

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

**OCTOBER 6, 2014**  
**(Corrected on 11/26/14)**

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, October 6, 2014, 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  
\*Frederick Liggin  
Dean Tharp  
Paul Bergmann

**Members absent:**

Betty Jarboe

**Staff members present:**

Emily Liu, Director, Planning & Design Services  
John Carroll, Legal Counsel  
Jonathan Baker, Legal Counsel  
Jessica Wethington, Planning Information Specialist  
Steve Hendrix, Planning Supervisor  
Joe Reverman, Planning Manager  
Sherie Long, Landscape Architect  
Jon Crumble, Planner II  
Latondra Yates, Planner II  
Chris Brown, Planner II  
Beth Stevenson, Management Assistant

**Others present:**

David Marchal, Assistant Director/Construction Review Manager  
April Robbins, Zoning Enforcement Supervisor

\*Member Liggin arrived at approximately 8:35 a.m. and Member Allendorf arrived at approximately 8:45 a.m.

The following cases were heard:

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**APPROVAL OF MINUTES**

**SEPTEMBER 22, 2014 BOARD OF ZONING ADJUSTMENT MEETING  
MINUTES**

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

**RESOLVED**, that the Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on September 22, 2014.

**YES: Members Proffitt, Fishman, Tharp and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe,  
Liggin and Allendorf.**

**ABSTAINING: No one.**

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**NEW BUSINESS**

**CASE NO. 14VARIANCE1086**

**Request:** Variance from the Land Development Code to allow a reduction in the 30% required private yard.

**Project Name:** New Garage

**Location:** 1342 S. 1<sup>st</sup> Street

**Owner:** William J. Kearney  
1342 S. 1<sup>st</sup> Street  
Louisville, KY 40208

**Applicant:** Same as owner

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

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 6—David James**

**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. 5<sup>th</sup> 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 wants to remove the existing carport and relocate the existing shed to construct a one story frame detached garage at the rear of the lot in the Old Louisville Historic

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Preservation District. She said it will be an improvement to the property maintaining 90% of the private yard; and not obstruct any views.

**The following spoke in favor of this request:**

Charlie Williams.

**Summary of testimony of those in favor:**

Charlie Williams, the applicant's representative, said he was present to answer any questions. Chair Fishman asked to see the renderings.

**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 October 6, 2014 public hearing proceedings.**

**VARIANCE TO ALLOW A REDUCTION IN THE 30% REQUIRED PRIVATE YARD AREA:**

After the public hearing in open business session, on a motion by Member Liggins, 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, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code, Chapter 5, Section 5.4.1D.2, to allow a reduction in the 30% required private yard area to 2, 155 square feet; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the detached garage is not obstructing views of vehicular or pedestrian traffic; and because it is not encroaching into any easements; and the properties in the vicinity have similar lot configurations; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity because there are other properties in the neighborhood which have garages at the rear and parking pads; and because the new garage will have construction materials similar to those used in the neighborhood and the general vicinity; and because the garage construction was reviewed and approved by the Landmarks Staff for the Old Louisville Historic Preservation District; and because 90% or 2,155 square feet of the private yard is being provided; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the private yard is separated from the alley by the new garage and wooden automatic gates; and because it is separated from adjacent properties by privacy fencing; and because the new garage and parking pad will not obstruct any views for motorists or pedestrians; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the variance is required prior to construction of the new garage allowing the private yard to be reduced to 2,155 square feet or 90% of the required 2,400 square foot area; also because there are other lots in the area which have similar private yards between the garage and the house which may not meet the 30% requirement; 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

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because the new garage is being aligned and setback similar to the garages on the adjacent abutting properties which have limited private yard area; 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 because the proposed shed would have to be eliminated and the garage would be too shallow; and

**WHEREAS**, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought because the applicant is not responsible for the existing layout of the site; and because the applicant is requesting a variance prior to construction;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the private yard area to be 2,155 square feet.

**YES: Members Allendorf, Proffitt, Liggin, Fishman, Tharp and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS**

**CASE NO. 14VARIANCE1087**

**Request:** Variance from the Land Development Code to allow a reduction in the required 30% private yard.

**Project Name:** Garage and House Addition

**Location:** 2302 Rutherford Wynd

**Owners:** Kirk D. & Amy Haffler  
1907 Lauderdale Road, Apt. #4  
Louisville, Kentucky 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:** 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. 5<sup>th</sup> 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 wants to remove the existing garage and construct an attached garage and house addition on the southwest side of the existing house along Rutherford Wynd. She said

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the applicant also wants to construct an 8-ft. brick privacy wall between the private yard area and the alley. She said there are similar fences and walls in the area.

