

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

AUGUST 3, 2015

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, August 3, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present were:

David Proffitt, Chairperson
Rosalind Fishman, Secretary
Betty Jarboe
Dean Tharp
Paul Bergmann
*Lester Turner

Members absent:

Mike Allendorf, Vice Chairperson

Staff members present were:

Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Jessica Wethington, Information Specialist
Eugene Sowell, Planning Information Specialist
Brian Davis, Planning Supervisor
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Manager
Joseph Haberman, Planning Manager
Sherie' Long, Landscape Architect
Jon Crumbie, Planner II
Matthew Doyle, Planner II
Julia Williams, Planner II
Beth Stevenson, Management Assistant

*Member Turner left the meeting at 11:03 a.m.

The following cases were heard:

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APPROVAL OF MINUTES

JULY 20, 2015 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

On a motion by Member Tharp, 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 July 20, 2015.

YES: Members Fishman, Tharp, Jarboe, Proffitt, Turner and Bergmann.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1040

Request: Variance from the Land Development Code to allow a proposed carport to encroach into the required side yard.

Location: 1142 Delor Avenue

Owner: Vicki Liwo
1142 Delor Avenue
Louisville, KY 40217

Applicant: Same as owner

Representative: Almy Law Office
Sarah Almy, Esq.
1611 Rosewood Avenue
Louisville, KY 40204

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 10—Steve Magre
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 applicant is proposing to add a carport onto the existing residence, which will encroach into the required 2 ft. north side yard. He said gutters and downspouts are not shown on the plan so the applicant will need to discuss this. Chair Proffitt asked if there were any

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similar carports in the area. Mr. Crumbie said he didn't see any on site inspect, but said it looks like people share driveways.

The following spoke in favor of this request:

Sarah Almy, Attorney.

Summary of testimony of those in favor:

Sarah Almy, the applicant's attorney, said her client would like to construct a carport to cover her Corvette. She said there is an identical carport in the neighborhood. Ms. Almy said the carport will start at the front of the house and go back 18 feet. She submitted information into the record regarding the drain pipes.

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:

Mary Beth Williams, 1140 Delor Avenue, Louisville, KY 40217.

Greg Williams, didn't sign in.

Summary of testimony of those in opposition:

Mary Beth Williams, said she lives adjacent to this property and is opposed because there will not be enough room for her to work on her house. She said there is very little room in between the homes as it is; and that the proposed drain pipe will encroach even further into her yard.

Greg Williams, said he is Mary Beth's father and a licensed inspector, and is also opposed due to the limited space in between the homes making maintenance a safety hazard for him and his daughter. He said they've already made several repairs on this side of the property due to hail storms and that this request will leave no room for a ladder.

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Rebuttal:

Ms. Almy said she understands their concerns and that her client would have built a garage in the back, but that there's not enough room. She said she believes the gutter and piping are included in the width provided by the builder.

Deliberation:

Chair Proffitt said this is the first carport he's seen proposed with such limited space. Member Jarboe said she feels the opposition could accommodate the applicant, since they encroach onto her property when doing repairs. The other Board members felt the space is too limited for this 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 August 3, 2015 public hearing proceedings.

Variance—To allow a proposed carport to encroach into the required north side yard:

After the public hearing in open business session, 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 evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow a proposed carport to encroach into the required north side yard; and

WHEREAS, the Board finds that the requested variance will cause a hazard or nuisance to the public because if the proposed carport were built, would only leave 9 inches or less from the adjacent property owner to the north making it difficult and unsafe for her to make repairs to her home or maintain it; and

WHEREAS, the Board finds that the variance will alter the essential character of the general vicinity because there are not any similar style carports in the

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neighborhood and would negatively impact the peaceful enjoyment of the adjacent property owner's property and possibly reduce the value and appeal of her home if she should decide to sell in the future;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the variance to allow a proposed carport to be 9 inches from the north property line.

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

NO: Member Jarboe.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1043

Request: Variance from the Land Development Code to allow a proposed garage to encroach into the required west side yard.

