933 Bardstown Road
Louisville, KY 40218

Applicant: Same as owner

Attorney: Bardenwerper Talbott & Roberts
Nick Pregliasco
1000 N. Hurstbourne Parkway, Ste. 200
Louisville, KY 40223

Representative: Land Design & Development
Ann Richard
503 Washburn Avenue
Louisville, KY 40222

Jurisdiction: City of Middletown

COUNCIL DISTRICT 19—Jerry Miller

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

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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 a new one story, 3,280 square foot building behind the two existing primary structures. A third existing structure at the rear of the property will remain; and all three of the existing structures will be remodeled. She said the applicant has agreed to pay a fee-in-lieu to not construct the sidewalk along Daisy Lane which connects the development to the existing sidewalk fronting Shelbyville Road. She said Shelbyville Road is a scenic corridor; and that some of her findings for the variances and waivers are not favorable. Ms. Long said she did receive a letter of support and submitted this into the record.

The following spoke in favor of this request:

Nick Pregliasco, Attorney.

Ann Richard, representative.

Summary of testimony of those in favor:

Nick Pregliasco, the applicant's attorney, explained the request and said the City of Middletown supports their request and submitted a letter from them into the record. He said he's been working with Public Works regarding access per ADA requirements. Member Bergmann suggested more landscaping facing Shelbyville Road.

Ann Richard, the applicant's landscape architect, said the scenic corridor requirements are being met with the addition of a hedge and trees. She said they can't move the curb cut per Public Works.

The following spoke neither for nor against the request:

No one.

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

No one.

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The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

The Board said that more landscaping should be added facing Shelbyville Road; and that windows should be included on the side that doesn't have any.

Back into public hearing:

Ms. Long said there is space to add interior landscape areas.

Bill Etscorn, the applicant was sworn in. Chair Proffitt asked if he would consider continuing this case to January 12, 2015, so they could provide more landscaping and straighten out the front. Mr. Etscorn and Ms. Richards agreed.

Deliberation Again:

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 December 15, 2014 public hearing proceedings.

After the public hearing in open business session, 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 **JANUARY 12, 2015**.

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

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Tharp
AND Liggin.**

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 14CUP1027

Request: Conditional Use Permit to allow off-street parking in an R-7 zoning district; and waivers from the Land Development Code to allow the Vehicle Use Area (VUA) and parking to encroach into the 50 ft. Gene Snyder Freeway Parkway Buffer; and to eliminate the 15-foot property perimeter landscape buffer area along the shared Office Tourist Facility (OTF) and the R-7 boundary line.

Project Name: Indian Springs Hotel

Location: 3501 Indian Lake Drive - Tentative

Owner: Indian Springs Green Space, LLC
Brent Nash, President
9462 Brownsboro Road
Louisville, KY 40241

Indian Springs, LLC
David E. Wren, Managing Member
3408 Indian Lake Drive
Louisville, KY 40241

Applicant: M & T, LLC
Pat Madden
P.O. Box 12128
Lexington, KY 40580

Attorney: Bardenwerper Talbott & Roberts, PLLC
Nick Pregliasco, Esq.
1000 N. Hurstbourne Parkway, 2nd Floor
Louisville, KY 40223

Representative: Mindel Scott & Associates
David Mindel
5151 Jefferson Blvd.
Louisville, KY 40219

Jurisdiction: Louisville Metro

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CASE NO. 14CUP1027

COUNCIL DISTRICT 17—Glen Stuckel

Staff Case Manager: Jon Crumby, 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).

Agency Testimony:

Staff case manager, Jon Crumby discussed the case summary, standard of review and staff analysis from the staff report. He said this property was previously approved for an Aldi Grocery Store and McDonald's restaurant. The applicant is now proposing a new hotel, which requires more parking.

The following spoke in favor of this request:

Nick Pregliasco.

David Mindel.

Summary of testimony of those in favor:

Nick Pregliasco, the applicant's attorney, said the golf course was losing money so they decided to build an upscale hotel development. He said they will consolidate the lots.

David Mindel, the applicant's representative, said one of the waivers was already granted. He said they've submitted a minor plat and should have approvals by the end of this year. Chair Proffitt said the Board should add a condition of approval for the applicant to work with staff on landscaping. Mr. Mindel agreed and said that landscaping is important to his client; and wants to be a good neighbor to the adjacent apartments.

The following spoke neither for nor against the request:

No one.

