

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

April 17, 2017

A meeting of the Louisville Metro Board of Zoning Adjustment was held on April 17, 2017 at 8:30 a.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Members Present:

Betty Jarboe, Vice Chair
Rosalind Fishman, Secretary
Paul Bergmann
Lester Turner
Dean Tharp
Lula Howard

Members Absent:

Mike Allendorf, Chair

Staff Members Present:

Brian Mabry, Planning & Design Supervisor
Emily Liu, Planning & Design Director
Joe Haberman, Planning & Design Manager
Steve Hendrix, Planning Supervisor
Julia Williams, Planning Supervisor
Jon Crumbie, Planning & Design Coordinator
Dante St. Germain, Planner I
Laura Mattingly, Planner II
Joel Dock, Planner II
John Carroll, Legal Counsel
Sue Reid, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

APRIL 3, 2017 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

00:05:26 On a motion by Member Fishman, seconded by Member Tharp, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on April 3, 2017.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Howard, Tharp and Vice Chair Jarboe

Absent: Chair Allendorf

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BUSINESS SESSION

CASE NUMBER 17VARIANCE1012

Request:	Variance from the required 5' side yard setback
Project Name:	7115 Welchire Falls Drive
Location:	7115 Welchire Falls Drive
Owner:	Welch Builders Inc.
Applicant:	Welch Builders Inc.
Representative:	Charles Podgursky
Jurisdiction:	Louisville Metro
Council District:	8 – Brandon Coan
Case Manager:	Dante St. Germain, 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:

00:06:10 Dante St. Germain presented the case. Ms. St. Germain stated this is a Business Session item because all adjoining property owners' signatures have been received by staff. Ms. St. Germain showed the site plan and responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

No one spoke.

The following spoke in opposition of the request:

No one spoke.

00:08:34 On a motion by Member Fishman, seconded by Member Tharp, the following resolution was adopted:

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WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the encroaching wall will need to meet building code, protecting the health, safety and welfare of the neighboring resident, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the house's design and materials are consistent with the rest of the neighborhood, and the encroachment is under 2 ½ feet, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the south wall of the building must meet building code, which will protect the interests of the neighboring resident, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the encroachment was accidental, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the parcel is not irregularly shaped, and the topography of the parcel does not constrain the construction in such a way as to require the variance, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring costly revisions to the house or the demolishing and rebuilding of the house, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the encroachment was accidental and took place subsequent to the adoption of the zoning regulation; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 17VARIANCE1012, does hereby **APPROVE** Variance from Land Development Code Table 5.3.1 for a structure to encroach into the required side yard (**Requirement 5 ft., Request 2.56 ft., Variance 2.44 ft.**), based upon the Staff Report and the presentation.

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The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Howard, and Vice Chair Jarboe

Absent: Chair Allendorf

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PUBLIC HEARING

CASE NUMBER 14CUP1003

Request:	Conditions of Approval for the potentially hazardous or nuisance use (staging lot for trucks and trailers) Conditional Use Permit, approved on January 11, 2016.
Project Name:	Conditions of Approval
Location:	151 & 201 Cabel Street
Owner:	Swift Pork Company
Applicant:	JBS USA, LLC & Swift Pork Company
Representative:	Glenn Price
Jurisdiction:	Louisville Metro
Council District:	4- Barbara Sexton Smith
Case Manager:	Steve Hendrix, Planning and Design Supervisor

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

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Agency Testimony:

00:10:04 Steve Hendrix presented the case and showed a Powerpoint presentation. Mr. Hendrix responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

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

Summary of testimony of those in favor:

00:13:50 Glenn Price spoke in favor of the request and showed a Powerpoint presentation. Mr. Price responded to questions from the Board Members (see recording for detailed presentation).

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The following spoke in opposition of the request:

Jon Salomon, 101 South Fifth Street, Louisville, KY 40202

Summary of testimony of those in opposition:

00:22:53 Jon Salomon spoke in opposition of the request. Mr. Salomon stated he would like to commend JBS Swift Company for their efforts so far. Mr. Salomon stated he thinks there is still some landscaping that needs to be done, but the most important issue at this time would be Condition 18 regarding Diesel Emissions. Mr. Salomon responded to questions from the Board Members (see recording for detailed presentation).

REBUTTAL:

00:27:18 Glenn Price spoke in rebuttal. Mr. Price stated he thought the landscaping had been completed, but he'll go back and double check and report back (see recording for detailed presentation).