Project Name: New Garage

Location: 1408 Highland Avenue

Owners: Phillip & Elizabeth Brown
1408 Highland Avenue
Louisville, KY 40204

Applicants: Same as owners

Representative: Gravatte Design Services, Inc.
Stephen Gravatte
4030 Leland Road
Louisville, KY 40207

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

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 two-story garage to replace an existing one story

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garage. The second floor will be used for an office or extra family space. Metro Public Works staff has given the applicant approval to encroach into the alley without a licensing agreement, but as a condition of approval, the owner will be required to obtain an encroachment permit prior to construction. She said the adjacent property owners are not opposed.

The following spoke in favor of this request:

Phillip Brown, the owner.

Zach Steele, 1410 Thornberry Avenue, Louisville, KY 40215

Steve Gravatte, Gravatte Design Services, the applicant's representative.

Summary of testimony of those in favor:

Phillip Brown, the owner said there is a considerable amount of foot traffic, so they want to construct the two-story garage including a fence. He said the project will be an asset to his property and the neighborhood; and that all his adjacent property owners are in favor. He said the second story will be extra living space for his kids and will not include a bathroom or kitchen.

Zach Steele, the applicant's contractor said they will be installing a hinged gate along the alley.

Steve Gravatte, the applicant's representative, discussed the foundation and footers; and said the proposal will be flush with the property line.

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.

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Deliberation:

Chair Proffitt suggested adding a condition of approval that they receive the encroachment permit from Public Works prior to construction.

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After the public hearing in open business session, on a motion by Member Jarboe, 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 a variance from Chapter 5, Section 5.4.1.E.6 of the Land Development Code to allow a proposed two-story garage to encroach into the required west side yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the applicant has consulted with MSD, Louisville Gas & Electric and the Louisville Water Company to ensure no utilities are located in the 4 foot public alley; and because the applicant has obtained permission from Public Works staff to allow the encroachment of the spread footer up to 18 inches with an encroachment permit, which will be obtained prior to construction; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the new two-story garage will be located in the same general location of the existing garage; and because the adjacent property owner closest to the west perimeter has no objection to the location of the garage or the encroachment of the footer into the shared 4-ft. alley; and because Metro Public Works staff has approved the encroachment into the alley; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the new garage will be located in

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the same general location as the existing removed garage; and because there are other garages in the area which are located close to the side property line with little or no setback being provided; 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 garage was located on the perimeter with no setback; and because other garages in the vicinity are also located very close to property lines with little or no setback; 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 proposed addition could only be constructed at the 2 foot setback;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed two-story garage to be 0 feet from the west side property line **ON CONDITION** that the applicant receive the encroachment permit from Public Works prior to construction.

YES: Members Fishman, Tharp, Jarboe, Proffitt, Turner and Bergmann.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1044

Request: Variances from the Land Development Code to allow an existing fence to exceed the maximum height along the east property line; to allow a fence/trellis to encroach into the rear east side yard; and to allow a pergola to be located in the required front yard/public realm area.

Location: 1648 Edenside Avenue

Owner: Greg Guelda
1648 Edenside Avenue
Louisville, KY 40204

Applicant: Same as Owner

Representative: No one

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Matthew Doyle, 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, Matt Doyle discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant built a 13.5' fence and trellis in the rear yard between the house and garage, where Stop Work Order was issued. The applicant has also built a pergola in the front yard, approximately 5 feet from the public sidewalk. Mr. Doyle said some of the requests are not meeting the standard of review/staff analysis.

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The following spoke in favor of this request:

Greg Guelda, the owner.

Summary of testimony of those in favor:

Greg Guelda, the owner, said this house has been in his family since 1930; and wanted to create a garden with plantings on the trellis for shade. He said he didn't know he couldn't build as he did; and that his neighbors' are not opposed. He said his adjacent owner is happy with the fence he installed and inquired about building one similar on her property.

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 Bergmann said he thinks the scale is out of character. Most of the other Board members liked the look, especially the pergola.