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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:

Chair Proffitt said the Board needs to add the condition of approval regarding enhanced landscaping.

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 December 15, 2014 public hearing proceedings.

Conditional Use Permit to allow off-street parking in an R-7 zoning district:

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, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow off-street parking in an R-7 zoning district; and

WHEREAS, the Board finds that the proposal meets all applicable policies 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 because the subject site is located in a commercial area that has a mix of commercial uses and is a focal point for several surrounding residential neighborhoods; and because all commercial uses in the area have similar scale, intensity, traffic, noise and lighting; and

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WHEREAS, the Board finds that the proposal includes all necessary public facilities (both on-site and off-site) such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation etc. to serve the proposed use because the plan has been reviewed by Public Works and MSD and both have approved the plan; and

WHEREAS, the Board finds that the proposal complies with 5 of the 6 specific standards required to obtain the Conditional Use Permit with the exception of Item C., because the applicant is requesting a modification of the required 50 ft. setback from the Gene Snyder Parkway buffer to 30 feet;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow off-street parking in an R-7 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 off-street parking without further review and approval by the Board.
3. The applicant shall work with staff's landscape architect for enhanced landscaping in and around the subject property, especially near the adjacent apartments.

YES: Members Proffitt, Bergmann, Jarboe, Allendorf, Fishman and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.

ABSTAINING: No one.

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CASE NO. 14CUP1027

Waiver to allow the Vehicle Use Area (VUA) and Parking to encroach into the 50-foot Gene Snyder Freeway Parkway Buffer:

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, testimony and discussion at the public hearing that the applicant is requesting a waiver to allow the VUA and parking to encroach into the required 50-foot Gene Snyder Freeway Parkway Buffer; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since ample landscaping will still be provided as a buffer along the on-ramp; and because the applicant has agreed to work with staff's landscape architect for enhanced landscaping in and around the subject property especially near the adjacent apartment complex; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 13, Policy 7 is for the protection of the character of parkways and scenic byways and corridors through standards for buffers, landscape treatment, lighting and signs; and because the intent of parkway development standards is to protect existing scenic and aesthetic qualities to ensure a quality visual experience on developing corridors and to protect and improve the visual experience on established corridors; and because landscaping and buffering will be provided along the property line; and because the applicant has agreed to work with staff's landscape architect for enhanced landscaping, especially near the adjacent apartment complex; 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 the landscaping and tree canopy requirements will be met; 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 parking would not be able to accommodate the size and type of hotel that is part of the agreement with the Indian Springs Community Association;

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CASE NO. 14CUP1027

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the vehicle use area and parking to be 30 feet from the Gene Snyder Parkway Buffer area **ON CONDITION** that the applicant work with staff's landscape architect for enhanced landscaping in and around the subject property, especially near the adjacent apartment complex.

YES: Members Proffitt, Bergmann, Jarboe, Allendorf, Fishman and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.

ABSTAINING: No one.

Waiver to eliminate the required 15-foot property perimeter landscape buffer area along the Office Tourist Facility (OTF) and R-7 boundary line:

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, testimony and discussion at the public hearing that the applicant is requesting a waiver to eliminate the required 15-foot property perimeter landscape buffer area along the shared OTF and R-7 boundary line; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the hotel and off-street parking are located on the same lot; and because the Conditional Use Permit site is simply for overflow parking; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020, specifically Guideline 13, Policy 4 which is to ensure appropriate landscape design standards for different land uses within urbanized, suburban and rural areas; and because Guideline 13, Policy 6 is for screening and buffering to mitigate adjacent incompatible uses; and because the intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities

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associated with impervious surfaces and to filter air borne and water borne pollutants; 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 there's a zoning line between the parking areas; 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 parking area would be greatly reduced;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to eliminate the required 15-foot property perimeter landscape buffer area along the shared OTF and R-7 boundary line.

YES: Members Proffitt, Bergmann, Jarboe, Allendorf, Fishman and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.

ABSTAINING: No one.

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CASE NO. 14APPEAL1007

Request: An Appeal of a Notice of Violation issued by the Department of Codes and Regulations concerning non-conforming use rights for a landscaping business in an R-4 zoning district.

Location: 8200 Cedar Creek Road

Appellant: Raymond Holding Company, LLC
Jeanine Raymond, Registered Agent
8200 Cedar Creek Road
Louisville, KY 40291

Owner: Same as appellant

Attorneys: Graham Whatley & J. Robert Yates
436 S. 7th Street, Ste. 100
Louisville, KY 40203

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 22—Robin Engel

Staff Case Manager: Steve Hendrix, Planning Supervisor

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 Planning and Design Services offices located at 444 S. 5th Street).