00:28:15 Board Members' deliberation

00:35:31 On a motion by Member Fishman, seconded by Member Tharp, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 14CUP1003, does hereby acknowledge that Condition #3B (Fencing) and Condition #5 (Lighting) have been **MET**, and Condition #18 (Diesel Emissions) be **CONTINUED** to the July 10, 2017 Board of Zoning Adjustment meeting, along with an affirmation that the landscaping requirement of Condition #3C has been complied with, based upon the presentation, the Staff Report and the discussion.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Howard, and Vice Chair Jarboe

Absent: Chair Allendorf

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CASE NUMBER 16CUP1001

Request:	Presentation of the feasibility study concerning the additional structure in front of the unloading area as per Condition of Approval #5, 16CUP1001 and the status of the AquaCode equipment.
Project Name:	Swift Update
Location:	1200 Story Avenue
Owner:	Swift Inc. (JBS USA, LLC)
Applicant:	John W. Cliff
Representative:	Glenn Price
Jurisdiction:	Louisville Metro
Council District:	4- Barbara Sexton Smith
Case Manager:	Steve Hendrix, Planning and Design Supervisor

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

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Agency Testimony:

00:38:14 Steve Hendrix presented the case and showed a Powerpoint presentation. Mr. Hendrix responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Glenn Price, 400 W. Market Street, Suite 3200, Louisville, KY 40202
Tim Stern, 1200 Story Avenue, Louisville, KY 40206

Summary of testimony of those in favor:

00:41:01 Glenn Price spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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00:42:20 Tim Stern spoke in favor of the request. Mr. Stern explained there is not enough space to allow for adding a structure in front of the unloading area. Mr. Stern stated another concern is humane handling. Mr. Stern reported on the operation of the Aqua Code system. Mr. Stern responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

Jon Salomon, 101 South Fifth Street, Louisville, KY 40202

Summary of testimony of those in opposition:

00:52:33 Jon Salomon spoke in opposition. Mr. Salomon stated he will take the applicant at their word that it is not feasible to add a structure in front of the unloading area. Mr. Salomon stated he wishes they would have proposed something else. Mr. Salomon stated it's important to note that there's new leadership at the plant, so he thinks we all need to be reasonable in giving people a chance to get up to speed (see recording for detailed presentation).

The following spoke in rebuttal:

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

Eric Wallin, 1200 Story Avenue, Louisville, KY 40206

Summary of rebuttal testimony:

00:56:52 Glenn Price spoke in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

01:00:11 Eric Wallin spoke in rebuttal in regard to staging of trucks on the street and responded to questions from the Board Members (see recording for detailed presentation).

01:05:32 Jon Salomon spoke in response to the additional testimony of Mr. Wallin. Mr. Salomon stated he agrees a great deal of the problem could be eliminated with scheduling (see recording for detailed presentation).

01:06:24 Board Members' deliberation

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01:16:45 Public Hearing was reopened to hear additional testimony from Mr. Price, Mr. Wallin and Mr. Salomon (see recording for detailed presentation).

01:23:00 Board Members' deliberation

01:23:25 On a motion by Member Howard, seconded by Member Tharp, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 16CUP1001, finds that the feasibility study report regarding Condition of Approval #5 be **ACCEPTED** in that the applicant has demonstrated that it would be unfeasible to enclose the trucks in front of the unloading area due to the size of the area, and that the status report of the Aqua Code system be **CONTINUED** to the July 10, 2017 Board of Zoning Adjustment meeting, based upon the presentation and discussion.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Howard, and Vice Chair Jarboe

Absent: Chair Allendorf

01:25:27 Meeting was recessed.

01:25:50 Meeting was reconvened.

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CASE NUMBER 17VARIANCE1017

Request:	Sign Height and Setback Variance
Project Name:	Thornton's Gas Station
Location:	4170 Taylor Blvd
Owner:	Jode Ballard, Thornton's Inc
Applicant:	Eric Tracy, Kimley-Horn & Associates
Representative:	Eric Tracy, Kimley-Horn & Associates
Jurisdiction:	Louisville Metro
Council District:	15 – Marianne Butler
Case Manager:	Laura Mattingly, 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:

01:26:00 Laura Mattingly presented the case and showed a Powerpoint presentation. Ms. Mattingly responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Eric Tracy, 7055 Yorkshire Drive, Woodridge, IL 60517
Jode Ballard, 2600 James Thornton Way, Louisville, KY 40245

Summary of testimony of those in favor:

01:32:42 Eric Tracy spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

01:36:09 Jode Ballard spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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The following spoke in opposition of the request:

No one spoke.

