

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

APRIL 21, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, April 21, 2014, at the Metro Development Center, 444 S. 5th Street, Room 101 Louisville, Kentucky.

Members present were:

David Proffitt, Chairperson
Rosalind Fishman, Secretary
Betty Jarboe
Frederick Liggin
Dean Tharp

Members absent:

Mike Allendorf, Vice Chairperson

Staff members present were:

Emily Liu, Director, Planning & Design Services
Jonathan Baker, Legal Counsel
Jessica Wethington, Planning Information Specialist
Becky Gorman, Historic Preservation Specialist
Steve Hendrix, Planning Supervisor
Jon Crumble, Planner II
Latondra Yates, Planner II
David Wagner, Planner II
Matthew Doyle, Planner I
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

Approval of the minutes of the meeting held on April 7, 2014.

On a motion by Member Fishman, seconded by Member Tharp, the minutes of the meeting conducted on April 7, 2014 were approved.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: Member Jarboe.

**MINUTES OF THE MEETING
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APRIL 21, 2014

BUSINESS SESSION:

CASE NO. 14CUP1001

Applicant: Trilogy Health Services, LLC
Peter Massey
303 N. Hurstbourne Pkwy., Ste. 200
Louisville, Kentucky 40222

Owner: Louisville Healthcare Partners
Michael J. Kitchen
9200 Shelbyville Road, Ste. 310
Louisville, Kentucky 40222

Attorney: Glenn Price, Esq.
Frost Brown Todd, LLC
400 West Market Street, Ste. 3200
Louisville, Kentucky 40202

Representative: Suburban Design Group, LLC
Chris Schipper
1527 Highland Avenue
Louisville, Kentucky 40204

Subject: An application for the modification of an existing Conditional Use Permit to allow 6 additional duplexes in place of the memory care facility, for a total of 12 duplexes.

Premises Affected: On property known as 12812, 12904-12908 Westport Road and being in Louisville Metro.

COUNCIL DISTRICT 17—Glenn Stuckel
Staff Case Manager: Jon Crumbie, Planner II

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

The recording of this hearing will be found on the DVD of the April 21, 2014 proceedings.

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BUSINESS SESSION:

CASE NO. 14CUP1001

On February 14, 2014, the applicant requested a modification of the approved Conditional Use Permit to allow site plan revisions to allow 6 additional duplexes in place of the memory care facility

The original hearing for this case was held on June 3, 2014 for a Conditional Use Permit and variance, Case No. B-18461-12.

On April 21, 2014, the Board held a meeting in business session to discuss the request. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

DISCUSSION:

Staff case manager, Jon Crumbie, explained the request to the Board Members, and said he didn't have anything further to add.

A motion was made by Member Fishman, seconded by Member Liggin and the following resolution was adopted:

WHEREAS, the Board finds that the applicant has requested a modification of an approved Conditional Use Permit to allow 6 additional duplexes in place of the memory care facility, for a total of 12 duplexes; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives; and it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the modification of the existing Conditional Use Permit is hereby **APPROVED**, to allow revisions to the site plan to allow 6 additional duplexes in place of the memory care facility; and is based on the previously approved conditions of approval.

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BUSINESS SESSION:

CASE NO. 14CUP1001

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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APRIL 21, 2014

BUSINESS SESSION:

CASE NO. B-18850-13

Applicant/Owner: Maryhurst
Judy Lambeth, President & CEO
1015 Dorsey Lane
Louisville, Kentucky 40223

Representative: Urban 1, LLC
Charles Cash, AIA
500 Upland Road
Louisville, Kentucky 40206

Consultant: Concepts 21, PLLC
Mohammad Nouri, PE
1119 Rostrevor Circle
Louisville, Kentucky 40205

Subject: An application for the modification of an existing
Conditional Use Permit for a change in timing for completion of the development.

Premises Affected: On property known as 1015 Dorsey Lane and being in
Louisville Metro.

COUNCIL DISTRICT 18—Marilyn Parker
Staff Case Manager: Steve Hendrix, Planning Supervisor

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

The recording of this hearing will be found on the DVD of the April 21, 2014 proceedings.

On April 14, 2014, the applicant requested a modification of the approved Conditional Use Permit to allow a change in timing for completion of the development

The original hearing on this case was held on October 17, 2005 to allow an existing institution obtain compliance, along with a proposed multi-purpose

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recreational center; a variance to allow the building to exceed the maximum setback; and a reduction in the LBA along portions of the property which were approved.

On January 9, 2006, the minutes were corrected to reflect that there will be buffering from the residences to the south and east by existing and proposed landscaping, in particular, the Farris, Randall, Coffman, McGriff and Horsell properties.

On February 25, 2013, the applicant requested a modification of the approved Conditional Use Permit for an institutional use (B-190-05VW) to allow a phased campus redevelopment plan on approximately 14.84 acres.

On April 21 2014, the Board held a meeting in business session to discuss the request. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

DISCUSSION:

Staff case manager, Steve Hendrix, said the applicant will be reducing the number of buildings and need more time to complete the development.

