

Board of Zoning Adjustment Staff Report

November 20, 2017



Case No:	17VARIANCE1078/17CUP1084
Project Name:	Sproutlings Day Care
Location:	330 Masonic Home Drive
Owner(s):	Masonic Homes of KY, Inc.
Applicant:	Masonic Homes of KY, Inc.
Representative(s):	Dinsmore & Shohl, LLP – Clifford Ashburner
Project Area/Size:	3.53 acres
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
Case Manager:	Joel P. Dock, Planner II

REQUEST(S)

- **Variations** of Land Development Code (LDC), section 5.3.5.C.3.a to allow for parking and an accessory structure to encroach upon the street side yard setback at various locations as shown on the development plan
- **Variance** of Land Development Code (LDC), section 5.3.5.C.3.b to allow for parking to encroach upon the side yard setbacks as shown on the development plan
- **Modified Conditional Use Permit** to allow for revisions and an expansion to the existing approved conditional use permit of docket 13371 (approved 9/9/10)

CASE SUMMARY

The existing daycare with associated offices is proposing an expansion of 10,200 square feet with a net increase of twenty-seven parking spaces. Existing rain gardens are also present on the site. As a result, the layout of parking facilities are changing to accommodate the building and parking expansion, as well as the existing rain gardens; leading to encroachments into multiple setbacks and buffers. A variable encroachment into the street side yard setback for parking facilities is requested along Tom Larimore Ln and Masonic Home Drive. A variable setback for parking facilities and a dumpster is requested along Frankfort Avenue, with the closest point of the parking appearing to be only a few feet from the property line. An additional variance and slight expansion of the approved conditional use permitted is needed for the parking facilities to along and crossing the West property line.

STAFF FINDING

The variations and modified conditional use permit appear to be adequately justified and meet the standard of review based on staff analysis in the staff report. The Masonic Homes property is an integrated development with mixed-uses, shared parking facilities, internal drives, and open space. Existing and proposed vegetative screening provides sufficient buffers at appropriate locations. No hazards or nuisance appear to result from these requests, and the public health, safety, and welfare does not appear to be adversely impacted.

TECHNICAL REVIEW

Associated Cases

- 13371: CUP/RDDDP for daycare and offices (approved 9/9/10)
- 17DEVPLAN1174: RDDDP & waivers heard at DRC November 15, 2017.
- A full listing of cases on the Masonic Homes property is provided as *Attachment 4*.

There is no minimum requirement for non-residential side yard setbacks in the Campus form district, except where adjacent to a residential use or zoning district, in which case a minimum side setback of 20 feet shall be maintained. This regulation is applicable to the West property line. Because the parking facilities are expanding a bit beyond the property lines, an expansion to the CUP is needed and the application of the setback applies on each side of the line for the parking facilities. All setbacks along the property line are requested in this particular variance.

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCES

LDC, section 5.3.5.C.3.a to allow for parking and an accessory structure to encroach upon the street side yard setback at various locations as shown on the development plan (Tom Larimore Ln, Masonic Home Drive, and Frankfort Avenue)

- (a) The requested variances will not adversely affect the public health, safety or welfare.

STAFF: The requested variances will not adversely affect public health safety or welfare as the Masonic Homes property is an integrated development with mixed-uses, shared parking facilities, internal drives, and open space. Frankfort Avenue is screened and buffered with existing vegetation and the proposed parking encroaching and minor encroachment of a screened accessory use towards this public way would not appear to reduce or eliminate the existing vegetation, or create an unsafe situation for pedestrians or vehicular traffic.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as the Masonic Homes property is an integrated development with site design and building design that is consistent with the character of the development, immediately surrounding properties, and within the general vicinity.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the encroachments will not cause a visual nuisance due to existing landscape screening or result in any adverse impact on vehicular and pedestrian traffic.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as parking facilities are being provided to accommodate the building expansion and at locations to avoid any adverse impact on drainage and water quality facilities (rain gardens). Existing screening is provided along Frankfort Avenue to protect the aesthetic quality of this way from the minimal encroachment of parking.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

2. 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.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as sufficient parking must be provided to accommodate the use and the locations chosen for the proposed parking avoids disturbance of existing drainage and water quality facilities.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as appropriate relief is being requested from the Board of zoning Adjustment.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

LDC, section 5.3.5.C.3.b to allow for parking to encroach upon the side yard setbacks as shown on the development plan

- (a) The requested variances will not adversely affect the public health, safety or welfare.