01:37:46 Board Members' deliberation

01:41:23 On a motion by Member Fishman, seconded by Member Tharp, the following resolution was adopted:

Variance from Land Development Code Table 8.3.2 (Traditional Neighborhood) to allow a proposed freestanding sign to exceed the minimum height of 6 feet, as shown on the sign elevations:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the sign does not encroach into the right of way and does not obstruct vision from the right-of-way, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the proposed sign is similar in style to those in the immediate area, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the sign does not encroach into the right of way, does not obstruct vision from the right-of-way and will comply with all lighting standards, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as this type of signage is typical for gas stations and many other commercial establishments of similar nature, and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the height is needed to adequately alert and inform patrons, 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 gas

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station would not be able to display all needed information and would not be visible to the extent needed by the applicant, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, and

WHEREAS, the Board further finds that the variance will enable the appropriate height for the sign to properly alert customers of the service offered and visible from the appropriate locations to allow vehicles to safely enter the site, and

WHEREAS, the Board further finds that the variance would not alter the essential character of the general vicinity because the development will be located on a section of the Taylor Boulevard corridor with multiple commercial users, and

WHEREAS, the Board further finds that the variance will not cause a hazard or nuisance to the public because the Louisville Department of Public Works is anticipated to approve the development plan. This approval will indicate, among other things, that the increased sign height will not adversely affect the safety of motor vehicles travelling adjacent to the site. Therefore, the variance will not cause a hazard or nuisance to the public, and

WHEREAS, the Board further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because sign height must be higher than the allowed in order to properly provide advanced warning to motorists, and

WHEREAS, the Board further finds that this site will be the only gas station & convenience store in the general vicinity. This increased sign height is required for advanced warning to motorists to allow motor vehicles to enter and exit safely. The configuration as described does not generally apply to land in the general vicinity, and

WHEREAS, the Board further finds that if the variance were not granted, the strict application of the regulation would require a sign of inadequate height. Such an alternate sign height for a gas station use would prevent proper notification to motor vehicles and would create an unnecessary hardship. The required landscaping would block the sign's target area, and

WHEREAS, the Board further finds that the circumstances are the result of typical site design for a gas station & convenience store & landscape requirements conflicting with the sign; and

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VARIANCE from Land Development Code Section 5.5.1.A.2 to allow the proposed building to be located more than 5' from the rights of way of both Bluegrass Avenue and Taylor Boulevard, as shown on the development plan:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since safe pedestrian access is provided from Bluegrass Avenue to the building entrance, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as there are a few properties in the vicinity that were constructed prior to the adoption of the regulation and the variance is being mitigated by the shrubbery screen that will be provided along the perimeter at the corner and along both adjacent roadways, and

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

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulation as the variance is being mitigated by the shrubbery screen that will be provided along the perimeter at the corner and along both adjacent roadways, and

WHEREAS, the Board further finds that the requested variance arises from special circumstances that do not generally apply to land in the general vicinity or the same zone, as gas stations cite an increase in safety issues with their buildings set close to public right-of-ways, 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 layout of the site, which is standard for all Thornton's, would have to be completely reconfigured, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, and

WHEREAS, the Board further finds that the variance will enable the appropriate positioning of the convenience store to allow for safe vehicular and pedestrian

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movement. The variance will not have any effect on the public health, safety or welfare because the development plan will seek the approval of the Department of Public Works, and

WHEREAS, the Board further finds that the variance would not alter the essential character of the general vicinity because there are multiple other commercial users along the Taylor Boulevard corridor which are consistent with the proposed layout, and

WHEREAS, the Board further finds that the variance will not cause a hazard or nuisance to the public because the Louisville Department of Public Works is anticipated to approve the development plan. This approval will indicate, among other things that the layout of the site is safe for motor vehicles and pedestrians on site, that there are adequate parking facilities on-site and that access points to and from the site are safe. Therefore, the variance will not cause a hazard or nuisance to the public, and

WHEREAS, the Board further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because convenience stores built in conjunction with gas/convenience facilities must be set back further than typically found in a Neighborhood Form District, to meet accepted site planning goals & principles, and

WHEREAS, the Board further finds that this site will be the only gas station & convenience store in the general vicinity. This configuration requires the location of the gas canopy and buildings at specific locations to allow motor vehicles to enter and exit safely, as well as, allowing customers to enter the store for consumables. The configuration as described does not generally apply to land in the general vicinity, and

WHEREAS, the Board further finds that if the variance were not granted, the strict application of the regulation would require the placement of the convenience store at the front of the site (i.e., so that the gas canopy would be at the rear of the site). Such an alternate site configuration for a gas station use would prevent the use of the site for sales of gas and would create an unnecessary hardship, and deviate from accepted site planning principles, and

