

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

October 3, 2016

A meeting of the Louisville Board of Zoning Adjustment was held on October 3, 2016, at 8:30 a.m. at the Old Jail Building, 514 W Liberty Street, Louisville, KY 40202.

Members present:

Mike Allendorf, Chair
Betty Jarboe, Vice Chair
Dean Tharp
Paul Bergmann
Lester Turner, Jr.
Lula Howard

Members absent:

Rosalind Fishman, Secretary

Staff members present:

Brian Davis, Planning Manager
Steve Hendrix, Planning Supervisor
Jon Crumbie, Planning Coordinator
Laura Mattingly, Planner I
Ross Allen, Planner I
John Carroll, Legal Counsel
Tony Kelly, MSD
Kristen Loeser, Management Assistant

*Board Member Tharp left at 3:15 p.m.

The following cases were heard:

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BUSINESS SESSION

Approval of the September 12, 2016 BOZA Meeting Minutes

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of its meeting conducted on September 12, 2016.

The vote was as follows:

Yes: Howard, Jarboe, Bergmann, and Allendorf,

Absent: Fishman

Abstain: Tharp and Turner

No: None

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BUSINESS SESSION

BOZA Bylaws Update

NOTE: Business Session items were heard after the Public Hearing.

07:06:00 Jon Crumbie presented the Board with the updates to the BOZA Bylaws. The Board will take action on the Bylaws during Business Session of the October 17, 2016 Board of Zoning Adjustment meeting (see recording for detailed presentation).

No action was taken at this time.

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BUSINESS SESSION

Short Term Rental Presentation

07:10:00 Joe Haberman reviewed the Louisville Metro Short Term Rental Regulations and showed a PowerPoint presentation (see recording for detailed presentation).

No action was taken at this time.

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PUBLIC HEARING

CASE NUMBER B-17987-12

Project Name:	Seismographic Analysis Summary Report
Location:	7331 Global Drive
Owner:	Yamamoto FB Engineering, Inc.
Representative:	Darryl Keels
Project Area/Size:	8.03 acres
Existing Zoning District:	EZ-1
Existing Form District:	Suburban Workplace
Jurisdiction:	Louisville Metro
Council District:	12 – Rick Blackwell
Case Manager:	Steve Hendrix, Planning Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

NOTE: Due to technical problems, only a partial recording is available for this case.

Agency Testimony:

00:16:42 Steve Hendrix presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Darryl Keels, 7311 Global Drive, Louisville, KY 40258
Tom Trowbridge, 1300 Gardiner Lane, Suite 7, Louisville, KY 40213

Summary of testimony of those in favor:

00:18:35 A representative with Yamamoto FB Engineering, Darryl Keels, stated that they have come before the Board again today to summarize the

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findings of the seismographic analyses that were conducted in 2012 and 2016 and answer any questions.

00:19:04 Tom Trowbridge explained the results of the seismographic analysis to the Board in comparison to the industry standards and stated that Yamamoto's results rank below the industry standard for causing damage to nearby homes. The analysis was conducted for 24 hours a day for two weeks (data from the analysis can be found on pages 5 and 6 of the staff report).

00:23:14 In regards to Condition of Approval # 2 from the 2012 staff report, Mr. Keels stated that Codes and Regulations did come to the property for an inspection. Regarding # 3, Mr. Keels did send a contractor to the Hillerich property to review the damage to the garage, and they provided him an estimate for the repairs. He has not yet discussed this with the Hillerichs. He would like to work with the Hillerichs, but he does not plan to specifically pay to fix the concrete leading to the garage because the contractor believes this damage was caused by regular settling over the years rather than the activity of his company. Regarding the noise, Mr. Keels stated that the garage doors are kept shut overnight from 7:00 p.m. to 7:00 a.m. and are only opened when entry is needed, and some of the louder activity has been moved to the front of the building. He said that these actions were taken to mitigate the sound prior to the last hearing.

00:26:50 Steve Hendrix spoke about the results of the inspection by Codes and Regulations on September 9, 2016, and provided the Board with pictures that were taken during this inspection. A written report from this inspection was not provided to the Board and there is not a Codes and Regulations representative present today.

00:29:44 Mr. Keels stated there is already a fence along the property as well as a berm and some trees. He would be willing to consider further sound mitigation along the property line if there was evidence that it is necessary, but he reiterated to the Board that the results from the analysis indicated he is well below the industry standard for noise-based damage.

