

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

JULY 20, 2015

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, July 20, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

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

Members absent:

No one

Staff members present:

Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Manager
Sherie Long, Landscape Architect
Jon Crumble, Planner II
Matthew Doyle, Planner II
Beth Stevenson, Management Assistant

*Member Bergmann left the meeting at 11:04 a.m.

The following cases were heard:

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APPROVAL OF MINUTES

JULY 6, 2015 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

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

RESOLVED, that the Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on July 6, 2015.

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

NO: No one.

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

ABSTAINING: No one.

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BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 15VARIANCE1039

Request: Non-Hearing Variance to allow an existing detached garage, as a resultant of a new house addition to be 4.2 feet from the south side property line.

Project Name: House Addition

Location: 311 Eline Avenue

Owner: Emily C. Bartz
311 Eline Avenue
Louisville, KY 40207

Applicant: Same as Owner

Representative: Charlie Williams Design, Inc.
Charlie Williams
1626 Windsor Place
Louisville, KY 40204

Jurisdiction: City of St. Matthews

COUNCIL DISTRICT: 9—**Bill Hollander**
Staff Case Manager: **Sherie' Long, Landscape Architect**

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 in the Planning & Design Services offices. Please contact customer service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 20, 2015 public hearing proceedings.

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BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 15VARIANCE1039

On a motion by Board Member Fishman, 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; and discussion at the public hearing that the applicant is requesting a variance from the Development Code, Articles 4.6 and 9.2.P, to allow an existing detached garage, as a resultant of a new house addition, to be 4.2 feet from the south side yard property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure is existing and located in the rear of the parcel; and because the adjacent neighbors have no objection to the new addition or the location of the existing garage; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the structure is an existing detached garage is located in the rear of the parcel; and because it is compatible with the architecture throughout the neighborhood; and because most lots in the neighborhood have rear detached garages; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the detached garage is located at the rear of the property and the adjacent property owners have no objection to the location; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the structure only encroaches into a small portion of the required side yard, plus, it is an existing condition; 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 house addition will reduce the distance between the structures to less than the required 15 feet; and because the required detached garage setback will be increased from 2 feet to 5 feet; therefore, to build the new house

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addition, a variance of 0.8 feet is needed for the existing detached garage to remain where it is currently located; and

WHEREAS, the Board finds that the strict application of the regulation would create an unnecessary hardship on the applicant because the existing detached garage would need to be moved or removed and rebuilt to meet the required 5 foot side yard setback;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow an existing detached garage to be 4.2 feet from the south property line;

BE IT FURTHER RESOLVED, that this action be effective immediately.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1034

Request: Variance from the Land Development Code to allow a proposed fence to exceed the maximum height requirement.

Location: 2234 Wynnewood Circle

Owners: Paul and Mary Whitty
2234 Wynnewood Circle
Louisville, KY40222

Applicants: Same as owners

Representative: Glenn Price, Esq.
400 W. Market Street, Ste. 3200
Louisville, KY 40202

Jurisdiction: City of Northfield

COUNCIL DISTRICT 7—Angela Leet

Staff Case Manager: Jon Crumbie, Planner II

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

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

Agency Testimony:

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant's would like to replace a 9 ft. dilapidated fence with a new 12 ft. tall fence. The existing mature trees and landscaping will almost completely hide the fence.

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The following spoke in favor of this request:

Glenn Price, Attorney.

Paul Whitty.

Summary of testimony of those in favor:

Glenn Price, the applicant's attorney, said his client would like to construct a new 12 ft. tall wood fence to replace the existing 9 ft. tall fence to reduce noise and light issues from Brownsboro Road and the expressway. Similar fences exist in the neighborhood for the same reasons.

Paul Whitty, the owner, said he will put the finished side of the fence facing Brownsboro Road.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Chair Proffitt said the fence will not be noticeable from the street due to the existing mature evergreen trees.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 20, 2015 public hearing proceedings.