STAFF: The requested variances will not adversely affect public health safety or welfare as the Masonic Homes property is an integrated development with mixed-uses, shared parking facilities, internal drives, and open space. The adjacent use is an assisted living nursing facility with a similar parking layout which is consistent with the overall development of the Masonic Homes property.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity as the Masonic Homes property is an integrated development with site design and building design that is consistent with the character of the development, immediately surrounding properties, and within the general vicinity.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the encroachments will not result in any adverse impact on vehicular and pedestrian movement.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as parking facilities are being provided to accommodate the building expansion and at locations to avoid any adverse impact on drainage and water quality facilities (rain gardens).

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the parking is needed to cross the property line at this location.

2. 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.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land as sufficient parking must be provided to accommodate the use and the locations chosen for the proposed parking avoids disturbance of existing drainage and water quality facilities.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as appropriate relief is being requested from the Board of zoning Adjustment.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

1. Is the proposal consistent with the applicable policies of the Comprehensive Plan?

STAFF: The proposed modification and slight expansion to the area of the conditional use for parking facilities is in keeping with applicable policies of the Comprehensive Plan and with those findings of the Board of Zoning Adjustment in granting the conditional use permit on August 16, 2010.

2. Is the proposal compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc?

STAFF: The proposal is compatible with surrounding land uses and the general character of the area as the Masonic Homes property is an integrated development with site design and building

design that is consistent with the character of the development, immediately surrounding properties, and within the general vicinity

3. Are necessary public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation, etc. adequate to serve the proposed use?

STAFF: Necessary public facilities appear to be present to accommodate multiple modes of transportation, adequate drainage and run-off, emergency services, and the general health and welfare of the community.

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

4.2.19 Day Care Facilities (providing care for more than 6 children)

Day Care Facilities may be allowed in the R-R, R-E, R-1, R-2, R-3, U-N, R-5A, R-5B, R-6, and R-7 districts upon the granting of a Conditional Use Permit and in compliance with the listed requirements.

A. Signs - There shall be allowed one non-illuminated sign identifying the name and use, which sign shall be limited in size to four square feet and be placed on the building.

B. Residential Structure - The structure shall remain or shall be constructed so that the exterior design and ornamentation is residential in character and compatible with the immediate neighborhood, so that there is no evidence from the street that the use is other than residential (except for the sign).

C. Alterations or Improvements to the Structure - Where such a use is permitted in a structure which has been used as a residence, the permittee shall make no substantial alterations or improvements to the structure which would impair the structure's use as a residence at a later time.

D. On-Site Drop-off and Pick-up Area - An on-site area shall be provided where passengers from automobiles may safely exit the automobile and enter the building and vice versa. The design of this area must be approved by the appropriate agency responsible for transportation planning.

E. Parking Spaces - The appropriate number of parking spaces shall be provided for members of the day care center staff. The number of parking spaces required pursuant to this section shall be determined by the Board of Zoning Adjustment, and may thereafter be modified by the Board of Zoning Adjustment by petition from the owner of the premises granted a Conditional Use Permit or upon recommendation from the zoning inspector or other authorized personnel after an annual inspection of the premises or other such inspection. The parking layout must be approved by the appropriate agency responsible for transportation planning.

F. Drainage Control - The development plan shall have the approval of the appropriate agency responsible for surface drainage control.

G. All buildings and structures shall conform to the requirements of the zoning and form district in which they are located.

H. Fence - A fence with a minimum height of 4 feet shall be erected around the outdoor play area.

I. Alterations or Improvements to the Property – Where such a use is permitted on a lot with an existing residential structure; the residential character of the lot shall not be disturbed by exterior changes to the property that are visible from the public street. Off-street parking shall not be located within the front and/or street-side yards. Drop-off and pick-up shall not be located in front yard and/or street-side yard of the existing residential structure, except for driveways approved by Metro Public Works.

J. Conditional use permits for Day Care Facilities in R-4 and R-5 zoning districts issued prior to the effective date of this ordinance (March 9, 2011) may continue to operate as authorized under the approved conditional use permit. Upon request by an applicant, such conditional use permits may be modified in any manner the Board determined, in its discretion, to be appropriate.