00:32:48 Mr. Hendrix stated that Codes and Regulations did not mention sound as being a problem. The pictures show the fence and the landscape buffer. The plant has met the setback requirements for distance from a residential area.

00:36:26 Mr. Keels further discussed with the Board his company's operations and the type of equipment used at the facility. Mr. Hendrix discussed with the Board the possibility to have another site visit conducted by Codes and

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Regulations to verify if the doors are in fact remaining closed overnight (partial recording of testimony available).

The following spoke in opposition to the request:

Myra Hillerich, 7608 Tommie Court, Louisville, KY 40258

Tom Hillerich, 7608 Tommie Court, Louisville, KY 40258

Summary of those in opposition:

00:47:15 Myra and Tom Hillerich provided pictures to the Board of the damage to their garage. Ms. Hillerich stated that they put four to five truckloads of dirt behind their garage for support in 2008 when the damage occurred. Since then, the company has made improvements, and shaking is no longer an issue. She also stated that the doors at the plant do not remain shut throughout the night like they are supposed to. Mr. Hillerich stated he would like to see the garage and the concrete surrounding the garage be fixed by the applicant, and for the plant doors to remain shut overnight (see recording for full testimony of opposition).

Rebuttal:

01:00:07 Mr. Keels spoke in rebuttal and stated that he feels that everything has been done to help with the noise situation. He stated that the Hillerichs have not yet provided evidence that shows the damage to the garage was caused by his company. He is willing to work with them and repair damage up to the amount of \$500 (see recording for full rebuttal).

01:07:30 Deliberation

01:31:14 On a motion by Vice Chair Jarboe, seconded by Board Member Howard, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number B-17987-12, does hereby **CONTINUE** the case to the March 6, 2017 Board of Zoning Adjustment meeting for the purpose of reviewing the conditions of approval on page 12 and 13 of the staff report, based on the applicant's

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testimony, the opposition's testimony, and the Board's discussion, and **SUBJECT** to the following Conditions of Approval offered by the Board today:

Conditions of Approval:

1. Yamamoto FB shall conduct a seismographic analysis of its site and the adjacent property at 7608 Tommie Court (the Hillerich's) to determine whether vibrations from the Yamamoto site under normal operating conditions are having an adverse impact and undertake such measures as recommended by the seismologist to mitigate such impacts to a reasonable standard. Yamamoto FB will provide the Louisville Metro Board of Zoning Adjustment with the results of this analysis and the recommended mitigation measures.
2. Codes and Regulations shall inspect the site after the seismographic analysis is complete and *verify* the applicant's attempts to mitigate the noise to the adjacent neighbors by opening the garage doors only as needed during the hours of 7:00 p.m. and 7:00 a.m. and *confirm* that Yamamoto is cutting the grass in accordance with code.
 - a. Codes and Regulations shall provide the Board with a written report of the findings of their inspection, and the inspector shall appear at the March 6, 2017 to provide testimony of their findings.
3. Yamamoto FB shall fix the crack(s) in the Hillerich's garage.

01:37:47 Meeting was recessed.

01:37:51 Meeting was reconvened.

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CASE NUMBER 16VARIANCE1035

Request:	Proposed Vehicle Use Area to encroach into streamside buffer
Project Name:	Algood Manufacturing
Location:	10611 Freeport Drive
Owner:	Cecil C Barnette Family, LLC
Applicant:	Cecil C Barnette Family, LLC
Representative:	Ashley Bartley, QK4
Jurisdiction:	Louisville Metro
Council District:	12 – Rick Blackwell
Case Manager:	Laura Mattingly, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

01:41:14 Laura Mattingly presented the case (see Staff Report and recording for detailed presentation).

01:48:48 Tony Kelly with Louisville MSD answered questions from the Board regarding flooding on the property (see recording for full testimony).

The following spoke in favor of the request:

Ashley Bartley, 1046 E Chestnut Street, Louisville, KY 40204

Summary of testimony of those in favor:

02:09:41 Ashley Bartley with QK4 spoke on behalf of the applicant. She stated that the finished floor elevation of the building will be 435.8 or above, and the truck dock will be located in the back and will be at a lower elevation. This is where the flood water compensation will be located. They will be mitigating with a bioswale. They will replant 84 trees, twice the number they are required to

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replant, which will also assist with water mitigation. Ms. Bartley further responded to questions from the Board (see recording for a more detailed testimony).