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NEW BUSINESS:

CASE NO. 15VARIANCE1034

Variance—To allow a proposed fence to exceed the maximum height requirement:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow a proposed fence to exceed the maximum height requirement by 4 feet; requirement 8 ft. or a 12 ft. tall fence; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the existing landscaping will almost completely screen the fence; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because a fence currently exists in the same area; and because the applicant will be placing the finished side of the proposed fence toward Brownsboro Road (US Highway 42); and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the existing fence is in poor condition and in need of replacement; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are similar encroachments of this type throughout the neighborhood due to the location being off Brownsboro Road and near the expressway; 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 site slopes downward at the rear approximately 3 feet toward Brownsboro Road, visually making the proposed fence seem shorter; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because more light and noise would trespass on the site;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed fence to be 12 feet tall.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1035

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

Project Name: New House Addition

Location: 1129 Goss Avenue

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

Applicants: Same as owners

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

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 10—Steve Magre
Staff Case Manager: Sherie' Long, Landscape Architect

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

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant received a Stop Work Order for not having a permit to build. Ms. Long said the applicant needs to address the technical review items in the staff report on page 3; and

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suggested that a survey be submitted to verify that the foundation and gutter are not encroaching onto the property next door.

The following spoke in favor of this request:

Zach Driscoll.

Summary of testimony of those in favor:

Zach Driscoll, the owner, said he was told he didn't need to submit a survey by Planning & Design Services; and that he has this neighbors' approval. He said the overhang will be 1 foot from the adjacent house; and the foundation will be in the same place as what was there.

Member Turner asked if Mr. Driscoll had an objection to getting a survey done. Mr. Driscoll said no.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Some of the Board members felt the owner should do a survey and submit to staff along with the appropriate building permits.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.4.1.C.6.b of the Land Development Code to allow a proposed house addition to encroach into the required southeast side yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the applicant agreed to submit the appropriate permits to staff for the proposal and conduct a survey on the southeast property line to ensure there is no further encroachment onto the adjacent property owners property; and because the proposed addition will be built in the original footprint of what was previously there; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the new two-story addition will be located in the same footprint as what was there; and because there are other camelback style houses in the area; and because the construction material will be similar to other homes in the vicinity; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the renovation will not be any closer to the road or adjacent property owner that what existed; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the new addition will be located in the same footprint as what was there; and because there are other similar two-story camelback style homes in the neighborhood with little or no setback provided; and

WHEREAS, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is very narrow like most of the other lots in the neighborhood;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed house addition to be 0 feet from the southeast property line **ON CONDITION:**

1. The applicant shall submit all the required building permits to staff for verification and to include in the file.
2. The applicant shall submit a survey of the southeast property line by a licensed surveyor for verification and at the discretion of staff. will be staff approvable.

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

NO: Member Jarboe.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1036

Request: Variance from the Land Development Code to allow a reduction in the required private yard area

Location: 2437 Ransdell Avenue

Owner: Mark P. Pfeifer
2439 Ransdell Avenue
Louisville, KY 40204

Applicant: Same as owner

Representative: Charlie Williams Design, Inc.
Charlie Williams
1626 Windsor Place
Louisville, KY 40204

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Matthew Doyle, Planner II

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

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

Agency Testimony:

Staff Case Manager, Matt Doyle discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing to expand the deck and add a roof. The applicant has received a Certificate of Appropriateness since the property is located in Cherokee Triangle. Mr. Doyle said the applicant also received a variance in 2009 to reduce the private yard.

Chair Proffitt asked Mr. Doyle if he and Planning & Design staff would find this request inappropriate since they already received a variance. Mr. Doyle said this

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situation is different since a deck already exists. Member Fishman asked if it is within the same footprint. Mr. Doyle said he believes so.

The following spoke in favor of this request:

Charlie Williams.