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

WHEREAS, the Board finds that the applicant has requested a modification of an approved Conditional Use Permit to allow a change in the amount of time needed to complete the development due to shifts in statewide programs for residential treatment facilities like Maryhurst; and because the State has decided to place greater emphasis on foster home care, moving away from long-term institutional residency programs—a situation beyond the control of the applicant; and

WHEREAS, the Board finds that the applicant will still proceed with the construction of the first cottage dormitory which will redefine the northeast corner of the campus as per the Master Plan; and because future cottage construction will be on hold pending a fuller understanding of new State programs and their results; and because the applicant will complete all site work associated with the Humana-funded nature trail and the garden in this phase; and, as originally

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BUSINESS SESSION:

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proposed, this work will include the restoration and extension of the earthen berm and the planting of native tree species as provided by Bernheim; and

WHEREAS, the Board finds that the existing cottage closest to the new construction will be vacated as soon as the new construction is complete; and because this building will no longer be used for any residential purpose and will not be demolished immediately; and because this cottage may be used as staff office or storage space on an interim basis until the full implementation schedule of the Master Plan is more fully developed and understood; and because the long-term plan still envisions this building's removal as originally proposed; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives; and it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that based on the request and revised site plan, the Board does hereby **APPROVE** a change in the amount of time needed to complete the development per the Master Plan for Case No. B-18850-13; and is also based on the previously approved conditions of approval.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1005

Applicants/Owners: Robert & Ann Gutterman/Lois Ann Koontz
5228 Mercury Drive
Louisville, Kentucky 40258

Representative: Jones & Scott Fencing Co.
Charles Jones
5306 Galaxie Drive
Louisville, Kentucky 40258

Project Name: Fence

Subject: An application for a variance from the Land
Development Code to allow a 77' fence to remain in the front yard.

Premises affected: On property known as 5228 Mercury Drive and being
in Louisville Metro.

COUNCIL DISTRICT 12—Rick Blackwell
Staff Case Manager: Steve Hendrix
(CONTINUED FROM MARCH 3, 2014)

Appearances for Applicant:
Charles Jones, 5306 Galaxie Drive, Louisville, Kentucky 40258; who submitted
information into the record.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to
this case is available in the office of Planning and Design Services, located at
444 South Fifth Street, Suite 300, Louisville, Kentucky.

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NEW BUSINESS:

CASE NO. 14VARIANCE1005

On January 28, 2014, Robert & Ann Gutterman filed an application for a variation from the requirements of the Land Development Code to allow an existing fence to be 77 inches in height along the front property line on Gabriel Drive.

The case was continued from the March 3, 2014 public hearing.

On April 21, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 21, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Steve Hendrix gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said this case was continued from March 3, 2014 to allow the County Attorney's Office to subpoena the fence company to testify. Mr. Hendrix said the owner of the fence company is present today.

SUMMARY OF TESTIMONY OF PROPONENTS:

Charles Jones, the applicant's contractor, said he was asked to build the fence too close to the roadway and knew he couldn't do this. He said someone in Codes and Regulations told him what he could legally do. Mr. Jones said he checked with the neighbor next door, who was not opposed and even liked the fence for more privacy. He said he advises customers to the best of his knowledge, and didn't know the side yard was actually a front yard, so he didn't know he was exceeding the height limit. Chair Proffitt suggested he get a copy of the regulations; and said fence companies in Louisville need to be aware of the regulations since the Board has been receiving so many of these cases. Mr. Jones said he could take off the decorative spikes to lower the height, but said, he couldn't cut it to height since it's a vinyl fence.

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NEW BUSINESS:

CASE NO. 14VARIANCE1005

Ann Gutterman, the applicant, said there are similar fences in the neighborhood, specifically, one on Sky Blue Avenue. She said she still wants to build a pool and will get the appropriate permits for this.

Lois Koontz said there is a registered sex offender in the neighborhood; and they want privacy for the yard and pool.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one.

BUSINESS SESSION:

The Board said they don't think it would help much taking off the decorative caps, if they decide to approve the request. The Board also discussed the pool; and said she can't put a pool in the side yard. Mr. Hendrix said there has to be at least a 4 ft. tall fence around a pool.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 4.4.3.A.1.a. to allow an existing fence to remain at 77 inches along Gabriel Drive—the front yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the fence will not be encroaching any vision triangle area; and because it is placed within the applicant's property lines; and

WHEREAS, the Board finds that the variance will not alter the essential character of the area because there are similar fences in the neighborhood; and

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CASE NO. 14VARIANCE1005

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because by building this fence, the property owner has enhanced protection and privacy for the applicant and their dogs; and because the applicant is considering installing a swimming pool, so the fence would keep children out of their yard; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the property is an odd shaped corner lot with no backyard; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the subject property is an odd shaped corner lot without a backyard; and

WHEREAS, the Board finds that the provisions of the regulation would create an unnecessary hardship on the applicant because the size of the yard that the Code allows them to fence in, with privacy fencing, would be reduced;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow an existing fence to be 77" tall along Gabriel Drive—the front yard.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1016

Applicant/Owner: MWA Investments, LLC
Samir Faraj
331 East Oak Street
Louisville, Kentucky 40203

Representative: Mike Evans, PE, PLS
6625 Colonial Drive
Evansville, Indiana 47725

Project Name: East Oak Street Laundromat and Grocery

Subject: An application for a variance from the Land Development Code to allow a proposed building not to hold the corner at a 0' maximum setback to 40' along South Preston Street and nearly 75' from East Oak Street.

Premises affected: On property known as 331 East Oak Street and being in Louisville Metro.

COUNCIL DISTRICT 6—David James
Staff Case Manager: Matthew Doyle, Planner I

Appearances for Applicant:
Samir Faraj, 331 East Oak Street, Louisville, Kentucky 40203.

Ed Eiche, Eiche & Associates Architects, 10011 Tuppence Trace, Louisville, Kentucky 40223.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

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NEW BUSINESS:

CASE NO. 14VARIANCE1016

On February 24, 2014, Samir Faraj with MWA Investments, LLC filed an application for a variation from the requirements of the Land Development Code to allow a proposed building to exceed the maximum setback of 0 feet.

The case was continued from the April 7, 2014 public hearing.

