

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

April 24, 2023

A meeting of the Louisville Metro Board of Zoning Adjustment was held on Monday, April 24, 2023 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky, and also via Webex.

Members Present:

Sharon Bond, Chair
Richard Buttorff, Vice Chair
Yani Vozos
Jan Horton

Members Absent:

Kim Leanhart, Secretary
Brandt Ford
Lula Howard

Staff Members Present:

Emily Liu, Director, Planning & Design Services
Brian Davis, Assistant Director, Planning & Design Services
Chris French, Planning & Design Supervisor
Joe Haberman, Planning & Design Manager
Heather Pollock, Planner I
Molly Clark, Planner II
Amy Brooks, Planner I
Dante St. Germain, Planner II
John Michael Lawler, Planner I
Laura Ferguson, Legal Counsel
Chris Cestaro, Management Assistant (minutes)

The following cases were heard:

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April 10, 2023 Board of Zoning Adjustment Meeting Minutes

00:04:30 On a motion by Member Vozos, seconded by Member Horton, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the April 10, 2023 Board of Zoning Adjustment meeting.

The vote was as follows:

YES: Members Horton, Vozos, and Chair Bond.

ABSTAIN: Vice Chair Buttorff.

ABSENT: Members Howard, Leanhart, and Ford.

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BUSINESS SESSION

Case No. 23-VARIANCE-0057

Request:	Variance to allow a principal structure to encroach into the side yard setback.
Project Name:	3rd Street Variance
Location:	2909 S. 3rd Street
Owner:	Mary Campbell and Christopher Fitzgerald
Applicant:	Kyle Onan, Creek Alley Contracting, LLC
Jurisdiction:	Louisville Metro
Council District:	15- Jennifer Chappell
Case Manager:	Amy Brooks, Planner I

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

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

Agency testimony:

00:05:56 Amy Brooks presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

00:09:34 On a motion by Member Vozos, seconded by Vice Chair Buttorff, Leanhart, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested; and

WHEREAS, the Board further finds that the structure will not alter the essential character of the general vicinity as it will be built with material that is in character with the surrounding residential neighborhood. In addition, there are other primary structures along this stretch of 3rd Street that encroach into the side yard setback; and

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Case No. 23-VARIANCE-0057

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the structure must be constructed to comply with all building codes; and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the location of the proposed structure is similar to others in the neighborhood; and

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

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the existing house is within required side yard setback line; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction; now therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Variance** from the Land Development Code Table 5.2.2 to allow a primary structure to encroach into the side yard setback (requirement: 3 feet; request: - 1 foot; variance of 2 feet.)

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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BUSINESS SESSION

Case No. 22-MCUP-0005

Request:	Modified Conditional Use Permit for a Landfill
Project Name:	Waste Management Addition
Location:	2673 Outer Loop
Owner/Applicant:	Waste Management of Kentucky, LLC
Representative:	Stites & Harbison, PLLC.
Jurisdiction:	Louisville Metro
Council District:	13 - Dan Seum, Jr.
Case Manager:	Molly Clark, Planner II

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

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

Agency testimony:

00:10:30 Molly Clark presented the case, showed a Power Point presentation, and responded to questions from the Board Members (see staff report and recording for detailed presentation.) She noted that the proposed construction is to enhance the existing treatment facility (system that is associated with recycling on the site.)

Modified Conditional Use Permit for Earth Excavation, Filing, and Refuse Disposal Operations, Major (LDC 4.2.22).

00:14:50 On a motion by Vice Chair Buttorff, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

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

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

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

WHEREAS, the Board further finds that the modified conditional use permit remains compliant with the standards required to obtain the conditional use permit and all conditions of approval; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Modified Conditional Use Permit** for Earth Excavation, Filing, and Refuse Disposal Operations, Major (LDC 4.2.22), SUBJECT to the following Conditions of Approval:

Conditions of Approval for Consolidation and Expansion of Landfill (B-28-85)

The Board does hereby WAIVE Section IV, D., 27., Items b.; b., (3); c., (1); d., (1), ©, xi.; and item d., reviewed at 5 year intervals, however, no public hearing shall be required on the occasion of each 5 year review unless requested by the Zoning Enforcement Officer.

1. The landfill shall be operated in strict compliance with all applicable listed requirements of section IV, D., 27 of the Zoning district Regulations, unless a specific waiver of the requirement has been granted by the Board of Zoning Adjustment.
2. The landfill shall be operated in strict compliance with the approved site development plan and the Environmental Impact Report and Operating Plan submitted by the applicant. The November, 1984, Environmental Impact Report and Operating Plan shall be considered a part of the approved site development plan.
3. The landfill shall be operated in strict compliance with all applicable Federal, State, and local regulations applicable to any portion of the operation.
4. All drainage improvements and the operation of the landfill shall be in conformance with all conditions of approval by the Jefferson County Public Works and Transportation Cabinet Water Management Engineering Section and the Louisville District Army Corps of Engineers.
- 5a. SCA Services shall maintain all perimeter ditches and sedimentation basins. This maintenance shall be performed annually or within 30 days of written notice from the Jefferson County Department of Public Works and Transportation.

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- b. SCA Services shall provide construction plans for and construct a five foot wide flat bottom ditch in the 60' right-of-way north of the Grade Lane tract at such time as the right-of-way is converted to provide use for drainage purposes. Additionally SCA Services shall remove overfill from adjoining tracts where permission of effected property owners is obtainable.
 - c. SCA Services provide construction plans and construct a perimeter ditch parallel with the south property line of the Grade Lane tract. This perimeter ditch shall be installed only if the Grade Lane tract is creating a drainage problem for the adjacent property to the south. The construction of this ditch shall be completed within ninety days of written notice from the Jefferson County Department of Public works and Transportation.
- 6. No fill materials shall be accepted which are classified as hazardous or toxic waste.
7. ***Applicant will pay a fee in lieu for offsite construction of sidewalks.***

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 23-VARIANCE-0022

Request:	TO BE CONTINUED TO A DATE UNCERTAIN – Variance from LDC Section 5.3.1 to allow a 10’ encroachment into the required 25’ rear yard setback
Project Name:	Shean Court Variance
Location:	6024 Shean Ct
Owner:	Shean Court, LLC
Applicant:	Shean Court, LLC
Representative:	Chris Crumpton, Bluestone Engineering
Jurisdiction:	Louisville Metro
Council District:	22 - Robin Engel
Case Manager:	John Michael Lawler, 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:

00:16:30 John Michael Lawler explained why the case is being continued (see staff report and recording for detailed presentation.)

00:17:42 On a motion by Vice Chair Buttorff, seconded by Member Vozos, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to a date uncertain to allow the applicant time to submit relevant materials to staff.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 22-VARIANCE-0119

Request: **TO BE CONTINUED TO A DATE CERTAIN** - Variance to allow a private yard area to be less than the required 20% of the area of the lot; Variances to allow a primary structure to exceed the maximum front yard setback and the maximum building height

Project Name: Rear Mulberry Street Variances

Location: 917 R. Mulberry Street

Owner: MBS Remodeling LLC

Applicant: Jamie Barnes

Jurisdiction: Louisville Metro

Council District: 15- Jennifer Chappell

Case Manager: **Amy Brooks, Planner I**

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

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

Agency testimony:

00:18:03 Amy Brooks introduced the case and explained why the case is being continued (see staff report and recording for detailed presentation.)