**The following spoke in favor of this request:**

Charlie Williams.

**Summary of testimony of those in favor:**

Charlie Williams, the applicant's representative, said he would like to have the garage 1 foot off the property line instead of 2 feet. Chair Proffitt said that would require another variance where neighbors would have to be notified again. Member Fishman questioned the 8 ft. tall brick wall. Mr. Williams said his client wants 8 but might only need a 6 ft. tall wall.

**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 October 6, 2014 public hearing proceedings.**

After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Liggin, 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 applicant's justification; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, and Section 5.4.1D.2 of the Land Development Code to allow a reduction in the required 30% private yard area to 1,407 square feet; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the attached garage is not obstructing views of vehicular or pedestrian traffic; and because the garage location is similar to the existing configuration; and because the proposed garage and new driveway will be accessed from the named alley located at the rear of the property; and because the private yard area is similar to the current configuration; plus, the addition of the 6-8 ft. brick screen wall separating the private yard area from the alley will improve the usability of the proposed private yard; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity because the new garage and addition will be constructed with brick and similar materials to those used in the neighborhood; and because the new garage and house addition is in keeping with the style and scale of the existing house; and because there are other lots in the vicinity which have non-conforming private yard areas; in addition, there are also other yards which are surrounded by privacy fences or walls similar to the brick wall being proposed to separate the private yard from the alley; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the new garage and addition are located on the lot similar to the existing configuration; and because the proposed private yard area is basically the same as what it currently is; and because the 6-8 ft. tall brick wall will improve the private yard area along the rear and east side; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since a variance is required to allow the private yard to be reduced; and because the configuration of the lot is non-conforming; and the configuration of the lot has limited the area for the private yard; typically, the area between the principal structure and the accessory

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structure is the private yard area; however, because of the location of the existing principal structure and garage and shape of the lot, doesn't conform to the traditional lot configuration; therefore a variance is required to allow the private yard to be reduced to 65% of the requirement; and because there are several other lots in the area which have similar private yards which may not meet the 30% requirements; 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 existing house and garage are very close, less than 20 feet to the rear property line and this has restricted the private yard area; and

**WHEREAS**, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought because the current owner did not lay out the existing configuration; and because the applicant is requesting a variance prior to construction;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the private yard area to 1,407 square feet.

**YES: Members Allendorf, Proffitt, Liggin, Fishman, Tharp and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS**

**CASE NO. 14VARIANCE1088**

**Request:** Variances from the Land Development Code to allow proposed structures to exceed the maximum setback.

**Project Name:** Old Henry Crossing—Lots 11C and D

**Location:** 2020 & 2100 High Wickham Place

**Owner:** OREO 2, LLC  
Darryl Schulte  
2120 High Wickham Place, Ste. 200  
Louisville, KY 40245

**Applicant:** Same as owner

**Representative:** Sabak, Wilson & Lingo, Inc.  
Matt Wolff  
608 South Third Street  
Louisville, KY 40202

Stites & Harbison, PLLC  
Jamie Cox  
400 W. Market Street, #1800  
Louisville, KY 40202

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 19—Jerry Miller**

**Staff Case Manager: Matthew Doyle, Planner I/Steve Hendrix, Planning Supervisor**

**(Applicant will be asking for this case to be deferred and rescheduled).**

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.

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**CASE NO. 14VARIANCE1088**

**DISCUSSION:**

Steve Hendrix, Planning Supervisor, said the applicant would like to defer their case today and reschedule to November 3, 2014.

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

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 14VARIANCE1088 to **NOVEMBER 3, 2014**.

**YES: Members Proffitt, Liggin, Fishman, Tharp and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Allendorf.**

**ABSTAINING: No one.**

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**NEW BUSINESS**

**CASE NO. 14CUP1029**

**Request:** Modified Conditional Use Permit to allow off-street parking on R-5 zoned property; and a variance to allow the proposed building addition to exceed the maximum 25 ft. front yard setback by 60 feet.