Summary of testimony of those in favor:

Charlie Williams, the applicant's architect, said the addition is only 1 foot larger and will only encroach 1 foot into the yard. He said the variance is needed since they are enclosing the porch; and that he received all signatures of approval from adjacent neighbors' except the condominium regime.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

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Variance—To allow a reduction in the required private yard area:

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

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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 including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.4.1.D.2 of the Land Development Code to allow a reduction in the required private yard which is 1,604 square feet to 1,291 square feet or a variance of 313 square feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since it meets or exceeds all other development standards, including the minimum side yard setback of the form district; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since it maintains appropriate private yard area of more than 20% of the area of the lot; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since it meets or exceeds all other development standards, including the minimum side yard setback of the form district; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since it maintains the traditional site design pattern that exhibits the four basic components of a residential lot which consist of the public realm area; the principal structure area; the private yard area; and the accessory use/structure area; 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 since the lot is smaller than the adjoining properties; 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 since the proposal maintains the traditional site design pattern that exhibits the four basic components of a residential lot which consist of the public realm area; the principal structure area; the private yard area; and the accessory use/structure area;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a reduction in the required private yard area to 1,291 square feet.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1038

Request: Variance to allow a reduction in the required private yard area.

Location: 1852 Edgeland Avenue

Owner: Ronald D. & Jill Bath
1852 Edgeland Avenue
Louisville, KY 40204

Applicant: Same as owners

Representative: Charlie Williams Design, Inc.
Charlie Williams
1626 Windsor Place
Louisville, KY 40204

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Matthew Doyle, Planner II

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

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

Agency Testimony:

Staff Case Manager, Matt Doyle discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing to construct an addition and garage onto the rear of the principal structure which will reduce the private yard area. He said the site has alley access in the rear from either Ray or Bassett Avenue.

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The following spoke in favor of this request:

Charlie Williams.

Summary of testimony of those in favor:

Charlie Williams, the applicant's representative, said the lots in the Highlands are very small, but the owner has a spacious backyard to accommodate the attached garage. He said the existing garage is one foot off the property line and this will be maintained. The gable and gutters will be directed away from the adjacent property owners'.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

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Variance—To allow a reduction in the private yard area:

After the public hearing in open business session, on a motion by Member Allendorf, 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

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PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.4.1.D.2 of the Land Development Code (LDC) to allow a reduction in the required private yard area for the construction of a one story addition and garage attached one story garage (requirement 753 sq. feet, request 574 sq. ft. or a variance of 179 sq. feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since it meets or exceeds all other development standards, including the minimum side yard setback of the form district; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since it is compatible with other residential lots on the same side of the street that have garages; and because the private yard area is on the eastern side of the rear yard; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since it meets or exceeds all other development standards, including the minimum side yard setback of the form district; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since it is compatible with other residential lots on the same side of the street that have garages; and because the private yard area is on the eastern side of the rear yard; 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 since the lots on Edgeland Avenue are nonconforming, substandard lots that do not have the appropriate depth; 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 since the proposal is compatible with other residential lots on the same side of the street that have garages; and because the private yard area is on the eastern side of the rear yard;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the private yard area to be 574 square feet; a variance of 179 square feet.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1037

Request: Variance from the Development Code to allow a detached garage and screened porch to exceed 30% of the required rear yard.

Project Name: Garage and Screened Porch

Location: 511 Macon Avenue

Owners: Nancy and E. J. Gary
511 Macon Avenue
Louisville, KY 40207

Applicants: Same as owners

Representative: DelPrince Designs, LLC
Anne DelPrince, Architect
640 Country Club Road
Louisville, KY 40206

Jurisdiction: St. Matthews

COUNCIL DISTRICT 9—Bill Hollander

Staff Case Manager: Sherie' Long, Landscape Architect

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

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant is proposing to replace the existing garage with a new garage and screened porch.

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The following spoke in favor of this request:

Anne DelPrince.

Summary of testimony of those in favor:

Anne DelPrince the applicant's architect, explained the materials that will be used for the garage.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 20, 2015 public hearing proceedings.