02:16:45 Vice Chair Jarboe expressed concern with how the city is handling flood mitigation.

02:19:32 Deliberation

02:23:10 On a motion by Board Member Bergmann, seconded by Board Member Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the encroachment will be mitigated with a bioswale and additional plantings to add to the streamside buffer, as well as the Landscape Buffer Area along the eastern property line, increasing the overall plantings within the buffer, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the variance request is located behind the proposed warehouse and will not affect views from Freeport Drive, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as mitigation measures are being put in place to compensate for the increased runoff and potential negative effects on the stream and neighboring properties, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the applicant has agreed to mitigate with plantings beyond the minimum requirements, as well as a bioswale which meets the intent of the buffer, and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as this industrially zoned lot is very narrow for a typical large warehouse, and

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WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the building would not be able to be built large enough to meet the needs of the applicant, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as this is a new proposal, although the constraints of the size of the property and stream have existed prior to the current regulations; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1035, does hereby **APPROVE** the variance from the Land Development Code 4.8.6 to allow vehicle use area in the required 100' streamside buffer (**Requirement: 100 ft.; Request: Maximum 54.5 ft.; Variance: Maximum 45.5 ft.**) based on the testimony heard at the September 12, 2016 BOZA meeting, the testimony heard today, the staff report, and the Approval on Condition from page 3 of the staff report.

The vote was as follows:

Yes: Howard, Bergmann, Tharp, Turner, and Allendorf

Absent: Fishman

Abstain: None

No: Jarboe

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CASE NUMBER 16VARIANCE1053

Request:	Proposed parking for hotel to encroach into front setback
Project Name:	Residence Inn by Marriott
Location:	401 Bullitt Lane
Owner:	Tim Boden, The Estate of Alice A. Boden
Applicant:	Chester Musselman, Musselman Hotels, LLC
Representative:	John Addington, BTM Engineering, Inc
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Laura Mattingly, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

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Agency Testimony:

02:25:09 Laura Mattingly presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

John Addington, 3001 Taylor Springs Drive, Louisville, KY 40220

Summary of testimony of those in favor:

02:31:31 John Addington spoke on behalf of the applicant and showed a presentation. The applicant feels like they are fitting in with the pattern of development already established and that the parking is badly needed. They plan to plant as many trees as are required, or more, in the parking lot (see recording for detailed testimony).

02:37:59 Deliberation

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02:39:57 On a motion by Board Member Howard, seconded by Vice Chair Jarboe, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the parking setback request will have no impact from the public right of way, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the proposal includes the provisions of all required screening and tree plantings and the parking layout and setback is typical for this mixed use area, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed parking is not imposing on the public right-of-way and the setback is enough to allow all required landscaping, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the irregular shape of the lot renders it very difficult to adhere to the setbacks of the Campus form district with this proposal, and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone due to the irregular shape of the lot, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as the site design would have to be completely reconfigured due to the required widths of drive aisles and parking stalls, and

WHEREAS, the Board further finds that the circumstances are NOT the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the existing conditions have been in place since before the adoption of the current setback regulation; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1053, does hereby **APPROVE** the variance from the Land Development Code 5.3.5.C.3.a to allow parking to encroach into required 25'

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front setback (**Requirement: 25 ft.; Request: 9 ft.; Variance 16 ft.**) based on the staff report, testimony and evidence provided today, and that the standards of the Land Development Code have been met.

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, Tharp, Turner, and Allendorf

Absent: Fishman

Abstain: None

No: None

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Request:	To allow construction of an addition onto the rear of the primary structure.
Project Name:	3917 Bardstown Road Variance
Location:	3917 Bardstown Road
Area:	0.36750 acres
Owner:	Tony Zagata – Zagata Properties
Applicant:	John White – WPC Company Inc.
Representative:	John White – WPC Company Inc.
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

02:41:45 Ross Allen presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Doug White, 4307 Progress Blvd., Louisville, KY 40218
Tony Zagata, 3917 Bardstown Road, Louisville, KY 40218

Summary of testimony of those in favor:

02:56:20 The applicant, Doug White, stated that the variance and waivers are being requested because of the way the building is positioned on the property. There is currently little to no landscaping on the property, which they plan to significantly improve. There will also be improvements made to the entrance to make it safer and more attractive. He stated that the exterior of the building will be block, while the remaining three sides will have a metal exterior,

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and that the building will be used for car dealership work such as window tinting and alarm installation.