**Project Name:** Thorntons

**Location:** 4500 South Third Street

**Owner:** Thorntons Inc. & Thorntons Oil Corp.  
Eric Zoph, Vice President of Construction  
10101 Linn Station Road, Suite 200  
Louisville, KY 40223

**Applicant:** Same as owner

**Attorney:** Frost Brown Todd, LLC  
Glenn Price, Esq.  
400 West Market Street, Suite 3200  
Louisville, KY 40202

**Representative:** Land Design & Development  
Ann Richard  
503 Washburn Avenue, Suite 101  
Louisville, KY 40222

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 21—Dan Johnson**

**Staff Case Manager: Christopher Brown, 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

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case file maintained at the Planning and Design Services offices located at 444 S. 5<sup>th</sup> Street).

**Agency Testimony:**

Staff case manager, Chris Brown discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing a 1,021 SF addition to the existing 3,108 SF Thornton's building as part of a renovation. The Modified Conditional Use Permit will allow for 13 more parking spaces to include a 25' Landscape Buffer Area and 8' vinyl fence for screening. The variance will allow the proposed building addition to exceed the maximum 25' front yard setback by 60 feet. Member Fishman questioned the number of handicapped parking spaces.

**The following spoke in favor of this request:**

Glenn Price, Attorney.

Ann Richard.

**Summary of testimony of those in favor:**

Glenn Price, the applicant's attorney explained the request and presented a PowerPoint presentation. He said the revised plan and 4 waivers were approved by the Development Review Committee on condition that they receive the modified conditional use permit and variance from BOZA. He said they will be including landscaping in the right-of-way and other areas on the property. Chair Proffitt asked if the applicant maintains the alley. Mr. Price said yes.

Ann Richard, the applicant's representative, said there will be two handicapped parking spots in the front, and said she would revise the plan to reflect this.

**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.

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**Summary of testimony of those in opposition:**

No one.

**Deliberation:**

Board of Zoning Adjustment deliberation.

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**Variance to allow the proposed building addition to exceed the maximum 25' front yard setback by 60 feet:**

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, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.2.2.C.1.a and Table 5.2.2 of the Land Development Code to allow the proposed building addition to exceed the maximum required 25 ft. front yard setback by 60 feet; or 85 feet from the Southern Heights Avenue property line; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the addition will be located to the rear of the existing structure and not impede access to the building; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since the addition follows the established pattern of extended setbacks on the subject site; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since the addition is to the rear of the site and maintains the extended setbacks previously established on the subject site; and

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**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since it follows the established pattern of additional building setbacks on the subject site; 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 additional building setbacks had previously been granted for the existing structure on the subject site; 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 on the applicant by requiring construction of the addition at the 25' maximum setback line and not following the established building pattern on the site; 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 since the building pattern of the site had been previously established by approved variances;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building addition to be 85 feet from Southern Heights Avenue property line **ON CONDITION** that the applicant revise the plan to show an additional handicapped parking spot.

**YES: Members Allendorf, Proffitt, Liggin, Fishman, Tharp and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Modified Conditional Use Permit to allow off-street parking on R-5 zoned property:**

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, 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 under Chapter 4.2.40 of the Land Development Code to allow off-street parking on R-5 zoned property; and

**WHEREAS**, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because it will follow the existing pattern and form established under Guideline 1, Community Form on the site with the ingress and egress points at curb cuts along both street frontages; and because alley access to the site as required within the traditional form had been previously waived so screening will be provided along the rear alley from the parking area; and because the compatibility of the parking area has been enhanced in accordance with Guideline 3, Compatibility, by maintaining a 25 ft. landscape buffer along the western property perimeter with an 8' tall vinyl privacy fence for screening of the parking and maneuvering area; and because it will lessen the impact of the non-residential expansion into an established residential area; and because parking area also follows the previously approved conditional use permit by not going beyond the 25 ft. landscape buffer area; and because under Guideline 7, Circulation, the additional parking will allow parking that supports the use on the subject sites while also providing means for multiple modes of transportation to the building with a sidewalk connection from South 3<sup>rd</sup> Street along the right-of-way of proposed parking spaces; and