00:19:24 On a motion by Member Vozos, seconded by Member Horton, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to the **May 15, 2023** Board of Zoning Adjustment meeting.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 23-VARIANCE-0029

Request: A variance to allow structures and parking to encroach into the required side yard setback.
Project Name: New Life Directions Ministries Dixie Apartments Variance
Location: 10615 Dixie Highway
Owner/Applicant: New Life Directions Ministries
Representative: Kelli Jones, Sabak, Wilson, and Lingo, Inc.
Jurisdiction: Louisville Metro
Council District: 25- Khalil Batshon
Case Manager: Amy Brooks, Planner I

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

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

Agency testimony:

00:20:02 Amy Brooks presented the case, showed a Power Point presentation, and responded to questions from the Board Members (see staff report and recording for detailed presentation.) She used the site plan to point out locations of parking, and said that the entire site will be demolished in order to build new structures.

The following spoke in support of the request:

Kelli Jones, Sabak Wilson & Lingo, 608 South 3rd Street, Louisville, KY 40202

Kim Goode, 4705 Brewster Avenue, Louisville, KY 40211

Tena McNair, 13861 North Highway 127, Albany, KY 42602

Summary of testimony of those in support:

00:25:57 Kelli Jones, the applicant's representative, presented the applicant's case (see recording for detailed presentation.)

00:31:34 Tena McNair, the applicant, discussed the capacity and approximately how many residents/families were currently on-site, and also why a new building is necessary. She said the residents are usually referred by different agencies; many are

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domestic violence survivors. She said there are day programs for non-residents as well, and parking for residents and non-residents was discussed. She said she has notified the owners of the adjacent mobile home park, but has not had discussions with those residents (see recording for detailed discussions.)

00:35:02 Kim Goode was called but declined to speak unless there were questions.

The following spoke in opposition:

No one spoke.

00:35:43 Board Members' deliberation

Variance #1 - Variance from the Land Development Code section 5.3.2.C.2.b to allow a principal structure and parking to encroach into the required side yard setback.

Variance #2 - Variance from the Land Development Code section 5.5.5.to allow an accessory structure to encroach into the required side yard setback.

00:35:58 On a motion by Member Vozos, seconded by Vice Chair Buttorff, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

(Variance #1) WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes, including fire codes, and the Land Development Code, except where relief is requested. In addition, both the principal structure and related parking will be screened from the mobile home park per the landscaping buffering requirements that are regulated in Chapter 10. The site will have continuous six-foot screening that will separate the two properties; and

WHEREAS, the Board further finds that the structure will not alter the essential character of the general vicinity as there are other principal structures that encroach into the side yard setback along this stretch of the Dixie Highway Corridor. In fact, the existing building on the subject site currently encroaches into the same required side yard setback on the northeastern property line; and

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WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the structure must be constructed to comply with all building codes. In addition, the principal structure and parking will be appropriately screened from the adjoining residential properties; and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as there are buildings at 10513 and 10517 that also encroach into the side yard setback; and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances which do not generally apply to the land in the generally vicinity or the same zone as the lot is similar in size and shape to the surrounding properties. This site is long and narrow, and it would be difficult to provide the required 25- foot side yard setback; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant. If the applicant has to provide the 25-foot side yard setback, it would cause a significant portion of the lot to become unbuildable thereby depriving the applicant from reasonable use of the land; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant has not begun construction and has applied for a variance; and

(Variance #2) WHEREAS, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes, including fire codes, and the Land Development Code, except where relief is requested; and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity because the dumpster area will be appropriately screened; and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the accessory structure will be screened from the public view and located at the edge of VUA that will be less dangerous for any vehicles maneuvering through the provided parking lot; and

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WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as there is limited space to place the dumpster on the site; and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances which do not generally apply to the land in the generally vicinity or the same zone as the lot is similar in size and shape to the surrounding properties. This site is long and narrow, and it would be difficult to provide the required 25- foot side yard setback; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the applicant has a limited area to place the dumpster that would remain out of the vehicular maneuvering area but accessible for pick-up; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant has not begun construction and has applied for a variance; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Variance #1 - **Variance** from the Land Development Code section 5.3.2.C.2.b to allow a principal structure and parking to encroach into the required side yard setback (requirement – 25 feet; request – 5 feet; variance – 20 feet) **AND** the requested **Variance #2 - Variance** from the Land Development Code section 5.5.5.to allow an accessory structure to encroach into the required side yard setback (requirement – 25 feet; request – 7 feet; variance – 18 feet.)

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 22-APPEAL-0014

NOTE: This case was heard out of order. It was originally scheduled as Item #15 on the agenda.

Request:	CONTINUED FROM 03/20/23 - Appeal of an administrative decision regarding nonconforming rights.
Project Name:	Atterberry Court Appeal
Location:	4607 Atterberry Court
Owner:	Prospect Construction, LLC
Appellant:	Tom Sanders
Jurisdiction:	City of Shively
Council District:	3 - Vacant
Case Manager:	Chris French, AICP, Planning Supervisor

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

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

Agency testimony:

00:37:22 Chair Bond said the Board has requested that this case be continued to have an opportunity to review all of the material that has been provided.

The following spoke in support of the request:

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

Summary of testimony of those in support:

00:37:44 John Talbott, the applicant's representative, said the applicant was agreeable to the continuance. After some discussion, the Board of Zoning Adjustment meeting on **May 15, 2023** was agreed upon.

00:40:26 On a motion by Vice Chair Buttorff, seconded by Member Horton, the following resolution was adopted:

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Case No. 22-APPEAL-0014

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to the **May 15, 2023** Board of Zoning Adjustment meeting.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 23-VARIANCE-0037

Request:	Variance to not build to the corner in the Town Center Form District
Project Name:	Proposed Thornton's Gas Station
Location:	4900 Brownsboro Road
Owner:	4900 Brownsboro Road, LLC
Applicant:	Thorntons, LLC
Representative:	Dinsmore & Shohl, LLP
Jurisdiction:	Louisville Metro
Council District:	7 - Paula McCraney
Case Manager:	Molly Clark, Planner II

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

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

Agency testimony:

00:40:50 Molly Clark presented the case, showed a Power Point presentation, and responded to questions from the Board Members (see staff report and recording for detailed presentation.)

00:44:05 In response to questions from Vice Chair Buttorff, Ms. Clark reviewed what the Category 2 review was for, and what if any impact that review would have on this variance, if it was granted today (see recording for detailed discussion.) She noted that the Category 2 review would not really impact this review – DRC has already reviewed and approved the associated waivers. She said Metro Transportation Planning and KYTC have no issues with the proposal.

The following spoke in support of the request:

Cliff Ashburner, Dinsmore & Shohl, 101 South 5th Street Suite 2400, Louisville, KY 40202

Summary of testimony of those in support:

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00:45:41 Cliff Ashburner, the applicant's representative, presented the applicant's case, showed a Power Point presentation, and responded to questions from the Board Members. Using the site plan, he pointed out the locations of the greenspace and landscaping (see recording for detailed presentation.)