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Variance—To allow an existing fence to be 13.5 feet tall along the east side yard:

On a motion by Member Jarboe, 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 including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow an existing fence to exceed the maximum height along the east side yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the applicant is replacing a 30 year old fence in the same location and will be aesthetically pleasing; and because it meets or exceeds all other development standards; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the applicant has submitted photographs into the record showing other similar fence heights in the area; and because the applicant will be including vine type plants and vegetation to soften the appearance of the fence; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because it is strictly to enclose a private property and won't be accessible to the public; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the applicant submitted photographs of other similar fence heights into the record; and because the applicant will be including vine type plants and vegetation to soften the appearance of the fence;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow an existing fence to be 13.5 feet in height along the east side property line.

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YES: Members Fishman, Tharp, Jarboe, Proffitt, Turner and Bergmann.

NO: No one.

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

ABSTAINING: No one.

Variance—To allow a fence/trellis to encroach into the required rear east side yard:

On a motion by Member Jarboe, 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 including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow a fence/trellis to encroach into the rear east side yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since it meets or exceeds all other development standards; and because it is for the owner's private yard and will be aesthetically pleasing; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because of the vine type plantings that will be installed to soften the appearance; create shade and be visually appealing; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since it meets or exceeds all other development standards; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations due to the nature of the structure (fence/trellis) where vine type plantings will be installed to soften the appearance; create shade and be visually appealing;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the fence/trellis to be 0 feet from the east property line.

YES: Members Fishman, Tharp, Jarboe, Proffitt, Turner and Bergmann.

NO: No one.

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

ABSTAINING: No one.

Variance—To allow a pergola to be located in the required front yard:

On a motion by Member Jarboe, 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 the Land Development Code to allow a pergola to be located in the required front yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because it maintains the appropriate setback from the public right-of-way and will not obstruct the path of pedestrians and/or the visions of drivers; and because it meets or exceeds all other development standards; and

WHEREAS, the board finds that the variance will not alter the essential character of the general vicinity because it maintains the majority of the front yard/public realm and is not enclosed; and because it complements pedestrian access from the public sidewalk; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since it does not obstruct the path of pedestrians and/or the vision of drivers and maintains an appropriate setback from the public right-of-way; and because it meets or exceeds all other development standards; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since it maintains the majority of the front

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yard/public realm and is not enclosed; and because it complements pedestrian access from the public sidewalk;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the pergola to be 5 feet from the front property line.

YES: Members Fishman, Tharp, Jarboe, Proffitt, Turner and Bergmann.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15CUP1021

Request: Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district.

Project Name: Louvino Restaurant

Location: 11400 Main Street

Owner: MO Blankenbaker, LLC
Chris Palermo
8044 Montgomery Road, Ste. 710
Cincinnati, OH 45236

Applicant: CNL Coultier Properties, LLC
Chad Coultier
2555 Saratoga Drive
Louisville, KY 40205

Representative: Land Design & Development
Kevin Young
503 Washburn Avenue
Louisville, KY 40222

Jurisdiction: Douglass Hills

COUNCIL DISTRICT 19—Julie Denton

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).

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NEW BUSINESS:

CASE NO. 15CUP1021

Agency Testimony:

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. The applicant is proposing to construct an 8,540 sq. ft. restaurant on undeveloped land. He said the area will be for approximately 90 outdoor diners' among three restaurants.

The following spoke in favor of this request:

Kevin Young.

Chad Coultier.

Summary of testimony of those in favor:

Kevin Young, the applicant's representative, submitted a letter of support from the city of Douglass Hills. He said the architecture will have an older look to keep in character with existing businesses.

Chad Coultier said this is his second wine and tapas restaurant; and that his first business on Bardstown Road has been very successful. Member Jarboe asked if all three proposed restaurant areas will be using the outdoor space. Mr. Young said yes, even though they don't know what the other two restaurants will be. He said the areas will be separated out for each restaurant. Chair Proffitt said the CUP should only be for Louvino's. Mr. Young said Louvino's owns all of the property.