WHEREAS, the Board further finds that the circumstances are the result of applying accepted site design principles for a gas station & convenience store; now, therefore be it

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RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 17VARIANCE1017, does hereby **APPROVE** Variance from Land Development Code Table 8.3.2 (Traditional Neighborhood) to allow a proposed freestanding sign to exceed the minimum height of 6 feet, as shown on the sign elevations, and Variance from Land Development Code Section 5.5.1.A.2 to allow the proposed building to be located more than 5' from the rights of way of both Bluegrass Avenue and Taylor Boulevard, as shown on the development plan, based upon the Staff Report, the applicant's justification statement, the presentation and discussion.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Howard, and Vice Chair Jarboe

Absent: Chair Allendorf

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CASE NUMBER 17VARIANCE1011

Request:	Variance to reduce private yard and waiver for orientation of entrance
Project Name:	620 S. Campbell Street
Location:	620 S. Campbell Street
Owner:	Kersey and Kersey, Inc.
Applicant:	Kersey and Kersey Architects
Representative:	Kersey and Kersey Architects
Jurisdiction:	Louisville Metro
Council District:	4 – Barbara Sexton-Smith
Case Manager:	Joel Dock, 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:

01:43:57 Joel Dock presented the case and showed a Powerpoint presentation. Mr. Dock responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Steven Kersey, 839 East Gray Street, Louisville, KY 40204

Summary of testimony of those in favor:

01:55:20 Steven Kersey spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

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Additional Agency Testimony:

02:06:44 Joel Dock responded to questions from the Board Members (see recording for detailed presentation).

02:08:21 Board Members' deliberation

02:09:29 On a motion by Member Bergmann, seconded by Member Fishman, the following resolution was adopted:

VARIANCE from LDC Section 5.4.1 to reduce the private yard area:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the reduced size does not impact the safe movement of pedestrians or vehicular traffic in the immediate vicinity, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the vacant lot is unusually situated with its front property line being similar in dimension to a common street side yard within the area and having a lot width from front to rear that is not consistent with the traditional pattern of lots. The applicant has provided a plan that respects the intent of the traditional pattern, while adjusting for the characteristics of the lot, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposal is for a single-family dwelling in a mixed-use neighborhood and does not impact the safe movement of people or obstruct views which are ordinarily expected, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the characteristics of the lot do not allow for conformance with all standards of residential site design in Traditional Neighborhood form districts and the applicant has attempted to design a project that meets the intent of many of the design elements of a traditional neighborhood, and

WHEREAS, the Board further finds that The variance arises from special circumstances which do not generally apply to land in the general vicinity or the

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same zone as the vacant lot is unusually situated with its front property line being similar in dimension to a common street side yard within the area and having a lot width from front to back that is not consistent with the traditional pattern of lots, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as it does not appear that the proposal adversely affects the public health, safety, or welfare and no apparent nuisance or hazard would be created by the requested variance, 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; and

Waiver from LDC Section 5.4.1.C.1 to allow the principal entrance to not be oriented to the primary street:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the entrance to the property is oriented to the primary street, into the private yard, thence into the principal structure. This is no different than entering the residence directly from the sidewalk on Campbell. There are numerous examples of this approach in the neighborhood. Many such entrances off of the private yard can be found throughout the neighborhood, and is a common feature in the classic shotgun home, and

WHEREAS, the Board further finds that the proposed approach is consistent with the Comprehensive Plan, and with the features of the traditional neighborhood fabric throughout the area. The character of the general neighborhood is preserved. Providing the property entrance from the frontage street into the private yard, thence to the principal structure serves to make the residence more secure and more livable, increasing the quality of life of the applicant. There are many similar courtyard entrances in homes throughout the existing neighborhood, allowing the development to maintain the existing character, and

WHEREAS, the Board further finds that a waiver of this requirement would remove the burden of providing multiple entrances to the residence, with the main entrance to the property on the Campbell St. side. The existing lot has the unique configuration of having its long dimension parallel with the frontage street. This lot configuration requires the design approach indicated to be consistent with neighborhood fabric, and

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WHEREAS, the Board further finds that the strict application of the provisions would deprive the applicant from the use of the land and create hardship on the owner by forcing a non-conventional design form into a non-conforming existing lot. The proposed design provides greater privacy, security and efficient use of the existing lot, and is consistent with the general features of the existing traditional neighborhood fabric; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 17VARIANCE1011, does hereby **APPROVE** Variance from LDC Section 5.4.1.D to reduce the private yard area, and Waiver from LDC Section 5.4.1.C.1 to allow the principal entrance to not be oriented to the primary street, based upon the Staff Report, the presentation, and the applicant's justification for the waiver.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, and Vice Chair Jarboe