The following spoke in opposition to the request:

No one spoke.

00:55:22 Board Members' deliberation

Variance from section 5.5.1.A.2 to allow a proposed convenience store to exceed the corner lot setback of 5 feet on each street.

00:56:02 On a motion by Vice Chair Buttorff, seconded by Member Vozos, the following resolution, based on the Standard of Review, the Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all building codes, including fire codes; and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the proposal is replacing an old gas station and the applicant is proposing several improvements to the site; and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the structure must be constructed to comply with all building codes; and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the existing structure meets the setback requirement and the proposed addition is in the only possible location on site; and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances which do not generally apply to the land in the generally vicinity or the same zone as the property is irregular in shape and has multiple road frontages; and

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WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the proposed addition is in the only possible location on site; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not started construction and is requesting the variance; now therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Variance** from section **5.5.1.A.2** to allow a proposed convenience store to exceed the corner lot setback of 5 feet on each street (requirement - **Max 5 feet on each road frontage**; request - **179.4 feet(Brownsboro Road Frontage)** and **71.2 feet (KY 22 Frontage)**; Variance of **174.4 feet (Brownsboro Road frontage)** and **66.2 feet (KY 22 frontage)**).

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 23-CUP-0010

Request:	Conditional Use Permit for Private Proprietary Club and Variances
Project Name:	Trinity High School Tennis Courts
Location:	150 Sears Avenue
Owner:	Trinity High School Foundation
Applicant:	Trinity High School Foundation
Representative:	Land Design & Development
Jurisdiction:	City of St. Matthews
Council District:	9 - Andrew Owen
Case Manager:	Dante St. Germain, AICP, Planner II

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

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

Agency testimony:

00:56:40 Dante St. Germain presented the case, showed a Power Point presentation, and responded to questions from the Board Members (see staff report and recording for detailed presentation.) She said the fencing next to the residential development (to the west) will be a privacy fence; the fencing on the sideyard setback will be chain link.

The following spoke in favor of the request:

Shawn Spalding, 500 West Jefferson Street Suite 2000, Louisville, KY 40202
Ted Bernstein, Land Design & Development, 503 Washburn Avenue, Louisville, KY 40222

Summary of testimony of those in favor:

01:03:38 Ted Bernstein, the applicant's representative, presented the applicant's case and showed a Power Point presentation. He noted that there will not be a PA system or site lighting there (see recording for detailed presentation.)

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01:12:22 In response to questions from Vice Chair Buttorff, Mr. Bernstein discussed the landscaping on the site in general. He said the applicant decided to install the sidewalk rather than landscaping along Sears Avenue because they thought that might be more beneficial for the neighborhood. He said the students from Trinity will not be driving/parking at the site, but will be walking from the school. The site will not be open to the public.

01:16:06 In response to questions from Chair Bond, Mr. Bernstein discussed the location of the underground detention.

01:17:00 In response to questions from member Horton, Mr. Bernstein said there will be 25 parking spaces provided.

01:17:35 Shawn Spalding, the applicant's representative, discussed the scope of the playing season and when the applicant would be using the facility (see recording for detailed presentation.)

01:21:32 Mr. Spalding discussed issues brought up by neighbors during the neighborhood meetings and noted that there had been concerns but no opposition from neighbors.

The following spoke in opposition to the request:

No one spoke.

01:22:50 Board Members' deliberation

Variance #1: from Article 9, Section 9.1.B.1.a to permit a fence to exceed 4' in height in the front yard setback (requested: 6', required: 4', variance of 2') (23-VARIANCE-0006)

Variance #2: from Article 9, Section 9.1.B.1.a to permit a fence to exceed 4' in height in the street side yard setback (requested: 10', required: 4', variance of 6') (23-VARIANCE-0007)

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Case No. 23-CUP-0010

01:23:38 On a motion by Member Vozos, seconded by Vice Chair Buttorff, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

(Variance #1) WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all building codes, including fire codes. The proposed fence will be setback far enough from the street intersection to not obstruct vision clearance; and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the fence is required by the Conditional Use Permit being requested, and the site is already in use as athletic practice fields; and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the proposed fence will not obstruct vision clearance associated with vehicles at the intersection; and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the fence is standard height for a privacy fence; and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do generally apply to land in the general vicinity or the same zone because, although the property is regular in shape, it is proposed to be used for tennis courts, which requires a Conditional Use Permit and a fence; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the height of the fence is required by the Conditional Use Permit to protect the adjacent residential property; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the fence has not been constructed and the applicant is requesting the variance; and

(Variance #2) WHEREAS, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare, because the structure must be

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constructed to comply with all building codes, including fire codes. The proposed fence will be chain link and will not obstruct sight lines; and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the fence is required to contain tennis balls, and the site is already in use as athletic practice fields; and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the proposed fence will not obstruct vision clearance associated with vehicles at the intersection; and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the fence is required to contain tennis balls from leaving the courts and entering the street; and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do generally apply to land in the general vicinity or the same zone because, although the property is regular in shape, it is proposed to be used for tennis courts, and the fence will contain the tennis balls and prevent them from leaving the courts; and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the height of the fence is needed in order to make the tennis courts safe to use; and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the fence has not been constructed and the applicant is requesting the variance; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested **Variance #1**: from Article 9, Section 9.1.B.1.a to permit a fence to exceed 4' in height in the front yard setback (requested: 6', required: 4', variance of 2') (23-VARIANCE-0006); AND the requested **Variance #2**: from Article 9, Section 9.1.B.1.a to permit a fence to exceed 4' in height in the street side yard setback (requested: 10', required: 4', variance of 6') (23-VARIANCE-0007).

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

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ABSENT: Members Howard, Leanhart, and Ford.

Conditional Use Permit for Private Proprietary Club (Article 15.D.12)

01:25:38 On a motion by Member Vozos, seconded by Vice Chair Buttorff, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with Plan 2040. The site is already in use as athletic practice fields. The proposed use is similar in intensity to the existing use; and

WHEREAS, the Board further finds that the proposal is compatible with the area and form district as the current use of the site is athletic practice fields. The use of the site will not significantly change; and

WHEREAS, the Board further finds that MSD and Transportation Planning have approved the site plan prior to docketing of the case; and

WHEREAS, the Board further finds that the proposal complies with the following specific standards required to obtain the conditional use permit requested:

Private proprietary clubs may be located in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, RRD, R-5A, R- 5B, R-6, R-7, OR-1, OR-2, OR-3, OTF and C-R Districts where such use is compatible in size and scale with surrounding land uses and where the lot contains at least 2 acres upon the granting of a Conditional Use Permit.

Tennis centers, racquetball clubs or similar operations requiring large structures to house the facilities shall have a development plan approved by the Planning Commission prior to filing an application for a Conditional Use Permit.

