

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

December 19, 2022

A meeting of the Louisville Metro Board of Zoning Adjustment was held on Monday, December 19, 2022 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky, and also via Webex.

Members Present:

Lula Howard, Chair
Sharon Bond, Secretary
Yani Vozos
Jan Horton

Members Absent:

Richard Buttorff, Vice Chair
Kimberly Leanhart
Brandt Ford

Staff Members Present:

Chris French, Planning & Design Supervisor
Joe Haberman, Planning & Design Manager
Julia Williams, Planning Supervisor
Heather Pollock, Planner I
Joel Dock, Planning Coordinator
Molly Clark, Planner II
Amy Brooks, Planner I
Clara Schweiger, Planner I
Laura Ferguson, Legal Counsel
Chris Cestaro, Management Assistant (minutes)

The following cases were heard:

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December 5, 2022 Board of Zoning Adjustment Meeting Minutes

00:05:03 On a motion by Member Bond, seconded by Member Horton, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the December 5, 2022 Board of Zoning Adjustment meeting.

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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PUBLIC HEARING

Case No. 22-APPEAL-0012

NOTE: The following case was heard out of order. It was originally scheduled as Item #11 on the agenda.

Request:	Appeal of an administrative decision to deny a retail license for a Smoking Retail Store for non-compliance with the zoning requirements in the Land Development Code (LDC).
Project Name:	Bardstown Road Appeal
Location:	3333 Bardstown Road
Owner:	Nigam Retail Complex, LLC
Appellant:	Nigam Retail Complex, LLC
Representative:	Shunnarah Law Firm
Jurisdiction:	Louisville Metro
Council District:	26 - Brent Ackerson
Case Manager:	Chris French, Planning & Design Supervisor

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

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

Agency testimony:

00:06:04 The applicant's attorney has requested that this case be continued to the January 9, 2023 Board of Zoning Adjustment meeting.

00:07:18 On a motion by Member Vozos, seconded by Member Bond, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to the January 9, 2023 Board of Zoning Adjustment meeting.

The vote was as follows:

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YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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PUBLIC HEARING

Case No. 22-CUP-0347

NOTE: This case was heard out of order. It was previously listed as Item No. 10 on the agenda.

Request:	Conditional Use Permit for hospital with waivers and a variance
Project Name:	Norton Hospital
Location:	2820 W Broadway
Owner/Applicant:	Norton Hospitals Inc.
Jurisdiction:	Louisville Metro
Council District:	4- Jecorey Arthur
Case Manager:	Julia Williams, AICP, Planning Supervisor

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

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

Agency testimony:

00:08:02 Julia Williams presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Cliff Ashburner, Dinsmore & Shohl, 101 S 5th St #2500, Louisville, KY 40202

Derek Triplett, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Russell Cox, 4965 US Hwy 42, Louisville, KY 40222

Renee Murphy, 4964 US Hwy 42, Louisville, KY 40222

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Summary of testimony of those in favor:

NOTE: Due to technical difficulties, audio recording was lost during the applicant's presentation. Visual presentations are recorded. ALL information related to this proposal is on file and is also available online.

00:15:54 Cliff Ashburner, the applicant's representative, introduced the applicant's case.

00:17:39 Russell Cox, President and CEO of Norton Healthcare, explained why and how this proposal came about, and his/Norton's vision for this facility and the area.

00:22:15 Renee Murphy, Chief Communications Officer for Norton Healthcare, talked about Norton's community engagement efforts.

00:25:49 Mr. Ashburner presented the case and showed a Power Point presentation which detailed the site plan, the proposed structures, greenspace, traffic flow, and tree planting. He emphasized that the proposal will add greenspace and help revive the neighborhood. He said TARC stops are already in place, and this facility is pedestrian-friendly (see video recording.)

00:46:48 In response to questions from member Horton, Mr. Cox said the facility will have approximately 30 beds, and will also provide mental health services. Staff will consist of approximately 120-130 full-time employees.

00:48:42 In response to questions from Member Bond, Ms. Murphy said there are additional public meetings/discussions planned regarding this project (there will be a public outreach meeting on January 6, 2023.)

00:49:12 Ms. Williams discussed an addition to Condition of Approval #5 in the staff report. The COA should read as follows:

"A pergola shall be constructed on the site at the corner of 28th and Garland as shown on the development plan, and substantially similar to the renderings presented by the applicant."

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The following spoke in opposition to the request:

No one spoke.

00:53:06 Board Members' deliberation

Conditional Use Permit for a Hospital

On a motion by Member Horton, seconded by Member Vozos, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with the policies of the Comprehensive Plan because the proposed site redevelopment is compatible with the surrounding non-residential uses and nearby residential. The plan is not a non-residential expansion into a residential area. The proposal does not replace existing housing but is for the redevelopment of a former industrial site. The site can be accessed safely by all modes of transportation. Transit is provided for with two shelters along 28th Street; and

WHEREAS, the Board further finds that the proposed hospital is compatible with the surrounding institutional, residential, and commercial uses in the area. The proposal meets the Land Development Code requirements for height and do not have any adverse effects on noise, odor, drainage, etc; and

WHEREAS, the Board further finds that improvements to the site and right-of-way made necessary by the proposed development, such as transportation and drainage, have been adequately provided to serve the proposed use; and

WHEREAS, the Board further finds that:

Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

- A. In form districts where nonresidential freestanding signs are not permitted, a single freestanding on-premise sign, not exceeding 80 square feet in area and not exceeding 10 feet in height, may be placed at each major entrance. Attached signs shall be designed in accordance with form district requirements, but the Board reserves the right to approve the size and location of all attached signs.