On April 21, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 21, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Matt Doyle gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the proposal is for a 2,502 SF addition to the existing structure for a laundromat and grocery store. He said the design would be similar to what exists for compatibility. Mr. Doyle said per Land Development Code requirements; the building must hold the corner maintaining a 0 ft. setback since it's a business use. The setback would be just over 40' from South Preston Street and nearly 75' from East Oak Street. Member Tharp asked what percentage increase is it. Mr. Doyle said approximately 50%. Member Fishman questioned the hours of operation. Mr. Doyle said she would have to ask the applicant. Member Tharp asked if any landscaping is required. Mr. Doyle said yes.

SUMMARY OF TESTIMONY OF PROPONENTS:

Ed Eiche, Eiche & Associates & Architects, said he is filling in for the applicant's representative, Mike Evans. Mr. Eiche said the proposal would be too difficult to build without the variance. He said the hours of operation will be 6:00 a.m. to 11:00 p.m.

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CASE NO. 14VARIANCE1016

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

The Board discussed the hours of operation.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variances of Section 5.5.1.A.2 of the Land Development Code to allow a proposed building to be approximately 40 feet from South Preston and approximately 75 feet from East Oak Street; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare, since safe pedestrian access is provided from the public right-of-way to the building entrance; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity since the proposal is compatible with the existing building; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public since safe pedestrian access is provided from the public right-of-way to the building entrance and safe vehicular maneuvering is provided on site; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations since the proposal is compatible with the existing building; and

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NEW BUSINESS:

CASE NO. 14VARIANCE1016

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the site has several nonconformities, one of which is the setbacks of the existing structure; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship since the proposal is compatible with the existing building; safe pedestrian access is provided from the public right-of-way to the building entrance; safe vehicular maneuvering is provided on site; and the addition would be an underutilized portion of the site; and

WHEREAS, the Board finds that the circumstances are not the result of actions taken subsequent to the adoption of the zoning regulation since the applicant is adding on to an existing commercial building with like setbacks;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variances.

The variances allow:

1. The proposed building to be approximately 40' from South Preston Street.
2. The proposed building to be approximately 75' from East Oak Street.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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APRIL 21, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1023

Applicant/Owner: Marshall Realty Company
Phillip H. Marshall, Jr.
P.O. Box 7066
Louisville, Kentucky 40257

Representative: American Engineers
Matthew Allen & Dwayne Clemons
65 Aberdeen Drive
Glasgow, Kentucky 42141

Project Name: McDonald's Ormsby Station

Subject: An application for variances from the Land Development Code to allow a reduction in the setback along Ormsby Station Road from 25' to 15' for the Vehicular Use Area (VUA); and to reduce the setback along Ormsby Park Place from 25' to 0' for the dumpster, small building and VUA encroachments.

Premises affected: On property known as 9901 Ormsby Station Road and being in the City of Lyndon.

COUNCIL DISTRICT 18—Marilyn Parker
Staff Case Manager: David Wagner, Planner II

Appearances for Applicant:
Dwayne Clemons, American Engineers, 65 Aberdeen Drive, Glasgow, Kentucky 42141.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

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NEW BUSINESS:

CASE NO. 14VARIANCE1023

On March 17, 2014, Marshall Realty Company filed an application for a variation from the requirements of Section 5.3.5.C.3a. of the Land Development Code to allow a reduction in the setback along Ormsby Station Road from 25' to 15' for the vehicular use area (VUA); and to reduce the setback along Ormsby Park Place from 25' to 0' for a dumpster, small building and VUA encroachments

The case was continued from the April 7, 2014 public hearing to allow the applicant to reconsider moving two of the parking spaces the Board felt were dangerous.

On April 21, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 21, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, David Wagner gave a brief presentation of the case to the Board, which included a PowerPoint presentation. Mr. Wagner said the Board continued this case to allow the applicant the opportunity to move two of the proposed parking spaces which they thought were dangerous. Mr. Wagner said the applicant moved them to the northwest and northeast corners of the site.

SUMMARY OF TESTIMONY OF PROPONENTS:

Dwayne Clemons, the applicant's representative, said they moved the two parking spaces as requested.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

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BUSINESS SESSION:

Member Tharp commended the applicant for moving the parking spaces.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances from Section 5.3.5.C.3.a. of the Land Development Code to allow a reduction in the setback along Ormsby Station Road from 25' to 15' for VUA encroachment; and to reduce the setback along Ormsby Park Place from 25' to 0' for the dumpster, small building and VUA encroachment; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the encroachments by the VUA, dumpster and small building along Ormsby Station Road and Ormsby Park Place already exist and have not had an adverse effect over the years; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the encroachments already exist and there have been no concerns or issues; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public since there are already existing encroachments and the variances will actually allow the new parking spaces to be added, providing adequate parking for the site; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations as the surrounding lots are all commercial or office uses and the proposal will actually bring the site into compliance with the existing zoning regulations which have changed since the current development plan's approval in 1999; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone

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CASE NO. 14VARIANCE1023

because this lot is a corner lot that is bordered by three streets; and because the adjacent streets create much greater setbacks since they are considered to be street side yard setbacks instead of a side yard setback; and

WHEREAS, the Board finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land as this lot has been a McDonald's for some years and the variances allow the site to come into compliance with the current zoning regulations; and

WHEREAS, the Board 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 because the zoning regulations have significantly changed since the current development plan was approved;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variances.

