

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

MARCH 17, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30 A.M. on Monday, March 17, 2014, at the Metro Development Center, 444 S. 5th Street, Conference Room 101, Louisville, Kentucky.

Members present were:

David Proffitt, Chair
Rosalind Fishman, Secretary
*Frederick Liggin
Betty Jarboe
Dean Tharp

Members absent:

Mike Allendorf, Vice Chair

Staff members present were:

Jim Mims, Director of Codes and Regulations
Emily Liu, Director of Planning & Design Services
John Baker, Legal Counsel
Jessica Wethington, Public Information Specialist
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
David Wagner, Planner II
Jon Crumble, Planner II
Latondra Yates, Planner II
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

*Member Liggin arrived at the meeting at approximately 8:45 a.m.

The following cases were heard:

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

MARCH 17, 2014

APPROVAL OF THE MINUTES:

Minutes of the meeting held on March 3, 2014, 2014

On a motion by Member Fishman, seconded by Member Jarboe, the minutes of the meeting conducted on March 3, 2014 were approved.

The vote was as follows:

YES: Members Jarboe, Tharp, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 17, 2014

BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 14VARIANCE1015

Applicants/Owners:

Lois Tash
1605 S. 3rd Street
Louisville, Kentucky 40208

Janene Rigney
3918 Stafford Run Court
High Point, North Carolina 27265

Contractor:

Primera Services
Paul Parker
710 Grant Avenue
Louisville, Kentucky 40222

Subject:

An application for a variance from the Land Development Code to allow a proposed garage to encroach into the south side yard setback.

Premises affected:

On property known as 1605 South Third Street and being in Louisville Metro.

COUNCIL DISTRICT 6—David James

Staff Case Manager: Regina Thomas, Associate Planner

On February 17, 2014, Lois Tash and Janene Rigney filed an application for a non-hearing variance to allow a proposed garage to encroach into the required south side yard setback.

On March 17, 2014, at a meeting of the Board, this case was presented to the Board in open business session pursuant to KRS 100.241 and KRS 100.243. A drawing showing the premises affected and the existing structure was presented to each Board member.

The recording of this hearing will be found on the DVD of the March 17, 2014 proceedings.

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

MARCH 17, 2014

BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 14VARIANCE1015

DISCUSSION:

Steve Hendrix, Planning Supervisor, said the request meets the Old Louisville Architectural Review Committee with conditions of approval. He said the first tier adjoining property owners signed the Non-Hearing Variance Consent form; and are not opposed.

On a motion by Board Member Fishman, seconded by Member Jarboe, 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 garage to be 0 feet from the south property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the area where the garage will be constructed is currently utilized as parking and will make it safer for the tenants; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the neighborhood has large, Victorian style homes with some multi-family uses that currently have garages and carriage houses at a 0 ft. setback; and because the Architectural Review Committee has approved the plan; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the garage will be set back 8 feet from the alleys edge to allow drivers safe view of traffic and entrance and exit into and out of the garage; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because existing garages with like setbacks are commonplace in the area; and because the layout of this lot was

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

MARCH 17, 2014

BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 14VARIANCE1015

created prior to the current regulations; and because most structures along the alley are at a 0 ft. setback; 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 some lots in the area were designated single family and others multi-family at the time of this lots plotting and construction of accessory structures were not configured as they are today; and because vehicles weren't as prevalent as they are today; 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 on the applicant because it would prevent the owner from providing a safe environment for the tenants to park their vehicles; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the lot was created prior to the current owners of the property and it appears that a garage was at one time located at the rear of this lot upon viewing the Sanborn map;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed garage to be 0 feet from the south side property line;

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

The vote was as follows:

YES: Members Proffitt, Jarboe, Fishman and Tharp.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1011

Applicant: CHOP Partners II, LLC
Greg Oakley
13307 Magisterial Drive
Louisville, Kentucky 40223

Owner: Indian Springs, LLC
David Wren
3408 Indian Lake Drive
Louisville, Kentucky 40241

Attorney: Bardenwerper Talbott & Roberts
Nick Pregliasco, Attorney
1000 N. Hurstbourne Pkwy., 2nd Floor
Louisville, Kentucky 40223

Representative: American Engineers, Inc.
Joe Watson
65 Aberdeen Drive
Glasgow, Kentucky 42141

Project Name: McDonald's

Subject: An application for a variance from the Land Development Code to allow a proposed McDonald's to exceed the maximum setback.