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- B. All buildings and structures shall be at least 30 feet from any property line.
- C. Medical clinics shall provide an indoor waiting area(s) for clients. The waiting area shall be large enough to accommodate the clients arriving for services.
- D. Parking for medical clinics shall be adequate to accommodate the maximum number of clients expected to be at the site at one time.
- E. Such facilities shall be located on or near a collector or arterial street with reasonable access to public transportation. Criteria for granting the proposed form district change/rezoning: KRS Chapter 100.213

The Board finds that the proposal meets the standards to obtain a conditional use permit. The proposal is located along a local and collector level road and the structure is located 30 feet from the property lines. Signs will be reviewed through a separate permit process but there is no indication that the signs will not meet the requirement; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit for a Hospital, **SUBJECT** to the following Conditions of Approval:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a Hospital without further review and approval by the Board.
3. Proposal is subject to full construction plans being submitted to Transportation Planning for traffic and MSD for storm water approvals. Once those have been approved, the plan is subject to Construction Review for building/parking permits.
4. The applicant will work with TARC on placing 2 transit shelters along the sites 28th Street frontage.
5. A pergola shall be constructed on the site at the corner of 28th and Garland as shown on the development plan, and substantially similar to the renderings presented by the applicant.

The vote was as follows:

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YES: Members Horton, Bond, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

Variance from Chapter 5.5.1.A.2 to permit the building to exceed the maximum 5' setback along 28th Street (approximately 132.36' and 169.7') and Garland (approximately 238' and 249.20')- 22-VARIANCE-0153

On a motion by Member Vozos, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the site can be accessed by all forms of transportation with several pedestrian ways into the site; and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the area has a mix of traditional development and suburban development; and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the site will be able to be accessed on both street frontages with added transit amenities and pedestrian connections and walks; and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the hospital requires access to all sides of the structure due to the different hospital uses with the structure such as the emergency, service, and patient drop off areas; and

WHEREAS, the Board further finds that the variance arises from the hospitals need to have vehicular access all around the structure which is specific to the requested use; and

WHEREAS, the Board further finds that the proposed building could not function with the interior uses without access all around the building; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Variance from Chapter 5.5.1.A.2 to permit the building to exceed the

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maximum 5' setback along 28th Street (approximately 132.36' and 169.7') and Garland (approximately 238' and 249.20')- 22-VARIANCE-0153.

The vote was as follows:

YES: Members Horton, Bond, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

Waivers:

(Waiver #1) - Waiver from Chapter 5.6.1.A.1 to not provide animating features along no less than 50% of the length of the façade (22-WAIVER-0205)

(Waiver #2) - Waiver from Chapter 10.2.10 to reduce the required 10' VUA LBA to approximately 7.5' along 28th Street and to between 10' and 4' along Garland Avenue, as shown on the development plan (22-WAIVER-0206)

(Waiver #3) - Waiver from Chapter 5.5.1.A.3.a to permit parking in front of the primary structure along both 28th Street and Garland Ave (22-WAIVER-0207)

On a motion by Member Bond, seconded by Member Vozos, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

(Waiver #1) WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested waiver will not adversely affect adjacent property owners as the building sits back from the road and is not abutting residential. Plantings within the VUA LBA will meet code requirements and will help screen the building from the road; and

WHEREAS, the Board further finds that Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects. This is met because the main entrance to the structure along 28th street has sufficient articulation to meet the requirement. The south side of the building adjacent to the Garland frontage requires a service area where a screen wall is provided to screen the service area; and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the hospital requires access to

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all sides of the structure due to the different hospital uses with the structure such as the emergency, service, and patient drop off areas. The service area is being screened and is located off the road. The VUA LBA will provide trees from the public sidewalk to reduce the look of the screen wall from the public ROW; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the land use requires access to all sides of the building, including service, where the service area will be screened with a wall; and

(Waiver #2) WHEREAS, the Board further finds that the waiver will not adversely affect adjacent property owners since the planting and screening requirements will still be met; and

WHEREAS, the Board further finds that Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes. Community Form Goal 1, Policy 20 calls to mitigate adverse visual intrusions when there are impacts to residential areas, roadway corridors, and public spaces. The comprehensive plan is being met since the planting and screening requirements will still be met; and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the planting and screening requirements will still be met; and

(Waiver #3) WHEREAS, the Board further finds that the waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public rights-of-way to the building entrance; and

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WHEREAS, the Board further finds that Community Form Goal 1, Policy 12 calls for the proposal to Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians.

Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes. Community Form Goal 2, Policy 15 calls for parking in activity centers should reflect the area's associated Form District standards to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. While the parking layout does not meet the form district requirements, the hospital use dictates that access be along all building frontages. The hospital use is needed in this area as there are no hospitals west of 9th Street. The use mitigates the waiver request; and

WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the hospital use dictates that access be along all building frontages. The hospital use is needed in this area as there are no hospitals west of 9th Street. The use mitigates the waiver request; and

WHEREAS, the Board further 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 since the hospital use dictates that access be along all building frontages. The hospital use is needed in this area as there are no hospitals west of 9th Street. The use mitigates the waiver request; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Waivers, as follows:

(Waiver #1) - Waiver from Chapter 5.6.1.A.1 to not provide animating features along no less than 50% of the length of the façade (22-WAIVER-0205); **AND (Waiver #2)** - Waiver from Chapter 10.2.10 to reduce the required 10' VUA LBA to approximately 7.5' along 28th Street and to between 10' and 4' along Garland Avenue; the landscaping shall be substantially similar to what was shown in the applicant's presentation at the December 19, 2022 Board of Zoning Adjustment meeting, with the addition of five (5) street trees added along Garland Avenue (22-WAIVER-0206); **AND (Waiver #3)** -

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Waiver from Chapter 5.5.1.A.3.a to permit parking in front of the primary structure along both 28th Street and Garland Ave (22-WAIVER-0207).

The vote was as follows:

YES: Members Horton, Bond, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

Category 3 Development Plan

On a motion by Member Vozos, seconded by Member Bond, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Category 3 Development Plan.