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

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CASE NO. 15CUP1021

Deliberation:

Chair Proffitt said the motion should include the CUP area for all three restaurants.

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 August 3, 2015 public hearing proceedings.

Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district:

On a motion by Member Jarboe, 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 including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because landscaping and lighting will be code compliant; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise etc. 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 neighbors; and because all the commercial uses in the area have similar scale, intensity, traffic noise and lighting; and

WHEREAS, the Board finds that all necessary public facilities both on and off site, such as transportation, sanitation, water, sewer, drainage, emergency services etc. because the proposal has been reviewed by Public Works and MSD and both have approved the plan; and

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CASE NO. 15CUP1021

WHEREAS, the Board finds that the proposal complies with applicable specific standards required to obtain the Conditional Use Permit; where all outdoor areas for the sale and consumption of alcohol will have designated boundaries; and because the use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1:00 A.M.; and because the applicant is in the process of obtaining the liquor license;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 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 outdoor alcohol sales and consumption without further review and approval by the Board.
3. The Conditional Use Area for the sale and consumption of alcohol will have designated boundaries for all three proposed restaurants.

YES: Members Fishman, Tharp, Jarboe, Proffitt, Turner and Bergmann.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15CUP1000

Request: Conditional Use Permit from Chapter 4.2.3 to allow an accessory apartment.

Location: 1646 Cowling Avenue

Owner: Linda Block-Coalter
1646 Cowling Avenue
Louisville, KY 40205

Applicant: Same as owner

Attorney: Wyatt, Tarrant & Combs
Cliff Ashburner, Esq.
500 W. Jefferson Street
Louisville, KY 40202

Representative: Schroll Land Surveying, LLC
William D. Schroll III
5450 Southview Drive
Louisville, KY 40214

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Julia Williams, AICP, 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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NEW BUSINESS:

CASE NO. 15CUP1000

Agency Testimony:

Staff case manager, Julia Williams discussed the case summary, standard of review and staff analysis from the staff report. She said the owners were previously allowed a single family structure, but was used as multi-family. The applicant would now like to turn two apartments into one that will be over 650 square feet; and will need to modify the requirement, Section 4.2.3.B for a 2,148 SF accessory apartment. She said the applicant also wants to modify Section 4.2.3.A. of the Land Development Code to allow the property owner to reside in either the primary structure or accessory structure. Ms. Williams said no one is living in the structure at this time; and that it is compatible considering there are other carriage houses in the area.

The following spoke in favor of this request:

Cliff Ashburner, Esq.

Summary of testimony of those in favor:

Cliff Ashburner, the applicant's attorney, said this is a double lot and that his client has owned it for a number of years. He said all the neighborhood objections have been resolved; and read an agreement into the record. The Board questioned when and why it was built without approval. Mr. Ashburner said it was built in 2012; and the owner's architect built it without knowing the permitting process.

Ms. Williams added that she received a letter from Friends of Cowling Avenue Neighborhood Association who stated that they are not opposed to 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.

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Deliberation:

Chair Proffitt said to include the conditions of approval submitted by Mr. Ashburner in the motion. Ms. Williams added that the lots will be consolidated.

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 August 3, 2015 public hearing proceedings.

Conditional Use Permit to allow an accessory apartment in an R-5 Zoning District:

On a motion by Member Jarboe, 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 and agreement read into the record by the applicant's attorney, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow an accessory apartment in an R-5 zoning district; and

WHEREAS, the Board finds that the proposal complies with the Cornerstone 2020 Comprehensive Plan because the overall site design and land use is compatible with the existing and future development of the area; and because buildings and parking lots will meet all required setbacks; and because the Traditional Neighborhood Form District is characterized by predominantly residential uses, by a grid pattern of streets with sidewalks and often including alleys;

WHEREAS, the Board finds that the necessary public facilities (both on and off-site) are being provided such as transportation, sanitation, water, sewer, drainage etc. because 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 because provisions for safe and efficient vehicular and pedestrian transportation within and around the