No: Member Tharp

Abstain: Member Howard

Absent: Chair Allendorf

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CASE NUMBER 17DEVPLAN1011

Request:	Category 2B Review with variance & waiver applications for the placement of a proposed convenience store and restaurant
Project Name:	17DEVPLAN1011
Location:	1101 Fairdale Road
Owner:	IRJ, LLC
Applicant:	Axis Investments LLC
Representative:	Sarah Beth Sammons, Land Design & Development, Inc
Jurisdiction:	Louisville Metro
Council District:	13 – Vicki Aubrey Welch
Case Manager:	Steve Hendrix, Planning & Design Supervisor

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

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Agency Testimony:

02:12:29 Steve Hendrix presented the case and showed a Powerpoint presentation. Mr. Hendrix responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Sarah Beth Sammons, 503 Washburn Avenue, Louisville, KY 40222
Kevin Triplett, 601 W. Jefferson Street, Louisville, KY 40202

Summary of testimony of those in favor:

02:18:11 Sarah Beth Sammons spoke in favor of the request and showed a Powerpoint presentation. Ms. Sammons provided updated elevations to the

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Board Members and responded to questions from the Board Members (see recording for detailed presentation).

02:22:28 Kevin Triplett, Legislative Assistant to Councilwoman Vicki Aubrey Welch, spoke in favor of the request (see recording for detailed presentation).

02:24:27 Sarah Beth Sammons responded to questions regarding the entrance (see recording for detailed presentation).

The following spoke neither for nor against the request:
Joyce Miller, 803 Fairdale Road, Fairdale, KY 40118

Summary of testimony of those neither for nor against:

02:25:17 Joyce Miller spoke neither for nor against the request and responded to questions from the Board Members (see recording for detailed presentation).

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

REBUTTAL:

02:29:50 Sarah Beth Sammons spoke in response to questions raised by the neutral party (see recording for detailed presentation).

02:31:38 Ms. Miller asked additional questions in regard to drainage issues (see recording for detailed presentation).

02:32:59 Ms. Sammons responded to Ms. Miller's questions and further questions from the Board Members (see recording for detailed presentation).

02:34:24 Steve Hendrix responded to questions from the Board Members (see recording for detailed presentation).

02:34:55 Board Members' deliberation

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02:35:40 On a motion by Member Howard, seconded by Member Tharp, the following resolution was adopted:

Variance from LDC Section 5.3.1.C.5, Table 5.3.2 to allow the placement of the structure along National Turnpike to exceed the 80 foot maximum setback:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the variance will not adversely affect the public health, safety or welfare, because the placement of the convenience store, the gas pumps and circulation pattern are typical of what the public is accustomed to seeing, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity because most of the other commercial establishments along this side of National Turnpike exceed the 80 foot maximum, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the general public is accustomed to this type of configuration, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because this type of layout provides for a safe traffic circulation for a convenience store, and

WHEREAS, the Board further finds that the requested variance arises from special circumstances, since the applicant is placing all of the 4,488 square foot development, (convenience store/restaurant) on the existing less than an acre C-1 zoned portion of the 3.41 acre site and at the same time having a safe traffic flow, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, since the site design would have to change and the traffic flow would not function, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant subsequent to the adoption of the zoning regulations, but the design allows for such a land use and one that is functional and safer; and

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CASE NUMBER 17DEVPLAN1011

Waiver from LDC Section 5.5.2.A.1 to allow for no entrance facing Fairdale Road:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners, since two of the properties are vacant, one will have an existing wooded area that will serve as a buffer and the existing dwelling to the north will have a 25 foot landscape buffer area. The Fairdale Road building entrance would have been on the south side of the property, and

WHEREAS, the Board further finds that the waiver will not violate specific guidelines of Cornerstone 2020, since the Fairdale Road side of the building has various materials, shapes and colors which prevent a blank wall. This particular corner is within a Suburban Workplace Form District, while the others are within a Village, and

WHEREAS, the Board further finds that having only one entrance for convenience stores is typical, which is probably a result of a desired floor plan and safety concerns. This particular store will have their entrance on the National Turnpike side of the building, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, since the interior floor plan of the convenience store would have to be changed and possibly the security of the store would be reduced; now therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 17DEVPLAN1011, does hereby **APPROVE** Variance from LDC 5.3.1.C.5, Table 5.3.2 to allow the placement of the structure along National Turnpike to exceed the 80 foot maximum setback (**Requirement 80 foot maximum setback, Request 132 feet, Variance 42 feet**), and Waiver from LDC 5.5.2.A.1 to allow for no entrance facing Fairdale Road, based upon the Staff Report, the testimony given by the applicant today, the review of the development plan and the elevations, and the architectural renderings presented today.

