

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

APRIL 18, 2016

A meeting of the Louisville Metro Board of Zoning Adjustment was held on April 18, 2016 at 8:30 a.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Members Present:

Mike Allendorf, Chair
Rosalind Fishman, Secretary
Paul Bergmann
Lester Turner
Lula Howard

Members Absent:

Betty Jarboe, Vice Chair
Dean Tharp

Staff Members Present:

Emily Liu, Director, Planning & Design Services
Steve Hendrix, Planning & Design Supervisor
Laura Mattingly-Humphrey, Planner I
Ross Allen, Planner I
Jon Baker, Legal Counsel
Sue Reid, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

April 4, 2016 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

00:08:25 On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on April 4, 2016.

The vote was as follows:

Yes: Members Fishman, Turner, Howard, Chair Allendorf

Absent: Vice Chair Jarboe and Member Tharp

Abstain: Member Bergmann

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PUBLIC HEARING

CASE NUMBER 16VARIANCE1013

Request:	Variance from the Land Development Code to allow the construction of a proposed dormer to encroach into the minimum side yard setback.
Project Name:	1904 Stevens Avenue
Location:	1904 Stevens Avenue
Owner:	John Gatchel
Applicant:	John Gatchel
Representative:	John Gatchel
Jurisdiction:	Louisville Metro
Council District:	8 – Tom Owen
Case Manager:	Ross Allen, 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:

00:09:13 Ross Allen presented the case and requested a continuance on behalf of the applicant (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Dan Madrega, 414 Baxter Avenue, Suite 101, Louisville, KY 40205

Summary of testimony of those in favor:

00:10:15 Dan Madrega spoke on behalf of the applicant. Mr. Madrega stated they would need a little extra time to secure the site survey for the lot. Chair Allendorf stated the next BOZA meeting will be May 2nd. Steve Hendrix

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confirmed the date, and asked Mr. Madrega if that would allow him enough time to secure the survey. Mr. Madrega stated that it should be. Ms. Liu stated that hearing will start at 10:00 a.m. instead of 8:30 a.m. that day (see recording for detailed presentation).

The following spoke in opposition to the request:

Shirley Lazrovitch, 1902 Stevens Avenue, Louisville, KY 40205

Summary of testimony of those in opposition:

00:12:53 Shirley Lazrovitch spoke in opposition to the request. Ms. Lazrovitch stated she just wanted to know for sure that they're talking about the three foot setback. Ms. Lazrovitch stated they are telling her they're going to be able to build on to the building without coming on her property, her roof or anything. Ms. Lazrovitch stated at the last hearing she submitted a statement that she did not want them on her property, and she still does not want them on her property (see recording for detailed presentation).

REBUTTAL:

00:14:57 Dan Madrega spoke in rebuttal. Mr. Madrega stated that with the new design that they've put together, there will be no need to be on her property or on her roof at all to construct (see recording for detailed presentation).

00:15:42 Board Members' deliberation

00:16:18 On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case Number 16VARIANCE1013 to the May 2, 2016 Board of Zoning Adjustment meeting.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Howard, and Chair Allendorf

Absent: Member Tharp and Vice Chair Jarboe

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PUBLIC HEARING

CASE NUMBER 16DEVPLAN1048

Request:	Category 3 Development Plan Review with associated Variances and Waiver
Project Name:	West Louisville Food Port
Location:	3029 W Muhammad Ali Blvd
Owner:	Louisville Metro Government
Applicant:	Caroline Heine, Seed Capital KY
Representative:	Kyle Galloway, Duncan Galloway Egan Greenwald
Jurisdiction:	Louisville Metro
Council District:	5-Cheri Bryant Hamilton
Case Manager:	Laura Mattingly-Humphrey, 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:

00:17:31 Laura Mattingly-Humphrey presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

00:24:12 Member Bergmann asked if there was much change from what was submitted earlier.

00:24:16 Ms. Mattingly-Humphrey stated yes, there are changes. She stated the bio digester was part of the original plan and they have removed that from the plan completely. Ms. Mattingly-Humphrey stated they have changed the parking location and the orientation of the buildings, but the uses have not changed (see recording for detailed presentation).

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00:24:41 Chair Allendorf asked if the buildings are going to be built at one time or if there were going to be different phases.

00:24:47 Ms. Matthingly-Humphrey stated she believes this is Phase I, but to clarify we should ask the applicant (see recording for detailed presentation).

The following spoke in favor of the request:

Stephen Reily, 1074 Cherokee Road, Louisville, KY 40204

Kyle Galloway, 9750 Ormsby Station Court, Louisville, KY 40223

Kelli Jones, 608 S. Third Street, Louisville, KY 40202

Summary of testimony of those in favor:

00:25:07 Stephen Reily spoke in favor of the request and referred to a Powerpoint presentation. Mr. Reily also responded to questions from the Board Members (see recording for detailed presentation).

00:40:48 Kyle Galloway spoke in favor of the request (see recording for detailed presentation).

00:46:21 Kelli Jones spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition to the request:

No one spoke.