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development and the community has been provided because Metro Public Works has also preliminarily approve the development plan; and

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the Conditional Use Permit, but the Board will modify specific standard in Chapter 4.2.3.A of the Land Development Code to allow the property owner to reside in either the primary structure or the accessory structure; also the Board will modify specific standard in Chapter 4.2.3.B to allow the accessory apartment to be 2,148 square feet, instead of the required 650 square feet; and because the accessory structure does not exceed the height or square footage of the primary structure; and because all appropriate parking will be provided;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow an accessory apartment 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 allow an accessory apartment without further review and approval by the Board.
3. The proposal is subject to full construction plans being submitted to the Department of Public Works for traffic and MSD for storm water approvals. Once those have been approved, the plan is subject to Develop Louisville Construction Review for building and parking permits.
4. The development shall be in accordance with the approved CUP development plan and the following conditions of approval. Any modifications to the CUP development plan or conditions of approval shall require a public hearing before the Board of Zoning Adjustment. Notice of the public hearing shall be mailed by first class mail at least fourteen (14) days in advance to first and second tier adjoining property owners and to Friends of Cowling Avenue Neighborhood Association Corporation at its principal office as registered with the Kentucky Secretary of State's office.

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5. The principal residence and accessory apartment shall be under common ownership. The owner may reside in either the principal dwelling or accessory apartment. Occupancy of both the principal dwelling and the accessory apartment may occur only while the owner resides on the premises.
6. The accessory apartment shall be no greater than 2,148 square feet.
7. No more than 2 parking spaces shall exist immediately off of the alley, which shall be surfaced with pavers, permeable pavement, asphalt or concrete, at the property owner's sole discretion.
8. Outdoor lighting shall comply with applicable provisions of Section 4.1.3 of the Land Development Code.
9. In addition to the existing crepe myrtle tree, the property owner shall install three additional shrubs around the parking area off the alley.

YES: Members Fishman, Tharp, Jarboe, Proffitt, Turner and Bergmann.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1015

Request: Variances from the Land Development Code to allow a proposed structure to be located beyond the maximum setbacks; and waivers of design criteria and landscaping; and a Category 2B development review.

Project Name: Sethi Station

Location: 2124 West Market Street

Owner: Sethi Properties, LLC
Meena Sethi
4901 Hunters Point Circle
Louisville, KY 40216

Applicant: Same as owner

Representative: Miller Wihry
John Miller
1387 S. 4th Street
Louisville, KY 40208

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

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).

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CASE NO. 15VARIANCE1015

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 requesting approval of two variances and 8 waivers for the construction of a new convenience store with gas pumps and overhead canopy along with two rental retail spaces. Ms. Long said that one of the variances and some of the waivers do meet the standards of review/staff analysis. Ms. Long said they do not have a landscape plan yet, but will be providing the required plantings. Chair Proffitt said there should be additional mitigation efforts made by the applicant.

The following spoke in favor of this request:

John Wihry.

Summary of testimony of those in favor:

John Wihry, the applicant's representative, said his client bought the property in 2011 and requires approval of the requests to bring this dormant property back to life. He said you will only see the front elevation; and that vegetation exists on the east property line. Mr. Miller said there are some overhead wires that prevent tree plantings. Member Jarboe said the 3 ft. tall wall should be built. Mr. Miller said his client would rather install landscaping.

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:

Chair Proffitt questioned Ms. Long about the amount of landscaping needed. Ms. Long said about 5%, and said they could install the Interior Landscaped Areas (ILA's) on either side of the handicapped parking spaces.

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Public Hearing:

Chair Proffitt asked Mr. Wihry if he would consider installing the ILA's. Mr. Wihry said it will not last with pedestrian traffic. He added that his client does not want the wall to prevent people from sitting on it and loitering.