Variance—To allow a detached garage and screened porch to exceed 30% of the required rear yard:

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 is requesting a variance of Article 9.2.Q of the 2001

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Development Code, to allow a detached garage and screened porch to exceed 30% or 375 sq. ft. or the required rear yard to 38% or 478 sq. feet; a variance of 8% or 103 square feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure is located in the rear of the parcel; and because the proposed structure is being located at the minimum distance allowed by the regulations from both the side and rear yards; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed structure is located at the rear of the parcel and is compatible with the architecture throughout the neighborhood; and because most lots in the neighborhood have similar rear detached garages; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed garage and screened porch are located at the rear of the property; and because the required setbacks from the property lines are being honored along both the rear and side perimeters; and

WHEREAS, the Board finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the structure encroaches into a small portion of the required rear yard; and because there will be 1,280 SF +/- of green space provided in the rear yard area in addition to an existing patio; 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 applicant would not be able to construct the proposed garage and screened porch because the lot is not deep enough or wide enough to allow for the size of the building proposed;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the northeast rear yard area to be 478 square feet.

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CASE NO. 15VARIANCE1037

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14DEVPLAN1180

Request: Variance from the Land Development Code to allow parking areas and drive aisles to encroach into the required side yards; and a variance to allow a reduction in the required private yard area; waivers from the Land Development Code to not provide an entrance oriented toward the primary street; to eliminate the required Landscape Buffer Area (LBA) along the west perimeter of the site to allow parking and drive aisle; and to allow the open space to be less than the minimum 30 ft. width; and a Category 3 Review.

Project Name: Leroy Avenue Townhomes

Location: 1719, 1721 & 1723 Leroy Avenue

Owner: Edwin R. Montgomery, Trust C
Guy R. Montgomery
4738 Dixie Highway
Louisville, KY 40216

Applicant: Same as owner

Representative: Blomquist Design Group
Marv A. Blomquist
10529 Timberwood Circle, Suite "D"
Louisville, KY 40223

Jurisdiction: City of Shively

COUNCIL DISTRICT 3—Mary Woolridge

Staff Case Manager: Sherie' Long, Landscape Architect

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

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and was available

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to any interested party prior to the public hearing. (The staff report is part of the case file maintained at the Planning and Design Services offices located at 444 S. 5th Street).

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant is proposing to construct 18 townhouse units in three buildings; and will be consolidating three residential lots to one. She said the plan will have to be revised to address the technical review items; and that the applicant can discuss mitigation efforts for some of the waivers.

The following spoke in favor of this request:

Marv Blomquist.

Summary of testimony of those in favor:

Marv Blomquist, the applicant's representative, said that MSD preliminarily approved the plan with the parking area in the floodplain. He said they may have to provide a basin or detention on site for water runoff. Chair Proffitt asked if he would agree to a condition of approval for landscaping around the first floor porches. Mr. Blomquist agreed.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

Cindy Vance, didn't sign in.

Summary of testimony of those in opposition:

Cindy Vance said she is opposed to the two parking spaces in the front. Chair Proffitt said those spaces could be moved back by the dumpster area which would eliminate one of the variances. Mr. Blomquist agreed to this. Member Tharp suggested adding a fence or gate to prevent trespassers from entering in back of the patios. Mr. Blomquist agreed to this. Ms. Vance said she thinks Leroy Avenue is not wide enough to accommodate this development. Ms. Long

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said she thinks Leroy Avenue is 20 feet wide and doesn't believe there is any plan to widen it. Chair Proffitt said Ms. Vance could call the city with this request. Ms. Vance was also concerned if the units would be Section 8 housing. Mr. Blomquist said the developer wants to keep them at a fair market rate.

Deliberation:

Member Jarboe suggested continuing this case to find out if Public Works/Transportation will widen Leroy Avenue. Emily Liu, Planning & Design's Director, said Public Works has already preliminarily approved the plan; and that low income housing is not part of the Board's job to determine per the Fair Housing Act. Ms. Long said the applicant will be improving the alley and adding parking. The Board and the Board's legal counsel went over the agreed upon conditions of approval.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 20, 2015 public hearing proceedings.