00:49:16 Board Members' deliberation

00:51:54 On a motion by Board Member Howard, seconded by Board Member Bergmann, the following resolution was adopted:

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Variance #1, Variance from Chapter 5.5.1.A.2 of the Land Development Code to allow the proposed building to not be built at the corner of South 30th Street and West Muhammad Ali Blvd., AND to allow the proposed building to not be built at the corner of South 30th Street and West Market Street:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the location of the Food Port buildings away from the corners has no impact on public health, safety or welfare. The buildings are actually relatively near the corners and are designed to allow the development of community spaces such as plazas, marketplaces and a demonstration farm, and

WHEREAS, the Board further finds that there is not a façade of buildings along this street scape that will be disrupted by this request. In addition, the plan is to create public spaces that improve the character of the general vicinity. Also, a number of properties in the area are vacant or contain buildings that are not built to the street corners, and

WHEREAS, the Board further finds that the location of the buildings away from the street corners is part of an innovative site design that will create open and useful public spaces and synergies between the neighborhood and the business located on site and will not cause any sort of nuisance or hazard, and

WHEREAS, the Board further finds that the variance is not unreasonable as it will allow for the reuse of a vacant brownfield lot and the revitalization of a number of adjacent neighborhoods with minimal harm, and

WHEREAS, the Board further finds that the Food Port developers have created this parcel as part of the innovative design of the entire 24- acre site. This double-triangular design is in part designed to overcome the presence of two large main sewer lines bifurcating the property that create numerous design challenges for this parcel, and

WHEREAS, the Board further finds that the application of the provisions of this regulation would create an unnecessary hardship as it would prevent the full actualization of site uses (farm, plaza, garden, orchards, business delivery routes, etc...), and

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WHEREAS, the Board further finds that this is new construction to an existing site, and

WHEREAS, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare since safe pedestrian access is provided from the public rights-of-way to the building entrance and programmed outdoor space will be located along these street ROW intersections, and

WHEREAS, the Board further finds that the requested variances will not alter the essential character of the general vicinity since the proposed setbacks will follow a pattern of varying setbacks within the general vicinity of the subject site and significant features of the proposed use will be located at the ROW intersections, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since safe pedestrian access is provided from the public rights-of-way to the building entrance and since safe vehicular maneuvering has been provided, and

WHEREAS, the Board further finds that the requested variances will not allow an unreasonable circumvention of the zoning regulations since the proposed setbacks will follow a pattern of varying setbacks within the area, 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 since the size of the lot with three major street frontages makes it difficult to hold a 0' setback along both ROW intersections, 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 by not allowing the proposed structure on the site with accommodations for the proposed outdoor plazas and focal point facilities, 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

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from which relief is sought since the size of the lot and the multiple street frontages existed prior to the zoning regulation; and

Variance #2, Variance from Chapter 5.2.5.C.4.a of the Land Development Code to allow the buildings to exceed the maximum front setback of 25':

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that allowing the Food Port buildings to be further away from the streets will actually benefit the community as truck traffic will occur further away from the right-of-way and allow for the development of community spaces such as the food truck plaza and demonstration farm, and

WHEREAS, the Board further finds that there is not a façade of buildings along this street scape that will be disrupted by this request. In addition, the hope is to create public spaces that improve the character of the general vicinity. Also, the large, vacant industrial building directly across the street is located beyond the 25-foot setback, and

WHEREAS, the Board further finds that the location of the buildings away from the street frontage is part of an innovative site design that will create open and useful public spaces and synergies between the neighborhood and the business located on site and will not cause any sort of nuisance or hazard, and

WHEREAS, the Board further finds that the variance is not unreasonable as it will allow for the reuse of a vacant brownfield lot and the revitalization of a number of adjacent neighborhoods with minimal harm, and

WHEREAS, the Board further finds that the Food Port developers have designed the facility as part of the innovative design of the entire 24- acre site. This double-triangular design is in part designed to overcome the presence of two large main sewer lines bifurcating the property that create numerous design challenges for this parcel, and

WHEREAS, the Board further finds that the application of the provisions of this regulation would create an unnecessary hardship as it would prevent the full actualization of site uses (farm, plaza, garden, orchard, business delivery routes, etc...), and

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WHEREAS, the Board further finds that this is new construction to an existing site, and

WHEREAS, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare since safe pedestrian access is provided from the public rights-of-way to the building entrance and programmed outdoor space will be located along the street frontage, and

WHEREAS, the Board further finds that the requested variances will not alter the essential character of the general vicinity since the proposed setbacks will follow a pattern of varying setbacks within the general vicinity of the subject site and significant features of the proposed use will be located along the frontage of the development, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since safe pedestrian access is provided from the public rights-of-way to the building entrance and since safe vehicular maneuvering has been provided, and

WHEREAS, the Board further finds that the requested variances will not allow an unreasonable circumvention of the zoning regulations since the proposed setbacks will follow a pattern of varying setbacks within the area, 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 since this proposal is on such a large site with an innovative mix of uses that warrants a unique design, 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 by not allowing the proposed structure on the site with accommodations for the proposed outdoor plazas and focal point facilities, 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

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from which relief is sought since the size of the lot existed prior to the zoning regulation; and

Waiver #1, Waiver from Chapter 5.5.1.A.1.a of the Land Development Code to allow the proposed building to not be parallel to the street:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver relates to internal site uses and will not adversely affect adjacent property owners. The proposed innovative design of the site is intended to revitalize and re-use the property and is vast improvement over the current vacant lot. Furthermore, the function and nature of the proposed design compensates for the requirement for buildings to be parallel to the street and provides an enhancement to the neighborhood that does not detract from neighboring buildings, and

WHEREAS, the Board further finds that the proposed waiver is consistent with the goals and objectives of the Comprehensive Plan. For instance, Goal G1 of the Traditional Workplace Form District states that it is, in part, intended to support the redevelopment and enhancement of existing traditional and suburban workplaces. Goal G3 also states that there is a desire to "encourage[s] adaptive reuse and reinvestment." Finally, Goal G4 states in part that wants to "encourage innovation and flexibility in site design." Thus, the overall aim of the Comprehensive Plan and the Traditional Workplace Form District is amply addressed and the waiver does not violate the concepts embedded in the Comprehensive Plan, and