STAFF: The modification to the approved conditional use permit is in keeping with those findings of the Board of Zoning Adjustment in granting the conditional use permit on August 16, 2010. The conditional use permit at that time was found to meet these guidelines and the modifications continue to meet the intent of these guidelines.

REQUIRED ACTIONS

- **APPROVE or DENY** the **Variations** of Land Development Code (LDC), section 5.3.5.C.3.a to allow for parking and an accessory structure to encroach upon the street side yard setback at various locations as shown on the development plan
- **APPROVE or DENY** the **Variance** of Land Development Code (LDC), section 5.3.5.C.3.b to allow for parking to encroach upon the side yard setback as shown on the development plan
- **APPROVE or DENY** the **Modified Conditional Use Permit** to allow for revisions and an expansion to the existing approved conditional use permit of docket 13371 (approved 9/9/10)

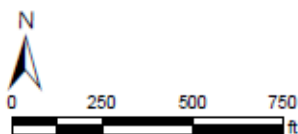
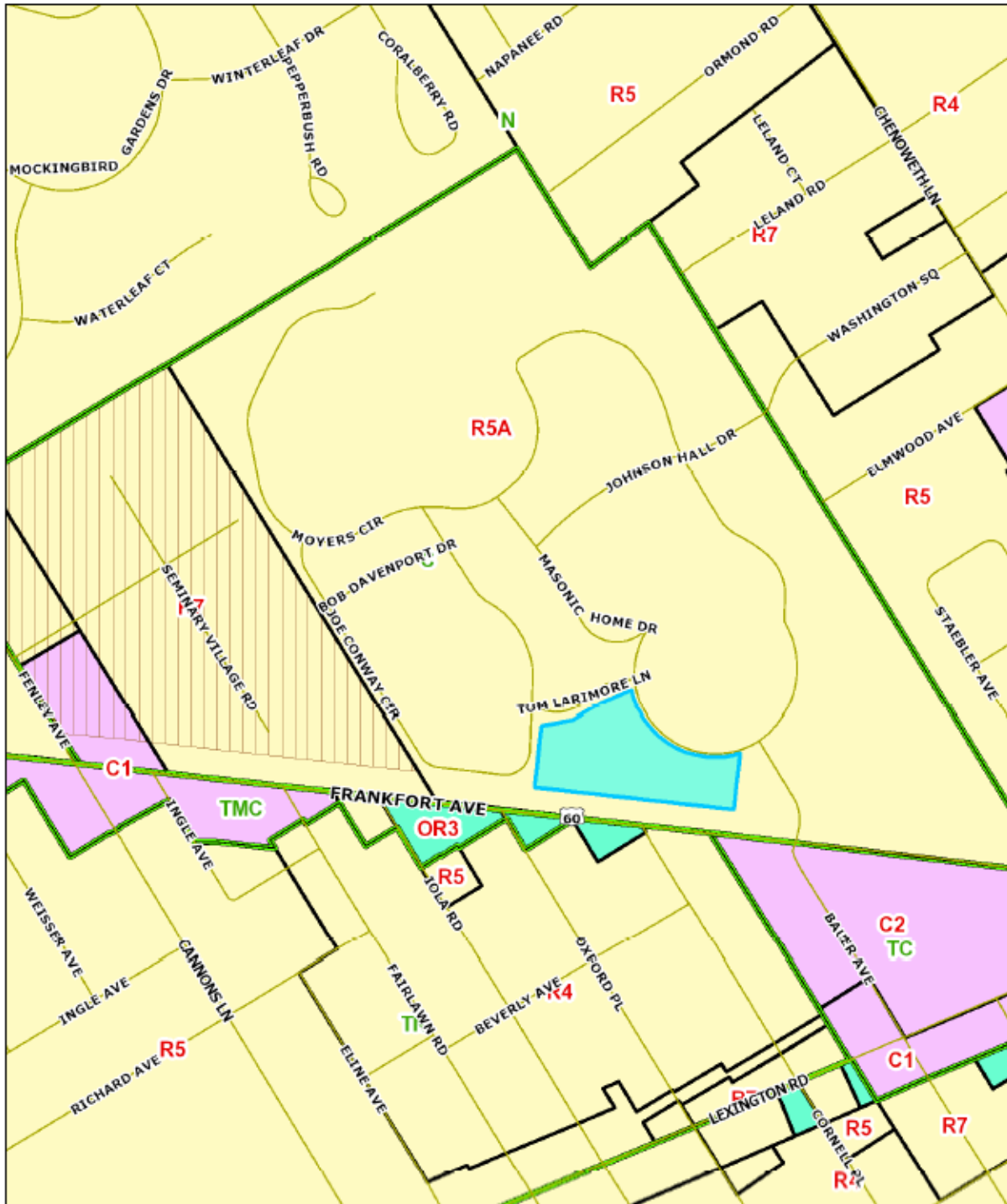
NOTIFICATION