The vote was as follows:

YES: Members Horton, Bond, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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Case No. 22-VARIANCE-0141

Project Name:	Zoom Group
Location:	4545 Taylorsville Road
Owner(s):	Zoom Group Inc
Applicant:	Zoom Group Inc
Jurisdiction:	Louisville Metro
Council District:	11 – Kevin Kramer
Case Manager:	Clara Schweiger, Planner I

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

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

Agency testimony:

01:07:36 Clara Schweiger presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation.)

How far is the parking space to the property line? The closest parking space is right on the property line. The Variance is whatever the required setback is.

The following spoke in support of the request:

Cliff Ashburner, Dinsmore & Shohl, 101 S 5th St #2500, Louisville, KY 40202

Matt Wolff, Sabak Wilson & Lingo, 608 South 3rd Street, Louisville, KY 40202

Melisse Marvel, 1904 Embassy Square Boulevard, Louisville, KY 40299

Summary of testimony of those in support:

01:15:14 Cliff Ashburner, the applicant's representative, presented the applicant's case, showed a Power Point presentation, and responded to questions from the Board members (see recording for detailed presentation.)

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01:24:34 Using a slide of the development plan in context, Chair Howard and Mr. Ashburner discussed a requested variance of 21.7 feet for the addition containing the elevator (see recording.)

The following spoke in opposition to the request:
No one spoke.

01:27:43 Board Members' deliberation

(Variance #1) - Variance from Chapter 5.3.5.C.3.a (22-VARIANCE-0141) to reduce the street-side setback from 25' to 3.3' at its closest point to allow a building addition.

(Variance #2) - Variance from Chapter 5.5.2.C.2.a (22-VARIANCE-0162) to allow parking in the front and street- side setback as shown on the plan.)

01:29:54 On a motion by Member Vozos, seconded by Member Bond, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

(Variance #1) WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the variance will not adversely affect the public health, safety or welfare because the proposed addition is located on the side of the existing building adjacent to a public school; there will be approximately 3.3 feet between the new addition and the property line. Additionally, Power House Lane aka Blowing Tree Lane is a dead end, unimproved right of way; and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity because the addition façade materials will match the materials used on the existing building; and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the proposed addition is located on the side of the existing building, adjacent to a public school, and is between the existing building and Power House Lane aka Blowing Tree Lane, an unimproved right of way; and

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WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the existing building on the site is already encroaching into the street- side yard setback for an unimproved right of way and is proposed to be located on the side of the building; and

WHEREAS, the Board further finds that the requested variance does not arise from any special circumstances. The applicant is expanding into the required street side yard setback for an unimproved right of way with the proposed addition; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed addition would not be able to be built and the addition is necessary to increase accessibility for the individuals the applicant serves; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the location of the existing building, but they would like to expand into the street side yard with an addition; and

(Variance #2) WHEREAS, the Board further finds that the variance will not adversely affect the public health, safety or welfare because no new VUA is proposed. The same parking lot that has been used for the antique store will be used for this proposal; and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity because no new VUA is being proposed only the layout of parking spaces; and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because landscaping will be provided in front of the parking located in the setback; and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the VUA is not increasing, and only the parking layout is changing; and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances. The applicant provides services to disabled individuals, so parking closer to the building is reserved for ADA spaces and drop off and loading of clients. In order for there to be sufficient parking for employees some parking will need

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to be located in the setback. The variance is necessary due to the size and shape of the lot; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because this would limit parking on the site; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant is not responsible for the location of the existing parking lot, but they would like to change the layout of some parking spaces on the site; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested (**Variance #1**) Variance from Chapter 5.3.5.C.3.a (22-VARIANCE-0141) to reduce the street-side setback from 25' to 3.3' at its closest point to allow a building addition (**variance of 21.7 feet**); **AND** the requested (**Variance #2**) Variance from Chapter 5.5.2.C.2.a (22-VARIANCE-0162) to allow parking in the front and the street-side setback as shown on the plan (variance of 50 feet from the Taylorsville Road setback and the street side yard setback, creating a variance of 19 feet from Powerhouse Lane).

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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Case No. 22-VARIANCE-0147

Request: Variance to allow an addition to encroach into the required street side yard setback.
Project Name: Glenview Avenue Variance
Location: 2200 Glenview Ave.
Owner/Applicant: Eron Jaber
Jurisdiction: Louisville Metro
Council District: 16-Scott Reed
Case Manager: Amy Brooks, Planner I

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

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

Agency testimony:

01:31;31 Amy Brooks presented the case and showed a Power Point presentation, (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

Eron Jaber, 2200 Glenview Avenue, Louisville, KY 40222

Summary of testimony of those in support:

01:35:18 Eron Jaber, the applicant, presented the case (see recording for detailed presentation.)

01:40:58 In response to questions from Chair Howard and Member Vozos, Mr. Jaber provided details about where both the fence and the driveway will be in relation to the proposed addition (see recording.)

01:44:17 In response to questions from Member Bond, Mr. Jaber discussed some other alternative designs that had been considered, to minimize impact on adjoining residents from the sideyard (see recording.)

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01:46:17 Mr. Jaber discussed where the current garage is with Member Horton. The Board members discussed the property survey (see recording.) After some discussion, Mr. Jaber said the new addition is what is being shown; the plan does not show the existing garage. Chair Howard noted that, according to the renderings, the new addition garage doors would be facing Hunting Road.

01:54:12 In response to a request from Chair Howard, Ms. Brooks resumed the podium and discussed infill development standards (see recording for detailed discussion.)

The following spoke in opposition to the request:

No one spoke.

01:56:55 Board Members' deliberation

Variance from the Land Development Code section 5.1.12.B to allow a structure to encroach into the street side yard setback.