WHEREAS, the Board further finds that part of the design is driven by the reality of two (2) large sanitary sewer lines crossing the site in separate locations parallel to West Market Street. In order to meet the design goal of the proposed project and overcome the site constraints in place this waiver is needed and is the minimum necessary to provide relief, and

WHEREAS, the Board further finds that the unique and innovative site design that incorporates numerous site enhancements such as a plaza, a garden and a farm to create a nationally unique site more than exceeds district minimums and serves to compensate for non-compliance with the requirements that are to be

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waived. In addition, strict application of the provisions of the regulation would deprive the applicant of the ability to use the land for a Food Port, and

WHEREAS, the Board further finds that the waiver will not adversely affect adjacent property owners since safe pedestrian and vehicular access will be provided from the public rights-of-way to the building entrance, and

WHEREAS, the Board further finds that Guideline 2, policy 12 calls to encourage large developments in activity centers to be compact, multi-purpose centers designed around a central feature such as a public square or plaza or landscaped element. Guideline 3, policy 1 new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. The proposed building has orientation and layout toward South 30th Street with a focal point plaza located along the terminus of Jefferson Street and incorporates several public plaza spaces along the other two street frontages; therefore, the waiver will not violate specific guidelines of Cornerstone 2020, 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 to allow the layout of the building to incorporate the proposed uses within the needed square footage, 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 by requiring a parallel orientation toward the street frontage that could impeded the layout and needed incorporation of the uses with one another on the subject site, now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** Case Number 16DEVPLAN1048 Variances and Waiver, based on the applicant's justification, the staff report, and to reaffirm the prior decision of the Board of Zoning Adjustment in this case, also to include statements of those who spoke in favor in the previous case (Case Number 15DEVPLAN1108) as well as those statements received today.

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The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Howard, and Chair Allendorf

Absent: Member Tharp and Vice Chair Jarboe

00:56:18 On a motion by Board Member Howard, seconded by Board Member Bergmann, the following resolution was adopted:

Category 3 Plan:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the plan has met all of the requirements of the Land Development Code, and

WHEREAS, the Board further finds that since the relief has been provided everything else is in order; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Category 3 Development Plan for the West Louisville Food Port.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Howard, and Chair Allendorf

Absent: Member Tharp and Vice Chair Jarboe

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CASE NUMBER 16DEVPLAN1012

Request: Variances from the LDC to exceed maximum height and maximum front setback along Moser Road. Partial Sidewalk Waiver along a portion of Moser Road and the entirety of Watterson Trail.

Project Name: 1407 Moser Road
Location: 1407 Moser Road
Owner: Southeast Christian Church of Jefferson County, KY Inc.
Applicant: Scott Hannah – Heritage Engineering
Representative: Scott Hannah – Heritage Engineering
Jurisdiction: Louisville Metro
Council District: 19 – Julie Denton
Case Manager: Ross Allen, 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:

00:57:48 Ross Allen presented the case and showed a Powerpoint presentation. Mr. Allen also responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

John Campbell, 642 S. 4th Street, Suite 100, Louisville, KY 40202
Jeff Conatser, 920 Blankenbaker Pkwy., Louisville, KY 40243

Summary of testimony of those in favor:

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01:09:11 John Campbell spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

01:33:22 Jeff Conatser spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

01:40:18 **Board Members' deliberation**

01:42:57 **Public Hearing was re-opened to hear testimony from Tammy Markert.**

01:43:00 Tammy responded to questions from the Board Members regarding traffic issues at Moser Road and Watterson Trail.

01:47:17 **Board Members' deliberation**

01:49:28 On a motion by Board Member Fishman, seconded by Board Member Howard, the following resolution was adopted:

WAIVER from the LDC section 5.8.1.B to not provide a sidewalk along a portion of Moser Road and the entire frontage of Watterson Trail:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the sidewalk waiver requested will conform to the Comprehensive Plan and intent of the Land Development Code as it will not alter the essential character of the general vicinity which has a rural setting along Moser Road and Watterson Trail. A portion of the right-of-way along Moser Road and Watterson Trail is heavily wooded with a 10 to 18-foot grade change within feet of the existing edge of pavement. Such severe grade change and limited space makes a walk within the public right-of-way unfeasible. An alternate walkway connection is proposed through the site allowing alternative safe pedestrian movements, and

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WHEREAS, the Board further finds that the site is designed in a way that promotes an alternate walkway connection from the residential neighborhood located to the west to the primary Southeast Christian Church Campus to the east, and

WHEREAS, the Board further finds that compliance with the regulations is not appropriate since it would greatly impact the roadside swales, heavily wooded area and steep slopes along the roadway providing for a less appealing transition to the nearby residential neighbors. In addition, providing a sidewalk connection along the public roadway is less appealing and secure because the Interstate-64 overpass does not provide for safe pedestrian travel to businesses and the connection from the neighborhood to the primary Southeast Christian Church campus is better served using the proposed internal walks within the site, and

WHEREAS, the Board further finds that the requested sidewalk waiver will not adversely affect adjacent property owners because granting of the waiver will allow for internal walks that provide a more direct connection from the neighborhood to the primary Southeast Christian Church while protecting the roadside swales, heavily wooded area and steep slopes along Moser Road and Watterson Trail. The existing rural streetscape that currently occurs along our frontage is of a greater benefit to the neighbors than a more suburban streetscape with roadside swales, trees and slopes removed for sidewalks, and

WHEREAS, the Board further finds that granting of the sidewalk waiver is the minimum necessary to afford relief to the applicant as the proposed sidewalk would greatly impact the roadside swales, heavily wooded area and steep slopes along Moser Road and Watterson Trail while not provided a safe connection to the businesses located on the opposite side of Interstate-64. Additionally, the Kentucky Transportation Cabinet has a planned project to widen Watterson Trail and realign Moser Road that when completed will include sidewalks along the portions of our project as well as completed sidewalks under the Interstate-64 overpass, and