- a. All new buildings, structures and facilities shall be at least 30 feet from any property line. **Staff: The applicant requests relief from this requirement.**
- b. Roads and parking areas shall be surfaced with a hard and durable material and properly drained. **Staff: The applicant shall comply with this requirement.**
- c. Off-street parking shall be provided in a ratio of one space for every 100 square feet of floor area in the building(s). The Board shall determine the number of spaces required for facilities which are not located within a building. **Staff: Parking is being**

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provided in compliance with the ratio for tennis courts (4-6 spaces per court).

d. Swimming pools shall be enclosed within a fence at least six feet high. **Staff: This requirement is not applicable.**

e. All recreation areas or play fields and parking lots shall be separated from adjacent properties by a solid fence or dense evergreen shrubbery plantings at least five feet high. **Staff: The applicant shall comply with this requirement.**

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

g. Landscaping treatment of the buildings and grounds shall be provided to harmonize with the district in which it is located. **Staff: The applicant shall comply with this requirement.**

now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit for Private Proprietary Club (Article 15.D.12) and does hereby provide relief from requirement A because the site is relatively narrow in width and a 30-foot setback would be infeasible to provide, and **SUBJECT** to the following Conditions of Approval:

Conditions of Approval

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

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3. The Conditional Use Permit shall not be valid unless and until the Revised Detailed District Development Plan and required waivers are approved by the City of St. Matthews.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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Case No. 23-CUP-0007

Request:	Conditional Use Permit for Short Term Rental of a Dwelling Unit That is Not the Primary Residence of the Host
Project Name:	Rodman Street Short Term Rental
Location:	3005 Rodman Street
Owner/Applicant:	Magnolia & Pine, LLC
Representative:	Shelby & Evan Lamb
Jurisdiction:	Louisville Metro
Council District:	3 - Kumar Rashad
Case Manager:	Heather Pollock, Planner I

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

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

Agency testimony:

01:27:49 Heather Pollock presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation). She said the lot next door looks like it has been paved over for parking. It is owned by the rental hall next door.

The following spoke in favor of the request:

Evan Lamb, 11708 Wetherby Avenue, Louisville, KY 40243

Summary of testimony of those in favor:

01:31:49 Evan Lamb, the applicant's representative, presented the case and responded to questions from the Board members (see recording for detailed presentation.) He said they bought the property at the end of November; the property had been vacant for two years prior to their purchase and was in bad shape. He said this will be their second short-term rental property, but they have multiple regular long-term rentals in this area.

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The following spoke in opposition to the request:

No one spoke.

01:36:55 Board Members' deliberation

01:38:44 On a motion by Member Horton, seconded by Member Vozos, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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

WHEREAS, the Board further finds that, when appropriately managed, the proposed use is compatible with surrounding development and land uses; and

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

WHEREAS, the Board further finds that **4.2.63** Short Term Rental Term Rental of a dwelling unit that is not the primary residence of the host or the Short Term Rental of a condominium unit that is the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and Short Term Rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days, or more is not considered a short term rental. ***The applicant has been informed of this requirement.***
- B. The dwelling unit shall be limited to a single short term rental contract at a time. ***The applicant has been informed of this requirement.***
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is

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in excess of two acres in which case the occupancy limit shall be two times the number of bedrooms plus six individuals. ***The subject property is smaller than two acres. The 1st unit will have 2 bedrooms that will allow a maximum number of 6 guests. The 2nd unit will have 1 bedroom that will allow a maximum number of 4 guests.***

- D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to the nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. The provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host. **The Board has granted relief from this requirement.**
- E. The building in which the dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. The evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board where in all condominium would be discussed and a majority of the board members voted in favor of permitting/allowing the short term rental of the subject condominium. In addition to notification required by Chapter 11 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted. ***The applicant has been informed of this requirement and proposes to convert the structure to a duplex. PVA lists the structure as a single family dwelling unit.***
- F. Food and alcoholic beverages shall not be served by the host to any guest. ***The applicant has been informed of this requirement.***
- G Outdoor signage which identifies the short term rental is prohibited in residential zoning districts. ***The applicant has been informed of this requirement.***
- H. There shall be a sufficient amount of parking available for guests, as determined

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by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. ***The applicant has stated there are 4 off street parking spaces available. Additionally, on-street parking is available in the area.***

- I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances. ***The applicant has been informed of this requirement.***
- J. If the property is subject to two (2) or more substantiated civil and/or criminal complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief. ***The applicant has been informed of this requirement.***
- K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void. ***The applicant has been informed of this requirement***
- L. An active registration for the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code. ***The applicant has been informed of this requirement.***

Now, therefore be it

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RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in the R-6 multi-family zoning district and Traditional Neighborhood form district, and does hereby grant relief from Item D because the site is in the center of a commercial tourist venue and will benefit the immediate community, and the other short-term rental proposal had not yet been approved, and **SUBJECT** to the following Condition of Approval:

Condition of Approval

- 1) The conditional use permit approval for this short term rental shall be allowed up to 2 bedrooms (with a maximum of 6 guests at any time) in the 1st unit, and up to 1 bedroom in the 2nd unit (with a maximum of 4 guests at any one time). Prior to use, bedrooms must meet all occupancy requirements set forth in Louisville Metro Code of Ordinances. A modification of the conditional use permit shall be required to allow additional bedrooms.

The vote was as follows:

YES: Members Horton, Vozos, and Chair Bond.

NO: Vice Chair Buttorff.

ABSENT: Members Howard, Leanhart, and Ford.

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Case No. 23-CUP-0012

Request:	Conditional Use Permit for Short Term Rental of a Dwelling Unit That is Not the Primary Residence of the Host
Project Name:	Parkland Court Short Term Rental
Location:	12004 Parkland Court
Owner/Applicant:	Greg & Stephanie Virgin
Representative:	Michael Marks, Wetterer & Clare
Jurisdiction:	City of Middletown
Council District:	19 - Anthony Piagentini
Case Manager:	Heather Pollock, Planner I

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

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

Agency testimony:

01:41:36 Heather Pollock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Greg Virgin, 11603 Shelbyville Road Suite 4, Louisville, KY 40243
Michael Marks, 2933 Bowman Avenue, Louisville, KY 40205

Summary of testimony of those in favor:

01:45:23 Michael Marks, the applicant's representative, presented the applicant's case (see recording for detailed presentation.)

01:48:45 Greg Virgin, the applicant, presented his case (see recording for detailed presentation.)

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The following spoke in opposition to the request:

Emily Spendlove, 12016 Parkland Court, Louisville, KY 40243

Lisa and Paul Cattano, 12019 Parkland Court, Louisville, KY 40243

Lesley Chadwell, 12005 Parkland Court, Louisville, KY 40243

Kevin Weis, 12013 Parkland Court, Louisville, KY 40243

Summary of testimony of those in opposition:

01:50:15 Emily Spendlove, president of the homeowner's association, said only seven of the 20 homes on this cul-de-sac were invited to the neighborhood meeting. She said neither she nor the homeowner's association received an invitation in the mail. She said all three neighbors who attended the neighborhood meeting were opposed to the permit, and that new polling shows that 17 of 20 homes are opposed to the permit, with two homes unavailable for comment. She said this home is currently under contract to be sold to an unknown party.

01:54:02 Lisa Cattano said the applicant put this home up for sale on March 23, 2023. On April 7, 2023, a sign was posted on the property advertising this hearing. She said neighbors were not invited to the neighborhood meeting, and there is concern because no one knows who will be staying here. She said there is also concern about where renters will be parking – this is a cul-de-sac.

