

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

AUGUST 24, 2015

A Special Meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, August 24, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

David Proffitt, Chairperson
Mike Allendorf, Vice Chairperson
Rosalind Fishman, Secretary
Betty Jarboe
Frederick Liggin
Dean Tharp
Paul Bergmann

Members absent:

No one

Staff members present:

Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
Sherie Long, Landscape Architect
Pam Brashear, Management Assistant
Beth Stevenson, Management Assistant (minutes)

Minutes were corrected for Case No. 14CUP1003 per the Board on September 21, 2015.

The following cases were heard:

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APPROVAL OF MINUTES

**AUGUST 17, 2015 BOARD OF ZONING ADJUSTMENT MEETING MINUTES
FOR CASE NO. 15VARIANCE1029 ONLY:**

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

RESOLVED, that the Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on August 17, 2015 for Case No. 15VARIANCE1029 ONLY.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1035

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

Project Name: New House Addition

Location: 1129 Goss Avenue

Owners: Kansas Andrade & Zach Driscoll
395 Normandy Road
Taylorsville, KY 40071

Applicant: Same as owners

Representative: Tim McIntyre
6816 Spring Lawn Court
Louisville, KY 40291

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 10—Steve Magre

Staff Case Manager: Sherie' Long, Landscape Architect

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

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said after the applicant submitted the survey, realized that they needed another variance for the

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northwest property side. Ms. Long said the applicant will need to discuss the gutter overhang.

The following spoke in favor of this request:

Zach Driscoll.

Summary of testimony of those in favor:

Zach Driscoll, the owner, said he talked to his architect regarding the overhang and submitted a plan showing that it will not encroach onto his neighbor's property. Chair Proffitt said it appears the overhang will not be an issue as long as the gutters aren't any wider than 6 inches.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the August 24, 2015 public hearing proceedings.

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

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

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review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, Section 5.4.1.C.6.b of the Land Development Code to allow a proposed home addition to encroach into the required side yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the new addition will be the same distance from the adjacent property as the existing house; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the new two-story addition is roughly located in the same footprint as what was removed; and because the location of the addition is similar to other homes in the area; and the construction materials will be compatible with the existing home and other homes in the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the new addition is in the rear of the property; and because the applicant submitted a plan showing that the overhang will not encroach into the adjacent neighbor's property; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the new addition will be located similar to the location of the addition which was removed; and because there are other houses in the area which are located close to the side property line with little or no setback being provided; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is very narrow limiting the amount of space for the new addition; and because there was previously an addition in roughly the same location as the proposed; 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 the foundation would need to be removed and rebuilt;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed home addition to be 0.77 feet from the northwest property line.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1003

Request: Conditional Use Permit to allow a proposed staging lot for trucks and trailers in an M-3 zoning district.

Project Name: JBS Cabel Street Truck Staging

Location: 151 & 201 Cabel Street

Owners: Swift Pork Company
c/o John Cliff
1200 Story Avenue
Louisville, KY 40206

Louisville Gas & Electric Company
S. L. Cockerill, Director Operating Services
220 West Main Street
Louisville, KY 40202

Metropolitan Sewer District
c/o Chief Engineer
700 West Liberty Street
Louisville, KY 40203

Applicant: JBS USA, LLC & Swift Pork Company
John Cliff
1200 Story Avenue
Louisville, KY 40206

Attorneys: Frost Brown Todd, LLC
Glenn Price, Esq. & Bart Greenwall, Esq.
400 West Market Street, Suite 3200
Louisville, KY 40202

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

Jurisdiction: Louisville Metro

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COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Steve Hendrix, Planning Supervisor

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

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

Agency Testimony:

Staff case manager, Steve Hendrix discussed the case summary, standard of review and staff analysis from the staff report. He pointed out the single family residences and other commercial businesses in the area on the PowerPoint picture; and said that this operation would open 24 hours a day. The site plan shows that the TRU's (transportation refrigeration units) will be located in the northwestern part of the property near the entrance and along the northern property line adjacent to a salvage yard. The opposition is concerned about the noise, emissions and other nuisances from the TRU's.

The following spoke in favor of this request:

Glenn Price, Attorney.

Todd Royer, 500 W. Jefferson Street, Suite 1600, Louisville, KY 40202.

Christopher Long, Gradient, 20 University Road, Cambridge, MA 02138.