Date	Purpose of Notice	Recipients
11/2/17	Hearing before BOZA	1 st tier adjoining property owners, attendees of neighborhood meeting, and others. Registered Neighborhood Groups in Council District 9

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Conditions of Approval
4. Associated Cases

1. Zoning Map



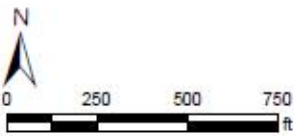
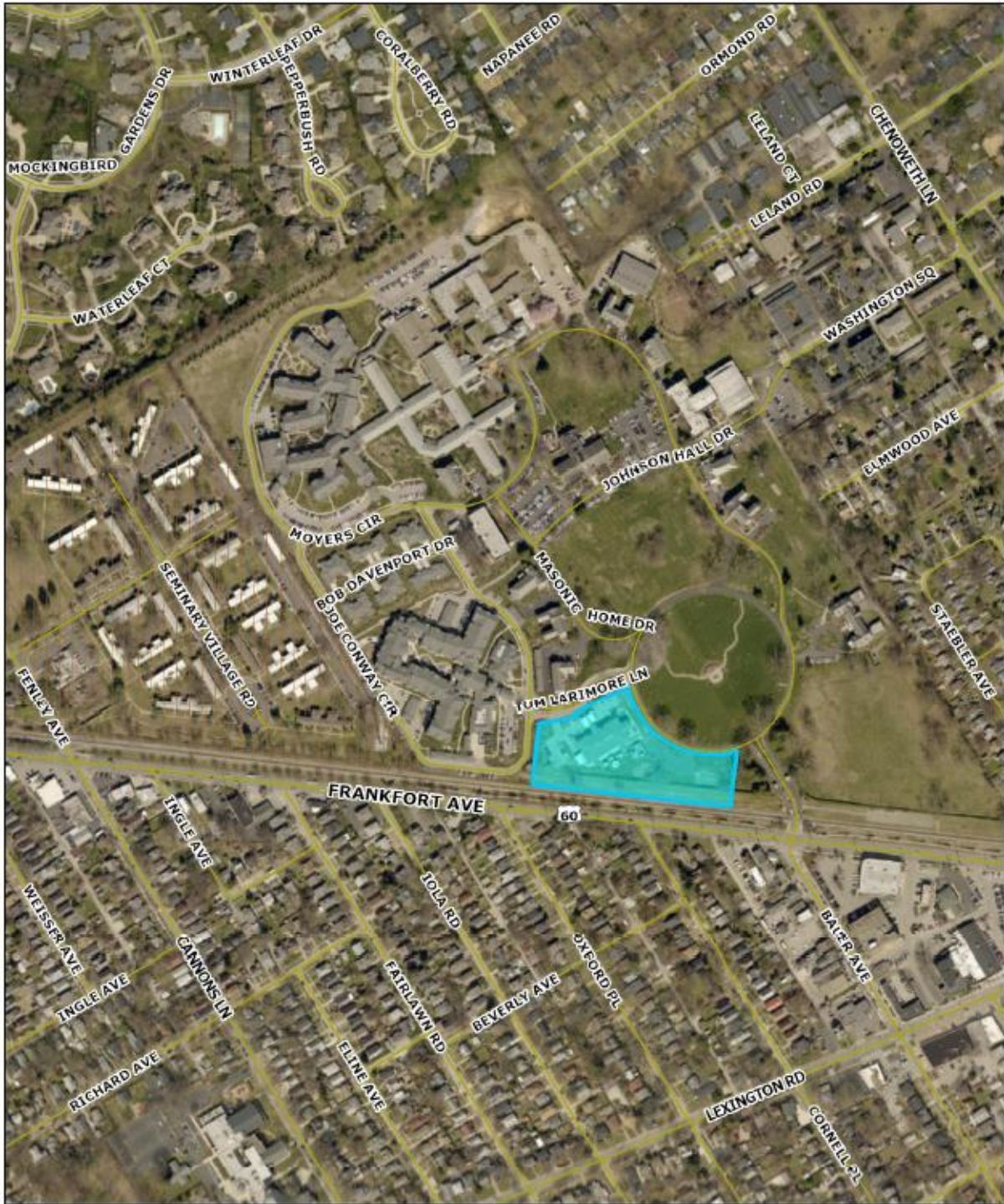
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This map is not a legal document and should only be used for general reference and identification.