Premises affected: On property known as 3420 Indian Lake Drive and 10600 Westport Road and being in Louisville Metro.

COUNCIL DISTRICT 17—Glen Stuckel
Staff Case Manager: David Wagner, Planner II

Appearances for Applicant:
Nick Pregliasco, Attorney, 1000 N. Hurstbourne Pkwy., 2nd Floor, Louisville, Kentucky 40223.

Greg Oakley, 13307 Magisterial Drive, Louisville, Kentucky 40223.

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1011

Steve Porter, 2406 Tucker Station Road, Louisville, Kentucky 40299.

Appearances Interested Party:

No one.

Appearances Against Applicant:

No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 10, 2014, CHOP Partners II, LLC filed an application for a variation from the requirements of the Land Development Code to allow a proposed building to exceed the maximum setback.

On March 17, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the March 17, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, David Wagner gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said that this request is a joint proposal with a Revised Detailed District Development Plan (13DEVPLAN1128) and amendments to the binding elements, which will be heard by the Planning Commission on March 20, 2014. The variance proposed is to allow the McDonald's to be setback further than is required due to the drive-thru and driving aisle additions. Chair Proffitt said his biggest concern is that it

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1011

will be dangerous to turn left from Westport Road crossing 4 or 5 lanes. Chair Proffitt asked if they received approval from Public Works. Mr. Wagner said yes.

SUMMARY OF TESTIMONY OF PROPONENTS:

Nick Pregliasco, the applicant's attorney, said the variance will allow the McDonald's to align with the grocery store next door. He said the plan was previously approved, but now have a revised plan that will go before the Planning Commission. He said the sign will be monument style.

Greg Oakley said they pulled the entrance back to line up with Aldi's; and are buying another lot. Mr. Oakley pointed out the access points into and out of the property. Chair Proffitt said they should reconsider making improvements for cars turning left onto Westport Road.

Steve Porter said he is representing the Indian Springs Homeowners Association, who does not object to the variance. He said his clients would rather see less traffic along Indian Lake Drive, but that Chair Proffitt's concerns are valid.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Member Liggin said he is not opposed to the request. Member Tharp said the applicant should make the intersection safer.

After the public hearing in open business session, on a motion by Member Liggin, seconded by Member Tharp, 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 Table 5.3.2 of the Land

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1011

Development Code to allow a proposed McDonald's to be 105 feet from the front property line; and

WHEREAS, the Board finds that the proposed variance will not adversely affect the public health, safety or welfare because the extra setback from Westport Road is very typical of retail buildings with their requirements for parking, maneuvering, and especially when drive-thrus are involved which require vehicles to circumnavigate the building; and because there is a commercial center located across Westport Road, so the setback will lessen the impact where similar setbacks are found; and because no residential uses are located across Westport Road; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the Aldi grocery store next door mirrors this setback as do other retail uses in this area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because this is an aesthetic regulation, not involving health or safety; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulation because this is a common setback in the area; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because this setback is typical to the area for retailers and restaurants with drive-thrus; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land because the requested setback allows for the drive-thru lane to be placed where it should logistically be and allows the drive aisle on the north side of the Aldi development to be the same and extended on the McDonald's site; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulations from which relief is sought but is rather a result of the location on a commercial arterial

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1011

where this particular use demands a certain amount of parking, access and circulation;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed McDonald's to be 105 feet from the front property line.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13VARIANCE1013

Applicants/Owners: William J. & Megan Kishman
3201 Brownsboro Road
Louisville, Kentucky 40206

Project Name: Proposed Fence

Subject: An application for a variance from the Land Development Code to allow a proposed fence to exceed the maximum 48 inch height to 72 inches in the street side yard along Winton Avenue.