The variances allow:

1. A reduction in the street side yard setback on Ormsby Station Road to 15 feet to accommodate the Vehicular Use Area.
2. A reduction in the street side yard setback on Ormsby Park Place to 0 feet to accommodate a dumpster, small building and Vehicular Use Area encroachments.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1026

Applicant/Owner: Christ Church United Methodist
Scott Hannah, Authorized Agent
4614 Brownsboro Road
Louisville, Kentucky 40207

Representative: Heritage Engineering, LLC
John Campbell
642 South 4th Street, Ste. 100
Louisville, Kentucky 40202

Project Name: Christ Church United Methodist Parking Lot Expansion

Subject: An application for variances from the Land Development Code to allow proposed parking and maneuvering in the required 50' setback adjacent to residential properties.

Premises affected: On property known as 4614 & 4610 Brownsboro Road and being in the City of Windy Hills.

COUNCIL DISTRICT 7—Ken Fleming
Staff Case Manager: Sherie' Long

Appearances for Applicant:
John Campbell, 642 South 4th Street, Ste. 100, Louisville, Kentucky 40202; who presented a PowerPoint presentation to the Board.

Appearances Interested Party:
Phil Samuel, 3 Angora Court, Louisville, Kentucky 40206.

Appearances Against Applicant:
Julianne Downard, 706 Indian Ridge Road, Louisville, Kentucky 40207.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

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NEW BUSINESS:

CASE NO. 14VARIANCE1026

On March 24, 2014, Christ Church United Methodist filed an application for a variation from the requirements of the Land Development Code to allow proposed parking and maneuvering in the required 50' setback adjacent to residential properties.

On April 21, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 21, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Sherie Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the owner wants to expand the parking in two locations to add 101 new spaces. She said 36 spaces are proposed near the primary entrance off Brownsboro Road; and 65 spaces with additional maneuvering area along the south and east property lines at the rear. Ms. Long said there is a lot of existing vegetation around the property but has requested as a condition of approval that new plantings and screening be provided in various areas near the new parking spots. She said an adjacent property owner sold their house to the church to accommodate the new parking spaces. Chair Proffitt asked if they consolidated the properties. Ms. Long said no, but they have to per Category 2B requirements. Ms. Long said the applicant needs to address the technical review items; and wants to know if the applicant agrees to conditions of approval.

SUMMARY OF TESTIMONY OF PROPONENTS:

John Campbell, the applicant's representative, said the church has grown over the years and has a long history of previous cases. He said they want to replace the two-story parking garage that was previously approved, with the new plan incorporating 101 new parking spaces. He said they will be planting more greenery and trees inside the property, and said they will not be removing any of

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the existing evergreen trees or shrubbery. Mr. Campbell said they will also supplement more plants where some have died or gotten sparse.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

Phil Samuel said he is concerned about water runoff since they'll be removing more greenspace; and asked if MSD approved the new plan. Mr. Campbell said they sent the plan to MSD and have various approvals. He said the water will be contained on site; and that he agrees to first three conditions of approval. Chair Proffitt said they need to submit the approval from MSD to staff.

SUMMARY OF TESTIMONY OF OPPONENTS:

Julianne Downard said she is concerned about the lighting of the new parking area to the west since it is moving closer to her home. She said currently, the parking area is lit 24/7. Mr. Campbell said her property is to the east and that the lighting will be code compliant and facing down and away from adjacent neighbors'. Member Jarboe asked if this was due to security reasons. Mr. Campbell said yes. Chair Proffitt interjected and said most businesses are not next to residential areas. Mr. Campbell said they will do minimal shielded lighting. Chair Proffitt wanted to add a condition of approval that the lighting be faced down and away from adjacent residences.

BUSINESS SESSION:

The Board discussed the conditions of approval.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant has requested three variances from the Land Development Code, Section 5.3.1.C.5 (Table 5.3.2) to allow proposed parking and maneuvering in the required 50' setback adjacent to residential properties; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposed parking will be located

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at a distance from the property lines which will allow additional screening and tree planting to be provided; and because the existing vegetation will be preserved to screen headlights and reduce noise; and because additional new plantings will be added to supplement and enhance to buffer; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the existing vegetation around the rear parking lot will be preserved and supplemented with new plantings to enhance the screening; also, because additional planting material will be added between the proposed 36 parking spaces and the existing residential properties in the front parking area which will reduce the noise and headlight glare; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the parking lot is limited to use only during church functions; and because the existing and new vegetation will be maintained; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the constructed parking and maneuvering area will be located a minimum of 25 feet from the property lines in the rear and 19 feet from the side property line in the front; and because allowing sufficient area for screening and additional planting being provided will reduce the impact of the parking and maneuvering areas; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the location of the parking in a residentially zoned area is unique and requires additional buffering to reduce the impact of the headlight glare and noise which the applicant has agreed to do; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the proposed additional parking would need to be located out of the 50 ft. setback or eliminated; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variances **ON CONDITION**:

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The conditions of approval are as follows:

1. The existing vegetation is preserved along the rear and side perimeter adjacent to the proposed 65 parking spaces and maneuvering area.
2. Additional new plantings will be added to supplement the existing vegetation adjacent to the 65 parking spaces and maneuvering area.
3. New plantings and screening will be added between the proposed 36 parking spaces and the adjacent residential properties.
4. The applicant will submit documentation from MSD that the existing drainage basin will handle drainage overflow from the proposed parking areas.
5. Lighting by the proposed 65 parking spaces will meet Land Development Code requirements and will be directed down and away from adjacent property owners; in addition, the applicant will control the lighting in the evening by dimming or turning off some of the lights so it doesn't bother the adjacent property owners'.