2. Aerial Photograph



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3. Existing Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a daycare center without further review and approval by the Board.
3. Proposal is subject to full construction plans being submitted to the Department of Public Works for traffic and MSD for storm water approvals. Once those have been approved, the plan is subject to Inspections, Permits and Licenses for building/parking permits.

4. Associated Cases

- B-11-79: CUP for Home for Infirm or Aged (approved 3/5/79).
- 9-19-83/10-5-83: Change-in-zoning from R-1 and R-5 to R-5A, multi-family residential, and Major Preliminary Subdivision Plan for Masonic Village (approved 7/21/83). The rear of the Masonic Village proposal, Lots 3-7, was later subdivided to become Mockingbird Gardens Subdivision, docket 10-39-88.
- B-65-88: CUP for Home for Infirm or Aged as an expansion to B-11-79 (approved 5/16/88).
- B-184-03: CUP for off-street parking at the dead-end of Washington Square in the City of St. Matthews (approved 12/9/03).
- 10164: Modified CUP for 136 bed nursing home facility to replace previous facility located towards the Northwest in the Masonic Homes development site (approved 2/20/08).
- 10911: RDDDP for 136 bed nursing home facility located towards the Northwest in the Masonic Homes development site and other minor modifications across the Masonic Homes site (approved 5/7/08).
- 11444: Minor Subdivision Plat of record in PB 53, PG 14 creating two tracts from one; subsequently, separating the Masonic Homes R-5A site into two sections (recorded 7/18/08).
- 12293: RDDDP for accessory building and temporary doctor's office (approved 5/7/09).
- 13106: Modified CUP for vehicle/maintenance building and temporary doctor's office (approved 12/29/09).
- 13371: CUP for proposed daycare with offices along Frankfort Avenue (approved 9/9/10).
- 14169: RDDDP for Independent Living and Cottage Units in Southwest Corner and Amendment to Binding Element 1, 4, 5, 6, and 11, with an addition of Binding Element 14 (approved 10/27/10).
- 14226: Modified CUP for proposed Independent Living and cottage units in Southwest corner of Masonic Homes Development (approved 11-16-10).
- 15987: RDDDP for proposed revisions to Independent Living and cottage units in the Southwest section of the Masonic Homes development site (approved 6/30/11).
- 16769: Sign Plan with Variance (approved 1/24/12).
- 13DEVPLAN1105: RDDDP for Independent Living in Southwest section of the Masonic Homes development site (approved 2/5/14).
- 13CUP1022: Modified CUP for Independent Living in Southwest section of the Masonic Homes development site (approved 2/24/14).

14MOD100: Amendment to Binding Element to allow employees and residents site access from adjacent streets to the East (denied 7/28/14).

15CUP1036: Modified CUP associated with this RDDDP request (approved 2/1/16)

15DEVPLAN1186: RDDDP for 72 unit assisted living facility (approved 2/18/16)

15DEVPLAN1187: RDDDP for 124 independent living units (approved 2/18/16)

16DEVPLAN1145: RDDDP for revisions to approved plan in 15DEVPLAN1186 (approved 8/4/16 on condition that the CUP is abandoned where it is no longer needed).

16VARIANCE1055: Variance associated with 16DEVPLAN1145 for building connection along Western P/L (approved 8/15/16)

17DEVPLAN1174: RDDDP & Waivers to be heard at DRC on 11/15/17.