The vote was as follows:

Yes: Members Fishman, Turner, Tharp, Bergmann, Howard, and Vice Chair Jarboe

Absent: Chair Allendorf

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02:40:07 The meeting was recessed.

02:40:12 The meeting was reconvened.

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CASE NUMBER 16CUP1081

Request:	Conditional Use Permit to allow an athletic facility at Spalding University in an M-3 zoning district
Project Name:	Spalding University Athletic Fields
Location:	916 South 8 th Street and 939 South 9 th Street
Owner:	Spalding University Inc.
Applicant:	Spalding University Inc.
Representative:	Matt Wolff
Jurisdiction:	Louisville Metro
Council District:	6 – David James
Case Manager:	Jon E. Crumby, Planning and Design Coordinator

NOTE: Board Member Tharp left at approximately 11:46 a.m.

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:

02:40:23 Jon Crumby presented the case and showed a Powerpoint presentation. Mr. Crumby responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Patrick Dominik, 608 S. Third Street, Louisville, KY 40202
Matt Wolff, 608 S. Third Street, Louisville, KY 40202
Kevin Weber, 852 S. Third Street, Louisville, KY 40202

Summary of testimony of those in favor:

02:49:09 Patrick Dominik spoke in favor of the request (see recording for detailed presentation).

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02:54:27 Matt Wolff spoke in favor of the request and showed a Powerpoint presentation. Mr. Wolff responded to questions from the Board Members (see recording for detailed presentation).

03:07:05 Kevin Weber spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

03:11:47 Patrick Dominik responded to a question from John Carroll, Legal Counsel (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

03:12:37 Board Members' deliberation

03:16:34 On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposed use supports reinvestment, rehabilitation and redevelopment through the use of creative site design work respectful of the traditional pattern of development in the area. The proposed use serves as a transitional use between abutting multifamily residential and industrial, non-residential uses by providing green space with appropriate buffers, setbacks, heights, and building materials, and

WHEREAS, the Board further finds that the site represents a lower intensity use in a Traditional Workplace setting and provides transitional use between the multifamily housing and more intensive business/industrial uses in the area. The facility will be owned, operated and maintained by Spalding University and the proposed scale, intensity, and hours of operation will not adversely impact the surrounding neighborhood nor represent a nuisance, and

WHEREAS, the Board further finds that the site is adequately served by the existing network, is in close proximity to existing TARC service. New sidewalks will be constructed on 8th and Kentucky Streets. There is adequate sanitary and water service to support the use. No new utility or service main extensions are required to accommodate the proposed use, and

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WHEREAS, the Board further finds that:

Indoor and outdoor athletic facilities as a principal use are permitted in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, R-5A, R-6, R-7, R-8A, M-1, M-2, and M-3 districts in compliance with the following requirements. The applicant will be asking to modify item A, G-2 and H2, and item F does not apply.

A. The athletic facilities are located in a suburban form district; the applicant is asking for relief because the site is located in the Traditional Workplace Form District; **the applicant is asking for relief because the site is located in the Traditional Workplace Form District.**

B. Pedestrian and vehicular circulation patterns, including location of parking lots and driveways, must be designed to safely accommodate recreational users and avoid conflict with truck traffic, as determined by the Director of Works.

C. The applicant shall submit a lighting plan documenting compliance with Section 4.1.3 (Lighting ordinance).

D. No structure, parking area or outdoor recreation facility shall be located within 30 feet of a property line, unless further restricted in accordance with paragraph F below.

E. Signs – Shall be in accordance with the on-premises sign standards of Chapter 8 of the LDC for non- residential uses.

F. Athletic facilities in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, R-5A, R-6, R-7 and R-8A districts shall meet the following compatibility requirements:

1. No outdoor athletic facility or parking area may be located closer than 100 feet to an adjacent property zoned for residential use.
2. No indoor athletic facility may be located closer than 50 feet to an adjacent property zoned for residential use. 3. The minimum tract size for an athletic facility shall be 10 contiguous acres.