Premises affected: On property known as 3201 Brownsboro Road and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
William Kishman, 3201 Brownsboro Road, Louisville, Kentucky 40206.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 17, 2014, William and Megan Kishman filed an application for a variation from the requirements of the Land Development Code to allow a proposed fence to exceed the maximum height.

On March 17, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13VARIANCE1013

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the March 17, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the variance is to allow the replacement of a 4 ft. tall fence to a 6 ft. tall fence. She said per the standard of review and staff's analysis, is in support of the granting of the variance. Ms. Yates said that there are other similar fences in the neighborhood. Chair Proffitt said the development plan is incorrect and needs to be revised.

SUMMARY OF TESTIMONY OF PROPONENTS:

William Kishman, the applicant and owner, was sworn in. Chair Proffitt asked if it would be the same staggered type of fence. Mr. Kishman said no, it will be flat with trim on top. Chair Proffitt said it is scaled incorrectly on the site plan and reiterated that this must be changed. Ms. Yates said they could revise the existing plan. Member Jarboe asked if his neighbors were in favor of it. Mr. Kishman said he spoke to everyone, except the neighbor to the west, who has a 6 ft. tall fence. He said everyone else was not opposed.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Member Fishman said she doesn't like the look of flat fences.

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

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13VARIANCE1013

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 has requested a variance from Section 4.4.3.A.1.a.i. of the Land Development Code to allow a proposed fence to be 72 inches tall (6 ft. tall) along the Winton Avenue street side yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed fence appears to be situated in a manner that will not impede sight distance or negatively affect the view of neighboring properties; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are other similar fence heights in the neighborhood; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed fence appears to be situated in a manner that will not impede sight distance or negatively affect the view of neighboring properties; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are other similar fence heights throughout the neighborhood;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed fence to be 6 feet tall along the Winton Avenue street side yard.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

Applicant: JBS USA, LLC
John Cliff, Vice President & General Mgr.
1200 Story Avenue
Louisville, Kentucky

Owner: JBS USA, LLC
1700 Promontory Circle
Greeley, Colorado 80634

Attorney: Glenn Price
Frost Brown Todd, LLC
400 West Market Street, Suite 3200
Louisville, Kentucky 40202

Representative: QK4
Ashley Bartley, ASLA, LEED AP
1046 East Chestnut Street
Louisville, Kentucky 40204

Subject: An application for a Modified Conditional Use Permit to allow a proposed fence along Story Avenue; a covered break area; a proposed 162 sq. ft. expansion to the existing stunning and bleeding building; a determination whether additional conditions of approval are necessary for the unloading chute area and a privacy fence near Mellwood Avenue. **The applicant has revised the plan where the break area has been moved south approximately 95 feet away from Story Avenue; and the proposed Mellwood Avenue privacy fence is now situated between an existing fence and the proposed chute enclosures with a gate at the Board's request.**

Premises affected: On property known as 1200 Story Avenue and being in Louisville Metro.

**COUNCIL DISTRICT 4—David Tandy
Staff Case Manager: Steve Hendrix, Planning Supervisor
(CONTINUED FROM FEBRUARY 17, 2014)**

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

Appearances for Applicant:

Glenn Price, Attorney, Frost Brown Todd, LLC, 400 West Market Street, Suite 3200, Louisville, Kentucky 40202.

Appearances- Interested Parties:

No one.

Appearances Against Applicant:

Jon Salomon, Attorney, 101 S. 5th Street, Louisville, Kentucky 40202.

Appearances—Air Pollution Control District:

Nicholas Hart, Environmental Coordinator, 850 Barret Avenue, Room 205, Louisville, Kentucky 40204.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On September 9, 2013, the applicant submitted an application that included a proposed fence along Story Avenue, a covered break area, and the 162 square foot building addition. The applicant's representative later informed staff, that the modification would only include the stunning and bleeding expansion; and was presented to the Board on December 16, 2013. The Board continued this case to February 17, 2014, to allow the Board to consider all requests pertaining to the Story Avenue site. **On August 31, 2009, the Board approved the boiler room expansion and the 4,008 sq. ft. unloading chute enclosure**, which was partially built. The Board placed three conditions of approval, where one was voided and remanded back to the Board by Circuit Court (JBS USA, LLC vs. Louisville Metro Board of Zoning Adjustment, et al, NO. 09CI09990). The Board needs to determine if any additional conditions of approval are necessary.