01:57:45 Paul Cattano said there is not adequate parking for 12 occupants at that house. Also, because of where the house is located, additional cars could impede vehicles (particularly large emergency vehicles) trying to get to the back of the cul-de-sac. He had concerns about the home's maintenance.

02:00:01 Lesley Chadwell said she lives directly across the street from the subject site. She reiterated all of the concerns her neighbors have mentioned, and is also concerned about a negative effect on her property value.

02:02:30 Kevin Weis said there has been a "significant change" since the application was filed back in January, namely that the house has been put up for sale, and residents do not know who the new owner might be. This renders the applicant's submitted justification statement incorrect. He also reiterated concerns previously raised by today's speakers. Member Bond discussed Condition of Approval #3 regarding a change of ownership and obligations of new owners (see recording for detailed discussion.)

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Rebuttal:

02:08:34 Mr. Marks delivered rebuttal (see recording.)

02:11:42 Mr. Virgin said the house is up for sale but is not scheduled to close. He said he is not at liberty to disclose any contingencies related to the contract but said it is his understanding that the buyer is currently out-of-state. He discussed a neighborhood meeting which was held without him, and legal reasons why his application is justified (see recording for detailed discussion.)

02:19:28 Board Members' deliberation.

Joe Haberman, Planning & Design Manager, discussed Louisville Metro's and the City of Middletown's regulations regarding short term rentals. Laura Ferguson, legal counsel for the Board, also discussed enforcement (see recording for detailed discussion.)

02:28:25 On a motion by Member Vozos, seconded by Vice Chair Buttorff, the following resolution, based on evidence and testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that Standard #2 is not being met, because the proposal is not compatible with the surrounding land use and general character of the area, due to the potential number of people and vehicles accessing the property, and that the proposed use is inconsistent with the other single-family homes in the neighborhood, in addition to significant neighborhood opposition; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the requested Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in the R-4 single family zoning district and Neighborhood form district, in the City of Middletown.

The vote was as follows:

YES: Members Horton, Vozos, and Vice Chair Buttorff.

NO: Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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Case No. 23-CUP-0017

Request:	Conditional Use Permit for Short Term Rental of a Dwelling Unit That is Not the Primary Residence of the Host
Project Name:	Wallace Avenue Short Term Rental
Location:	2403 Wallace Avenue
Owner/Applicant:	Brandon & Jennifer Tolman
Jurisdiction:	Louisville Metro
Council District:	8 - Ben Reno-Weber
Case Manager:	Heather Pollock, 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:

02:32:36 Heather Pollock presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Brandon Tolman, 10505 South Clementine Circle, South Jordan, Utah 84095
Flannery O'Neil, 2401 Wallace Avenue, Louisville, KY 40205

Summary of testimony of those in favor:

02:35:19 Brandon Tolman, the applicant, said he was available to answer questions. He said he has partnered with a local management company for property management. He said he and his family will be using the property when they visit here, but when not using it, they want to rent it out. He said he was not present for the neighborhood meeting, but a representative was there. He said only one person attended the meeting; no one was in opposition (see recording for detailed presentation.)

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02:38:19 Flannery O'Neil said she and her husband own the home directly next to the subject property. She said she is generally in support; however, she asked that a privacy fence be installed between the two properties because the homes are very close together. She also asked that fewer than 10 people at a time would be preferable.

The following spoke in opposition to the request:

Ann Ramser, 307 East Kenwood Drive, Louisville, KY 40214

Summary of testimony of those in opposition:

02:40:11 Ann Ramser asked if there were fire extinguishers, smoke alarms, and carbon monoxide detectors in the home, and if there had been a lead inspection. She asked if four bedrooms are standard for homes in the area. In response to a question from Vice Chair Buttorff, she said she does not live in close proximity to the subject site. She said she is concerned about short-term rentals anywhere in the Louisville Metro area because of homelessness and housing shortage (see recording for detailed discussion.)

Rebuttal:

02:46:24 Mr. Tolman said he was willing to consider the privacy fence. He said the house was a duplex that has been converted to a single-family home. He said some of the neighbors have his contact information; he is willing to provide the contact information for the management company. The Board members discussed whether a privacy fence should be made a Condition of Approval. It was agreed that this should be made as a Condition of Approval and that the applicant would have 6 months to complete the fence.

02:50:44 Board Members' deliberation

Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in the R-5 single family zoning district and Traditional Neighborhood form district.

02:53:41 On a motion by Vice Chair Buttorff, seconded by Member Vozos, the following resolution, based on Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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

WHEREAS, the Board further finds that, when appropriately managed, the proposed use is compatible with surrounding development and land uses; and

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

WHEREAS, the Board further finds that **4.2.63** Short Term Rental Term Rental of a dwelling unit that is not the primary residence of the host or the Short Term Rental of a condominium unit that is the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and Short Term Rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental. ***The applicant has been informed of this requirement.***
- B. The dwelling unit shall be limited to a single short term rental contract at a time. ***The applicant has been informed of this requirement.***
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is in excess of two acres in which case the occupancy limit shall be two times the number of bedrooms plus six individuals. ***The subject property is smaller than two acres. The applicant states that the residence has 4 bedrooms that will allow a maximum number of 10 guests.***
- D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to the nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. The provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host. ***As of the date of this report,***

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within 600' of the subject property, there are no properties with an approved conditional use permit allowing short term rentals that is not the primary residence of the host.

- E. The building in which the dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. The evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board where in all condominium would be discussed and a majority of the board members voted in favor of permitting/allowing the short term rental of the subject condominium. In addition to notification required by Chapter 11 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted. ***The applicant has been informed of this requirement. PVA lists the structure as a two-family dwelling; however, the applicant has shown this to be a single family residence.***
- F. Food and alcoholic beverages shall not be served by the host to any guest. ***The applicant has been informed of this requirement.***
- G. Outdoor signage which identifies the short term rental is prohibited in residential zoning districts. ***The applicant has been informed of this requirement.***
- H. There shall be a sufficient amount of parking available for guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. ***The applicant has stated there are 3 off-street parking spaces available. Additionally, on-street parking is available in the area.***
- I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances. ***The applicant has been informed of this requirement.***
- J. If the property is subject to two (2) or more substantiated civil and/or criminal

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complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief. ***The applicant has been informed of this requirement.***

- K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void. ***The applicant has been informed of this requirement***
- L. An active registration for the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code. ***The applicant has been informed of this requirement.***

Now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in the R-5 single family zoning district and Traditional Neighborhood form district; **SUBJECT** to the following Conditions of Approval:

Conditions of Approval

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1. The conditional use permit for this short term rental approval shall allow up to 4 bedrooms (with a maximum of 10 guests at any one time). Prior to use, bedrooms must meet all occupancy requirements set forth in Louisville Metro Code of Ordinances. A modification of the conditional use permit shall be required to allow additional bedrooms.
2. Within six months from the date of this approval, the applicant shall install a privacy fence along the northern-side property line.

The vote was as follows:

YES: Members Vozos, Vice Chair Buttorff, and Chair Bond.