WHEREAS, the Board further finds that the waiver will not adversely affect adjacent property owners since a sidewalk is present on the western portion of Moser Road, North and South of the entrance/exit, ending approximately 408 feet south of the entrance/exit to Grandin Woods. Furthermore, the applicant is

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providing a sidewalk along the western side of Moser Road from their northern property line until the sidewalk recesses behind a right-of-way with a 10-18 foot grade and tree stand, and continues along the edge of the vehicular use area and ends at the public right of way on the southern side of the entrance/ exit along Watterson Trail, and

WHEREAS, the Board further finds that Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The site is designed to promote an alternate walkway connection (partially internal to the public right of way along a portion of Moser Road and the entirety of frontage along Watterson Trail) from the residential neighborhood/s located to the west of the primary Southeast Christian Church Campus is to the East, 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 compliance with the regulations would greatly impact the roadside swales and steep sloped wooded right of way (topographic restraints). The applicant has attempted to provide connectivity/alternate access from west to east. In addition, providing a public sidewalk near the Interstate 64 overpass is more hazardous to pedestrians when connecting from the neighborhoods from the west to the east, where the primary Southeast Christian Church campus resides, 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 since proposed sidewalks would impact the roadside swales, wooded right of way, and slopes along Moser Road and Watterson Trail. Additionally, Interstate 64 limits the connectivity/safe pedestrian access to businesses located on the opposite side of I-64, and

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VARIANCE #1, Variance from the LDC, Section 5.3.1.C.5 and Table 5.3.2 to allow the building to exceed the maximum front and street side setback:

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 additional setback from Moser Road and Watterson Trail will allow for a greater buffer distance from nearby residences, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the proposed church chapel will be architecturally compatible with the nearby neighborhood homes as it transitions to the primary campus of Southeast Christian Church, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the proposed chapel (church) is located at a greater distance from public roads and nearby neighborhoods, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the added setbacks allow the scale of the church design to complement the existing neighborhood homes as it transitions into the main Southeast Christian Church campus, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the proposed development is located in between the main campus of Southeast Christian Church and a residential neighborhood, 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 LDC requirements would ask that the building be closer to the residential neighborhood as a result of the setback limits the ability to provide for transition (design) between the neighborhood and main Southeast Christian campus, 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

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from which relief is sought since the applicant has not constructed any aspect of the proposed development plan to date, and

WHEREAS, the Board further finds that the requested variances will not adversely affect the public health, safety or welfare because granting of the variance will allow for construction of the church roofs in a way that provides visual interest and transition from the more modern setting of the primary Southeast Christian Church campus to the residential neighborhoods to the west. Additionally, the variance to allow the church to exceed the maximum setback will provide for additional buffer between the church buildings and the nearby residential areas, and

WHEREAS, the Board further finds that the variances requested will not alter the essential character of the general vicinity as the proposed building will be compatible with nearby neighborhood while implementing a design that compliments the existing neighborhood homes as it transitions into the primary Southeast Christian Church campus. The additional setback will ensure the scale of the church transitions appropriately from the nearby residential areas, and

WHEREAS, the Board further finds that granting of the variances will not cause a hazard or a nuisance to the public as the proposed church is located internal to the property to ensure a generous setback from adjoining public roads and neighboring property, and

WHEREAS, the Board further finds that The development as proposed with the requested variances will not allow for an unreasonable circumvention of the zoning regulations as it will allow for the church roofs to be constructed in a way that provides visual interest while the added setback insures the scale of the church design compliments the existing neighborhood homes as it transitions into the primary Southeast Christian Church campus, and

WHEREAS, the Board further finds that the subject property is impacted by special circumstances such as the property is located between the existing neighborhood and the primary Southeast Christian Church campus, and

WHEREAS, the Board further finds that Strict application of the provisions would limit the ability to provide a transition design that blends the neighboring

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residential design while transitioning to the primary Southeast Christian Church campus, and

WHEREAS, the Board further finds that the proposed development of the property and need for the variances are not a result of actions taken by the applicant as the proposed church is designed with a desire to provide a visually interesting design with the adjoining neighborhood while transitioning to the primary Southeast Christian Church campus, and

VARIANCE #2, Variance from the LDC, Section 5.3.1.C.5 and Table 5.3.2 to allow the building to exceed the maximum building height:

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 request is for 2.5 feet higher than what is allowed in the form district. The roof height as proposed will be a more modern style which allows for transition from the residential neighborhoods to the east to the primary Southeast Christian Church campus to the west, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the proposed buildings have design/s that are similar in character to the existing neighborhood, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the proposed setback of the structures will be internal to the property, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the proposed roof structures will only be 2.5 feet greater than the maximum height allowed in the form district, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the adjacent campus form district, where Southeast Christian Church is located, have heights exceeding those found in

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the Neighborhood form district where the Chapel in the Woods development is proposed, 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 proposed design would act as a transition that blends with both the residential neighborhood and with the existing Southeast Christian Church campus, 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 since the proposed design is a meshing of designs found in the Grandin Subdivision and designs found in the campus form district where Southeast Christian Church's main campus resides, and

WHEREAS, the Board further finds that the requested variances will not adversely affect the public health, safety or welfare because granting of the variance will allow for construction of the church roofs in a way that provides visual interest and transition from the more modern setting of the primary Southeast Christian Church campus to the residential neighborhoods to the west. Additionally, the variance to allow the church to exceed the maximum setback will provide for additional buffer between the church buildings and the nearby residential areas, and