On March 17, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the March 17, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Steve Hendrix, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. Mr. Hendrix said he received information from Jon Salomon, attorney for the Butchertown Neighborhood Association ("BNA") dated March 12, 2014 asking the Board to continue the case again until the Air Pollution Control Board ("APCD") has approved their odor control plan. Mr. Hendrix said Glenn Price, attorney for the applicant, submitted a letter challenging Mr. Salomon's request, since his information was submitted after the filing deadline; and also because the Board did not continue this case to introduce new evidence into the record (APCD Violations). Mr. Hendrix explained the revisions to the plan since the last hearing including the break area location and the fence along Mellwood Avenue.

DISCUSSION:

Chair Proffitt said the meeting today is for any last minute questions and that the APCD violation notices have no bearing on the Board's decision on the chute enclosure that was already approved by the Board on August 31, 2009. Member Jarboe questioned limiting the scope of their discussion since the plan has changed. Jon Baker, the Board's legal counsel, said the Board has the authority to hear anything they want to, but could still limit the scope of discussion in order to make an educated decision. Chair Proffitt stated that he was limiting the amount of time for testimony from both sides.

SUMMARY OF TESTIMONY OF PROPONENTS:

Glenn Price, Attorney for the applicant, said they made the two changes to the plan which was recommended by the Board. He said they moved the break area to the south approximately 95 feet away from Story Avenue; and that the proposed Mellwood Avenue fence is now situated between an existing fence and the proposed chute enclosure with a gate. Chair Proffitt asked why they can't extend the fence more. Mr. Price said it would not allow the trucks to get in and out of the site. Member Fishman asked what the break area would look like. Mr. Price said it's a gazebo; and pointed out where it would be built on the plan.

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

Jon Salomon, attorney for the Butchertown Neighborhood Association, said he is not concerned with the two changes made to the plan, but said this company has numerous violations with the Air Pollution Control Board. Further, that JBS, USA, LLC, is currently not in compliance with the APCD regulations requiring the Control of Objectionable Odors in Ambient Air. Mr. Salomon said ½ of the violations are odors coming from the trucks and the hog pens; and that the APCD is requiring them to submit an Odor Control Plan. He said this business is a “hazardous and nuisance use”, so the Board legally cannot approve any more changes until the odor control issue is remedied. Mr. Salomon asked the Board to either deny the requests or continue the case until the violations are taken care of. Chair Proffitt disagreed and said they could have already voted on the requests at the previous hearings. Mr. Salomon said the Board should know that they are out of compliance with various regulations.

REBUTTAL—Mr. Price:

Mr. Price said the Board asked for changes, which they did and submitted it 14 days prior to the hearing. He said the Board did not ask for new or additional evidence which was submitted by Mr. Salomon at the last minute. Mr. Price submitted a letter from APCD stating that they need to enclose the chutes as soon as possible. Mr. Price said this neighborhood group is doing everything to “run them out of town.”

REBUTTAL—Mr. Salomon:

Mr. Salomon said enclosing the hog chutes will not eliminate all the odors coming from this plant; and that all ambient odors need to be addressed legally per the Land Development Code.

Mr. Price disagreed, and said enclosing the hog chutes will allow for faster offloading, less truck staging and contain the odor.

DISCUSSION:

Member Jarboe asked Jon Baker, the Board’s legal counsel, if the Board has to wait until JBS submits the odor control plan. Mr. Baker said the Board did not receive a letter from APCD regarding the odors; and that this is for the applicant

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

to work out with APCD. Mr. Baker said the Board could however; add a condition of approval, that the applicant report back to the Board to explain the violations and remedies until the issue is resolved. Mr. Baker said APCD is monitoring this site as is the Butchertown Neighborhood Association.