NO: Member Horton.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 23-CUP-0020

Request:	Conditional Use Permit for Short Term Rental of a Dwelling Unit That is Not the Primary Residence of the Host
Project Name:	Somber Way Short Term Rental
Location:	3006 Somber Way
Owner/Applicant:	Ashley & Michael Kimble
Jurisdiction:	Louisville Metro
Council District:	26 - Brent Ackerson
Case Manager:	Heather Pollock, 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:

02:57:08 Heather Pollock presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Michael Kimble, 3006 Somber Way, Louisville, KY 40220

Summary of testimony of those in favor:

02:59:42 Michael Kimble, the applicant, presented the case, showed a Power Point presentation, and responded to questions from the Board members (see recording for detailed presentation.) He described the locations of the fire extinguishers, smoke detectors, and carbon monoxide detectors in the home. In response to a question from Joe Haberman, Planning & Design Manager, Mr. Kimble addressed the complaint about the privacy fence. He described its location and height. An inspection is scheduled.

03:14:04 In response to a question from Member Vozos, Ms. Pollock said the correct number of guests listed in the Condition of Approval in the staff report should be

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eight, not ten (typo). Mr. Kimble discussed the “safety team” and police action that might be required to evict unruly renters.

The following spoke in opposition to the request:

Tim Warren, 3502 Johnston Way, Louisville, KY 40220

Summary of testimony of those in opposition:

03:16:56 Tim Warren discussed a loud party that took place on the property last summer. His primary concerns are noise, a fence too close to their property line, and safety issues (see recording for detailed presentation.)

Rebuttal:

03:20:00 Mr. Kimble delivered rebuttal (see recording.)

03:23:41 Board Members’ deliberation

Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in the R-5 single family zoning district and Neighborhood form district.

03:24:11 On a motion by Member Vozos, seconded by Member Horton, the following resolution, based on Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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

WHEREAS, the Board further finds that, when appropriately managed, the proposed use is compatible with surrounding development and land uses; and

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

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WHEREAS, the Board further finds that **4.2.63** Short Term Rental Term Rental of a dwelling unit that is not the primary residence of the host or the Short Term Rental of a condominium unit that is the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and Short Term Rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days, or more is not considered a short term rental. ***The applicant has been informed of this requirement.***
- B. The dwelling unit shall be limited to a single short term rental contract at a time. ***The applicant has been informed of this requirement.***
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is in excess of two acres in which case the occupancy limit shall be two times the number of bedrooms plus six individuals. ***The subject property is smaller than two acres. The applicant states that the residence has 3 bedrooms that will allow a maximum number of 8 guests.***
- D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to the nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. The provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host. ***As of the date of this report, within 600' of the subject property, there are no properties with an approved conditional use permit allowing short term rentals that is not the primary residence of the host.***
- E. The building in which the dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. The

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evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board where in all condominium would be discussed and a majority of the board members voted in favor of permitting/allowing the short term rental of the subject condominium. In addition to notification required by Chapter 11 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted. ***The applicant has been informed of this requirement. PVA lists the structure as a single family dwelling unit.***

F. Food and alcoholic beverages shall not be served by the host to any guest. ***The applicant has been informed of this requirement.***

G Outdoor signage which identifies the short term rental is prohibited in residential zoning districts. ***The applicant has been informed of this requirement.***

H. There shall be a sufficient amount of parking available for guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. ***The applicant has stated there are 5 off street parking space available. Additionally, on-street parking is available in the area.***

I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances. ***The applicant has been informed of this requirement.***

J. If the property is subject to two (2) or more substantiated civil and/or criminal complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief. ***The applicant has been informed of this requirement.***

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- K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void.

The applicant has been informed of this requirement

- L. An active registration for the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code. ***The applicant has been informed of this requirement.***

Now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in the R-5 single family zoning district and Neighborhood form district, **SUBJECT** to the following Condition of Approval:

Condition of Approval

1. The conditional use permit for this short term rental approval shall allow up to 3 bedrooms (with a maximum of 8 guests at any one time). Prior to use, bedrooms must meet all occupancy requirements set forth in Louisville Metro Code of Ordinances. A modification of the conditional use permit shall be required to allow additional bedrooms.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 23-CUP-0024

Request:	Conditional Use Permit for Short Term Rental of a Dwelling Unit That is Not the Primary Residence of the Host
Project Name:	Marwood Place Short Term Rental
Location:	3921 Marwood Place
Owner/Applicant:	B&B Properties LOU, LLC
Representative:	Donna Baugh
Jurisdiction:	Louisville Metro
Council District:	10 - Pat Mulvihill
Case Manager:	Molly Clark, Planner II

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

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

Agency testimony:

03:28:46 Molly Clark presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Donna Baugh, 1212 Larue Avenue, Louisville, KY 40213

Summary of testimony of those in favor:

03:22:22 Donna Baugh, the applicant, presented the case and responded to questions from the Board members (see recording for detailed presentation.) She said there are cameras on the outside of the home, but no noise detectors yet. She said she was interested in one shown by a previous short-term rental applicant for another case. She described the location of fire extinguisher, smoke detectors, and carbon monoxide detectors. She discussed the management of the other short-term rental property she owns.

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The following spoke in opposition to the request:

Judith Franck, 3919 Marwood Place, Louisville, KY 40213

Emily Gillooly, 3918 Marwood Place, Louisville, KY 40213

Ann Ramser, 309 East Kenwood Drive, Louisville, KY 40214

Summary of testimony of those in opposition:

03:43:57 Emily Gillooly said this is a very small, dead-end street (13 houses.) She said the property is currently being used as a mid-term rental right now; there are about six cars parked in front of the home right now. There have been loud parties with many cars.

03:48:36 Justin Franck discussed notice and neighborhood meetings. He also discussed the revving cars and other tenant issues and gave multiple examples in which he said the owners were not responsive. He is also concerned about increased traffic and parking on the street – he said some of his neighbors could not get their trash collected because the street was blocked with parked cars, and he showed a photo of the parked cars. In response to questions from Vice Chair Buttorff, he discussed the other long-term rentals on the street (see recording for detailed discussion.)

03:58:54 Joe Haberman, Planning & Design Manager, explained window height and width requirements for basement emergency egress (see recording.)

03:59:20 Ann Ramser was called but said she had nothing further to add to others' testimony.

Rebuttal:

04:00:00 Ms. Baugh discussed neighborhood notice; the pictures of the parked cars; and her calls to the police department after the noise complaint. She said there is currently a bedroom in the unfinished basement but there are no plans to rent that out (see recording.)

04:06:14 Laura Ferguson, legal counsel for the Board, Mr. Haberman, and the Board members discussed not using the basement bedroom and limiting the number of guests (see recording for detailed discussion.)

04:08:42 Board Members' deliberation.

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Conditional Use Permit to allow short term rental of dwelling unit that is not the primary residence of the host in the R-5 Single Family Residential Zoning District and Neighborhood form district.