**WHEREAS**, the Board finds that the proposal is compatible with the surrounding land uses and maintains the current use of the parcel in an expanded form; and because it is compatible with the general character of the area by maintaining the required setbacks, buffering and following the drainage and lighting requirements on the parcel; and

**WHEREAS**, the Board finds that all necessary public facilities both on and off-site are provided to serve the site, such as transportation, sanitation, water, sewer, drainage, emergency services etc.; and

**WHEREAS**, the Board finds that the proposal complies with all 6 items of the listed requirement to obtain the modified conditional use permit for off-street parking;

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**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Modified Conditional Use Permit to allow off-street parking **SUBJECT** to the following 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 Modified Conditional Use Permit shall be exercised as described in KRS 100.237 within two years of the Board's vote on the case. If the Modified Conditional Use Permit is not so exercised, the site shall not be used for off-street parking without further review and approval by the Board.

**YES: Members Allendorf, Proffitt, Liggin, Fishman, Tharp and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS**

**CASE NO. 14CUP1024**

**Request:** Conditional Use Permit to allow a potentially hazardous or nuisance use (hydrogen fuel cell tank) in a PEC zoning district.

**Project Name:** Kroger Distribution Center—Hydrogen Fuel Cell Tank

**Location:** 2000 Nelson Miller Parkway

**Owner:** The Kroger Company  
Tony Cox, Kroger Project Manager  
2000 Nelson Miller Parkway  
Louisville, KY 40223

**Applicant:** Same as owner

**Representative:** Lockett & Farley  
Phillip Gambrell  
737 S. 3<sup>rd</sup> Street  
Louisville, KY 40202

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 19—Jerry Miller**

**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. 5<sup>th</sup> 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 is proposing

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**CASE NO. 14CUP1024**

a new hydrogen fuel cell tank which will be located at the rear of the property, approximately 80 feet from the property line. He said area residents wanted to know if there is an evacuation plan and the radius of people alerted if there should be an explosion. Mr. Crumbie said the applicant needs to discuss how items B. and C. will be handled with regard to specific standards required to obtain the Conditional Use Permit (pg. 5 of staff report). Member Fishman questioned where the minutes were for the neighborhood meeting. Mr. Crumbie said to ask the applicant.

**The following spoke in favor of this request:**

Tony Cox, The Kroger Company.

**Summary of testimony of those in favor:**

Tony Cox, the applicant, explained how the process will reduce greenhouse gases and reduce the carbon footprint. He said this is new technology that they've implemented in other states with no safety incidences. He said they are not required to submit an evacuation plan; and that there are already numerous safety measures in place. Member Allendorf said area residents can subscribe to the Metro Safe Code Red to be alerted of any leaks/danger.

**The following spoke neither for nor against the request:**

Phil Williams, 2115 Stanley Gault Parkway, Louisville, Kentucky 40223.

Jim Kennedy, 13901 Old Henry Trail, Louisville, Kentucky 40245-

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

Phil Williams said he is representing a client who lives near the site. He said the applicant has answered all their questions, and his clients are comfortable with the request.

Jim Kennedy said he is chairman of the Old Henry Road Neighborhood Association, said he didn't receive a notice and has heard nothing about this request. Mr. Crumbie said he needs to sign up for the e-mails through the city's website; and that 278 people in District 19 were notified. Mr. Kennedy said the procedure is flawed for people who don't use a computer.

**The following spoke in opposition to this request:**

No one.

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**Summary of testimony of those in opposition:**

No one spoke in opposition.

**Deliberation:**

Member Allendorf said this is new “green” technology and is flammable but said there is probably more hazardous material than this. He said as long as there is proper ventilation and security measures in place, should be safe. Member Fishman asked if anyone showed up at the neighborhood meeting.

**Back Into Public Hearing:**

Scott Harrington, Councilmember Jerry Miller’s legislative assistant, said he attended the neighborhood meeting and said it was 22 miles from the district and at 6:00 p.m. making it very difficult for anyone to attend. He said the applicant should conduct another neighborhood meeting to answer any questions area residents might have. He said the policy should be changed so that neighborhood meetings are held within the same zip code or district and held at a neutral venue, as this meeting was held at the applicant’s engineering firm. Chair Proffitt agreed, and said he will address this at the next Policies and Procedures meeting.

**Back Into Business Session:**

Member Fishman said she would like the area residents to have the opportunity to ask questions regarding this request.