01:58:54 On a motion by Member Bond, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the structure will alter the essential character of the general vicinity as there are seemingly no other primary structures that encroach into the street side yard setback to this degree in the neighborhood surrounding the subject site. While there are some structures along Hunting Road that have less than a 40 ft feet setback, none of them are closer than 30 feet to the property line; and

WHEREAS, the Board further finds that the requested variance will allow an unreasonable circumvention of the zoning regulations. As the required setback on this site is determined by infill development standards, which is intended to preserve the basic feel of the streetscape by requiring new development to complement existing construction, this request does not seem compatible to the already established pattern of setbacks; and

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WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do generally apply to the land in the generally vicinity or the same zone as the lot is similar in size and shape to the surrounding properties; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant as the location of the street side yard addition could be altered or designed in such a manner to lessen the impact on adjoining properties; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the requested **Variance** from the Land Development Code section 5.1.12.B to allow a structure to encroach into the street side yard setback.

The vote was as follows:

YES: Members Bond, Horton, and Chair Howard.

NO: Member Vozos.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

BOARD OF ZONING ADJUSTMENT MINUTES
December 19, 2022

BUSINESS SESSION

CASE NUMBER 22-MCUP-0012

Request: Modified Conditional Use Permit for an institutional use
("Residential Transitional Treatment Center")
Project Name: St. Vincent de Paul
Location: 431 E. St. Catherine Street
Owner/Applicant: Society of St. Vincent de Paul, Council of Louisville - Sarah
Graham
Jurisdiction: Louisville Metro
Council District: 6 - David James
Case Manager: Joel Dock, AICP, Planning Coordinator

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

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

Agency testimony:

02:01:23 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation).

The following spoke in support of the request:

Sarah Cole Graham, 1015-C South Preston Street, Louisville, KY 40203

Summary of testimony of those in support:

02:06:52 Sarah Cole Graham presented the case and gave more detail for what the property is being used for (see recording for detailed presentation.)

02:12:17 In response to questions from Member Horton, Ms. Graham said that there would be no exterior or interior changes to the structure. The additional beds would be added because the existing space was being underutilized (see recording for detailed discussion.)

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BUSINESS SESSION

CASE NUMBER 22-MCUP-0012

The following spoke in opposition to the request:

No one spoke.

02:14:10 **Board Members' deliberation**

Modified Conditional Use Permit for an institutional use (“Residential Transitional Treatment Center”)

02:15:44 On a motion by Member Bond, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the modification to the conditional use permit is consistent with land use and development policies of Plan 2040; and

WHEREAS, the Board further finds that no improvements are being made that reduce compatibility with surrounding land uses or the general character of the area; and

WHEREAS, the Board further finds that necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use are available; and

WHEREAS, the Board further finds that the modified conditional use permit remains compliant with the standards required to obtain the conditional use permit and all conditions of approval. This request pre-dates current Land Development Code transitional/group housing standards and remains subject to all conditions of approval, except where modified, of docket B-181-97; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Modified Conditional Use Permit** for B-181-97 (“Residential Transitional Treatment Center”) to allow the occupancy to be increased from 30 beds to 50 beds;
SUBJECT to the following Condition of Approval:

1. The treatment center shall be limited to 50 beds.

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BUSINESS SESSION

CASE NUMBER 22-MCUP-0012

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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PUBLIC HEARING

CASE NUMBER 22-CUP-0227

Request:	Conditional Use Permit for a Hospital/Medical Clinic
Project Name:	Baptist Health Freestanding Emergency Room
Location:	7702 Bardstown Road
Owner:	Will Realty, LLC
Applicant:	Land Design & Development
Representative:	Land Design & Development
Jurisdiction:	Louisville Metro
Council District:	22 - Robin Engel
Case Manager:	Molly Clark, Planner II

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

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

Agency testimony:

02:17:20 Molly Clark presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation and discussion.) She noted that this proposed building will share an access with another use (part of KYTC's and Metro Transportation Planning's requests.)

The following spoke in support of the proposal:

Nick Pregliasco, Bardenwerper Talbott & Roberts PLLC, 1000 North Hurstbourne Parkway, Louisville, KY 40223

Ann Richard, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222 (signed in but did not speak)

Howard Ferriell, Baptist Health, 2701 Eastpoint Parkway Louisville, Kentucky 40223 (signed in but did not speak)

**BOARD OF ZONING ADJUSTMENT MINUTES
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PUBLIC HEARING

CASE NUMBER 22-CUP-0227

Summary of testimony of those in support:

02:21:18 Nick Pregliasco, the applicant's representative, presented the applicant's case, showed a Power Point presentation, and responded to questions from the Board members (see recording for detailed presentation.)

02:27:29 During his presentation, Mr. Pregliasco noted that a Condition of Approval adopted by DRC on November 16, 2022 for Case No. 22-DDP-0094 (the development plan portion of this case), to read as follows:

The Applicant shall plant the equivalent to 26 Type A, 2-inch caliper trees on the Bates Elementary School property, location of the tree plantings to be determined by JCPS.

The following spoke in opposition to the request:

No one spoke.

02:31:21 Board Members' deliberation

02:32:07 On a motion by member Horton, seconded by Member Vozos, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the applicant has requested two waivers regarding tree canopy and building design, which were approved at the November 16, 2022 Development Review Committee; and

WHEREAS, the Board further finds that the proposed development is compatible with surrounding land uses as the subject property is bound by an expressway to the north and a minor arterial street to the east. The residential land uses to the west could be served by the proposed land use; and

WHEREAS, the Board further finds that the subject property is served by existing public utilities and facilities. Transportation Planning, KYTC, and MSD have reviewed and approved the proposal; and

WHEREAS, the Board further finds that:

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CASE NUMBER 22-CUP-0227

1. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

4.2.29 Hospitals and medical clinics may be allowed in any district upon the granting of a Conditional Use Permit and compliance with the listed requirements:

- A. In form districts where nonresidential freestanding signs are not permitted, a single freestanding on-premise sign, not exceeding 80 square feet in area and not exceeding 10 feet in height, may be placed at each major entrance. Attached signs shall be designed in accordance with form district requirements, but the Board reserves the right to approve the size and location of all attached signs.