The variances allow:

1. The proposed parking and maneuvering to be 19 feet from the west perimeter property line.
2. The proposed parking and maneuvering to be 37 feet from the south perimeter property line.
3. The proposed parking and maneuvering to be 25 feet from the east perimeter property line.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1020

Applicant: Prestige Builders
Christopher Eldridge
12488 LaGrange Road
Louisville, Kentucky 40241

Owner: Joe Pepper
P.O. Box 805
Prospect, Kentucky 40059

Representative: MPSL Group
Joe Scannel
3501 Arrow Wood Ct.
LaGrange, Kentucky 40031

Project Name: Proposed House

Subject: An application for a variance from the Development Code, Article 4.C.2a, to allow a proposed house to encroach into the required front yard.

Premises affected: On property known as 11801 Woodland Road and being in the City of Anchorage.

COUNCIL DISTRICT 17—Glen Stuckel
Staff Case Manager: Sherie' Long

Appearances for Applicant:
Chris Eldridge, Prestige Builders, 12488 LaGrange, Kentucky 40241.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 10, 2014, Chris Eldridge filed an application for a variation from the requirements of the Land Development Code to allow a proposed structure to encroach into the required front yard.

On April 21, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 21, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Sherie' Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant is proposing to build a new house on a triple frontage infill lot in the City of Anchorage (Old Code). She said the variance is needed due to the required 75' setbacks and a drainage ditch/stream bisecting the property. She said the City of Anchorage Historic Preservation Committee recommended that the house face Evergreen Road and be located at the highest point on the property. Ms. Long said the applicant needs to revise the plan to show the 75' setbacks along all three street frontages; street names will need to be corrected (see staff report page 3); and the drainage/stream needs to be labeled on the plan.

Chair Proffitt said the plan and renderings are inaccurate and suggested continuing this case. Ms. Long said there are various elevations in the staff report.

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SUMMARY OF TESTIMONY OF PROPONENTS:

Chris Eldridge, the builder, pointed out the front elevation facing Evergreen Road with a garage on the side. He said he keeps getting conflicting information from various agencies. Chair Proffitt said the drawing is inaccurate which may change the variance requests. Chair Proffitt said he wants one correct plan with an outline of the house.

BUSINESS SESSION:

The Board determined that this case should be continued until the applicant can submit an accurate plan.

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

RESOLVED, that the Board does hereby **CONTINUE** this case to **MAY 19, 2014** to allow the applicant time to correct the plan.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1002

Applicant: Nicklies Development
Jim Calvery
6060 Dutchmans Lane
Louisville, Kentucky 40205

Owner: Valley Commons II, LLC
Scott Hannah, Agent
6060 Dutchmans Lane
Louisville, Kentucky 40205

Representative: Heritage Engineering
John Campbell
642 S. 4th Street, Ste. 100
Louisville, Kentucky 40202

Subject: An application for a Conditional Use Permit to allow outdoor alcohol sales and consumption and indoor entertainment for restaurants in a C-1 zoning district.

Premises affected: On property known as 10626 Dixie Highway and being in Louisville Metro.

COUNCIL DISTRICT 14—Cindi Fowler
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Jim Calvery, Nicklies Development, 6060 Dutchmans Lane, Louisville, Kentucky 40205.

Appearances- Interested Parties:
No one.

Appearances Against Applicant:
No one.

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An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 17, 2014, Nicklies Development filed an application for a Conditional Use Permit to allow outdoor alcohol sales and consumption and indoor entertainment for restaurants in the C-1 zoning district.

On April 21, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the April 21, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

Steve Hendrix, Planning Supervisor, presented this case for staff case manager Latondra Yates and gave a brief presentation of the case to the Board which included a PowerPoint presentation. He said the outdoor alcohol sales and consumption is in a proposed 500 sf. outdoor dining area; and that the CUP is related to a Category 2B (Docket No. 2-35-13) for the construction of a 5,260 sf. restaurant. The site is vacant and surrounded by commercial uses. Chair Proffitt asked if they are meeting their screening requirements. Mr. Hendrix said yes, otherwise they would have to apply for a landscape waiver.

SUMMARY OF TESTIMONY OF PROPONENTS:

Jim Calvery, the applicant, said they will be meeting the landscape requirements. He said the site has approved landscape and architectural plans. Mr. Calvery said they have a good relationship with the church, who even allowed them to continue the sewer line across their property. He said the proposed El Nopal restaurant's outdoor patio will be gated and screened. Mr. Hendrix said the indoor entertainment should be addressed. Mr. Calvery said they will not have

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indoor entertainment; and that they will adhere to the Louisville Metro Noise Ordinance.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

The indoor entertainment was discussed again.

After the public hearing, in open business session, Member Fishman made a motion to approve the CUP with conditions of approval and Member Tharp seconded the motion. The Board then went back into public hearing.

BACK INTO PUBLIC HEARING:

Mr. Calvery said they will probably have piped music outside but won't have bands or anything similar. He said the patio will close at 1:00 a.m. and added that the church has no objections.

BACK INTO BUSINESS SESSION:

Chair Proffitt read a condition of approval (COA) into the record regarding piped outdoor music will comply with the Louisville Metro Noise Ordinance. Member Fishman said they should add another COA that there will be no indoor entertainment.