Category 3 Development Plan:

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

WHEREAS, the Board finds, from the file of this case, the staff report, the site plan, the PowerPoint presentation(s); the renderings, the evidence and testimony submitted at the public hearing, that the applicant is requesting a Category 3 Review for the construction of 18 townhouse units in three buildings with associated parking on the north side of Leroy Avenue; and

WHEREAS, the Board finds that the conservation of natural resources on the property proposed for development including: trees and other living vegetation, steep slopes etc. because the slope of the property will be maintained; and landscaping requirements will be met; and

WHEREAS, the Board finds that the provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community

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will be met with the construction of a sidewalk along Leroy Avenue and internally to the site; and because parking will be provided off the alley; and

WHEREAS, the Board finds that the provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development because open space will be provided for passive and active recreation; and

WHEREAS, the Board finds that the provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community because MSD has reviewed and approved the plan; and

WHEREAS, the Board finds that the compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development have been met because the proposal will be a transition between the more intense commercial uses to the west and south, to the less intense single family residential uses to the north and east; and

WHEREAS, the Board finds that the development conforms to all Land Development Code requirements and therefore follows the guidelines of Cornerstone 2020; and because the proposed structure will have attractive facades with the appropriate fenestration and materials; and because proposed sidewalks will be located in close proximity to the proposed structure, creating a safe environment for those visiting the site; and because there will be signage and lighting that will be code compliant;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Category 3 plan to construct 18 townhouse units **ON CONDITION:**

1. Additional landscaping/shrubbery will be added around three sides of the patios to the west and approved by staff's landscape architect.
2. The development plan shall be revised moving two parking spaces from the front setback to the rear of the property, adjacent to the dumpster.

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3. A gate/fence shall be added from the proposed privacy fence along the east side perimeter to the corner of Unit 1, to keep out possible trespassers.

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

NO: No one.

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

ABSTAINING: No one.

Variance—To allow parking and drive aisle to encroach into the required side yard:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of 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 Section 5.2.5.C.2 and Table 5.2.2 of the Land Development Code to allow parking area and drive aisle to be 0 feet from the west side property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the parking area is being accessed from an existing alley, as recommended by the LDC and the Comprehensive Plan; and because the alley pavement will also be widened to allow for two-way traffic and the parking spaces; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the parking is located and accessed from the existing alley as recommended by the LDC and the Comprehensive Plan; and because there is existing parking on the other side of the alley for the existing daycare located to the west of the site; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the parking will be accessed from an existing alley which is being widened to improve the circulation and traffic flow; and

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WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the LDC and the Comprehensive Plan both recommend use of existing and proposed alleys to access parking; and

WHEREAS, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because there is an existing alley along the perimeter which the proposed development is utilizing for access to the required parking; 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 23 proposed parking spaces located along the alley in the setbacks would be required to be relocated elsewhere on the site;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the parking areas and drive aisles to be 0 feet from the west side property line **ON CONDITION:**

1. Additional landscaping/shrubbery will be added around three sides of the patios to the west and approved by staff's landscape architect.
2. The development plan shall be revised moving two parking spaces from the front setback to the rear of the property, adjacent to the dumpster.
3. A gate/fence shall be added from the proposed privacy fence along the east side perimeter to the corner of Unit 1, to keep out possible trespassers.

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

NO: No one.

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

ABSTAINING: No one.

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Variance—To allow a reduction in the required private yard area:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of 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 Section 5.4.1.D.2 of the Land Development Code to allow a reduction in the required private yard area to 6,595 square feet; requirement is 14,2220 square feet or a variance of 7,625 square feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because there is 6,595 square feet of open space and private yard being provided at the rear of the site for passive and active recreation; and because the required tree canopy will be provided to enhance the development and contribute to the public health; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the development layout provides open space and private yard adjacent to the existing residential property to the north and east; and because the open space and private yard will provide green space for residences to use for pleasure and recreation; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed development is providing both open space and tree canopy on the site along with perimeter plantings to buffer the development from the adjacent, less intense residential development; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the development layout is providing a large area of open space (6,959 sq. ft.) which serves as the private yard; 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 this is a proposed multi-family development in a traditional form district

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which creates the need for both open space and private yard; and because the development layout has provided the required 15% of the site in open space but because of the site configuration and location, the 30% required private yard cannot be provided; 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 if the required 30% or 14,220 sq. ft. at the rear of the site in the private yard would create a loss in the number of residential units;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the private yard area to be 6,595 square feet **ON CONDITION:**

1. Additional landscaping/shrubbery will be added around three sides of the patios to the west and approved by staff's landscape architect.
2. The development plan shall be revised moving two parking spaces from the front setback to the rear of the property, adjacent to the dumpster.
3. A gate/fence shall be added from the proposed privacy fence along the east side perimeter to the corner of Unit 1, to keep out possible trespassers.