STAFF: All signage will meet chapter 8 requirements according to the applicant.

- B. All buildings and structures shall be at least 30 feet from any property line.

STAFF: The proposed structure will be about 46 ft. from the nearest property line.

- C. Medical clinics shall provide an indoor waiting area(s) for clients. The waiting area shall be large enough to accommodate the clients arriving for services.

STAFF: This requirement will be met.

- D. D. Parking for medical clinics shall be adequate to accommodate the maximum number of clients expected to be at the site at one time.

STAFF: The proposed parking meets the minimum requirements for a hospital.

- E. E. Such facilities shall be located on or near a collector or arterial street with reasonable access to public transportation.

STAFF: Bardstown Road is a major arterial.

NOTE: The provisions of this Section 4.2.29 do not apply to Medical Offices as such are defined in this Land Development Code.

now, therefore be it

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PUBLIC HEARING

CASE NUMBER 22-CUP-0227

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit to allow a hospital/medical clinic in a C-1 Commercial zoning district (Land Development Code (LDC) 4.2.29), **SUBJECT** to the following Conditions of Approval:

Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a hospital use without further review and approval by the Board.
3. Prior to lawful commencement of the hospital the applicant shall obtain all permits and necessary approvals required by the Office of Construction Review and other governmental agencies.

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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PUBLIC HEARING

CASE NUMBER 22-CUP-0245

Request:	Conditional Use Permit for a Private Non-Profit Club
Project Name:	Louisville Outlaws, INC
Location:	1915 W Market Street
Owner:	Louisville Outlaws, INC
Applicant:	Dustin Harrig
Representative:	Dustin Harrig
Jurisdiction:	Louisville Metro
Council District:	5 - Donna Purvis
Case Manager:	Molly Clark, Planner II

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

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

Agency testimony:

02:34:29 Molly Clark presented the case, showed a Power Point presentation, and responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Dustin Harrig, 162 Jefferson Way, Mount Washington, KY 40047

Summary of testimony of those in favor:

02:47:03 Dustin Harrig, the applicant's representative, presented the applicant's case and responded to questions from the Board members (see recording for detailed presentation and discussion.)

02:54:53 Regarding Condition of Approval #4 in the staff report, Chair Howard requested that the language be changed from "...will need to pave" to "will pave", to read as follows:

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Applicant will pave the existing gravel parking area within one year of approval of the conditional use permit.

02:55:35 In response to questions from member Horton, Mr. Harrig described the approximate sizes of parties, events, fundraisers, etc. (approximate numbers of people per gathering).

The following spoke in opposition to the request:

No one spoke.

02:59:48 Board Members' deliberation

Conditional Use Permit to allow a private non-profit club in OR2 Office Residential zoning district.

03:03:58 On a motion by Member Vozos, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal does not conflict with Comprehensive Plan policies; and

WHEREAS, the Board further finds that the existing building and proposed pavilion are compatible with surrounding development and land uses; and

WHEREAS, the Board further finds that the subject property is served by existing public utilities and facilities. The proposal will not create additional requirements for the site; and

WHEREAS, the Board further finds that:

1. Does the proposal comply with the specific standards required to obtain the requested conditional use permit?

STAFF: See the following;

4.2.43 Private Non-profit Clubs

Private non-profit clubs may be located in the R-R, R-E, R-1, R-2, R-3, R-

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4, R-5, RRD, R-5A, R-5B, R-6, R-7, R-8A, OR-1, OR-2, or C-R or PTD Districts where such use is compatible in size and scale with the surrounding land uses upon the granting of a Conditional Use Permit.

- a. *All new buildings, structures, and facilities (except parking) shall be at least 30 feet from any property line.*

The existing building and the proposed pavilion will be encroaching in this required 30 ft setback. The applicant will need relief for both the Eastern, Southern and Western property lines. The subject site is located in a traditional neighborhood with small lot sizes which does not leave room to provide the full 30-foot setback on the eastern and western property lines. Demolishing the existing historical structure that encroaches into the 30 ft setback would create an unnecessary hardship on the applicant. Therefore, staff supports the request for relief.

- b. *Outdoor swimming pools shall be enclosed within a fence at least six feet high*

Not applicable.

- c. *All recreation areas or play fields and parking lots shall be separated from adjacent properties by a solid fence or dense evergreen shrubbery plantings at least five feet high*

The applicant proposes to use the existing 7 ft fence to screen the parking lot from adjacent properties, therefore, the 5 ft requirement is met. An LDC waiver is proposed to reduce the height of the continuous screen in accordance with Chapter 10 of the LDC from 8 ft to 7 ft.

- d. *One sign only may be permitted showing the name and address of the club. An attached sign shall not exceed 30 square feet in area, shall be attached flat to the face of the building and shall not project more than 18 inches from the face of the building. A free-standing sign shall not exceed 20 square feet in area per side, shall not have more than two sides, and shall not exceed a height of six feet. Either an attached sign or a freestanding sign may be permitted, but not both. No sign shall project into any required yard. The sign may be illuminated but not flashing.*

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Signage will meet code.

now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Conditional Use Permit** to allow a private non-profit club in OR2 Office Residential zoning district; **AND** does hereby grant relief from Item A because it would prove to be an unnecessary hardship to remove the existing buildings; and **SUBJECT** to the following Conditions of Approval:

Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a private non-profit club until further review and approval by the Board.
3. A landscape plan must be submitted to Planning and Design Services for review and approval before building permits can be issued.
4. Applicant will pave the existing gravel parking area within one year of approval of the conditional use permit.