WHEREAS, the Board further finds that the variances requested will not alter the essential character of the general vicinity as the proposed building will be compatible with nearby neighborhood while implementing a design that compliments the existing neighborhood homes as it transitions into the primary Southeast Christian Church campus. The additional setback will ensure the scale of the church transitions appropriately from the nearby residential areas, and

WHEREAS, the Board further finds that granting of the variances will not cause a hazard or a nuisance to the public as the proposed church is located internal to the property to ensure a generous setback from adjoining public roads and neighboring property, and

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WHEREAS, the Board further finds that the development as proposed with the requested variances will not allow for an unreasonable circumvention of the zoning regulations as it will allow for the church roofs to be constructed in a way that provides visual interest while the added setback insures the scale of the church design compliments the existing neighborhood homes as it transitions into the primary Southeast Christian Church campus, and

WHEREAS, the Board further finds that the subject property is impacted by special circumstances such as the property is located between the existing neighborhood and the primary Southeast Christian Church campus, and

WHEREAS, the Board further finds that strict application of the provisions would limit the ability to provide a transition design that blends the neighboring residential design while transitioning to the primary Southeast Christian Church campus, and

WHEREAS, the Board further finds that the proposed development of the property and need for the variances are not a result of actions taken by the applicant as the proposed church is designed with a desire to provide a visually interesting design with the adjoining neighborhood while transitioning to the primary Southeast Christian Church campus; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16DEVPLAN1012, does hereby **APPROVE WAIVER** from the LDC section 5.8.1.B to not provide a sidewalk along a portion of Moser Road and the entire frontage of Watterson Trail, **VARIANCE #1**, Variance from the LDC, Section 5.3.1.C.5 and Table 5.3.2 to allow the building to exceed the maximum front and street side setback, and **VARIANCE #2**, Variance from the LDC, Section 5.3.1.C.5 and Table 5.3.2 to allow the building to exceed the maximum building height, based on the staff report including the Standard of Review and Staff Analysis from page 3 through page 5, the presentation, the discussion, and the two documents from Heritage Engineering received March 31st.

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The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Howard, and Chair Allendorf

Absent: Member Tharp and Vice Chair Jarboe

01:53:47 On a motion by Board Member Fishman, seconded by Board Member Howard, the following resolution was adopted:

Category 3 Plan:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the plan has met the Standard of Review; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Category 3 Plan, based on testimony, the Staff Report and the Site Plan.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Howard, and Chair Allendorf

Absent: Member Tharp and Vice Chair Jarboe

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Request:	Modification of Conditional Use Permit, meat packing plant, (potentially hazardous or nuisance use), for the addition of a 9,852 square foot CO2 stunning building
Project Name:	CO2 Building
Location:	1200 Story Avenue
Owner:	Swift Inc. (JBS USA, LLC)
Applicant:	John W. Cliff
Representative:	Glenn Price
Jurisdiction:	Louisville Metro
Council District:	4—David Tandy
Case Manager:	Steve Hendrix, Planning and 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:

01:55:50 Steve Hendrix presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Glenn Price, 400 W. Market Street, Suite 3200, Louisville, KY 40202

Jack Jeffers, 1200 Story Avenue, Louisville, KY 40206

Lindsay Jones, 1713 Country Club Lane, Marshalltown, IA 50158

John Cliff, 1200 Story Avenue, Louisville, KY 40206(**Note:** Mr. Cliff spoke during Mr. Price's rebuttal to respond to questions from the Board Members)

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Summary of testimony of those in favor:

01:59:05 Glenn Price spoke on behalf of the applicant in favor of the request (see recording for detailed presentation).

02:06:33 Jack Jeffers spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

02:10:54 Lindsay Jones spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

02:14:26 Mr. Jeffers responded to additional questions from the Board Members (see recording for detailed presentation).

02:14:57 Mr. Price spoke further in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

02:21:41 Lindsay Jones explained JBS procedures and responded to questions from the Board Members (see recording for detailed presentation).

02:25:07 Mr. Price spoke further in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition to the request:

John Solomon, 3600 National City Tower, Louisville, KY 40202

Nick Johnson, 910 Franklin Street, Louisville, KY 40206

Summary of testimony of those in opposition:

02:28:27 John Solomon presented information to the Board Members and Mr. Price for review, to which Mr. Price objected because the information was not presented by the deadline. Mr. Solomon stated they have always presented

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evidence of a non-technical nature in this manner. Mr. Solomon stated they are not the applicant, and there's frankly nothing in here that the Board hasn't seen; a lot of it is minutes of past Board meetings and sections of the Land Development Code, certainly nothing of a technical nature (see recording for detailed presentation).

02:29:35 Chair Allendorf reviewed the information and stated it looks to him, as Mr. Solomon stated, it's just previous BOZA minutes, pieces and parts out of the Land Development Code, so barring anything from our legal representative he would be under the assumption we could accept it (see recording for detailed presentation).

02:30:09 Jon Baker, Legal Counsel, stated that just a cursory review it does seem like provisions from the Code to use to support those that are in opposition's argument. Mr. Baker stated given the history of these parties in the past it would seem we have a practice of letting everyone know what we're going to use before our hearings. Mr. Baker stated he does not think it is reason to not consider what's been given today, he would just say that based on past practices in relation to these applications provided by Swift, it would just seem this could have been provided on Friday instead of today, but he does not see any harm in the materials that are being provided today (see recording for detailed presentation).

02:31:19 Mr. Price stated the only one he really objects to is information provided under Tab F (see recording for detailed presentation).

02:32:41 Mr. Solomon spoke on behalf of the Butchertown Neighborhood Association in opposition to the request. Mr. Solomon presented three proposed Conditions of Approval. Mr. Solomon also responded to questions from the Board Members (see recording for detailed presentation).

03:11:45 Nick Johnson spoke in opposition to the request and responded to questions from the Board Members (see recording for detailed presentation).