03:05:09 Deliberation

03:09:47 There was further discussion between Mr. White and Board Member Bergmann about placing additional landscaping in the northwest corner of the property. Mr. White feels that they have fulfilled the landscape requirements for their plan.

03:14:50 On a motion by Vice Chair Jarboe, seconded by Board Member Tharp, the following resolution was adopted:

Variance from the Land Development Code section 5.5.1.A.2 to allow the proposed expansion at the rear of the existing structure to be setback from the right of way line greater than 5 feet along Six Mile Lane.

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the new attached rear addition will be setback further from the right of way along Six Mile Lane and will be restricted by a fence for the public to access, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since parcels in the vicinity have varying sizes and uses, most being commercial and many having parking in front of the structures. The proposed addition is planned at the rear of the parcel and is partially screened by a fence with shrubbery to the exterior of the fence, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the proposed addition is located behind a fence which limits the accessibility to the public and will be screened along Six Mile Lane by a fence, existing bushes/shrubs, and three proposed Yellow Wood Trees, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since many of the commercial structures in the general vicinity are not parallel with Six Mile Lane

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and are setback from the right of way by more than five feet, most notably Louisville Motors, east of the subject site and also on a corner lot, and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the subject site is located on a corner lot with properties in close proximity to the west along Bardstown Road, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the only available area to expand physically is at the rear of the property, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the existing structure that is to be added onto is already at a greater setback than what would be permitted by LDC, and

Waiver #1 from the Land Development Code section 5.5.1.A.3.a to allow parking in the front of the principal structure and to not provide the 3 foot masonry, stone, or concrete wall to screen the parking area along the Bardstown Road and Six Mile Lane frontages.

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds the waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public right-of-way to the building entrance from Six Mile Lane leading to a walkway along the front entrances facing Bardstown Road, and

WHEREAS, the Board further finds that Guideline 2, Policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, Policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, Policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, Policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use, encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. Guideline 9, Policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with

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location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. The waiver is compatible with the pattern of development within the general vicinity, and there does appear to be physical restraints preventing compliance with the regulations to be waived since parking is accessible from Bardstown Road and any reconfiguration of the parking would require that applicant to construct onto the existing structure out towards Bardstown Road and Six Mile Lane forcing parking to the rear of the subject site and this is not characteristic in the general vicinity. Therefore, the requested waiver will violate specific guidelines and policies of Cornerstone 2020 but would require the applicant to conform to regulations that are not in character with the general vicinity at current, and

WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since there are physical restraints preventing compliance with the regulations to be waived. Parking was present in the front of the primary structure prior to adoption of the current LDC regulations. The location of the primary structure on the subject site prevents parking access to the rear of the property, and

WHEREAS, the Board further finds that the applicant has incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived. The applicant is proposing extending the sidewalk along Six Mile Lane with a pedestrian access with landscaping traversing the parking lot to the front of the primary structure, and

Waiver #2 from LDC section 5.8.1.B to not provide sidewalks along the Bardstown Road frontage for a linear length of approximately 118 feet.

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since the subject site is situated near the corner and the applicant is proposing to construct a sidewalk along the Six Mile Lane side of the property to the corner of Bardstown Road and Six Mile Lane. There is also a street scape plan (Buechel Streetscape Phase II) which funding has been frozen by Kentucky Transportation Cabinet until July 2017. The current streetscape plans include the applicant's property frontage along Bardstown Road, and

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WHEREAS, the Board further finds that Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Guideline 9, Policy 1 states that new development should provide for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The applicant is attempting to provide the sidewalk along Six Mile Lane as an offset to providing the sidewalk along the Bardstown Road frontage. The aforementioned streetscape plan does not include any improvements to Six Mile Lane which adds to the movement of pedestrians, and

WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is willing to construct sidewalk along the Six Mile Lane for an approximate linear distance of 118 feet, which is longer than the distance found along the Bardstown Road frontage, and

WHEREAS, the Board further finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived since a sidewalk is to be constructed by the applicant connecting the existing sidewalk, north of their property, south to Bardstown Road which would not be addressed by the Buechel Streetscape Phase II project, and

Waiver #3 from LDC section 10.2.4.A, table 10.2.4 to not provide the 8 foot screen at the rear of the property with direction N57° 23' 21" W.