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

Waivers:

(Waiver #1) A waiver from section Chapter 10 Part 2 of the Land Development Code to provide a 7 ft screen with an existing 7 ft wooden fence instead of an 8 ft screen, to eliminate a portion of the screen along the western property line, to provide half of the required plantings (Type A trees) and to allow an existing

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structure and proposed pavilion to encroach into the required 10 ft landscape buffer area. (22-WAIVER-0187)

(Waiver #2) A waiver from section 5.5.1.A.3.a to not provide the required 3 ft masonry, stone or concrete wall. (22-WAIVER-0186)

03:05:43 On a motion by Member Vozos, seconded by Member Bond, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

(Waiver #1) WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since the applicant is proposing to still provide all screening and half of the required type A trees in the landscape buffer areas; and

WHEREAS, the Board further finds that the waiver will not violate the specific guidelines of Plan 2040; and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is still going to provide a 7 ft screen and half of the required type A trees in the required landscape buffer area. It would be an unnecessary hardship to have the applicant tear down an existing historical structure to meet the required 10 ft LBA; and

WHEREAS, the Board further finds that the applicant will provide a 7 ft privacy fence that will be sufficient to screen the property from other adjacent properties. The elimination of the LBA is needed so the applicant can retain the existing historic structure on the site. The applicant will provide trees on the site but there is insufficient space on the property to provide the full tree requirement based on the location of the existing structures and parking on the site. The size of the lot further restricts the location of trees on the site; and

(Waiver #2) WHEREAS, the Board further finds that the waiver will not adversely affect adjacent property owners since there are other properties next door and on the same block with parking on the side of their property that do not have a 3 ft masonry wall. The 3 foot masonry wall would also restrict access and maneuvering in the parking area; and

WHEREAS, the Board further finds that the waiver will not violate specific guidelines of Plan 2040; and

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WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant because the existing parking area is a very small space and a masonry wall will make parking and maneuvering difficult; and

WHEREAS, the Board further finds that the applicant has incorporated other design measures such as providing street trees along Market Street, preserving multiple trees throughout the site as well as providing a 7 ft screen on a majority of the site with an existing wood privacy fence; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested (**Waiver #1**) waiver from section Chapter 10 Part 2 of the Land Development Code to provide a 7 ft screen with an existing 7 ft wooden fence instead of an 8 ft screen, to eliminate a portion of the screen along the western property line, and to allow an existing structure and proposed pavilion to encroach into the required 10 ft landscape buffer area. (22-WAIVER-0187); AND the requested (**Waiver #2**) waiver from section 5.5.1.A.3.a to not provide the required 3 ft masonry, stone or concrete wall. (22-WAIVER-0186).

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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PUBLIC HEARING

CASE NUMBER 22-CUP-0271

Request:	Conditional Use Permit for a Private Institutional Use
Project Name:	Down Syndrome of Louisville Educational Foundation
Location:	5001 S Hurstbourne Parkway
Owner:	D.S. Education Foundation
Applicant:	AL Engineering Inc.
Representative:	AL Engineering Inc.
Jurisdiction:	Louisville Metro
Council District:	26 - Brent Ackerson
Case Manager:	Molly Clark, Planner II

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

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

Agency testimony:

03:08:16 Molly Clark presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Richard Bush, 2950 Breckinridge Lane Suite 9, Louisville, KY 40220

Alex Rosenberg, AL Engineering, 13000 Middletown Industrial Boulevard Suite A, Louisville, KY 40223

Kurt Graeser, 7709 Coral Bells Court, Louisville, KY 40220

Summary of testimony of those in favor:

03:12:35 Richard Bush, the applicant's representative, presented the applicant's case (see recording for detailed presentation.) Mr. Bush said hours of operation are usually 8:00 a.m. to 5:00 p.m. There is no intent to change the hours of operation from what is currently in place.

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03:15:14 Alex Rosenberg continued the presentation and said he was available to answer any questions.

03:16:50 Kurt Graeser, a Board member of Down Syndrome of Louisville, continued the presentation and gave more information about the services the facility provides (see recording.)

The following spoke in opposition to the request:
No one spoke.

03:20:18 Board Members' deliberation

03:22:19 On a motion by Member Vozos, seconded by Member Bond, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal meets all applicable policies of the Comprehensive Plan; and

WHEREAS, the Board further finds that the proposed improvements are compatible with surrounding development and land uses; and

WHEREAS, the Board further finds that the subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed and approved the proposal; and

WHEREAS, the Board further finds that:

1. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

Private institutional uses, except for such uses specifically regulated elsewhere in this LDC, may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, and U-N zoning districts upon the granting of a Conditional Use Permit and compliance with the listed requirements:

- A. Except in the R-R zoning district, all structures, except fencing, and all

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off-street parking shall be at least 30 feet from any property line adjacent to an existing residential use or residential zoning district. In the R-R zoning district all structures, except fencing, shall be at least 150 feet from any property line and all off-street parking shall be at least 30 feet from any property line. ***Although the existing/proposed structures are more than 30 feet from the residential uses and residential zoning along the north and east property line, the off street parking is closer than 30 ft along the northern, easter, and southern property line. The applicant will need relief from this standard.***

- B. The applicant must demonstrate that the impact of the traffic generated by the use can be mitigated. ***A traffic study was not required by Transportation Planning.***
- C. Off-street parking not located within a driveway shall be located to the side or rear of the building(s). The number of required off-street parking spaces shall be determined by the Planning Director in consultation with the Director of Public Works based on the standards for the closest comparable use and on the particular parking demand and trip generation characteristics of the proposed use. ***There is existing off-street parking on the site. Transportation Planning has reviewed and approved the parking numbers.***
- D. All activities shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99). ***The proposal will comply with the Metro Noise Ordinance.***
- E. The Board of Zoning Adjustment may set hours of operation for the institutional use in order to minimize potential negative impacts on surrounding residential properties. ***Hours of operation are usually 8:00 a.m. to 5:00 p.m. There are no plans to change that from what is currently in place.***

Now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit to allow a private institutional use to construct a detached multipurpose room, an addition to the existing structure and a detached garage; and does hereby **provide relief from Item A**, because the plan proposes that

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the proposed parking area will have no major impact on the residential area; and because some of the parking is existing; and because the 20-foot buffer is being provided along all of the property lines where the parking is encroaching. Adequate screening and buffering is being provided; and **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a private institutional use until further review and approval by the Board.