Todd Springer, VP, QK4, 1046 E. Chestnut Street, Louisville, KY 40204.

Chris Sanders, 1228 E. Breckinridge Street, Louisville, KY 40204.

Bill Kaufell, 6252 Middle Ridge Road, Newport, PA 17074.

John Cliff, JBS/Swift, 4216 Machupe Drive, Louisville, KY 40241.

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Bart Greenwall, Attorney.

Summary of testimony of those in favor:

Glenn Price, the applicant's attorney, said the proposal complies with the requirements of the Land Development Code and Cornerstone 2020; and submitted the justifications to staff prior to the hearing. He said the proposal will not have any adverse effects on neighboring properties because the TRU's on site do not cause emission levels that would raise any health concerns per his expert's study. In addition to the existing flood wall, a sound attenuation fence on the east side will be added to mitigate noise. Mr. Price said they will also be asphaltting the portion of the property that is creating dust. Mr. Price discussed conditions of approval they will agree to if approved, to mitigate other possible nuisances.

Todd Royer said he has a degree in chemical engineering and has worked many years consulting companies with regard to air pollution control and compliance. Mr. Royer said he received records of emissions from the applicant and measured concentration of various pollutants stating that levels are lower than highway pollutants.

Christopher Long said he has a Doctorate in Environmental Health and specializes in air pollution and inhalation risk assessment. He said he prepared a 20 page report last year which overestimated potential exposures. The study proved that diesel exhaust levels would be at similar levels even in the absence of the TRU's.

Todd Springer, V.P, of QK4 civil engineering firm, said he has worked for this company over 20 years and specializes in transportation planning. Mr. Springer said information submitted by Ms. Cunningham today is inaccurate and lacking data. He explained the regulations regarding the size of various roads (interstates, medium and low volume roads). He said semi-trucks swing out into more than one lane which is common in urban areas; and said the only location this would happen near this site is on Story Avenue. Once the bridges project is finished and Witherspoon opens back up, this will not occur.

Glenn Price added that the predominant pollution source is due to the nearby expressway and the traffic in Butchertown. He said the lot will have to be a 24/7 operation because truck drivers make deliveries all day long.

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Chris Sanders said he is representing the union workers for JBS/Swift, and has attended numerous meetings over the years for this case. He said before the trucks were parked at the Cabel Street lot, they parked on the side roads and neighbors' complained. He said this alleviates a lot of parking problems in the area and is better for the community as a whole. He said JBS/Swift is the third largest manufacturing company in Louisville with over 1,000 workers which provides good salaries, pensions and health insurance.

Bill Kaufell said he is the applicant's noise expert, and explained that most of the noise occurs in the washing area and that the noises are contained on the lot itself. He said the flood wall, trailers and the attenuation fence will all provide noise barriers.

Discussion/Questions:

Member Bergmann suggested extending the noise barrier fence down further. Mr. Price agreed if necessary and that the Board could add as a condition of approval. Member Fishman asked if the trucks backing in and out make noise. Mr. Price said there are only three trips per hour on an average; and that the trucks never back up. Member Jarboe asked if there are any fueling stations. John Cliff with JBS/Swift, said there are two, one for the trucks and one for the shag trucks. Member Allendorf asked how many trucks are running at one time. Mr. Cliff said 25 to 30 maximum per day.

Member Turner said he visited the site and noticed dust coming off the site. Mr. Price said they are having it paved; and are controlling the dust as APCD has asked them to do.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

Jonathan Salomon, Attorney, Tachau Meek PLC, 3600 National City Tower, 101 S. 5th Street, Louisville, KY 40202.

Sarah Lynn Cunningham, PE, 1711 Edgeland Avenue, Louisville, KY 40204.

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Natasha Maze, 1401 Quincy Street, Louisville, KY 40206.

Lauren Anderson, 1411 E. Breckinridge Street, Louisville, KY 40204.

Andrew Cornelius, 806 E. Washington Street, Louisville, KY 40206.