The motion carried and the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation, the evidence submitted and testimony at the public that the applicant is requesting a Conditional Use Permit under Section 4.2.42 of the Land Development Code to allow outdoor alcohol sales and consumption and indoor entertainment for a restaurant in the C-1 zoning district; and

WHEREAS, the Board finds that the property is within a Suburban Marketplace Corridor Form District; and

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WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan and Section 4.2.42 which is achieved both through site design and type of use with the restaurant being a family friendly establishment with site design features limiting any impacts to the neighborhood; and because the design features include placement of the outdoor patio in relationship to commercial activities along Dixie Highway and commercial uses adjacent to the site; and because both a landscape buffer along Dixie Highway and a metal rail will be provided around the patio area where the sale and consumption will occur; and

WHEREAS, the Board finds that the proposal will be compatible with the surrounding land uses and general character of the area because it is located within a commercial development along a commercial corridor; and

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the CUP because the plan outlines the boundaries of the outdoor patio and alcohol sales; and because the outdoor patio is not located within public right-of-way; and the plan has received preliminary approval from the Transportation Department; and because the required screening will be provided—additionally, the applicant will provide a barrier around the dining area; and because the applicant will obtain the appropriate licensing to allow alcohol sales; and because the use of the outdoor dining area for the sale and consumption of alcohol shall cease by 1:00 a.m. per the Condition of Approval; and because the applicant agreed to no indoor entertainment and no loud music outside complying with the Metro Noise Ordinance, Chapter 99 also included as a Condition of Approval; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION**.

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The conditions are as follows:

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 review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for outdoor alcohol sales and consumption without further review and approval by the Board.
3. The use of the outdoor dining area for the sale and consumption of alcohol shall cease by 1:00 A.M.
4. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).
5. Any outdoor piped music shall also comply with the Metro Noise Ordinance (LMCO Chapter 99).
6. No indoor entertainment shall occur.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1000

Applicant/Owner: Louisville Soccer Alliance
Michael E. Hayes, President
P.O. Box 34113
Louisville, Kentucky 40232

Subject: An application for a Conditional Use Permit to allow an athletic facility in an M-3 zoning district.

Project Name: Louisville Soccer Alliance Training Facility

Premises affected: On property known as 3001 Stober Road and being in the City of Watterson Park.

COUNCIL DISTRICT 10—Jim King
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Michael Hayes, P.O. Box 34113, Louisville, Kentucky 40232.

Appearances- Interested Parties:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 7, 2014, Louisville Soccer Alliance filed an application for a Conditional Use Permit to allow an athletic facility in an M-3 zoning district.

On April 21, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in

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advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the April 21, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing to use the existing building and adjacent side yard as a training facility for soccer. The building is currently declining and the applicant will be restoring it and install a multi-purpose athletic room and creating a grass surface on the east side for outdoor training. Mr. Crumbie said the applicant is requesting a modification of Item D of the listed requirements to allow the parking area to be 7 feet at its closest point from the Stober Road property line and 3 feet from the Watterson Park Road property line. In addition, the modification will allow parking to encroach into the Landscape Buffer Area's (LBA) along Stober Road and Watterson Park Road. The parking will also be located 16 feet from the north property line. The existing structure will be located 21 feet from the nearest property line and the athletic field will be 2 feet off the north property line and 1 foot off the east property line. Mr. Crumbie said the applicant has received letters of support from Mayor Fischer and the Mayor of Watterson Park.

SUMMARY OF TESTIMONY OF PROPONENTS:

Mike Hayes, the applicant, said they will not be changing the building too much, but moving the bathrooms and offices. Mr. Hayes, presented two large renderings for the Board to see. Member Fishman asked what one of the existing buildings is. Mr. Hayes said he's not sure, but possibly a post office.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

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

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation and the evidence submitted and testimony at the public hearing that the applicant is requesting a Conditional Use Permit to allow an athletic facility in an M-3 zoning district; and

WHEREAS, the Board finds that the property is within a Suburban Workplace Corridor Form District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because the applicant will add additional landscaping and buffering to the property; and because the existing access to the site will be improved; and because adequate parking spaces are provided on-site to meet the Land Development Code (LDC) requirements; and the proposed signage and lighting will be LDC compliant; and

WHEREAS, the Board finds that the proposal is compatible with the surrounding land uses and the general character of the area because the proposal will be located in an existing building in an industrial area; and because the proposal will be compatible with the surrounding land uses with respect to height, scale, drainage, dust, lighting, in addition to the appearance will be greatly improved; and

WHEREAS, the Board finds that the proposal complies with specific standards, Items A., B., E., and F; where Item C does not apply; and the Board will hereby modify D. to allow the parking area to be located 7 feet at its closest point from the Stober Road property line and 3 feet from the Watterson Park Road property line; and because this modification will allow parking to encroach into the landscape buffer areas along Stober Road and Watterson Park Road; in addition, parking will be located 16 feet from the north property line; the existing structure will be located 21 feet from the nearest property line and the athletic field will be 2 feet off the north property line and 1 foot off the east property line; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received

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preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION**.

The conditions are as follows:

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.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14DEVPLAN1034

Applicant:

Milhaus Development
Greg Martin
530 East Ohio Street – Suite A
Indianapolis, IN 46204

Owner:

Windhorst Investments, LTD & Ready Electric Co.
Andrew G. Windhorst
3300 Gilmore Industrial Blvd.
Louisville, Kentucky 40213

Attorney:

Frost Brown Todd, LLC
Glenn Price, Esq.
400 West Market Street – Suite 3200
Louisville, Kentucky 40202

Representative:

DkGr, LLC
John Albrecht
55 Monument Circle –Suite 816
Indianapolis, IN 46204

Project Name:

Frankfort Avenue Multi-Family Housing

Subject:

An application for a variance from the Land Development Code to allow the elimination of the required private yard; Land Development Code waivers and a Category 3 Plan for the construction of a multi-housing development.

Premises affected:

On property known as 2030 Frankfort Avenue; 2008-2032 Frankfort Avenue and 113 North Bellaire Avenue and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh

Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:

Glenn Price, Attorney, 400 W. Market Street, Ste. 3200, Louisville, Kentucky 40202; who submitted information and a PowerPoint presentation into the record.