BUSINESS SESSION:

Chair Proffitt said JBS is doing what APCD wants by enclosing the chutes to reduce the odor. He said the Board heard from expert witnesses that this would decrease the odor, and no one has refuted this. Member Jarboe mentioned oppositions concerns about increasing production. Chair Proffitt said per the condition of approval, they are limited to 10,500 per day on a 6 day rolling average; and that their coolers can't hold anymore either. Chair Proffitt added that he doesn't feel the enlargement of the stunning and bleeding building is an expansion, but to make it safer for the employees and more humane for the animals. He said they are also adding the fences that will further block the view from Mellwood; and that overall, the changes will improve the site and benefit the neighborhood. Chair Proffitt said the Board could still continue this case until the APCD violations are resolved. Mr. Baker interjected and asked the Board to consider if the changes will exacerbate or mitigate the nuisances. Chair Proffitt said he feels comfortable moving forward, and to add a condition of approval regarding compliance with APCD. Mr. Baker said to keep in mind that whatever APCD wants JBS to do, could trigger more modifications of the CUP. Chair Proffitt said the latest violation from APCD states that they have to come into compliance by March 28, 2014 or pay fines. Member Tharp said fencing will not contain the odors. Chair Proffitt said that no one has said the odors will be completely eliminated. Member Jarboe said the opposition requested that the number of hogs slaughtered be reduced to 6,400 per day.

Mr. Price asked the Board to look under Tab 17 in his exhibit book regarding the reduction in slaughtering.

Chair Proffitt said from the information Mr. Price submitted, demonstrates that the slaughter rate has decreased over the years. Mr. Baker said the Board could request violations and remedies from APCD; and even request that a representative from APCD attend the follow up hearings.

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

BACK INTO PUBLIC HEARING:

Nick Hart with the APCD, said this is an active enforcement site; and that he could inform upper management about attending public hearings. Chair Proffitt asked Mr. Hart if the Board could obtain any information open or closed. Mr. Hart said yes.

BACK INTO BUSINESS SESSION:

Member Liggin said he agrees with Chair Proffitt, that the company is trying to make changes that will help the overall situation. Member Tharp said there are over 1100 people who work at this plant; and that the Board must consider the safety of the employees. He said he hopes the company can do more about the rendering process and overall odors. Chair Proffitt explained what the Board is voting on today. Mr. Baker said to include the revised development plan dated March 3, 2014. The Board discussed a new condition of approval about the applicant appearing before the Board starting on September 22, 2014, to discuss notice of violations and remedies every 6 months from today's date for two years.

After the public hearing in open business session, 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, the PowerPoint presentations; the revised plan dated March 3, 2014; the evidence submitted; and testimony at the public hearing, that the applicant is requesting Modifications to an existing Conditional Use Permit to allow a proposed 162 square foot expansion to the existing stunning and bleeding building; a covered break area; a proposed fence along Story Avenue and a proposed privacy fence near the Mellwood Avenue entrance; and

WHEREAS, the Board finds that the property is within a Traditional Marketplace Corridor Form District; and

WHEREAS, the Board finds that the additions are consistent with the applicable policies of the Comprehensive Plan, since the proposal is a Modification of the existing Conditional Use Permit for a meat packing plant/slaughterhouse which was approved in 1969, since the proposal is minimal compared to the existing plant and since the proposal will reduce noise, odor and rectify a safety concern for the employees; and because the proposal conforms to Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy B. 7

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

(Traditional Marketplace Corridor), and is consistent with the Executive Summary of the Butchertown Neighborhood Plan. See Louisville Ordinance No. 24, Series 2008; and because this industrial business pre-dates the designation of this site, and the immediate area, as a Traditional Marketplace Corridor Form District; and because there is a mixture of low to medium intensity uses in the area, such as the Butchertown Marketplace directly across Story Avenue from the site; and because there is a connected street and alley system in the Butchertown Neighborhood; and because the design and function of the proposed fences and outdoor employee break area are consistent with the form district; and