Business Session:

Member Jarboe said the wall would keep people from walking on the landscaping; and would enhance the look of the property. Member Bergmann agreed and said Walgreens installs them; and feels extensive landscaping is needed for this property. Chair Proffitt agreed with enhanced landscaping. Chair Proffitt asked Mr. Wihry if his client would agree to a solid wood fence near the adjacent multi-family property.

Public Hearing:

Mr. Wihry said there is already an existing chain link fence with a lot of vegetation. He said he will contact the owners to see what they want. Mr. Wihry agreed to street scape plantings.

Business Session:

Chair Proffitt said the Board should continue this case to resolve some of the issues discussed. Joe Reverman, Planning Manager, said if the applicant installed a 6 ft. tall solid wood fence, would eliminate one of the landscape buffer waivers.

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 August 3, 2015 public hearing proceedings.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **AUGUST 17, 2015** and placed first under new business to resolve design and landscaping issues.

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

NO: No one.

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

ABSTAINING: No one.

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AUGUST 3, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1041

Request: Category 3 Plan to construct a 1,136,201 square foot structure consisting of a hotel, apartments, retail and parking structure; variances for setbacks along the north, east and west property lines; and a design waiver.

Project Name: Omni Louisville Hotel and Residences

Location: 400 South 2nd Street

Owner: Louisville/Jefferson County Metro Government
E. Jeffrey Mosley, Director of Economic Growth & Innovation
444 S. 5th Street, Ste. 600
Louisville, KY 40202

Applicant: Omni Louisville, LLC
Michael Smith
4001 Maple Avenue, Ste. 600
Dallas, TX 75219

Representative: HKS, Inc.
Zachary Jekot
350 N. St. Paul Street, Ste. 100
Dallas, TX 75201

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Brian Davis, AICP, 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 the Planning and Design Services offices located at 444 S. 5th Street).

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Agency Testimony:

Staff Case Manager, Brian Davis discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing the redevelopment of the 400 block of South Second Street for the Omni Louisville Hotel and Residences which is divided into two tracts. The applicant has received approval from the Downtown Development Review Overlay Committee for the design and materials on July 29, 2015. They also discussed the relocation of the old Louisville Water Company building. Mr. Davis presented the most recent renderings in his PowerPoint presentation; and said the Board should include a condition of approval that the right-of-way issue be resolved with the Transportation Planning Department prior to construction plan approval.

The following spoke in favor of this request:

Jeff Mosely, Louisville Forward, Director of Economic Growth & Innovation.

Zachary Jekot, the applicant's representative.

Summary of testimony of those in favor:

Jeff Mosely introduced the architect.

Zachary Jekot, the architect, presented a PowerPoint presentation showing the design of the hotel and street views which includes the grocery store and various retail spaces. He said they will be providing a double row of street trees by the grocery store, benches and sidewalk dining areas. Member Bergmann questioned the 3rd Street frontage. Mr. Jekot said there will be service docks and two overhead doors, but a large portion of it will have display windows for various retail stores. Member Fishman inquired about the old Water Company Building. Mr. Mosely said it will be dismantled and stored to reconstruct elsewhere later. He assured the Board that the building will not be demolished.

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.

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Summary of testimony of those in opposition:

No one.

Deliberation:

Member Jarboe said although the design of the hotel was already decided, felt they could have incorporated the old Water Company building into their design. Overall, the Board expressed their support for this proposal.

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 August 3, 2015 public hearing proceedings.

Variances—To increase the maximum building setback of 0 feet to approximately 23.5 feet at the furthest point along the West Liberty Street property line; a variance to increase the maximum building setback of 0 feet to 68 feet at the furthest point along the South 2nd Street property line; and a variance to increase the maximum building setback of 0 feet to approximately 5.9 feet at the furthest point along the South 3rd Street property line:

After the public hearing in open business session, on a motion by Member Jarboe, 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 evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.1, C.5, 6 and 7 of the Land Development Code to increase the maximum building setback of 0 feet to approximately 23.5 feet at the furthest point along the West Liberty Street property line; and a variance from Section 5.2.1, C.5, 6 and 7 to increase the maximum building setback of 0 feet to approximately 68 feet at the furthest point along the South 2nd Street property line; and a variance from Section 5.2.1, C.5, 6 and 7 of the Land Development Code to increase the maximum building setback of 0 feet to