Summary of testimony of those in opposition:

Jon Salomon, Attorney for the Butchertown Neighborhood Association, said the proposed use doesn't meet the requirements of the Land Development Code, Cornerstone 2020 or the Butchertown Neighborhood Plan. He said this is a new use for the property and the applicant must prove how negative impacts will be mitigated. Mr. Salomon said conditions of approval that would be required by the Land Development Code should be implemented by the Board regarding: limiting the hours of operation; semi-trailers screened from view from abutting residential property and right-of-ways; implement applicable Landscape Design Requirements; include Vehicle Use Area (VUA) and Landscape Buffer Areas (LBA's) between right-of-ways/residential uses; VUA perimeter planting; tree canopy requirements met; appropriate fencing and remove noncompliant razor wire or barbed wire fences; provide sidewalks in abutting right-of-way. He said other conditions of approval are appropriate to promote the Goals and Objectives of the Comprehensive Plan and the Land Development Code regarding the use of property for temporary outdoor storage of meat products on employment of hybrid/electric transport refrigeration units; and install proposed "Acoustifence" sound attenuation product along the entire perimeter abutting residential uses or right-of-way. Mr. Salomon said the pollution experts for the applicant haven't submitted quantifiable emissions or ambient air quality from the property, but used a model or averages. He said APCD also has concerns about particulate matter on this site; and said it is serious and can cause bronchitis, heart attacks and other health related issues.

Mr. Salomon said other area residents and speakers will discuss the nuisances including various pollutants, light nuisances from the property and trucks, dust noise and visual impacts.

Support again:

Bart Greenwall, the applicant's environmental attorney, said he objects to information they just received from Ms. Cunningham. Mr. Price said he also

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objects to a handout named "Updated Diesel Health Issues" by Chad Bailey, stating that he doesn't know who this gentleman is or his credentials.

Back to Opposition:

Sarah Lynn Cunningham said she is a licensed professional engineer specializing in the environment, chemical and sanitary disciplines and explained her experience and job history to the Board. She said she worked for MSD from 1990 to 2004 and is very familiar with this site, stating that they maintained and stored MSD and LG&E trucks and equipment on this lot. She said diesel trucks could only idle for 15 minutes to warm up etc. She said her biggest concern is the applicant not taking samples of the emissions coming from this site. She suggested that the applicant look at new technology to reduce emissions, noise and other nuisances.

Natasha Maze said her backyard backs up to this site, and didn't know they were going to run refrigerated trailers all day long. She said the dust and emissions are constant. She said she met with Mr. Cliff because semi-trucks were traveling down Webster and shouldn't be. She said it feels like a truck stop and that Swift should be more socially responsible and follow the rules like everyone else.

Lauren Anderson said she was the Director of APCD from 2008-2013 and prior to that was their attorney. She said she has counted up to 75 trailers, and doesn't feel they are clearly delineated on the site. She said she feels the emissions may be underestimated since the pollutants haven't been measured on the site. Modeling is a powerful tool as long as the data is accurate. She said APCD doesn't monitor mobile sources of pollution and since the trailers are being moved and feels this is a way to circumvent the regulations. She said diesel exhaust is carcinogenic and campaigns are in effect to reduce the emissions and idling trucks. Ms. Anderson concluded that they should use water to suppress the dust instead of surfactant.

Andrew Cornelius, an area resident, read some statements from other neighbors into the record, who could not stay for the entire meeting. He said Emily Boone has lived in the area for 30 years; and said she was almost hit on her bike by one of the shag trucks. Not pedestrian friendly. Mark Duffy wrote that the trucks that drive on Adams Street literally shake his house; and observed a semi-truck that had rolled over a car. He said the streets are not designed to handle this kind of traffic. Todd Turner wrote that the truck drivers go through stop signs and make

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illegal turns. He wrote that the fumes are bad and that the Board should impose some restrictions to protect the homeowners and the neighborhood in general.

Andrew Cornelius explained the history of Butchertown, which started out mostly residential. The area was eventually rezoned because people couldn't get homeowners insurance after the Great Flood in 1937. He said the late Jim Segrest went above and beyond to preserve Butchertown, both residential and business. Mr. Cornelius said the Board should impose conditions of approval for the hours of operation; only allow hybrid trailers; buffering; landscaping and anything else that would make it more acceptable. He said the pork industry is very profitable, and that JBS/Swift can afford to make some appropriate changes for the residents and this historic neighborhood.

Discussion:

Member Turner said he hopes the neighbors' and the applicant come together in a positive manner to resolve some of these issues like Rubbertown did.

Member Jarboe said the Butchertown Neighborhood Association has brought up important issues that need to be addressed before she can make a decision.

Chair Proffitt agreed, and also because they just received new information today.