G. Athletic facilities in the M-1, M-2 and M-3 districts subject to a conditional use permit may serve three purposes:

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1. To allow a transitional use of industrially zoned land, while preserving the community's supply of industrially zoned property until such time as market demand justifies use of such property in a manner that will significantly meet the community's economic development needs;
2. **To allow use of parcels for permanent open space or recreational purposes serving employees of an industrial development;** or
3. To accommodate greenways or similar open space use of environmentally constrained land, with or without trail systems or other recreational facilities.

H. Thus, athletic facilities are permitted only when the applicant indicates which of the three purposes the proposed use will meet, and can demonstrate the following to the satisfaction of the Board of Zoning Adjustment or the Board's designee:

1. If Transitional Use: The proposed athletic facilities do not entail construction of permanent facilities that are inconsistent with industrial use of the site.
2. **If Permanent Open Space/Recreation Use: The site is an integral component of a multi-lot business or industrial park, and the recreation facilities primarily benefit persons working at the industrial park.**
3. If Greenway or Environmentally Constrained: The site is subject to environmental constraints regulated in Chapter 4 Parts 6, 7, or 8, and is precluded from development by conservation easement or restriction on the development plan, and

WHEREAS, the Board further finds that based on the staff report, the evidence and testimony presented at the public hearing, including the applicant's justification statement and proposed findings of fact, that the proposed Conditional Use Permit for athletic fields be allowed in the M-3 Zoning District in the Traditional Workplace Form District complies with the Cornerstone 2020 Comprehensive Plan Guideline 1.B.9. because it supports the reinvestment, rehabilitation, and redevelopment of vacant urban property supporting the intercollegiate soccer and softball programs of Spalding University – an urban campus 4 blocks east of the subject property and within walking distance; Guideline 3.21 of the Comprehensive Plan because the site will provide a green

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open space buffer between ex. College Court apartments to the east of 8th Street and other industrial/business uses west of 9th Street; and because the proposed use is compatible in terms of mass, height, intensity and character within the surrounding neighborhood, and

WHEREAS, the Board further finds that the proposed athletic facilities are compatible with the surrounding land uses and the general character of the area because the proposed 5,000 square foot single-story fieldhouse will serve the athletic teams and patrons and will not be an intrusion into the neighborhood; the site will provide open space within the Traditional Workplace Form District; a lighting plan has been prepared that complies with NCAA requirements and meets the requirements of the Metropolitan Lane Development Code; the other half of the subject property is zoned EZ-1 and allows athletic fields as a permitted use; intercollegiate men's and women's soccer and women's softball games should be completed by 9:00pm during the season and will not create a nuisance for surrounding land uses; and the site's perimeter will be fenced to contain play within the property boundary, and

WHEREAS, the Board further finds that there are public facilities available to adequately serve the proposed use because the site is in close proximity to existing TARC stop at 7th and Kentucky Streets; an existing shared curb cut is utilized as the sole means of ingress/egress so no new curb cuts are proposed; adequate provisions have been made for off-street parking and signage; the proposed use will not impact peak-hour traffic volumes; the site will support the recreational and intercollegiate athletic teams of Spalding University – located within 4 blocks of the subject property; all necessary utilities are available to serve the site; and the site will utilize MSD's Best Management Practices (BMP's) for storm water management, including infiltrating storm water runoff to reduce combined sewer overflows, and

WHEREAS, the Board further finds that relief from LDC Chapter 4.2.8.A. stating the athletic fields are to be located in a suburban form district is appropriate because Spalding University is located in the Downtown and Traditional Neighborhood - 4 blocks east of the proposed athletic fields; the subject property is located within the Traditional Workplace Form District; the urban nature of the Spalding University campus would be in convenient, walking distance to the athletic fields; and the proposed use supports the university's intercollegiate soccer and softball programs, and

WHEREAS, the Board further finds that appropriate provisions have been made to address vehicular and pedestrian circulation patterns because the site is served by the perimeter urban sidewalk network, bus drop-off zones have been

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identified and striped which will not obstruct through traffic, adequate provisions for 56 off-street parking spaces have been made; the site will utilize a shared access point; interior sidewalks will connect pedestrians/patrons to the existing public sidewalks; that the applicant's lighting plan meets the requirements of Chapter 4.1.3 of the Metropolitan Land Development Code; that no structure, parking area, or outdoor recreational facility are located within 30 feet of the perimeter property line; and that a proposed 6-ft high by 10-ft wide sign complies with LDC Chapter 8 requirements, and