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since the subject site currently has an existing six foot high fence and are proposing 7 Emerald Green Arborvitae with an additional 4 Columnar Sweetgum trees along the rear of the property for screening the new addition, and

WHEREAS, the Board further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback

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requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The applicant has an existing six foot high fence and is proposing 7 Emerald Green Arborvitae with an additional 4 Columnar Sweetgum trees along the rear of the property for screening the new addition, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the existing six foot tall fence with the 7 Emerald Green Arborvitae and 4 Columnar Sweetgum trees along the rear of the property provide screening of the new addition, and

WHEREAS, the Board further finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived since the applicant is providing three Yellow Wood trees along the rear of the property to the interior of the fence along the Six Mile Lane, and

Waiver #4 from LDC section 10.2.4, table 10.2.3 to allow the proposed 2,887 sf. addition to encroach 5 ft. into the 10 ft. LBA along the rear property line found along the direction N57° 23' 21" W .

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since the encroachment is occurring on the subject site and does not impact the adjacent rear neighbor. The applicant is providing screening from the adjacent site with 7 Emerald Green Arborvitae and 4 Columnar Sweetgums to the interior of the existing six foot fence, and

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WHEREAS, the Board further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The applicant is providing landscaping, 7 Emerald Green Arborvitae and 4 Columnar Sweetgum trees in the remaining 5 feet of landscape buffer area at the rear of the property, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is using landscaping to mitigate the visibility of the proposed 16 foot tall attached rear addition with the remaining 5 feet of landscape buffer area, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant since the applicant is using 7 Emerald Green Arborvitae and 4 Columnar Sweetgum trees in the remaining 5 feet of landscape buffer area at the rear of the property and if the waiver is not granted would need to reduce the size of the proposed attached rear addition to the primary structure, and

Waiver #5 from LDC section 10.2.10 to not provide the 5 ft. VUA LBA along the Bardstown road frontage with direction S57° 15' 00" E.

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CASE NUMBER 16VARIANCE1062

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since the subject site is located on a corner lot which is adjacent to the Six Mile Lane right of way. The Pasha's Mediterranean Café (south of the subject site) and Café Joker (South of the subject site) of 5 adjacent sites along the Bardstown Road corridor have landscaping for the screening of the VUA, and

WHEREAS, the Board further finds that the waiver will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. However, the vehicular use area had existed prior to the current LDC regulations and the applicant's site is limited on available space for both the new addition and parking configuration, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the subject site would require the removal of parking in order to accommodate the 5 foot VUA LBA, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant. The subject site has had parking which pre-dates the current regulations and the existing parking would need to be removed in order to accommodate the 5 foot VUA LBA, and

Waiver #6 from LDC section 10.2.10 to allow the pavement to encroach into the 5 ft. VUA LBA along Six Mile Lane with a direction of N59° 31' 41"E.

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that The waiver will not adversely affect adjacent property owners since ingresses/egresses have been present prior to the current Land development code regulations and the neighboring property does not have a 5 foot VUA LBA nor the car dealership property directly across Six Mile Lane, and

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WHEREAS, the Board further finds that the waiver will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. However, three parcels found to the south of Bardstown Road have screening of the VUA with small bushes, whereas the applicant is proposing landscaping only near the corner towards the interior of the subject property leading from the side walk to the corner of the principal structure, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is attempting to provide some landscaping near the corner towards the interior of the subject property leading from the side walk to the corner of the principal structure, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the applicant is proposing a 2,887 sf. structure to the rear principal structure and additional landscaping may at some point need to be removed as a result of the Buechel Streetscape Phase II which funding was frozen for construction until July 2017, and

Waiver #7 from LDC section 10.2.11, table 10.2.7 to not provide a 1 type A tree per 50 linear feet of boundary and to not provide the 3 foot continuous screen for the VUA adjacent to the roadway along Six Mile Lane with a direction of N59° 31' 41"E and the Bardstown Road with a direction of S57° 15' 00" E.