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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PUBLIC HEARING

CASE NUMBER 22-CUP-0315

Request:	Conditional Use Permit for outdoor alcohol sales and consumption
Project Name:	Senora Arepa Restaurant
Location:	117 St. Matthews Avenue
Owner:	Louisville Timber & Wooden Products Co.
Representative:	Forza Architecture, Inc. - Stephen Tracy
Jurisdiction:	City of St. Matthews
Council District:	9 - Bill Hollander
Case Manager:	Joel Dock, AICP, Planning Coordinator

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

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

Agency testimony:

03:24:48 Joel Dock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Eric Ferry, Forza Architecture, 654 South Shelby Street, Louisville, KY 40202

Summary of testimony of those in favor:

03:28:05 Eric Ferry, the applicant's representative, presented the applicant's case and showed a Power Point presentation (see recording for detailed presentation.) He noted that the Louisville Metro noise ordinance states that outdoor dining areas for the sale and consumption of alcohol shall cease by 12:00 a.m.; the restaurant closes at 10:00 p.m.

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The following spoke in opposition of the request:

No one spoke.

03:31:30 Board Members' deliberation

03:31:25 On a motion by Member Bond, seconded by Vozos, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Adjustment finds that the proposal is consistent with applicable policies of Plan 2040; and

WHEREAS, the Board further finds that the proposal is compatible with surrounding land uses and the pattern of the form district. Most exterior improvements were provided with the prior development on the site; and

WHEREAS, the Board further finds that the site is in an existing area of development and utilities would appear to be readily available; and

WHEREAS, the Board further finds that the waiver to reduce the number of parking spaces was heard by the Louisville Metro Planning Commission and recommended for approval; and

WHEREAS, the Board further finds that:

1. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

42. Outdoor Alcohol Sales and Consumption/Indoor Entertainment Activity for a Restaurant in the C- 1 and CN Zoning Districts

Outdoor alcohol sales and consumption and/or indoor live entertainment for a restaurant may be permitted in the C-N and C-1 zoning districts with prior approval of a development plan by the City of St. Matthews City Council, upon the granting of conditional use permit and compliance with the listed requirements:

- A. All outdoor areas for the sale and consumption of alcohol must have

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designated boundaries which must be shown on the site plan and on the property itself Dining and consumption activities shall occur only within the designated boundaries.

B. Outdoor dining areas adjacent to the public right-of-way shall contain a physical barrier that is at least three feet in height. The barrier should be designed to permit existing legal access from building to the adjacent public right-of-way.

C. Outdoor dining areas that include the sale and consumption of alcohol within 50 feet of a residentially zoned or used property shall provide a six foot continuous screen as part of the designated boundary for the areas of the outdoor area within 50 feet of residentially used or zoned property. The continuous screen shall be in conformance with Article 12 . (Implementation Standards). Any lighting associated with the outdoor dining area shall be directed down and away from adjacent properties.

D. This conditional use permit shall be limited to restaurant uses in the C-N and C-1 that hold the following types of ABC licenses:

1. Restaurant liquor and wine license by the drink for 100 plus seats;
2. Restaurant wine license by the drink for restaurants with seating for 50 and receives at least 70 percent gross receipts from food sales

E. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 12:00 A.M. There shall be no outdoor electronic or other sound provided in outdoor areas, including but not limited to public address, radio, television, or other media.

F. The indoor entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99) and shall be in compliance with all applicable St. Matthews Noise Ordinances.

G. The Board may require additional and more restrictive requirements than those listed above based on the conditions of the specific location and the characteristics of the specific restaurant.

H. The Plan for any outdoor dining area not subject to detailed district development plan approval shall receive the approval of the City of St. Matthews City Council prior to approval of a conditional use permit by the Board of Zoning Adjustment

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Staff: The proposal will comply with each of the listed standards for the conditional use permit and all conditions of approval.

Now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Conditional Use Permit** for outdoor alcohol sales in a C-1, commercial zoning district (Article 15, Sec. 42 – City of St. Matthews), **SUBJECT** to the following Conditions of Approval:

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 until further review and approval by the Board.

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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PUBLIC HEARING

CASE NUMBER 22-APPEAL-0011

Request:	Conditional Use Permit for childcare and front setback variance
Project Name:	Poplar Montessori
Location:	4624 Poplar Level Road
Owner/Applicant:	Poplar Montessori - Pilar Cruz
Jurisdiction:	Louisville Metro
Council District:	21 - Nicole George
Case Manager:	Joel Dock, AICP, Planning Coordinator

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

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

Agency testimony:

03:32:35 Joel Dock presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation). He noted that relief is being requested from Item A 3 (see staff report). He said justification for that relief is already provided in the Standard of Review in the staff report.

The following spoke in favor of the request:

Pilar Cruz, 4624 Poplar Level Road, Louisville, KY 40213

Summary of testimony of those in favor:

03:41:20 Pilar Cruz, the applicant, presented the case and responded to questions from the Board members (see recording for detailed presentation.) She noted that hours of operation are Monday through Friday, from 8:00 a.m. to 4:30 p.m.