WHEREAS, the Board further finds that relief from LDC Chapter 4.2.8.G-H is appropriate because the site's urban location will support the intercollegiate athletic programs of Spalding University located within 4 blocks of the subject property; the EZ-1 zoned portion of the subject property already allows athletic fields as a permitted use; the proposed athletic fields are not a transitional or temporary use pending future industrial development, do not provide for the open space needs of the employees of an industrial park, and is not a part of a greenway or located on other environmentally-constrained lands; proposed site development standards comply with the Land Development Code and the Comprehensive Plan; and the proposed athletic fields represent an appropriate use and redevelopment in the neighborhood; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1081, does hereby find that the lighting plan is **IN COMPLIANCE**, and does hereby **APPROVE** Conditional Use Permit to allow athletic fields in a M-3 zoning district, based upon the Staff Report, the findings of fact presented by Spalding University, 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 athletic fields without further review and approval by the Board.

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The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Howard, and Vice Chair Jarboe

Absent: Member Tharp, and Chair Allendorf

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PUBLIC HEARING

CASE NUMBER 16CUP1083

Request: CUP for mini-storage with relief from the CUP requirements listed in 4.2.35 B and G, a Variance and Waivers

Project Name: Bardstown Road Storage

Location: 3415 Bardstown Road

Owner: Bardstown Road Centre LLC

Applicant: Erb, Walker, & Twiford

Representative: Mindel Scott and Assoc.; Bardenwerper Talbott and Roberts PLLC.

Jurisdiction: Louisville Metro

Council District: 26- Brent Ackerson

Case Manager: Julia Williams, RLA, 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:

03:22:19 Julia Williams presented the case and showed a Powerpoint presentation. Ms. Williams responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Nick Pregliasco, 1000 N. Hurstbourne Pkwy., Louisville, KY 40223

Kathy Linares, 5151 Jefferson Blvd., Suite 101, Louisville, KY 40219

Dana Delsignore, Suite 302, 3415 Bardstown Road, Louisville, KY 40218

Summary of testimony of those in favor:

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03:29:55 Nick Pregliasco spoke in favor of the request and showed a Powerpoint presentation. Mr. Pregliasco responded to questions from the Board Members (see recording for detailed presentation).

03:49:30 Kathy Linares spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

03:54:24 Nick Pregliasco responded to questions from the Board Members (see recording for detailed presentation).

The following spoke neither for nor against the request:

Fadi Muhammad, 2204 Heather Lane, Louisville, KY 40218

Summary of testimony of those neither for nor against:

03:57:36 Fadi Muhammad spoke neither for nor against the request. Mr. Muhammad spoke in regard to access issues and responded to questions from the Board Members (see recording for detailed presentation).

04:02:56 Julia Williams responded to questions from the Board Members (see recording for detailed presentation).

04:04:15 Mr. Muhammad responded to questions from the Board Members (see recording for detailed presentation).

04:07:52 Nick Pregliasco responded to questions from the Board Members regarding cross-access and access easements (see recording for detailed presentation).

04:14:48 Kathy Linares spoke in regard to access and pavement widths. Ms. Linares responded to questions from the Board Members (see recording for detailed presentation).

04:17:25 Mr. Pregliasco responded to questions from the Board Members (see recording for detailed presentation).

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Additional testimony of those in favor of the request:

04:24:09 Dana Delsignore spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

04:31:49 Mr. Pregliasco responded to questions from the Board Members regarding connectivity (see recording for detailed presentation).

Additional testimony of those neither for nor against:

04:35:17 Mr. Muhammad spoke in regard to truck traffic and responded to questions from the Board Members (see recording for detailed presentation).

REBUTTAL:

04:38:00 Nick Pregliasco spoke in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

04:41:12 Kathy Linares responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

04:43:06 Board Members' deliberation

04:53:48 Julia Williams asked the Board Members to provide specific direction as to what changes to the design of the building would be required because right now the design does meet the requirements of the Land Development Code (see recording for detailed presentation).

04:54:24 Board Members' deliberation

04:58:36 Ms. Williams stated any modification to the design of the building could be conditioned to be approved by Staff. Ms. Williams responded to questions from the Board Members (see recording for detailed presentation).

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05:02:42 Board Members' deliberation

05:08:28 On a motion by Member Bergmann, seconded by Member Fishman, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case Number 16CUP1083 to the May 1, 2017 Board of Zoning Adjustment meeting to address primarily Condition of Approval #6, the materials and design of the proposed structures.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, and Vice Chair Jarboe

No: Member Howard

Absent: Member Tharp and Chair Allendorf

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ADJOURNMENT

The meeting adjourned at approximately 2:00 p.m.

Chair

Secretary