03:20:56 John Solomon read a statement from Andy Cornelius, Treasurer of the Butchertown Neighborhood Association. Mr. Solomon responded to further questions from the Board Members (see recording for detailed presentation).

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REBUTTAL:

03:30:47 Glenn Price spoke in rebuttal. Mr. Price introduced Jessica Loving (volunteer with Trees Louisville) to provide information regarding planting of trees by JBS. Mr. Price continued to speak in rebuttal. Lindsay Jones spoke in regard to enclosing the trailers. Mr. Price continued to speak in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

03:53:39 John Solomon spoke in regard to proposed Conditions of Approval (see recording for detailed presentation).

03:59:41 Glenn Price spoke again in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

04:02:22 John Cliff spoke in regard to the feasibility of providing enclosures for the trailers. Mr. Cliff stated it would probably take between three and four months to really understand that whole thing. Mr. Cliff stated he just wanted to say that when they get the Aqua Code system up and running that that may take a lot of the things that we're talking about away from the table, so it would be good to know what that's going to do for us (see recording for detailed presentation).

04:03:14 Glenn Price responded to questions from the Board Members (see recording for detailed presentation).

04:05:33 Jon Baker, Legal Counsel, discussed with Mr. Price and Mr. Solomon the Condition of planting trees. Mr. Baker stated he would want that Condition justified based on something, and it just seems that these parties are willing to do this regardless (see recording for detailed presentation).

04:09:54 Board Members' deliberation

04:34:25 On a motion by Member Fishman, seconded by Member Howard, the following resolution was adopted:

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WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with the applicable policies of the Comprehensive Plan, since the proposal is a modification of the existing Conditional Use Permit for meat packing/slaughterhouse which was approved in 1969, since the proposal is minimal compared to the existing plant and since the new procedure is considered to be a more efficient and more humane method of killing the hogs, and

WHEREAS, the Board further finds that the proposal is compatible with the general character of the area, since the new building will have a maximum height of 27 feet which will still be lower than the existing processing plant, will be minimal compared to the overall facility and will have a precast concrete finish, and

WHEREAS, the Board further finds that The proposal has been reviewed by Transportation Planning and MSD and both have approved the plan and is subject to existing Air Pollution Control District's Industrial Compliance Engineering section, and

WHEREAS, the Board further finds that there are four listed requirements for this Conditional Use Permit, the proposal appears to meet all of the requirements;

- A. The Comprehensive Plan;
- B. Environmental and health related concerns raised by the operation and the applicant's proposal to mitigate any adverse effects to the public's health, safety and general welfare;
- C. The applicant's site design, buffering, and security measures and their adequacy to mitigate any adverse effects to the public's health, safety and general welfare;
- D. Any other evidence submitted by the applicant and any other party addressing the issues, and

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WHEREAS, the Board further finds that from the file of this case, the staff report, the PowerPoint presentations, the development plan submitted and the testimony at the public hearing that the Applicant is requesting a Modified Conditional Use Permit to allow a 13,990 square foot precast concrete building (the building is 9,852 square feet) and enclosed elevated skywalk (the skywalk is 4, 138 square feet) to permit a carbon dioxide ("CO2") stunning and conveyor system associated with animal slaughter, and

WHEREAS, the Board further finds that the proposal and the site are located within a Traditional Marketplace Corridor Form District and are consistent therewith because the JBS/Swift operation pre-exists the adoption of the Form District and because numerous high quality businesses have begun operation in the immediate vicinity of the JBS/Swift campus at 1200 Story Avenue since the adoption of the Form District, and

WHEREAS, the Board further finds that the proposal is consistent with the applicable Goals, Objectives, Guidelines and Policies of the Comprehensive Plan because the proposal is of minimal size when compared to the overall 456, 115 square foot plant, and because the proposed CO2 stunning system will provide for more humane treatment of the animals and additional safety for the workers who presently must wield high voltage electric wands in the stunning process; because the proposal will cause no resultant nuisances of odor, noise, lighting, dust or other nuisances, and

WHEREAS, the Board further finds that the proposal meets the purpose, intent and all requirements of the Land Development Code because the request is part of the "slaughtering of meat...packing, and storage/slaughter of animals" operation expressly permitted in the M-3 Industrial District. See LDC §4.2.43 (M-3); because the site is located in the M-3 Industrial District and maintains an existing Conditional Use Permit first granted in 1969; because the proposed Modification will not have an adverse effect on neighboring property because residences in Butchertown are distant from the proposed building and facilities and the new structures will not be generally visible off-site and because the new CO2 stunning system will not be a source of odor, noise, dust or other nuisances; because the proposal is essential to or will promote the public health, safety and general welfare in one or more zones because it will provide for more humane handling of animals and increased worker safety by eliminating

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the electrical wand stunning system; additionally, the proposal will have no adverse impact on air quality and will not cause odors or other nuisances; because the proposal conforms to the listed standards and requirements of the regulations; because there are no adverse environmental or health effects related to the proposed MCUP; because the proposal adequately mitigates or addresses any adverse effects to the public health, safety and general welfare because it will not increase the maximum number of hogs that may be slaughtered pursuant to Condition No. 3 of Louisville Board of Zoning Adjustment Docket No. 13CUP1011; because the proposal C02 operation and related facilities will be properly managed pursuant to Land Development Code ("LDC") §4.2.42 requirements, and the public health, safety and general welfare will be protected by the implementation of the development plan allowing the C02 building and related facilities; because there are no nuisances associated with the proposed C02 stunning operation, the building or the elevated skywalk, and