Mr. Price said he doesn't feel he can adequately rebut all the issues in 15 minutes. He said they could meet with the neighbors and continue this case. Mr. Price said they could pave the property now and asked Mr. Salomon if he had any objection to this. Mr. Salomon said no, but that water runoff needs to be addressed and any other requirements that need to be met.

Deliberation:

The Board discussed continuing this case to allow the applicant time to meet with the neighbors' to discuss mitigation efforts for the nuisances and to actually measure the amount of pollutants on this site. Chair Proffitt said they could give each side an hour with 15 minute rebuttal.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the August 24, 2015 public hearing proceedings.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **OCTOBER 19, 2015** to allow the applicant and BNA time to work out some of the issues such as:

1. Submit quantifiable emissions from the property.
2. Use of hybrid/electric transport refrigeration units.
3. Acoustical Fence extended beyond what was presented on the plan; and other noise mitigation efforts.
4. Hours of operation being limited.
5. Adding sidewalks.
6. Dust mitigation; possibly using water instead of surfactant.
7. Enhanced buffering landscaping and fencing.
8. Mitigate lighting from trucks into neighbors' properties and from the facility.
9. Limit the streets the trucks can travel on to get to and from the site.
10. Anything else that would make the site more compatible with the existing residential; and

BE IT FURTHER RESOLVED that each side will have one hour with a 15 minute rebuttal; and that staff keep this agenda light

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1057

Request: Variance to allow the addition not to be constructed at the right-of-way line; a waiver to allow parking between the building and right-of-way; a waiver to eliminate the masonry wall; and a waiver to allow the 5-ft. Vehicle Use Area (VUA) and Landscape Buffer Area (LBA) to be in the Franck Avenue right-of-way.

Project Name: Red Hog Market

Location: 2622 Frankfort Avenue

Owners: Katherine Garrett & Robert Hancock
c/o Blue Dog Bakery, LLC
2868 Frankfort Avenue
Louisville, KY 40206

Applicant: Same as owners

Representative: Architectural Artisans
Jeffrey Rawlins, Architect
748 East Market Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 9—Bill Hollander

Staff Case Manager: Steve Hendrix, Planning Supervisor

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

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

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Agency Testimony:

Staff Case Manager, Steve Hendrix discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is requesting a variance and three waivers to redevelop a vacant service station for a butcher shop and restaurant with outdoor seating and include 4 parking spaces in the front. The applicant is proposing a decorative fence in place of the wall.

The following spoke in favor of this request:

Jeff Rawlins, the applicant's architect.

Councilman Bill Hollander, 9th District, 601 W. Jefferson Street, Louisville, KY 40202.

Kathy Schmitt, V.P. of the Frankfort Avenue Business Association, 118 Hillcrest Avenue, Louisville, KY 40206.

Beverly Weinhold, 116 Franck Avenue, Louisville, KY 40206.

Christopher Harrell, contractor. Didn't sign in.

Katherine Garrett, owner.

Summary of testimony of those in favor:

Jeff Rawlins, the applicant's architect, said the request will be a dual business with a retail meat store and restaurant. He said the restaurant will be facing Frankfort Avenue with an outdoor patio and the butcher shop will be behind it. He said there is currently parking in the rear, but added four spaces in the front. Mr. Rawlins said they will be doing a substantial amount of landscaping, and that no walls exist on this portion of Frankfort Avenue. Member Jarboe asked if they will include decorative fencing. Mr. Rawlins said yes, which will be placed near the bike rack and landscaping in the corner.

Councilman Bill Hollander, said this property has been an unsightly for many years; and is looking forward to a new business here. He said he also approves of the proposed four parking spaces in the front since parking is limited along this corridor.

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Kathy Schmitt, V.P. of the Frankfort Avenue Business Association and a local business owner, said she is in support of this proposal and will be an economic benefit for not only the business, but for other businesses in the area.

Beverly Weinhold said she lives very close to this property and said she couldn't think of a better business for this property but would like traffic, the use of the alley and noise levels to be alleviated. Chair Proffitt asked what her ideas would be to mitigate. Ms. Weinhold said she hasn't had a lot of time to think about it; and added that she is also concerned with the safety of pedestrians. Chair Proffitt said the applicant is proposing a lot of landscaping, which will help block the noise.

Christopher Harrell, the applicant's contractor, said he thinks their design is the best for the business and sensitive to the adjacent residences.