**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 October 6, 2014 public hearing proceedings.**

**Conditional Use Permit to allow a potentially hazardous or nuisance use (hydrogen fuel cell tank) in a PEC zoning district.**

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

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**OCTOBER 6, 2014**

**NEW BUSINESS**

**CASE NO. 14CUP1024**

**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 evidence, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow a potentially hazardous or nuisance use (hydrogen fuel cell tank) in a PEC-Planned Employment Center zoning district; and

**WHEREAS**, the Board finds that the proposal meets all applicable policies of the Comprehensive Plan; and lighting will not be added; and

**WHEREAS**, the Board finds that the proposal is compatible with surrounding land uses since the subject site is located in a commercial area that has a mix of commercial uses and is a focal point for several surrounding neighborhoods; and because all the commercial uses in the area have similar scale, intensity, traffic, noise and lighting; and

**WHEREAS**, the Board finds that the proposal complies with specific standards required to obtain the conditional use permit because the evidence shows that the operation and associated nuisances will be properly managed and the public's health, safety and general welfare will be protected; and because the applicant will need to receive all necessary permits from local, state and federal regulatory agencies;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a potentially hazardous or nuisance use (Hydrogen Fuel Cell Tank) in a PEZ zoning district on the site **SUBJECT** to the following 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 potentially hazardous or nuisance use (Hydrogen Fuel Cell Tank) without further review and approval by the Board.

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**CASE NO. 14CUP1024**

**YES: Members Allendorf, Proffitt, Liggin, Fishman, Tharp and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

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**OCTOBER 6, 2014**

**(Corrected on 11/26/14)**

**NEW BUSINESS**

**CASE NO. 14APPEAL1003**

**Request:** Appeal of a Notice of Violation issued by the Department of Codes and Regulations concerning an off-premises sign.

**Location:** 490 East Witherspoon Street

**Appellant:** CBS Outdoor, LLC  
David Watkins  
1501 Lexington Road  
Louisville, KY 40205

**Owner:** CENCO Industries, Inc.  
Susan M. Bockoven, President  
4606 Schuff Avenue  
Louisville, KY 40213

**Representatives:** Wyatt, Tarrant & Combs, LLP  
Byron Leet, Esq. & Deborah Bilitski, Esq.  
500 W. Jefferson Street, Suite 2800  
Louisville, KY 40202

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 4—David Tandy**

**Staff Case Manager:** Steve Hendrix, Planning Supervisor

**(Related Case 14APPEAL1004 on properties located at 527 Franklin Street and 330 East Burnett Avenue).**

**Due to a conflict of interest, Member Bergmann recused himself and did not participate in the entire proceedings of this case.**

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.



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**NEW BUSINESS**

**CASE NO. 14APPEAL1003**

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 Planning and Design Services offices located at 444 S. 5<sup>th</sup> Street).

On June 3, 2014, a Notice of Violation was issued to CBS Outdoor LLC concerning the LED image-changing off-premises sign. An Appeal was submitted on July 3, 2014.

On October 6, 2014, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

**Agency Testimony:**

Steve Hendrix, Planning Supervisor, discussed the case summary, background and site context from the staff report. He said the sign went from a standard stationary billboard type sign to LED image-changing sign which is prohibited the Downtown Form District. The appellant also received a letter from the Commonwealth of Kentucky Transportation Cabinet on January 24, 2014, stating that the off-premise electronic advertising devices were prohibited. An electrical permit was issued on May 5, 2013, to upgrade service and panel to 200AMP for LED billboard signage by the Department of Codes and Regulations.

April Robbins, Code Enforcement Supervisor said the Form Districts were adopted in 2003; and the sign became non-conforming in 2009, when Chapter 4.3.12.F Permitted Uses with Special Standards was adopted by the Planning Commission on November 19, 2009 (Case No. 8503). She said the appellant received the electrical permit for the LED upgrade but that electrical inspectors are not responsible to ensure signage is in an appropriate zone classification. Ms. Robbins said the appellant did not indicate the change to LED on some of the applications.

**The following spoke in opposition to this appeal:**

Mark Davis, Attorney, 405 Swing Lane, Louisville, KY 40207.