WHEREAS, the Board finds that the request for a Modified Conditional Use Permit meets the purpose, intent and all requirements of the Land Development Code because the request is part of the “slaughtering of animals...meat packing, and storage” a use expressly permitted in the M-3 Industrial District (See Land Development Code (“LDC”) Section 4.2.43 (M-3); and because this site is located in the M-3 Industrial District and maintains an existing Conditional Use Permit; and because the request meets the purpose, intent and all requirements of the Land Development Code because they will not have any adverse effect on neighboring property and are not in conflict with the goals and plan elements of the Comprehensive Plan; in addition, the request will promote the public health, safety and general welfare in one or more zones, and is in compliance with listed standards and requirements; furthermore, there are no environmental or health effects related to the Proposed Modified Conditional Use Permit, and the proposal adequately mitigates or addresses any adverse effects to the public health, safety and general welfare; and

WHEREAS, the Board finds that the proposal conforms to Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policies 9.1 and 9.2 because sidewalks are available to serve employees along Story Avenue and Mellwood Avenue and all other public streets in the vicinity; and because bicycle facilities for bike storage are available within the plant; and because transit service via Transit Authority of River City (“TARC”) Route 31 serves Story Avenue at the front of the site; and TARC Route 15 serves Mellwood Avenue at the rear of the site; and

WHEREAS, the Board finds that the proposal conforms to Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 10.1, 10.4, 10.10 and 10.11 because the 162 SF proposal will

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

have no impact on flooding or stormwater; and because the Metropolitan Sewer District (“MSD”) approved the proposal on September 24, 2014; and because MSD’s approval is based on the full development potential to the entire watershed and the impact of the proposal on the watershed; and because MSD’s approval indicates that drainage systems will accommodate the “through” drainage capacity in a manner acceptable to MSD, and that peak stormwater run-off rates or volumes post development will be consistent with regional and watershed plans; and

WHEREAS, the Board finds that the proposal conforms to Infrastructure Guideline 14 and all applicable Policies adopted thereunder, including Policies 14.2, 14.3, 14.4 and 14.6 because the site is adequately served by existing utility providers; and because an adequate supply of potable water and water for fire-fighting purposes serves the site; and because the site is served by the sanitary sewer service facilities of the Metropolitan Sewer District; and because on-site utilities have access to Story Avenue and Mellwood Avenue, both of which are major arterial roadways; and

WHEREAS, the Board finds that the proposal conforms to Community Facilities Guideline 15 and all applicable Policies adopted thereunder, including Policy 15.9 because the site is adequately served by the services of Louisville Fire Protection District No. 2; and

WHEREAS, the Board finds that the necessary public facilities are adequate to serve the proposed Modified Conditional Use Permit because there are existing public facilities, such as transportation, sanitation, water, sewer, drainage, and emergency services; and because the proposal has been reviewed by Public Works and MSD and both have approved the plan; and because the plant would continue to be subject to Air Pollution Control District requirements; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

NOW, THEREFORE, BE IT RESOLVED, that the Modified Conditional Use Permit is hereby **APPROVED ON CONDITION**:

The conditions are as follows:

1. The site shall be developed in strict compliance with the approved development plan dated March 3, 2014 (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The modifications of 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 modifications are not so exercised, the proposed development would again require review and approval by the Board.
3. The maximum number of hogs slaughtered per day, on a 6 day rolling average will be 10,500. The limitation shall not be changed without the prior authorization of the Board of Zoning Adjustment following a duly notified hearing. Upon reasonable notice not to exceed 24 hours, representatives of the Louisville Department of Codes and Regulations shall have on-site access to JBS, USA, LLC/Swifts’ records showing the number of hogs slaughtered. To preserve JBS’ proprietary interest, the Department of Codes and Regulations shall not photocopy or otherwise record the number of hogs slaughtered unless Department representatives believe that a violation of Condition No. 1 has occurred.
4. Slaughtering shall be defined as: “The operation of killing hogs and eviscerating carcasses, all of which is conducted under the observation of the USDA Federal Safety Inspection Service.
5. JBS USA, LLC/Swift will appear before the Board of Zoning Adjustment regarding the status of any Notice of Violations from the Air Pollution Control District on September 22, 2014 and appear before the Board every 6 months starting from March 17, 2014 for two years.

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

MARCH 17, 2014

NEW BUSINESS:

CASE NO. 13CUP1011

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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

MARCH 17, 2014

The meeting adjourned at 10:57 a.m.

CHAIRPERSON

SECRETARY