04:19:28 On a motion by Member Horton, seconded by Vice Chair Buttorff, the following resolution, based on Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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

WHEREAS, the Board further finds that, when appropriately managed, the proposed use is compatible with surrounding development and land uses; and

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

WHEREAS, the Board further finds that **4.2.63** Short Term Rental Term Rental of a dwelling unit that is not the primary residence of the host or the Short Term Rental of a condominium unit that is the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and Short Term Rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental. ***The applicant has been informed of this requirement.***
- B. The dwelling unit shall be limited to a single short term rental contract at a time. ***The applicant has been informed of this requirement.***
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is in excess of two acres in which case the occupancy limit shall be two times the number of bedrooms plus six individuals. ***The subject property is smaller than two acres. The applicant states that the dwelling unit has 5***

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bedrooms that will allow a maximum number of 12 guests.

- D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to the nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. The provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host. ***As of the date of this report, within 600' of the subject property, there are 0 properties with an approved conditional use permit allowing short term rentals that is not the primary residence of the host.***
- E. The building in which the dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. The evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board where in all condominium would be discussed and a majority of the board members voted in favor of permitting/allowing the short term rental of the subject condominium. In addition to notification required by Chapter 11 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted. ***The applicant has been informed of this requirement.***
- F. Food and alcoholic beverages shall not be served by the host to any guest. ***The applicant has been informed of this requirement.***
- G. Outdoor signage which identifies the short term rental is prohibited in residential zoning districts. ***The applicant has been informed of this requirement.***
- H. There shall be a sufficient amount of parking available for guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. ***LDC standards credit the site with 1 on street and 4 off-street parking spaces.***

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- I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances. ***The applicant has been informed of this requirement.***
- J. If the property is subject to two (2) or more substantiated civil and/or criminal complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief. ***The applicant has been informed of this requirement.***
- K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void. ***The applicant has been informed of this requirement***
- L. An active registration for the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code. ***The applicant has been informed of this requirement.***

now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit to allow short term rental of dwelling unit that is not the primary residence of the host in the R-5 Single Family Residential Zoning District and Neighborhood form district; **SUBJECT** to the following Condition of Approval:

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Condition of Approval

1. The conditional use permit approval for this short term rental shall be allowed up to 5 bedrooms (with a maximum of 8 guests at any time). Prior to use, bedrooms must meet all occupancy requirements set forth in Louisville Metro Code of Ordinances. A modification of the conditional use permit shall be required to allow additional bedrooms.

The vote was as follows:

YES: Members Horton, Vozos, and Vice Chair Buttorff.

NO: Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

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PUBLIC HEARING

Case No. 23-CUP-0093

Request:	Conditional Use Permit for Short Term Rental of a Dwelling Unit That is Not the Primary Residence of the Host
Project Name:	Deer Park Avenue Short Term Rental
Location:	1610 Deer Park Avenue
Owner/Applicant:	Jack and Donna Heil
Representative:	Jack and Donna Heil
Jurisdiction:	Louisville Metro
Council District:	8 - Benjamin Reno-Weber
Case Manager:	Amy Brooks, Planner I

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

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

Agency testimony:

04:23:37 Amy Brooks presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation). She noted that there are comments from the Metro Council representative, and she handed out copies to the Board members for review. There is also another comment received after the deadline. She discussed the 600-foot rule, and explained that there is another CUP for a short-term rental within that boundary; however, that owner has allowed their registration to expire.

04:29:37 Joe Haberman, Planning & Design Manager, explained legal technicalities of the 600-foot rule and the revocation of a Conditional Use Permit in more detail (see recording for detailed presentation.)

The following spoke in favor of the request:

Donna Heil, 5419 Stalworth Drive, Charlotte, NC 28226-4002

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Summary of testimony of those in favor:

04:33:31 Donna Heil, the applicant and representative, presented the case and responded to questions from the Board members (see recording for detailed presentation.) She noted that she does not allow more than 8 guests, even though they are approved for 10. She discussed parking locations, and said she has never had any complaints from neighbors

The following spoke in opposition to the request:

Ann Ramser, 307 East kenwood Road, Louisville, KY 40214

Summary of testimony of those in opposition:

04:39:47 Ann Ramser asked who the applicant is partnering with to care for the property, since the applicant lives out of state. She also asked about short-term rentals that have been declared null and void, and what that process is. She said she is concerned that Metro is “trying to find ways to circumvent the 600-foot rule.”

Rebuttal:

04:43:20 Ms. Heil said the first two years, her next door neighbor and the neighbor’s adult daughter took care of the property. The property is now being taken care of by her adult niece, who lives less than a mile away. She said she is also in town about every 5-6 weeks. The neighbors have all of the contact phone numbers.

04:45:16 In response to questions from Vice Chair Buttorff, Ms. Heil discussed the letter of opposition from Metro Councilmember Ben Reno-Weber based on the 600-foot rule (see recording for detailed discussion.) She noted that the house has never been used for anything other than a short-term rental since 2019. Mr. Haberman and Laura Ferguson, legal counsel for the Board, also discussed the other short-term rental within the 600-foot boundary.

04:52:04 Board Members’ deliberation

Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in the R-5 single family residential zone and Neighborhood form district.

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04:54:04 On a motion by Vice Chair Buttorff, seconded by Member Vozos, the following resolution, based on Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

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

WHEREAS, the Board further finds that, when appropriately managed, the proposed use is compatible with surrounding development and land uses; and

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

WHEREAS, the Board further finds that **4.2.63** Short Term Rental of a dwelling unit that is not the primary residence of the host or the Short Term Rental of a condominium unit that is the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and Short Term Rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental. ***The applicant has been informed of this requirement.***
- B. The dwelling unit shall be limited to a single short term rental contract at a time. ***The applicant has been informed of this requirement.***
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is in excess of two acres in which case the occupancy limit shall be two times the number of bedrooms plus six individuals. ***The subject property is smaller than two acres. The applicant states that the residence has 4 bedrooms that will allow a maximum number of 10 guests.***

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- D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to the nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. The provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host. ***This property was approved for a conditional use permit to operate short-term rentals in 2019 with the standard that states “ if the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code.” The applicant failed to renew their annual short-term rental within the required six months; hence, staff determined that a new annual short term rental registration could not be issued until a new CUP was granted. However, the 2019 CUP (19-CUP-0035) is still existing and not yet revoked by the Board of Zoning Adjustment, and as such, makes this property not subjected to any 600 foot proximity requirements.***
- E. The building in which the dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. The evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board where in all condominium would be discussed and a majority of the board members voted in favor of permitting/allowing the short term rental of the subject condominium. In addition to notification required by Chapter 11 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted. ***The applicant has been informed of this requirement.***
- F. Food and alcoholic beverages shall not be served by the host to any guest. ***The applicant has been informed of this requirement.***
- G. Outdoor signage which identifies the short term rental is prohibited in residential

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zoning districts. ***The applicant has been informed of this requirement.***

- H. There shall be a sufficient amount of parking available for guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. ***. There is also a two-vehicle garage on the site with a large paved apron that can accommodate additional vehicles.***
- I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances. ***The applicant has been informed of this requirement.***
- J. If the property is subject to two (2) or more substantiated civil and/or criminal complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief. ***The applicant has been informed of this requirement.***
- K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void. ***The applicant has been informed of this requirement***
- L. An active registration for the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code. ***The applicant has been informed of this requirement***

BOARD OF ZONING ADJUSTMENT MINUTES
April 24, 2023

PUBLIC HEARING

Case No. 23-CUP-0093

now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in the R-5 single family residential zone and Neighborhood form district, **SUBJECT** to the following Conditions of Approval:

Condition of Approval

1. The conditional use permit for this short term rental approval shall allow up to 4 bedrooms (with a maximum of 8 guests at any one time). Prior to use, bedrooms must meet all occupancy requirements set forth in Louisville Metro Code of Ordinances. A modification of the conditional use permit shall be required to allow additional bedrooms.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

BOARD OF ZONING ADJUSTMENT MINUTES
April 24, 2023

PUBLIC HEARING

Case No. LIC-STL-22-00311

Request:	Short Term Rental Host Residency Hearing
Project Name:	Host Ty Walston
Location:	2509 Top Hill Rd
Owner:	2509 TH Land Trust
Applicant:	n/a
Representative:	Ty Walston
Jurisdiction:	Louisville Metro
Council District:	9 - Andrew Owen
Case Manager:	Joseph Haberman, Planning & Design Manager

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:

04:55:08 Joe Haberman presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation). He said Mr. Walston submitted a short-term rental application in April of last year. He said property owners need to sign off on almost all applications to use a property (see recording for detailed discussion.)

The following spoke in favor of the request:

No one spoke.

The following spoke in opposition to the request:

Sharon Merker, 2517 Top Hill Road, Louisville, KY 40206
Councilman Andrew Owen, 2611 Top Hill Road, Louisville, KY 40206
Joe O'Reilly, 2405 Top Hill Road, Louisville, KY 40206
Stephen Watkins, 2505 Top Hill Road, Louisville, KY 40206
Rosella Rudd, 2508 Top Hill Road, Louisville, KY 40206
David Habich, 2515 Top Hill Road, Louisville, KY 40206

BOARD OF ZONING ADJUSTMENT MINUTES
April 24, 2023

PUBLIC HEARING

Case No. LIC-STL-22-00311

Summary of testimony of those in opposition:

05:16:00 Sharon Merker said she has never seen Mr. Walston or Wayne Gallavin. She affirmed that Mr. Walston does not live at 2509 Top Hill Road.

05:16:44 Joe O'Reilly said he has lived here for 19 years and knows his neighbors. He showed a photo of Mr. Walston and said he has never seen him. He said Mr. Gallavin bought the house in 2016 and started renting it right away – he said he had plans to move in, or that his daughter would live there, but neither did.

05:19:12 Stephen Watkins said he has lived at his address since 1985. He said Mr. Gallavin had a neighborhood meeting shortly after buying the property and was going to apply for a short-term rental permit – there was so much opposition, that he changed his plans and said his daughter was going to live in the house. Then Mr. Walston was introduced to the neighbors as the new tenant. Mr. Watkins said the yard is not maintained, and tree branches have come down onto power lines and not been removed.

05:24:51 Rosella Rudd said no one has lived in the subject site since it became a short-term rental. She said that guests have been using this house after the registration expired on April 14th. She said a cleaning service comes to clean after guests leave.

05:27:29 Councilman Andrew Owen identified himself as a Top Hill Road resident and also the Metro Council representative for this district. He said that this address and 2-3 others are the reasons for the “host” clause in the Metro Ordinance

05:30:06 David Habich said he agreed with neighbors’ testimony today and said this rental has been a problem since it started. He said no one lives there permanently.

Rebuttal:

No one was present to deliver rebuttal.

05:32:30 Board Members’ deliberation

BOARD OF ZONING ADJUSTMENT MINUTES
April 24, 2023

PUBLIC HEARING

Case No. LIC-STL-22-00311

05:34:39 On a motion by Vice Chair Buttorff, seconded by Member Vozos, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **ACCEPT** the staff's determination that the subject dwelling is not the primary residence of the host, as defined in Section 1.2.2.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

05:35:50 Board Members' deliberation regarding a residency hearing for Wayne Gallavin (see recording for detailed discussion.)

05:36:17 On a motion by Member Vozos, seconded by Vice Chair Buttorff, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby schedule a residency hearing to be conducted for Wayne Gallavin to determine if his primary residency is at 2509 Top Hill Road at the **May 15, 2023** Board of Zoning Adjustment hearing.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

BOARD OF ZONING ADJUSTMENT MINUTES
April 24, 2023

PUBLIC HEARING

Case No. LIC-STA-23-00498

Request:	Short Term Rental Host Residency Hearing
Project Name:	Host William Thomas Nutt
Location:	1505 E Breckinridge St
Owner:	1505 East Breckenridge Street Land Trust
Applicant:	n/a
Representative:	William Thomas Nutt
Jurisdiction:	Louisville Metro
Council District:	8 - Ben Reno-Weber
Case Manager:	Joseph Haberman, Planning & Design Manager

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:

05:38:01 Joe Haberman presented the case, showed a Power Point presentation, and responded to questions from the Board members (see staff report and recording for detailed presentation). He noted that the host was not present for the hearing today, but neighbors have attended to present testimony. Mr. Haberman said that, according to the report, February of 2023 is the date when the rear unit was rented. The first violation date is from 2018 (see report for detailed timeline.) Mr. Haberman described the two units and their locations, and discussed a letter of opposition from Debra Harlan, who was not able to attend in person. A representative of the homeowners' association will also speak today.

The following spoke in favor of the request:

No one spoke.

The following spoke in opposition to the request:

Jim Schorch, 1503 East Breckinridge Street Front, Louisville, KY 40204
Sonya Johnson, 1503 East Breckinridge Street Rear, Louisville, KY 40204

BOARD OF ZONING ADJUSTMENT MINUTES
April 24, 2023

PUBLIC HEARING

Case No. LIC-STA-23-00498

Summary of testimony of those in opposition:

05:51:07 Jim Schorch said he has been living in his residents for 31 years. He detailed the complaints and issues arising from this rental, including parties and noise, and said that the Original Highlands Neighborhood Association has submitted a written letter of opposition. He described his efforts to contact William Nutt and said he does not know what he looks like. He said he has filed complaints with MetroCall. He said when the STR is rented, the owner/s use both units, not just one. He discussed traffic and parking, including renters who park in front of the fire hydrant (these issues have been report to the police.)

00:06:29 In response to questions from Member Vozos, Mr. Haberman discussed whether there was a CUP on the front unit. The owner submitted a pre-application for a CUP, but decided to not pursue it (see recording for detailed discussion.)

06:04:10 Sonya Johnson said she only sees the renters using what appear to be both front and rear units. She reiterated that the rentals have been a nuisance for years and there are loud parties almost every weekend. She said she has reported this to the police multiple times, as well as the owner. Mr. Haberman described the “two-strike rule”, wherein two substantiated complaints within one year can result in the loss of a STR license, regardless of whether the host lives on the property or not.

06:19:23 On a motion by Vice Chair Buttorff, seconded by Member Horton, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to the **May 1, 2023** Board of Zoning Adjustment meeting.

The vote was as follows:

YES: Members Horton, Vozos, Vice Chair Buttorff, and Chair Bond.

ABSENT: Members Howard, Leanhart, and Ford.

BOARD OF ZONING ADJUSTMENT MINUTES
April 24, 2023

The meeting adjourned at approximately 7:45 p.m.

Chair

Secretary