Background:

On August 14, 2014, the Louisville Metro Department of Codes and Regulations issued a Notice of Violation concerning non-conforming use rights for a landscaping business. An Appeal application was submitted on October 3, 2014.

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On November 3, 2014, this case was continued by the Board.

On December 15, 2014, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

Agency Testimony:

Staff case manager, Steve Hendrix, presented the case including the case summary, background and site context and presented a PowerPoint presentation. He said the cited three acre property is a portion of the overall land (150 acres) and that at one time was used as a quarry between 1951 through 1998. Since the property is in the former Jefferson County, 1943 is the base year for the appellant to prove non-conforming use rights for the landscaping business.

April Robbins, Code Enforcement Supervisor, said she received a complaint on August 4, 2014 about the amount of trees that were being grinded on the property. The area resident said it was so loud, they could not enjoy sitting outside. Ms. Robbins submitted inspection photos into the record showing large mulch piles and other landscape materials on the subject property.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition

No one spoke in opposition to the appeal.

The following spoke neither for nor against the request:

No one.

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

No one spoke neither for nor against the appeal.

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The following spoke in favor of the request:

Graham Watley, Attorney, 436 S. 7th Street, Ste. 100, Louisville, KY 40203; who submitted information into the record.

Robert Yates, Attorney, 436 S. 7th Street, Ste. 100, Louisville, KY 40203.

Summary of testimony of those in favor:

Graham Whatley, the appellant's attorney, said the previous owners filed a lawsuit for the recognition of nonconforming use rights for the rock quarry in 1951. He said other businesses have operated on this property for years including a blasting company, heavy equipment company etc. The court order said the bodies of water are to remain for 20 years with ongoing reclamation of the property, which his client is currently responsible for.

Robert Yates, the appellant's other attorney, submitted before and after photographs over the past year into the record. He said it is federally mandated to maintain the property; and that the Circuit Court Order found that the Greenscapes business is vital for continued maintenance of the property. He said his client does not want to waive any of the existing nonconforming use rights. Chair Proffitt asked if he would agree to a condition of approval to not grind/chip trees on the property. Mr. Yates said no; and that the grinding operation only occurs 1 to 2 times per year.

Mr. Graham submitted letters from Inspections, Permits and Licenses into the record, dated in 2005 which stated that the previous agricultural use did not fall within their enforcement authority.

Deliberation:

The Board deliberated whether the landscaping business is an ancillary use to maintain the subject property as required by federal and state regulations.

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 December 15, 2014 public hearing proceedings.

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CASE NO. 14APPEAL1007

Appeal:

On a motion by Member Allendorf, seconded by Member Jarboe, 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 a landscaping business in an R-4 zoning district; and

WHEREAS, the Board finds that mining and hauling of crushed stone, sand and gravel from the Cedar Creek Road Quarry still occurs today, so the landscape business is an ancillary use for the reclamation of the site as mandated by state and federal regulations; and because the landscaping business does conduct business outside the site, uses the income to improve and maintain the property (reclamation); and because the appellant states that tree chipping/grinding only occurs once or twice a year;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **ACKNOWLEDGE** that the landscape business is ancillary to the existing non-conforming industrial use and rock quarry on the subject site which is within an R-4 zoning district; and

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

YES: Members Proffitt, Jarboe, Allendorf, Fishman and Liggin.

NO: Member Bergmann.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.

ABSTAINING: No one.

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Notice of Violation Proper:

On a motion by Member Allendorf, seconded by Member Jarboe, 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 considering the information obtained when the Notice of Violation was issued is considered proper;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment finds that the Notice of Violation from the Department of Codes and Regulations was **PROPER**.

YES: Members Proffitt, Bergmann, Jarboe, Allendorf, Fishman and Liggin.

NO: No one.


NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp.

ABSTAINING: No one.

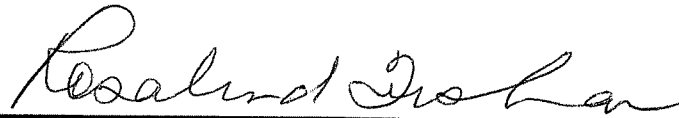
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The meeting adjourned at 3:21 p.m.



CHAIRPERSON



SECRETARY