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Kevin Young, Land Design & Development, 503 Washburn Avenue, Louisville, Kentucky 40222.

Greg Martin, Milhaus Development, 530 East Ohio Street, Ste. A, Indianapolis, Indiana 46204.

Appearances Interested Party:

Phil Samuel, 3 Angora Court, Louisville, Kentucky 40206.

Appearances Against Applicant:

No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 18, 2014, Milhaus Development filed an application for a variation from the requirements of the Land Development Code to allow the elimination of the required private yard; waivers and a Category 3 Plan for the construction of a multi-family development.

On April 21, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the April 21, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Steve Hendrix, Planning Supervisor, presented this case for staff case manager, Latondra Yates. Mr. Hendrix gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the requests are for the

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demolition of the existing structures on site, consolidation of several lots and the construction of a 93-unit, 4-story multi-family housing develop. He said the site is in the Clifton Historic Preservation and National Register Districts and will be reviewed by the Architectural Review Committee on April 23, 2014 (Case No. 13COA1038); and the Land Development & Transportation Committee on April 24, 2014 for the parking waiver. He said the requests violate one of the guidelines because a parking waiver is being requested even after the transit reduction. The development could be scaled down or redesigned to provide the required minimum parking, due to the parking demands in the area.

SUMMARY OF TESTIMONY OF PROPONENTS:

Glenn Price, attorney for the applicant, submitted some information into the record. He said his client specializes in infill developments of this type; and that most people are very happy with them once completed. Mr. Price explained the need for the variance and waivers considering the odd shape of the property and nearby railroad track. Mr. Price said they will be providing greenspace along Frankfort Avenue and other plantings and fences to mitigate the landscape waiver requests. He said they are about 11 parking spaces short of meeting the code; and that the on-street parking spots will be less utilized during the day with people being at work. Member Fishman asked if they could scale the development down in order to have enough parking. Mr. Price said no, and that they have negotiated with the neighbors and the Transportation Department.

Kevin Young, the applicant's other representative, said they have 102 parking spaces. Chair Proffitt said so they need a parking waiver for 11 spaces. Mr. Young said yes. Mr. Young said they met with the Transportation Department who suggested putting an entrance to the west due to accidents in the area. He said the billboard will be removed; and will be providing fences to buffer the neighbors'. Mr. Young said they are also incorporating a bio-infiltration system for water runoff. Chair Proffitt asked where the trees will be planted. Mr. Young pointed this out and added that there is not a tree canopy requirement but will be providing this.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

Phil Samuel asked if the plan will conform to the Frankfort Avenue Tree Canopy Plan. Mr. Young said yes, that they will be replacing trees as needed in the tree wells along Frankfort Avenue, as well as planting trees in any vacant tree wells. Mr. Samuel's said he feels the proposal will allow an unreasonable circumvention

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of the zoning regulations comparing it to other multi-family developments that don't have private yards in the area. He said he will be opposing the request for the parking waiver at LD&T; since parking along Frankfort Avenue is sparse. The 8 ft. tall fence and retaining wall was discussed. Mr. Samuel's said he would like the applicant to incorporate plantings near the fences. Member Liggin asked if people who attended the neighborhood meeting were happy with this development. Mr. Samuel's said people were mostly concerned about parking and the height of the building.

Becky Gorman, Historic Preservation Officer for Planning & Design Services, said the applicant is not violating any laws; and also that there was not a quorum at the Clifton Architectural Review Committee meeting.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

REBUTTAL:

Mr. Price said they have had meetings with LD&T, Clifton ARC, and BOZA, in addition to numerous other meetings with the Frankfort Avenue Business Association and Friends of Clifton Residents. He said the process has not been easy and that the Board could approve the plan based on the other required approvals. Mr. Price said if they eliminate 7 of the units, then his client won't build it. He said this development will create a lively streetscape with more people shopping and attending festivities in the area.

Greg Martin, the applicant, said they could continue this case to get other approvals first.

Chair Proffitt read a condition of approval into the record regarding the 8 ft. tall fence being placed along the Johnson and Cox properties. Mr. Young added that they would be installing an ornamental fence along Nussbaum Street.

BUSINESS SESSION:

Member Jarboe said the height of the building might set a precedent. She also said they don't know if reducing the number of units would be a deal breaker. Member Liggin said he would like to see the minutes from the Clifton Neighborhood Association and doesn't know if they've been involved enough. Member Tharp said he feels the applicant has done a lot to get this proposal

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approved. He said if the Clifton Neighborhood Association was concerned, that they would have showed up today to testify. Member Fishman said she would prefer as much landscaping as possible and also near the fences. She said she likes the proposed rain garden. Chair Proffitt said he has concerns about not having enough parking; and that the applicant should have a landscape plan. Mr. Price interjected and said they have a screening and buffering plan for the entire site.

VARIANCE:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance of Section 5.4.1.D.2. of the Land Development Code to not provide the required 30% private yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because an open space area is proposed at the rear of the building and parking, and the neighboring park will be used to meet recreational open space requirements; and because there are also other recreational opportunities in the neighborhood; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed development is compatible with other multi-family development in the area that does not observe the private yard; and because due to the irregular triangular shape of this block face, bounded by Frankfort Avenue, Bellaire Avenue and the CSX railroad tracks, none of the nearby residential lots have an accessory structure area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the open space area proposed will also serve as rain detention, helping control runoff from the site; and

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WHEREAS, the variance will not allow an unreasonable circumvention of the zoning regulations because there are other multi-family developments in the area that does not observe the private yards; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the lot is irregularly shaped; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because of the irregular shape of the lot; and because without the variance, would cause a substantial reduction in the number of units and parking spaces that could be constructed on the lot;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the private yard area behind the building to be 0.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: Member Liggin.