WHEREAS, the Board further finds that there are no environmental or health-related concerns associated by the proposed operation of the C02 building or related facilities. Any C02 that would escape into the atmosphere would quickly dissipate and security measures employed by plant officials are adequate to provide safety to all workers at the plant; and because the site design and location of the proposed C02 stunning facilities is adequate to mitigate any adverse effect to the public's health, safety and general welfare without additional site buffering or other measures, and

WHEREAS, the Board further finds that the proposal is consistent with the Executive Summary, Butchertown Neighborhood Plan because the Executive Summary recognizes this urban neighborhood as having a diversity of land uses with a close juxtaposition of residential, commercial and industrial buildings; and that although at the time of the 2008 adoption of the Executive Summary it was noted that "many...felt the secondary (negative) impacts of some existing heavy industrial uses were a detriment to the neighborhood [to fully realize] its potential for new residential and business development in the future" new high quality commercial and entertainment facilities such as the Butchertown Marketplace, Copper & Kings, the Butchertown Grocery restaurant and Play Dance Bar are now in operation in the immediate vicinity of the JBS/Swift plant; and because the proposal for the Modified Conditional Use Permit violates no recommendations of the Executive Summary, and

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WHEREAS, the Board further finds that the proposal is consistent with the Comprehensive Plan and all applicable Goals, Objectives, Guidelines and Policies as set forth in these Findings, and

WHEREAS, the Board further finds that the proposal conforms to Traditional Marketplace Corridor Form District Goal F1 because the development of the site for industrial use pre-dates the adoption of the Traditional Marketplace Corridor Form District applicable to the general vicinity and this site; because Goal F1 recognizes that a Traditional Marketplace Corridor Form District has "unique development characteristics," which would include this pre-existing industrial use at 1200 Story Avenue; and because diverse commercial and office uses are located in the immediate vicinity of the JBS/Swift campus and these uses will continue to be unaffected by the plant operation with the proposed CO₂ stunning facilities, and

WHEREAS, the Board further finds that the proposal conforms to Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy 1.B.7 (Traditional Marketplace Corridor) because this industrial business pre-dates the designation of this site and the immediate area as a Traditional Marketplace Corridor Form District; because there is a mixture of low to medium intensity commercial uses in the area, such as the Butchertown Marketplace directly across Story Avenue from the site, Play Dance Bar located on East Washington Street at Buchanan Street, and the Butchertown Grocery restaurant, also at East Washington Street at Buchanan Street, and Copper & Kings on East Washington Street; because there is a connected street and alley system in the Butchertown neighborhood; and because the proposed additions will be located generally behind existing structures nearer to Mellwood Avenue and the new structures will not be generally visible to the motoring public or pedestrians on foot, and

WHEREAS, the Board further finds that the proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.1, 3.2, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.12, 3.17, 3.18, 3.19, 3.21, 3.22, 3.23 and 3.28 because the continued operation of the plant utilizing a more humane and safer CO₂ stunning system, is compatible and consistent with other industrial businesses adjacent to the campus on the south side of Story Avenue; because the proposed new precast concrete building is appropriate for its location on-

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site because the material is the same as the new "barn" additions previously approved by the Louisville Metro Board of Zoning Adjustment Case 12323 (August 31, 2009), which are also precast concrete, which was approved by the Board of Zoning Adjustment on March 17, 2014 in BOZA Case No. 13CUP1011; because the proposal will not intrude into existing residential areas and will not be visible from residences; because the proposal is entirely enclosed and will not cause odor or air quality emissions or nuisances; because the proposal will not cause additional traffic to or from the site; because the proposal will not be a source of noise because all operations are enclosed; because the proposal will not be a source of external lighting which might otherwise impact nearby properties or the night sky; because the proposal will not cause an adverse impact visually because the new construction will be generally distant from nearby roads and views; because the proposal will be accessible to people with disabilities pursuant to applicable federal, state and local requirements; because Policy 3.17 encourages, but does not require, industries to locate in workplace form districts rather than isolated industrial sites and this site has been used for slaughterhouse purposes for many, many years and has been operating pursuant to a conditional use permit since 1969, more than 45 years ago; because although liquid CO₂ is a hazardous material involved in the CO₂ stunning process it is not flammable; because as required by Policy 3.18 and Hazardous Waste Goal 02 the CO₂ building will be located away from residential areas and population centers as is shown on the development plan; because CO₂ will be handled, stored and disposed of in a safe and environmentally sound manner in accordance with manufacturer's instructions and all governmental controls; because the use of CO₂ will not contaminate ground water or cause adverse ambient air quality; because the building and structures will be setback distant from adjacent roads and public sidewalks an appropriate transition is established by the location of the new building and structures; because buffers are not required because the new building and associated structures are compatible with other buildings on-site and in the vicinity; because the proposal meets all applicable setbacks, lot dimensions and building height maximums, and is compatible with nearby land uses; and because the proposed building and structures will have no signage, and

WHEREAS, the Board further finds that the proposal conforms to Economic Growth and Sustainability Guideline 6 and all applicable Policies adopted thereunder, including Policies 6.2, 6.3 and 6.8 because adequate access will

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continue to be provided to the site from worker population centers; because the proposal is a multi-million dollar re- investment in an older neighborhood, the Butchertown neighborhood; because the site is also an older industrial area which pre-existed the designation of the area as a Traditional Marketplace Form District; and because this industrial business (JBS/Swift) has approximately 1100 employees and is located on an arterial street, Story Avenue, with close access to Interstates 71 and 64, and

WHEREAS, the Board further finds that the proposal conforms to Circulation Guideline 7 and all applicable Policies adopted thereunder, including Policies 7.1, 7.2 and 7.10 because the Louisville Department of Public Works approved the development plan on March 4, 2016, which, among other things, indicates that internal and external circulation provides safe and efficient movement by all types of transportation and the development has provided adequate parking; because the proposal will cause no increase in traffic to or from the site which would otherwise necessitate street improvements or other transportation mitigation techniques; and because the proposal meets all Land Development Code requirements for off-street parking, and