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since all adjacent properties whether along Bardstown Road or Six Mile Lane have no 3 foot continuous wall. Furthermore, type A trees may interfere with overhead power lines along the Bardstown Road frontage, and

WHEREAS, the Board further finds that the waiver will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway

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corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for screening and buffering of parking areas adjacent to streets. The purpose of vehicle use area landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of way. However, adjacent properties in the general vicinity have no 3 foot continuous wall while other properties, notably to the south of Bardstown Road do have landscaping but not type A trees as required by the land development code, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the property owner would be required to place a 3 foot continuous screen with type A trees per 50 lineal feet of boundary which both may be removed in the future if and when the Buechel Streetscape Phase II project is funded. Also, the type A trees may cause issues with overhead power lines along the Bardstown Road frontage, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the property owner would be required to place a 3 foot continuous screen with type A trees per 50 lineal feet of boundary which both may be removed in the future if and when the Buechel Streetscape Phase II project is funded. Also, the type A trees may cause issues with overhead power lines along the Bardstown Road frontage, and

Waiver #8 from LDC section 10.2.12 and 10.2.13 to not provide the 5% Interior Landscape Area (ILA) and VUA ILA planting requirements of one medium or large deciduous tree for every 4,000 square feet of vehicular use area.

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that The waiver will not adversely affect adjacent property owners since the property is situated at the corner of Bardstown Road and Six Mile Lane limiting parking space. Parking spaces are perpendicular to Bardstown Road limiting space for interior landscape areas. Parking along Six Mile Lane is also limited since there are only two spaces and the remainder of the area is to be used for loading and unloading of required business materials, and

WHEREAS, the Board further finds that Guideline 13, Policy 5 calls for standards to ensure the creation and/or preservation of tree canopy as a valuable community resource. The purpose of interior landscape areas is to break up

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large impervious areas and allow for a greater distribution of tree canopy coverage. Although the subject site has 7,224 sf. of paved area for a parking lot, the lot remains to the exterior of the principal structure and the proposed addition to the rear further limits parking to the existing areas. Last, ILA's are required to be 8 ft. in width or length which is not feasible given the parking lot size and area for current number of spaces allotted, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since space is limited on the site, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the only other option for the applicant would to find an alternate location for the business, and

WHEREAS, the Board further finds that, based the staff report, the applicant's justification and the evidence and testimony presented today, that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1062, does hereby **APPROVE** Waivers 1-8 and the Variance from the Land Development Code section 5.5.1.A.2 to allow the proposed expansion at the rear of the existing structure to be setback from the right of way line greater than 5 feet along Six Mile Lane (**Requirement: 5 ft. from right of way line; Request: 28 ft.; Variance: 23 ft.**), based on the Standard of Review and Staff Analysis for Variances, the staff report, the applicant's justification statement, and the site plan.

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, Tharp, Turner, and Allendorf

Absent: Fishman

Abstain: None

No: None

03:16:55 Meeting was recessed.

03:17:10 Meeting was reconvened.

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CASE NUMBER 16VARIANCE1065

Request:	To allow a proposed detached 2 story garage to encroach into the minimum side yard setback.
Project Name:	815 East Washington Street
Location:	815 East Washington Street
Area:	.12080 acres
Owner:	Jan Debevoise
Applicant:	Jan Debevoise
Representative:	Jan Debevoise
Jurisdiction:	Louisville Metro
Council District:	4 – David Tandy
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

03:17:24 Ross Allen presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Jan DeBevoise, 815 E Washington Street, Louisville, KY 40206

Summary of testimony of those in favor:

03:26:53 Jan DeBevoise stated that he is seeking a variance so that his garage will align with his home along the western property line and be consistent with the character of the neighborhood—neighboring properties have homes that were built along the western property lines as his was. He also stated that he initially requested a 10 ft. setback, but would like permission to have up to a 12 ft. setback in order to have a greater turning radius in the alleyway. He will install electric in his garage, but not heating or air conditioning.