The following spoke in opposition to the request:

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No one spoke.

03:45:14 **Board Members' deliberation**

Conditional Use Permit for Child Care Center (LDC 4.2.19) with relief from item A.3 to allow off-street parking in front of the residence

03:46:15 On a motion by Member Bond, seconded by Member Vozos, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with the land use and development policies of Plan 2040. The proposed use advances the equitable distribution of community services and promotes neighborhoods that have access to the resources necessary to maintain health and well-being, including access to expanded child care services; and

WHEREAS, the Board further finds that the proposal is compatible with the area and the general character of the area. The site is located along an arterial level roadway, which contains a wide variety of uses from residential to industrial, and the proposed use and improvements are consistent with the development of the area, including parking in front of primary structures; and

WHEREAS, the Board further finds that necessary transportation facilities are proposed to ensure the safety of customers/clients and the general public. A parking area is included which allows for vehicles to enter the property and safely turn around and be forward facing before exiting back onto Poplar Level Road. Other transportation options are available, including public sidewalks and transit. Child care is further regulated by Kentucky Administrative Regulations Title 922 (922 KAR); and

WHEREAS, the Board further finds that:

1. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

Child and Adult Care Centers may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, PRD, R-7, TNZD, M-1, M-2, and M-3 districts upon

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granting of a Conditional Use Permit and in compliance with the listed requirements:

A. Existing Residential Structure

1. The structure shall remain, or property improved so that the exterior design and ornamentation is residential in character and compatible with the immediately surrounding neighborhood and form district(s).
2. Should the structure remain, there shall be no alterations or improvements which would impair future use of the structure as a primary residence.
3. Associated off-street parking shall not be located between the principal structure and the front property line or within the street side yard setback, except on driveways leading to the home, rear yard, or garage.
4. Outdoor activities shall be limited to the rear yard, except that corner lots may utilize the street side yard. No play equipment in excess of 4' in height is allowed in the required street side yard of the form district.

B. Industrial Zoning Districts – Standards Not applicable.

C. Drainage Control – Preliminary plan approval must be received by the Louisville Metro Sewer District (MSD).

D. Fence – A fence shall enclose all areas for outdoor activity.

E. Signs – In residential zoning districts, there shall be allowed one non-illuminated attached business sign not to exceed 4 square feet in area, regardless of the form district. No changing image signs shall be permitted.

F. Hours – No outdoor activities shall occur between the hours of 9 P.M. and 7 A.M., except for pick-up/drop-off.

G. Buildings – All buildings and structures shall conform to the requirements of the zoning and form district in which they are located.

H. The use shall be in compliance with all applicable regulations as administered by the Kentucky Cabinet for Health and Family Services.

Staff: The existing residential structure will not be modified in a manner which prevents future use as a residence and the operator is the primary resident. State

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license requirements for Type II facilities require that the home remain the primary residence of the operator. Improvements will be made to the interior of the structure to the satisfaction of state building and fire officials but not to the extent that the property is no longer a residence. The applicant will be installing hard-wired smoke detectors and exit signage to comply with licensing requirements. Outdoor activities occur in the rear yard, which is secured by a wood fence.

Pick-up/drop-off will be provided in an area parallel to Poplar Level Road from the existing driveway to ensure the safety of children, their families, and users of the roadway, which is an arterial roadway and does not allow for on-street parking/loading. The pick-up/drop-off area proposed allows for vehicles to enter the property and safely turn around and be forward facing before exiting back onto Poplar Level Road. This roadway contains a wide variety of uses from residential to industrial, and the proposed use and improvements are consistent with the development of the area, including parking in front of primary structures. Parking for the primary resident and one non- resident employee are available using the current garage and carport and this parking does not interfere with the proposed pick-up/drop-off zone. Other transportation options are available, including public sidewalks and transit.

The use will comply with all applicable regulations as administered by the Kentucky Cabinet for Health and Family Services

Now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Conditional Use Permit** for Child Care Center (LDC 4.2.19) with relief from item A.3 to allow off-street parking in front of the residence. **SUBJECT** to the following Condition of Approval:

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

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not so exercised, the site shall not be used for child care center until further review and approval by the Board.

3. The child care center shall be limited to a maximum of 12 children.
4. Passenger pick-up/drop-off shall occur in the area designated on the approved plan, unless otherwise approved by the Board of Zoning Adjustment.

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

Variance from Land Development Code (LDC), Section 5.3.1.C to encroach upon the required front yard:

03:48:00 On a motion by Member Bond, seconded by Member Vozos, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variances will not adversely affect public health, safety or welfare as the setback does not impede the safe movement of vehicles or pedestrians and increases the ability for vehicles to safely enter and exit the subject site from/to an arterial roadway; and

WHEREAS, the Board further finds that the requested variances will not alter the essential character of the general vicinity as the subject site is located along an arterial roadway containing a wide variety of uses from residential to industrial, and the proposed improvements are consistent with the development of the area and the form, including parking in front of primary structures; and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the setback does not impede the safe movement of vehicles or pedestrians and increases the ability for vehicles to safely enter and exit the subject site from/to an arterial roadway; and

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WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposal does not cause a hazard or nuisance or result in adverse impacts to public health, safety, or welfare; and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the proposed setback variance is associated with child care services and a desire to limit improvements to the exterior while also providing safe vehicular movement; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as relief in accordance with items 'a' through 'd' of the standard of review have been adequately justified; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Variance** from Land Development Code (LDC), Section 5.3.1.C to encroach upon the required front yard (Requirement: 30 feet; Requested – 12 feet; Variance – 18 feet.)

The vote was as follows:

YES: Members Bond, Horton, Vozos, and Chair Howard.

ABSENT: Members Leanhart, Ford, and Vice Chair Buttorff.

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The meeting adjourned at approximately 5:09 p.m.

Chair

Secretary