WAIVER—To allow parking in the principal structure area:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the landscape rendering presented at today's hearing; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver of Section 5.4.1.C.2. of the Land Development Code to allow parking in the principal structure area; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because there will be street trees to help screen the parking; and because there are also other developments in the area with similar

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parking layouts; and because parking is needed to help meet minimum requirements as much as possible; and

WHEREAS, the Board finds that the waiver will not violate guidelines of Cornerstone 2020 because the waiver complies with Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.3, 3.6, 3.9 3.22 and 3.24 because the most important value that this development should advance is to provide as much off-street parking as possible in order to reduce conflicts with on-street parking spaces; and because the provision of parking spaces adjacent to the building will not cause a visual nuisance to the public on foot or traveling on Frankfort Avenue due to appropriate building placement and buffering; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow as much parking as possible on site; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect);

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to allow parking in the principal structure area.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: Member Liggin.

WAIVER—To not provide the 10-ft. LBA:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; landscape rendering presented at today's

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hearing; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver of Section 10.2.4 of the Land Development Code to not provide the required 10-ft. Landscape Buffer Area and plantings adjacent to the R-6 property to the southwest; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because an 8-ft. tall wooden privacy fence will be installed and should provide effective screening; and

WHEREAS, the Board finds that the waiver will not violate specific standards of Cornerstone 2020 and complies with Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.22 and 3.24 because the grade change in this area is not conducive to tree growth; however, an existing green space will exist in this area and native evergreen shrubs will be planted which, together with an 8-foot tall wooden privacy fence, will soften the appearance of the parking area and buffer the adjacent R-6 properties from the proposed multi-family development; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because of the change in grade that will not allow trees to grow in this area; and because an existing green space will exist and native evergreen shrubs will be planted along with the installation of an 8-foot tall wooden privacy fence which will soften the appearance of the parking area and buffer the adjacent R-6 properties from the proposed multi-family development; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because of the change in grade that will not allow trees to grow in this area;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to not provide the required 10-ft. Landscape Buffer Area and plantings adjacent to R-6 properties to the southwest.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp and Jarboe.

NO: No one.

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NOT PRESENT FOR THIS CASE AND NOT VOTING: **Member Allendorf.**

ABSTAINING: **Member Liggin.**

WAIVER—To not provide the required 5-ft. VUA/LBA adjacent to C-2 properties:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; landscape rendering presented at today's hearing; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver of Section 10.2.10 of the Land Development Code to not provide the required 5-ft. VUA LBA adjacent to C-2 properties to the northwest (Johnson & Cox properties); and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the applicant has agreed to provide evergreen shrubs and an 8-ft. tall wooden privacy fence along this lot line; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020, but complies with Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.22 and 3.24, because the existing retaining wall does not leave enough space for the planting of trees in this area; and because the applicant has agreed to provide evergreen shrubs and an 8-ft. tall wooden privacy fence along this lot line; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because of the existing retaining wall and entry alignment to Bellaire Avenue; and because the applicant has agreed to provide evergreen shrubs and an 8-ft. tall privacy fence along this lot line; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because of the existing retaining wall and entry alignment to Bellaire Avenue;

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NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to not provide the required 5-ft. Vehicular Use Area and Landscape Buffer Area adjacent to the C-2 properties to the northwest **ON CONDITION** that the applicant install an 8-ft. tall wooden privacy fence by the Johnson and Cox properties for buffering.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp, Jarboe and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

WAIVER—To not provide the required 120-ft. distance between ILA's:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; landscape rendering presented at today's hearing; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver of Section 10.2.12 of the Land Development Code to not provide the required 120-ft. distance between the Interior Landscaped Areas; and

WHEREAS, the Board finds that the requested waiver will not adversely affect the adjacent property owners because the ILA's would be located interior to the site, largely screened by the proposed building and proposed landscaping and fencing; and because the development provides a 2997 square foot open space area which includes a ran garden/detention area of 1182 square feet, centrally located within the on-site parking area; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 and complies with Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.22 and 3.24 because the on-site parking area of the proposed multi-family development is situated behind the building on two sides; it is located behind a proposed fence and retaining wall on

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the west side, and is situated against the Louisville & Nashville Railroad at its southern property line; and because the large 2997 sq. ft. center open space area will provide adequate area for interior landscaping which will also include a rain garden/detention area of 1182 square feet; in addition, this is an urban environment, the provision of on-site parking is a greater land use “value” to be advanced than is the ILA distance requirement; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant given the need for detention, the proposed sewer and drainage easements and the need to provide as much parking as possible; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant given the need for detention, the proposed sewer and drainage easements and the need to provide as much parking as possible;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to not provide the required 120-ft. distance between the Interior Landscape Areas.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: Member Liggin.

CATEGORY 3 PLAN:

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

WHEREAS, the Board finds, from the file of this case, the staff report, the site plan, the PowerPoint presentation(s); the evidence including the landscape rendering presented at today’s public hearing and testimony submitted at the public hearing, that the applicant is requesting a Category 3 Plan for the construction of a multi-family development;

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NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **APPROVE** the Category 3 plan to construct a multi-family development **ON CONDITION** that the applicant receives approval from the Land Development and Transportation Committee and the Clifton Architectural Review Committee; in addition, the applicant will install plantings and trees along Frankfort Avenue substantially similar to that shown on the rendering presented at today's public hearing; and submittal and approval of a landscape plan.

The vote was as follows:

YES: Members Proffitt, Fishman, Tharp and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: Member Liggin.

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The meeting adjourned at 12:35 p.m.

CHAIRPERSON

SECRETARY