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03:33:21 Deliberation

03:35:27 On a motion by Vice Chair Jarboe, seconded by Board Member Bergmann, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the proposed 2 story garage will be set back from the alley by approximately 10 feet, by 5.5 feet from the property line along the eastern side, and have a zero foot setback along the western property line where the structure is adjacent to a parking lot. Many of the garages (accessory structures) are built to the property lines along the western side, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since other garages exist along the rear of the same block face, there are 6 accessory structures found along the same alley between North Shelby Street and North Campbell Street, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the applicant is requesting an accessory structure that is in character with the general vicinity, is 10 feet from the rear property line, and is adjacent to a parking lot on the western side where the variance is requested, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since 4 of the 11 R-6 zoned homes along the same block face have detached accessory structures at the rear of lots along the alley. Many of the garages (accessory structures) are built to the property lines along the western side, and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since most of the principal and accessory structures were built to the property line on the western side, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since all of the lot dimensions, north south and east of the applicant's site, are long and narrow. Principal and accessory structures were constructed to the western property line allowing for the maximum width of structures, and

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WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the applicant is proceeding to obtain both the Certificate of Appropriateness (16COA1186) and the variance to comply with the requirements of the Land Development Code (2016); now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1065, does hereby **APPROVE** the variance from the Land Development Code section 5.2.2, table 5.2.2 to allow a proposed detached garage to encroach into the minimum side yard setback along the western property line (**Requirement: 3 ft.; Request 0 ft.; Variance: 3 ft.**) based on the Standard of Review and Staff Analysis for Variances and further request by the applicant to have the flexibility of a 12 ft. setback from the alley, **SUBJECT** to appropriate review by staff.

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, Tharp, Turner, and Allendorf

Absent: Fishman

Abstain: None

No: None

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CASE NUMBER 16VARIANCE1068

Request:	To allow a proposed home and garage to encroach into the minimum street side yard setback.
Project Name:	1704 Speed Avenue
Location:	1704 Speed Avenue
Area:	0.14770 acres or 6,433.812 sf.
Owner:	Don Petty – Danagirl Investments LLC.
Applicant:	Jeremy Pearman – JB Pearman Construction Co.
Representative:	Jeremy Pearman – JB Pearman Construction Co.
Jurisdiction:	Louisville Metro
Council District:	8 – Tom Owen
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

03:37:08 Ross Allen presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Jeremy Pearman, 4115 Taylorsville Road, Louisville, KY 40220
Michael Higdon, 10525 Timberwood Circle, Louisville, KY 40223

Summary of testimony of those in favor:

03:47:09 Applicant and builder, Jeremy Pearman, explained that he and Michael Higdon, a real estate agent, found this property while driving in the area and thought it to be unique. They are under contract with the owner to purchase the property contingent upon receiving approval to build on the property. They

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feel that property values in the area will rise because they plan to sell the home for upwards of \$300,000.

The following spoke in opposition to the request:

Bill Sanders, 1812 Radnor Ave., Louisville, KY 40205

Joda Pyle (sp), 8721 Santa Monica Blvd., West Hollywood, CA 90069

Summary of testimony of those in opposition:

03:51:53 Bill Sanders lives near the site and stated that he was not aware that the proposal was for a two story structure, and he is concerned with what type of home could be built on such a narrow piece of property. He stated that in July of this year, Mr. Pearman and Mr. Higdon provided a packet of information about the proposed structure to the residents along Radnor Avenue and asked them to sign a document affirming their approval of the project. He would like to know if any of the other neighbors signed this document.

03:56:10 Joda Pyle (sp) owns neighboring property, 1711 Speed Ave. He stated that the proposed driveway would be across the street from his property. He has renovated his property and put it on the market. During four different showings of his property, he was told by perspective buyers that they would not be willing to put an offer on his home if the proposed structure was built across the street.

03:59:05 Mr. Allen stated that there were errors with the staff report and the meeting notice that said "single story home" instead of "single family home," which may have caused confusion with some of the neighbors. He also clarified for the Board that the subject property is zoned C-1.

04:02:55 Board Member Bergmann expressed his concern with building a home on such a narrow piece of property and with a two story home being out of character in this neighborhood.

Rebuttal:

04:04:57 Mr. Pearman stated that the property footprint is 18 ft. by 14 ft. and approximately 1,600 square ft. He stated that the plan that they showed when they visited the neighbors is the same plan being used during this presentation.

04:07:01 Mr. Higdon stated that, as a real estate agent, he doesn't feel that Mr. Pyle's home would be less likely to sell if a home is built across the street.