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**Summary of testimony of those in opposition**

Mark Davis said he's a retired attorney for the City of Louisville and Jefferson County. He said he served on the board of Scenic Kentucky for 28 years; and said "dancing" billboards are not allowed because of the form district regulations. He said he is opposed to this appeal and asked the Board to uphold the regulations.

**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 favor of the request:**

Byron Leet, Attorney for the appellant, submitted Land Development Code (LDC) regulations into the record.

Deborah Bilitski, Attorney for the appellant.

**Summary of testimony of those in favor:**

Byron Leet, the applicant's attorney, said his client relied on the electrical permits to upgrade the billboards spending over ½ million dollars. He argued that there is no provision in the LDC that prohibits LED billboards, only indicating that they cannot be enlarged in area and height and no added moving parts. He said one of the billboards has actually been reduced in area and asked the Board to approve their appeal. He said Codes and Regulations should be "estopped" from citing his client; and also said that the "Honest Error Doctrine" would apply since they relied on an electrical permit to upgrade the billboard.

**Rebuttal Ms. Robbins:**

April Robbins said the billboards have changed from static paper to illuminated LED image-changing signage. She said she understands the financial aspect and reiterated that the electrical inspectors do not monitor the zoning or Land Development Code regulations. Ms. Robbins said when the appellant received a permit to move the billboard due to the Ohio River Bridges Project, there was no

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mention of changing the static billboard to LED image-changing signage on the application.

**Rebuttal Mr. Davis:**

Mr. Davis said the LED sign changes every 8 seconds or 10,800 changes per day which he considers to be a significant change or extension of the established non-conforming use.

**Agency Testimony:**

Emily Liu, Planning & Design's Director, said the appellant received a letter from the Commonwealth of Kentucky Transportation Cabinet, stating that the off-premise electronic outdoor advertising is in violation of Kentucky Law, 23 U.S.C. 131 et seq., and KRS Chapter 177 and regulations thereunder. Ms. Liu also explained when the appellant negotiated with the city to relocate the sign due to the Ohio River Bridges Project, they discussed changing it to LED image changing, and they were told no.

Chair Proffitt said the Board is responsible for overseeing the LDC, not state regulations; and that information could be considered "hearsay".

**Rebuttal Mr. Leet:**

Mr. Leet said there's nothing in the staff report noting that the appellant was told that they couldn't change the sign from static to LED image changing.

Deborah Bilitski, the appellant's attorney, said the relocation permit was granted and built as a static billboard. Her client then applied for the electrical permit to change it. Chair Proffitt asked why they didn't refer to the LDC before making this change. Ms. Bilitski said there's nothing in the LDC that restricts LED signage.

**Deliberation:**

Chair Proffitt said the Board should only consider the appeal as it relates to the Land Development Code and if the non-conforming use sign has been enlarged or extended beyond the scope and area that existed at the time the nonconformity began. The Board members discussed their thoughts regarding this where opinions varied.

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**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and 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 October 6, 2014 public hearing proceedings.**

After the public hearing in open business session, a motion was made by Member Allendorf to approve the appeal; and was seconded by Member Liggin for discussion.

**DISCUSSION:**

There was more discussion whether the nonconforming use of the sign had been changed making it illegal.

The motion was proper with the following vote.

**YES: Members Allendorf and Liggin.**

**NO: Members Proffitt, Fishman and Tharp.**

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

**ABSTAINING: No one.**

The motion to approve the appeal failed.

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 presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting an Appeal of a Notice of Violation issued by the Department of Codes and Regulations concerning nonconforming signage on property located at 490 East Witherspoon Street; and

**WHEREAS**, the Board finds that this particular off-premise sign has three (3) faces and is located in the northeast corner of a parking lot for Louisville Slugger Field next to Witherspoon Street; and because the sign is south of the I-64 ramp

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to I-65, and west of I-65; the LED image changing sign faces the traffic going south on the I-64 ramp before connecting with south I-65; and

**WHEREAS**, the Board finds that the Form Districts were adopted in 2003, where the subject sign became nonconforming in 2009, when Chapter 4.3.12F-- Permitted Uses with Specific Standards was adopted by the Planning Commission on November 19, 2009 (Case No. 8503); and because this new regulation states that new outdoor advertising signs shall not be permitted within various form districts including the Downtown Form District, where the subject LED billboard sign exists; and because although an electrical permit was issued on May 5, 2013 to upgrade service and panel to 200AMP for LED billboard signage by the Department of Codes and Regulations, the electrical inspectors/permit writers are not responsible for monitoring compliance of the Land Development Code regulations or that such requests are in the appropriate zoning and form district classifications; and

**WHEREAS**, the Board finds that although nonconforming rights exist for the off-premises stationary sign—the LED image changing sign that changes advertisements every 8 seconds would be an extension/expansion of the nonconforming stationary billboard sign; and

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the appeal for Case No. 14APPEAL1003 on property located at 490 East Witherspoon Street.