WHEREAS, the Board further finds that the proposal conforms to Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policies 9.1 and 9.2 and Moving People and Goods Goal A1, Goal A2, Goal A4, Transportation and the Environment Goal C1 because adequate facilities exist for alternate modes of transportation; because of the availability of transit service and sidewalks throughout the vicinity; and the Board Further Finds That the proposal conforms with Bicycle and Pedestrian Circulation Plan Goal H1 and H2 and Objectives H2.1, H2.2, and Site Design Standards for Alternative Transportation Modes Goal 11 and Objective 11.1, Goal 12 and Goal 13 and Objective 13.1, Objective 14.1, Goal 15 and Goal 17 because of sidewalk availability and bicycle storage facilities within the plant; because sidewalks are available to serve employees along Story Avenue and Mellwood Avenue and all other public streets in the vicinity and because bicycle facilities for bike storage are available within the plant; and because transit service via Transit Authority of River City ("TARC") Route 31 serves Story Avenue at the front of the site, and TARC Route 15 serves Mellwood Avenue at the rear of the site, and

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WHEREAS, the Board further finds that the proposal conforms to Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 10.1, 10.4, 10.10 and 10.11 and Flood Control and Stormwater Management Goal 81, and Objectives 81.1, 81.3, 81.7 because the Metropolitan Sewer District ("MSD") approved the proposal on March 8, 2016 which approval, among other things, indicates that because the proposal will be constructed on an existing developed site it will have no impact on flooding or stormwater; because the approval of MSD was based on the full development potential of the entire watershed, which includes the impact of the proposed building and structures within the watershed; because the "through" drainage capacity has been accommodated in a manner acceptable to MSD; and because peak stormwater rates or volumes post development will be consistent with regional and watershed plans and will not exceed pre-development rates or volumes, and

WHEREAS, the Board further finds that the proposal conforms to Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 12.1, 12.3, 12.6 and 12.8 and Air Goal C1 and Objective C1.2 because the Louisville Air Pollution Control District approved the proposal on February 8, 2016, which approval indicates, among other things, that the proposal will not be a source of adverse air quality emissions; because no additional traffic to or from the site will be caused as a result of the new building or structures; because mass transit ("TARC") routes are available on both Story Avenue and Mellwood Avenue along the frontages of the site; because the proposal will have no adverse effect on air quality because all facilities will be indoors and there will be no emissions into the atmosphere; and because sidewalks are available along Story Avenue, Bickel Avenue and Mellwood Avenue as well as interior to the site, and

WHEREAS, the Board further finds that the proposal conforms to Infrastructure Guideline 14 and all applicable Policies adopted thereunder, including Policies 14.2, 14.3, 14.4, and 14.6 because the proposal has adequate access to all necessary utility service; because the proposal, as well as the entire site, has adequate access to potable water and water for fire-fighting purposes; because the site and the proposed building and facilities will be served by Metropolitan Sewer District sanitation services; because utility installations on-site are adequate for the proposed building and facilities and will be located where

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mandated by Louisville Gas & Electric Company requirements; and because whenever required, utility easements will be located where required by each reviewing utility, and

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

WHEREAS, the Board further finds that the proposal conforms to all other applicable Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the proposal is compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc. because the proposed building at 9,852 square feet and 27 feet in height and the associated elevated skywalk are consistent with the existing approved buildings on-site, being substantially smaller and substantially lower than the 456, 115 square foot plant; because no additional traffic to or from the site will be caused by the proposed building and facilities; and because no nuisances related to traffic, noise, odor, drainage, dust, lighting, appearance or otherwise will be caused by the new building or facilities, and

WHEREAS, the Board further finds that necessary public facilities (both on-site and off-site), including transportation, sanitation, water, sewer, drainage, emergency services, etc. are available and adequate to serve the proposed building and facilities; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** Case Number 16CUP1001, Modification of Conditional Use Permit to allow a proposed 9,852 square foot building that will be used in a new method to stun the hogs, based on the presentation, the staff report Standard of Review and Staff Analysis on pages 14 through 16, the findings of fact presented by the applicant under Tab 11 and Tab 12, and **SUBJECT** to the following Conditions of Approval:

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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 modification shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the modification is not so exercised, the proposed CO2 building site shall not be used as a part of the potentially hazardous or nuisance use (meat packing plant) without further review and approval by the Board.
3. The applicant shall instruct operators of vehicles transporting live animals to the Story Avenue plant not to stage upon or back up onto any public right-of-way adjacent to the plant.
4. Litter removal:
 - a) The applicant will provide for or contract for weekly litter removal along the frontages of (i) its Story Avenue plant site, (ii) its Cable Street Lot, and (iii) all of its employee parking lots.
 - b) The applicant will participate with the Butchertown Neighborhood Association, Inc. and/or the Butchertown Business Alliance to remove litter in all areas of the Butchertown neighborhood provided that each participating organization provides an equal number of volunteer workers.
5. JBS will present a feasibility of adding a structure in front of the unloading area for information purposes by the end of August, 2016.

The vote was as follows:

**Yes: Members Fishman, Turner, Bergmann, Howard, and Chair Allendorf
Absent: Member Tharp and Vice Chair Jarboe**

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NOTE: Chair Allendorf reminded the Board Members that the May 2, 2016 Board of Zoning Adjustment meeting will begin at 8:30 a.m. There will be a presentation from the Air Pollution Control District and the Public Hearing will begin at 10:00 a.m.

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ADJOURNMENT

The meeting adjourned at approximately 1:22 p.m.

Chair

Secretary