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approximately 5.9 feet at the furthest point along the South 3rd Street property line; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposed additional setback will allow for a wider sidewalk along the West Liberty Street frontage; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the proposed development will be compatible with nearby businesses, implement a high standard of design, will be in scale with surrounding development and will provide a wider than normal sidewalk to facilitate pedestrian circulation; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the additional setback will allow the sidewalk to be wider, provide more room for pedestrian maneuverability, and provide additional setback from vehicles traveling on the street; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the scale of the structure will make up for the additional setback, additional sidewalk width is being provided, the upper floors of the structure will extend over the proposed sidewalk and the structure will take up nearly the entire block; 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 applicant is developing the entire block, therefore, creating a new setback on this portion only; 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 hardship on the applicant because this would not allow the wide sidewalk to be constructed which would reduce the amount of area around some of the features which are being incorporated into the design;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby adopt and approve the applicant's findings of fact and does hereby **GRANT** the variances **ON CONDITION** that the applicant resolve the right-of-way dedication issue with the Louisville Metro Transportation Department on all three street frontages along West Liberty Street; South 2nd Street and South 3rd Street prior to construction plan approval.

The variances allow:

1. The maximum building setback to be 23.5 feet at the furthest point along the north property line (West Liberty Street).
2. The maximum building setback to be 68 feet at the furthest point along the east property line (South 2nd Street).
3. The maximum building setback to be 5.9 feet at the furthest point along the west property line (South 3rd Street).

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

NO: No one.

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

ABSTAINING: No one.

Waiver—To accommodate having an innovative high-rise design that proposes two towers that are not stepped back at and above the 14th Floor Level:

After the public hearing in open business session, on a motion by Member Jarboe, 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 including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.2.1, D of the Land Development Code to allow an innovative high-rise design that proposes two towers that are not stepped back at and above the 14th floor level; and

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WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the development is taking place within its own city block; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the proposed structure meets Guideline 3, Policy 1 regarding compatibility because the proposed use is compatible with surrounding uses as well as the scale and site design of nearby development and development within the Downtown Form District; and because the proposed structure meets Guideline 3, Policy 11, which encourages higher density developments in appropriate areas; 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 applicant is proposing an innovative, two-tower approach to the design of the structure; and

WHEREAS, the Board finds that the applicant will be incorporating other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) because the applicant is incorporating two towers into the design structure; a variety of materials, as well as overhangs on the upper floors of the structure to provide visual interest;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby adopt and approve the applicant's findings of fact and does hereby **GRANT** the waiver to allow an innovative high-rise design with two towers that are not stepped back at and above the 14th floor level **ON CONDITION** that the applicant resolve the right-of-way dedication issue with the Louisville Metro Transportation Department on all three street frontages along West Liberty Street; South 2nd Street and South 3rd Street prior to construction plan approval.

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

NO: No one.

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

ABSTAINING: No one.

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Category 3 Plan—To construct a 1,136,201 SF structure consisting of a hotel, apartments, retail and parking structure:

On a motion by Member Jarboe, seconded by Member Bergmann, 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 approval of a Category 3 Plan for the construction of a 1,136,201SF structure consisting of a hotel, apartments, retail and parking structure;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Category 3 plan to construct a 1,136,201 SF structure consisting of a hotel, apartments, retail and parking structure **ON CONDITION** that the applicant resolve the right-of-way dedication issue with the Louisville Metro Transportation Department on all three street frontages along West Liberty Street; South 2nd Street and South 3rd Street prior to construction plan approval.

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

NO: No one.

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

ABSTAINING: No one.

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The meeting adjourned at 12:42 p.m.

Michael May *Atty Gen.*
Vice CHAIRPERSON

Rosalind Disher
SECRETARY