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

NO: No one.

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

ABSTAINING: No one.

Waiver—To not provide an entrance oriented toward the primary street:

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

WHEREAS, the Board finds from the file of this case, the staff report, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the

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applicant is requesting a waiver from Section 5.4.1.C.1 of the Land Development Code to not provide an entrance oriented toward the primary street; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the applicant is providing entrances into the courtyard area from each building; and because the courtyard area is connected to the parking lot and the sidewalk along Leroy Avenue by a network of interior sidewalks; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the applicant is providing building materials and animation of the façade which mitigates the request to not provide an entrance facing Leroy Avenue; and because the applicant will be providing the required street trees along the perimeter of the street to mitigate the lack of required entrances; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is providing adequate access to the residential units by providing sidewalks internally to both the street sidewalk and the parking lot; 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 would create an unnecessary hardship on the applicant because the design layout is utilizing the court yard as the connection to some of the apartments which leads to the parking lot and then to the street sidewalk; also, because if the proposal is not developed as submitted, it would reduce the number of units and not be financially viable;

RESOLVED, that the Board does hereby **GRANT** the waiver to not provide an entrance oriented toward the primary street **ON CONDITION:**

1. Additional landscaping/shrubbery will be added around three sides of the patios to the west and approved by staff's landscape architect.
2. The development plan shall be revised moving two parking spaces from the front setback to the rear of the property, adjacent to the dumpster.

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3. A gate/fence shall be added from the proposed privacy fence along the east side perimeter to the corner of Unit 1, to keep out possible trespassers.

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

NO: No one.

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

ABSTAINING: No one.

Waiver—To eliminate the required Landscape Buffer Area (LBA) along the west perimeter of the site to allow parking and drive aisles:

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

WHEREAS, the Board finds from the file of this case, the staff report, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.4.A of the Land Development Code to eliminate the required LBA along the west perimeter of the site to allow parking and drive aisles; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the parking is located off the alley and adjacent commercial uses; and because trees will be planted in the interior islands of the parking area along with the 3 foot screen planting which will be located between the parking spaces and Leroy Avenue; and

WHEREAS, the Board finds that the requested waiver will not violate specific guidelines of Cornerstone 2020 because it encourages designs that are compatible with the surrounding areas and this proposal meets that objective by maintaining the face of the buildings almost the same as the only adjacent residential house; and because the development pattern in the area is predominantly commercial, except for the subject property and the adjacent property to the east; and

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WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the proposed development meets the other guidelines in Section 10.2.4 of the Land Development Code for the LBA requirements, provides safe pedestrian access to the site, is compatible with the surrounding pattern of development in this area and provides the required landscape plantings, except along the alley where the drive aisles and parking will encroach; 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 and create an unnecessary hardship because the required plantings in the other LBA areas will still be installed and the eliminated LBA along the existing alley is to allow for the needed parking and drive aisles;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to eliminate the required LBA along the west perimeter of the site to allow for parking and drive aisles **ON CONDITION:**

1. Additional landscaping/shrubbery will be added around three sides of the patios to the west and approved by staff's landscape architect.
2. The development plan shall be revised moving two parking spaces from the front setback to the rear of the property, adjacent to the dumpster.
3. A gate/fence shall be added from the proposed privacy fence along the east side perimeter to the corner of Unit 1, to keep out possible trespassers.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14DEVPLAN1180

Waiver—To allow the open space to be less than the minimum 30 ft. width:

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

WHEREAS, the Board finds from the file of this case, the staff report, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.11.4.A. and 10.5.4.A.4, of the Land Development Code to allow the open space requirement to be less than the minimum 30 ft. width; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the required open space square footage will be provided, just not at the minimum 30 ft. width; and because a large area at the rear of the property does provide a large continuous open space area for passive and active recreation; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 4, Policies A.2, A.3 and A.7 calls for open space to be provided to help meet the needs of the community as a component of the development and provides for the continued maintenance of that open space; and because Policy A.4 states that the open space design is consistent with the pattern of development in the Traditional Workplace Form District because open space will be provided; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant since the development proposal is providing the required square footage of open spaces, just not at the minimum 30 ft. width in some locations; 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 and create an unnecessary hardship because the number of units would have to be reduced which would no longer make it financially viable;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the open space to be less than the required minimum 30 ft. width **ON CONDITION:**

1. Additional landscaping/shrubbery will be added around three sides of the patios to the west and approved by staff's landscape architect.
2. The development plan shall be revised moving two parking spaces from the front setback to the rear of the property, adjacent to the dumpster.
3. A gate/fence shall be added from the proposed privacy fence along the east side perimeter to the corner of Unit 1, to keep out possible trespassers.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15CUP1019

Request: Modification of an existing Conditional Use Permit to allow a new driveway to extend to Terra View Trail.

Location: 14150 Aiken Road

Owner: Otte Family Ltd Partnership
12902 Shelbyville Road
Louisville, KY 40243

Applicant: Same as owner

Attorney: Bardenwerper Talbott & Roberts, PLLC
Nick Pregliasco, Esq.
1000 N. Hurstbourne Parkway, 2nd Floor
Louisville, KY 40223

Representative: Land Design & Development, Inc.
Ann Richard
503 Washburn Avenue, Suite 101
Louisville, KY 40223

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 19—Julie Denton

Staff Case Manager: Jon Crumbie, Planner II

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

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

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CASE NO. 15CUP1019

Agency Testimony:

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. Mr. Crumbie said he included previous sets of minutes since other modifications have been granted.

The following spoke in favor of this request:

Nick Pregliasco, Attorney.

Tee Ray, 5831 S. Hwy. 53, Smithfield, KY 40068.

Summary of testimony of those in favor:

Nick Pregliasco, the applicant's attorney, said this property was originally approved for a rock quarry, but this has stopped for over 20 years. He said they need another access to speed up reclamation of the property.

Tee Ray said one of the access points will be locked with an attendant for safety reasons. He said the Division of Mine Reclamation inspects this property once a month. Chair Proffitt said to delete condition of approval #3 in the July 18, 2005 minutes and replace it with what Mr. Ray said about a gated entry/exit with attendant.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

The Board discussed the new condition of approval.

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CASE NO. 15CUP1019

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 20, 2015 public hearing proceedings.

Modified Conditional Use Permit to allow trucking of inorganic fill material to occur off the public street access from Old Henry Road:

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

WHEREAS, the Board finds from the file of this case, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Modified Conditional Use Permit to allow trucking of inorganic fill material to occur off the public street access from Old Henry Road; and

WHEREAS, the Board finds that this is necessary because the access through the Rogers Group quarry site will be limited and eventually terminated; and because the new access from Old Henry Road will speed up the process of the Rogers Group's obligations to State agencies for reclamation of the property;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Modified Conditional Use Permit to allow trucking of inorganic fill material to occur off the public street access from Old Henry Road on the site **SUBJECT** to the following change in Condition of Approval #3 in the July 18, 2005 meeting minutes:

3. The owner/operator of the reclamation area will be monitored at the entry and exit point which will be gated and locked after hours.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1041

Request: Category 3 Plan; Variances from Section 5.2.1.C.5, 6 & 7 of the Land Development Code; and a Waiver from the Land Development Code, Section 5.2.1.D.

Project Name: Omni Louisville Hotel and Residences

Location: 400 South 2nd Street

Owner: Louisville Metro Government

Applicant: Omni Louisville, LLC

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Brian Davis, AICP, Planning Supervisor

(TO BE CONTINUED TO AUGUST 3, 2015)

Chair Proffitt announced at the beginning of the meeting and several times throughout the meeting that this case will be continued to August 3, 2015. No one responded from the audience.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 15VARIANCE1041 to **AUGUST 3, 2015**.

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

NO: No one.

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

ABSTAINING: No one.

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The meeting adjourned at 12:12 p.m.

CHAIRPERSON

SECRETARY