**YES: Members Proffitt, Fishman and Tharp.**

**NO: Member Allendorf.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Bergmann.**

**ABSTAINING: Member Liggin.**

**NOTICE OF VIOLATION PROPER:**

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

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**CASE NO. 14APPEAL1003**

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment finds that the Notice of Violation issued by the Department of Codes and Regulations was proper.

**YES: Members Allendorf, Proffitt, Liggin, Fishman, and Tharp.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Bergmann.**

**ABSTAINING: No one.**

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**(Corrected on 11/26/14)**

**NEW BUSINESS**

**CASE NO. 14APPEAL1004**

**Request:** Appeal of Notices of Violation issued by the Department of Codes & Regulations concerning off-premises signs.

**Locations:** 527 Franklin Street & 330 East Burnett Avenue

**Appellant:** CBS Outdoor, LLC  
David Watkins  
1501 Lexington Road  
Louisville, KY 40205

**Owner:** Louisville Metro & the Commonwealth of Kentucky

**Representative:** Wyatt, Tarrant & Combs, LLP  
Byron Leet, Esq. & Deborah Bilitski, Esq.  
500 W. Jefferson Street, Suite 2800  
Louisville, KY 40202

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICTS 4—David Tandy & 6—David James**  
**Staff Case Manager: Steve Hendrix, Planning Supervisor**

**(Related Case 14APPEAL1003 on property located at 490 East Witherspoon Street).**

**Due to a conflict of interest, Member Bergmann recused himself and did not participate in the entire proceedings of this case.**

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

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case file maintained at Planning and Design Services offices located at 444 S. 5<sup>th</sup> Street).

On July 9, 2014, Notices of Violations were issued to CBS Outdoor LLC, concerning image-changing off-premises signs.

Appeals were filed on September 18, 2014.

On October 6, 2014, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

**Agency Testimony:**

Steve Hendrix, Planning Supervisor, discussed the case summary, background and site context from the staff report. He said the signs went from standard, stationary billboard type signs to LED image-changing signs. He said the Board must determine if the image changing type signs are an extension of a nonconforming use beyond the scope of its operation; and if the Notice of Violation was proper.

April Robbins, Code Enforcement Supervisor, said the new LED signs are not the same as what previously existed and are, therefore, out of compliance with the Land Development Code.

**The following spoke in opposition to this appeal:**

Mark Davis, Attorney, 405 Swing Lane, Louisville, KY 40207.

**Summary of testimony of those in opposition:**

Mark Davis said he's a retired attorney for the City of Louisville and Jefferson County. He said he served on the board of Scenic Kentucky for 28 years; and said "dancing" billboards are not allowed because of the form district regulations. He said he is opposed to this appeal and asked the Board to uphold the regulations.

**The following spoke neither for nor against the request:**

No one.



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

No one.

**The following spoke in favor of the appeal:**

Byron Leet, Attorney for the appellant, submitted Land Development Code (LDC) regulations into the record.

Deborah Bilitski, Attorney for the appellant.

**Summary of testimony of those in favor of the appeal:**

Byron Leet, the appellant's attorney, argued that there is not a provision in the Land Development Code that prohibits LED signage. He said the LDC only indicates that signage cannot be enlarged in area and height and no added moving parts. Mr. Leet said his client received an electrical permit for one of their other signs located at 490 East Witherspoon Street (Related Case No. 14APPEAL1003) and is what they relied on to change the other two. He said Codes and Regulations should be "estopped" from citing his client; and also said that the "Honest Error Doctrine" would apply since they relied on an electrical permit to upgrade the billboard signage.

**Rebuttal Ms. Robbins:**

Ms. Robbins said the billboards have changed from static, paper to illuminated LED image-changing signage. She said she understands the financial aspect for the appellant, but that the signs are not in compliance with the Land Development Code.