Chair Proffitt asked Mr. Hollander to come back to the podium. Councilman Hollander said he thinks the business with the landscaping will make the streetscape more pleasant.

Mr. Rawlins said the alley will be used less with the entry on Franck. He said the landscaping will buffer some of the noise, but won't be too large that you can't see over it.

Member Fishman asked about the hours of operation. Mr. Rawlins said the restaurant will be normal business hours closing at 10 or 11:00 p.m. Chair Proffitt asked when the dumpster would be picked up. Mr. Rawlins said at 6:00 a.m.

Katherine Garrett, the owner, said they also own Blue Dog Bakery where their dumpster is picked up at 6:00 a.m. and would like them both dumped at a later time. Chair Proffitt asked if she would agree to a condition of approval that the dumpster will not be emptied any earlier than 7:30 a.m. Ms. Garrett agreed and said she would work with Waste Management.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Bergmann said he thinks the parking spaces in the front are too small. Chair Proffitt said they can be 8 ½ feet wide at the minimum. Chair Proffitt said he likes landscaping over a stark wall. The Board, in general, were pleased with the project.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the August 24, 2015 public hearing proceedings.

Variance—To allow an addition not to be constructed at the right-of-way line:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.5.1.A.2. from the Land Development Code to allow an addition not to be constructed at the right-of-way line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the addition will be added to the rear of the existing building which will allow for easier deliveries; will allow outdoor dining to be along the street and for the integrity of the façade to be maintained; and

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WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity but will allow the façade of the service station to remain; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since it will be more than 40 feet away from the alley; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations but allows for the reuse of the existing service station for a proposed butcher shop and restaurant and allows outdoor dining in front along Frankfort Avenue;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the building addition to be 110 feet from the right-of-way setback **ON CONDITION** that the dumpster is not emptied before 7:30 a.m.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Waiver—To allow parking between the building and the right-of-way:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Chapter 5.5.1.3.A & C of the Land Development Code to allow parking between the building and the right-of-way; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners but will create additional parking and lessen the impact; and because it will be buffered by landscaping; and to some degree, will be similar to the existing appearance of the service station; and

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WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because four parking spaces will not impact the aesthetic nature of the corridor with landscaping and outdoor dining; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because this section of parking is primarily for the butcher shop patrons, so its traffic will be using more of the northern end of Franck Avenue; 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 considering the creative reuse of the building and flow pattern required for this retail and restaurant use;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow parking between the building and the right-of-way.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Waiver—To eliminate the required masonry wall:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.5.1.3.a. of the Land Development Code to not provide the required masonry wall; and

WHEREAS, the Board finds that the requested waiver will not adversely affect the adjacent property owners, because the applicant will be providing landscaping instead of the wall; and because there are no existing street walls on this part of the block; and

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WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because landscaping will be provided as a buffer and be more aesthetically pleasing considering there are no street walls along this portion of Frankfort Avenue; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant since an alternative design is proposed with landscaping and an outdoor dining area; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirement to be waived because the applicant is proposing landscaping and an outdoor dining area in place of the masonry wall;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the masonry wall.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Waiver—To allow the 5 foot Vehicle Use Area (VUA) and the Landscape Buffer Area (LBA) to be in the Franck Avenue right-of-way:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Chapter 10, Part 2 of the Land Development Code to allow the 5 foot VUA and LBA to be in the Franck Avenue right-of-way; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the waiver will allow the applicant to provide a landscape buffer to the western and southwestern neighboring properties and at the same time, meet parking space requirements at the rear of the property; and

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because there is an existing row of bushes along the southern portion of the property and Franck Avenue; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 but will allow the applicant to meet the landscaping and parking requirements; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant and meet the landscaping and parking requirements; and

WHEREAS, the Board finds that the strict application would create an unnecessary hardship on the applicant since the location of the landscaping would move to the east and affect the parking space requirements;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the required 5 foot VUA and LBA to be in the Franck Avenue right-of-way.

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

NO: No one.


NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

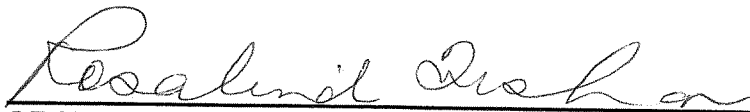
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The meeting adjourned at 1:52 p.m.



CHAIRPERSON



SECRETARY