**Rebuttal Mr. Davis:**

Mr. Davis said the LED signs change every 8 seconds or 10,800 changes per day which he considers to be a significant change/extension of the established nonconforming use.

**Agency Testimony:**

Emily Liu, Planning & Design's Director, said the appellant received a letter from the Commonwealth of Kentucky Transportation Cabinet, stating that the off-premise electronic outdoor advertising is in violation of Kentucky Law, 23 U.S.C. 131 et seq., and KRS Chapter 177 and regulations thereunder. Ms. Liu also

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explained when the appellant negotiated with the city to relocate a sign at 490 Witherspoon Street due to the Ohio River Bridges Project, they discussed changing it to LED image changing, and they were told no.

Chair Proffitt said the Board is responsible for overseeing the LDC, not state regulations; and that the other information could be considered “hearsay”.

**Rebuttal Mr. Leet:**

Mr. Leet said there’s nothing in the staff report noting that the appellant was told that they couldn’t change the sign from static to LED image changing.

Deborah Bilitski, the appellant’s attorney, added that there is nothing in the Land Development Code that restricts the use of LED signage; and that her client relied on receiving an electrical permit for one of their properties located at 490 East Witherspoon Street (Related Case No. 14APPEAL1003).

**Deliberation:**

Chair Proffitt said the Board should only consider the appeal as it relates to the Land Development Code and if the nonconforming use sign has been enlarge or extended beyond the scope and area that existed at the time the nonconformity began. The Board members discussed their thoughts regarding this where opinions varied.

**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and 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 October 6, 2014 public hearing proceedings.**

After the public hearing in open business session, a motion was made by Member Allendorf to approve the appeal; and was seconded by Member Liggin for discussion.

**DISCUSSION:**

There was more discussion whether the nonconforming use of the sign had been changed making it illegal.

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**NEW BUSINESS**

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The motion was proper with the following vote.

**YES: Members Allendorf and Liggin.**

**NO: Members Proffitt, Fishman and Tharp.**

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

**ABSTAINING: No one.**

The motion to approve the appeal failed.

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 presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting an appeal of a Notice of Violation issued by the Department of Codes and Regulations concerning nonconforming signage on properties located at 527 Franklin Street and 330 East Burnett Avenue; and

**WHEREAS**, the Board finds that the pole is located in the southwest corner of the Extreme Park and contains two (2) off-premises signs, where the only one facing traffic going north on I-65 is LED with changing images; the other sign has a permanent face and externally illuminated; and

**WHEREAS**, the Board finds that the Form Districts were adopted in 2003, where the subject signs became nonconforming in 2009, when Chapter 4.3.12F-- Permitted Uses with Specific Standards was adopted by the Planning Commission on November 19, 2009, (Case No. 8503); and because this new regulation states that new outdoor advertising signs shall not be permitted within various form districts including the Downtown Form District; Traditional Neighborhood and Neighborhood Workplace, where the subject LED billboard signs exists; and because although an electrical permit was issued on May 5, 2013 for property located at 490 East Witherspoon (Related Case No. 14APPEAL1003) to upgrade service and panel to 200AMP for LED billboard signage by the Department of Codes and Regulations, the electrical inspectors

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are not responsible for monitoring compliance of the Land Development Code regulations or that such requests are in the appropriate zoning/form district classifications; and

**WHEREAS**, the Board finds that although nonconforming rights exist for the off-premises stationary signs—the LED image changing sign that changes advertisements every 8 seconds would be an extension/expansion of the nonconforming stationary paper billboard sign; and

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the Appeal for Case No. 14APPEAL1004 on properties located at 527 Franklin Street and 330 East Burnett Avenue.

**YES: Members Proffitt, Fishman and Tharp.**

**NO: Member Allendorf.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Bergmann.**

**ABSTAINING: Member Liggin.**

**NOTICE OF VIOLATION PROPER:**

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

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment finds that the Notice of Violation issued by the Department of Codes and Regulations was proper.

**YES: Members Allendorf, Proffitt, Liggin, Fishman, and Tharp.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Jarboe and Bergmann.**

**ABSTAINING: No one.**

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**The meeting adjourned at 12:40 p.m.**

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**CHAIRPERSON**

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**SECRETARY**