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04:12:10 Mr. Allen stated that the site plan appears to also state that the house and garage would be one story only.

04:12:36 Deliberation

04:15:52 On a motion by Vice Chair Jarboe, seconded by Board Member Bergmann, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1068, does hereby **DENY** the variance from the Land Development Code section 5.3.1.C, table 5.3.1 to allow single story home and detached garage to encroach into the 25 foot minimum street side yard setback along Radnor Avenue by approximately 20.59 feet (**Requirement 25 ft.; Request: 4.41 ft.; Variance 20.59 ft.**) based on the irregularity of the lot, the surrounding homes, the character of the proposed building being inconsistent with the neighborhood, and testimony heard today.

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, and Tharp

Absent: Fishman

Abstain: None

No: Turner and Allendorf

04:19:15 Meeting was recessed.

04:19:19 Meeting was reconvened.

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PUBLIC HEARING

CASE NUMBER 16CUP1027

Project Name:	Off-Street Parking
Location:	5050 Norton Healthcare Boulevard
Owners:	McMahan Holdings, LLC
Applicant:	McMahan Holdings, LLC
Representative(s):	Chris Brown, Glenn Price
Project Area/Size:	2.24 acres
Existing Zoning District:	OR-3, Office Residential
Existing Form District:	RC, Regional Center
Jurisdiction:	Louisville Metro
Council District:	16 – Kelly Downard
Case Manager:	Jon Crumbie, Planning & Design Coordinator

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

NOTE: Cases 16CUP1027 and 16CUP1028 were heard together, out of order, as the second item under Public Hearing. The Board voted on these cases simultaneously.

The following spoke in favor of the request:

Glenn Price, 400 W market Street, Louisville, KY 40202
Mimi Sweets, 455 S 4th Street, Louisville, KY 40202
Alice Gunnison (sp), 7849 Wolf Pen Branch Road, Prospect, KY 40059

Summary of testimony of those in favor:

01:37:51 Glenn Price appeared before the Board regarding cases 16CUP1027 and 16CUP1028 and requested to continue these cases to the October 27, 2016 Board of Zoning Adjustment meeting.

01:40:00 Meme Sweets stated she is fine with continuing the meeting.

01:40:20 Alice Gunnison stated she is also fine with continuing the meeting.

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PUBLIC HEARING

CASE NUMBER 16CUP1027

01:40:34 On a motion by Board Member Bergmann, seconded by Board Member Tharp, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1027, does hereby **CONTINUE** the case to the October 17, 2016 Board of Zoning Adjustment meeting for the purpose of

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, Turner, Allendorf, and Tharp

Absent: Fishman

Abstain: None

No: None

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PUBLIC HEARING

CASE NUMBER 16CUP1028

Project Name:	Medical Office Buildings
Location:	4915 Norton Healthcare Boulevard
Owners:	McMahan Holdings, LLC
Applicant:	McMahan Holdings, LLC
Representative(s):	Chris Brown, Glenn Price
Project Area/Size:	8.90 acres
Existing Zoning District:	C-1, C-2, Commercial
Existing Form District:	RC, Regional Center
Jurisdiction:	Louisville Metro
Council District:	16 – Kelly Downard
Case Manager:	Jon Crumbie, Planning & Design Coordinator

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

NOTE: Cases 16CUP1027 and 16CUP1028 were heard together, out of order, as the second item under Public Hearing. The Board voted on these cases simultaneously.

The following spoke in favor of the request:

Glenn Price, 400 W market Street, Louisville, KY 40202
Mimi Sweets (sp), 455 S 4th Street, Louisville, KY 40202
Alice Gunnison (sp), 7849 Wolf Pen Branch Road, Prospect, KY 40059

Summary of testimony of those in favor:

01:37:51 Glenn Price appeared before the Board regarding cases 16CUP1027 and 16CUP1028 and requested to continue these cases to the October 27, 2016 Board of Zoning Adjustment meeting.

01:40:00 Mimi Sweets stated she is fine with continuing the meeting.

01:40:20 Alice Gunnison stated she is also fine with continuing the meeting.

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CASE NUMBER 16CUP1028

01:40:34 On a motion by Board Member Bergmann, seconded by Board Member Tharp, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1028, does hereby **CONTINUE** the case to the October 17, 2016 Board of Zoning Adjustment meeting for the purpose of

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, Turner, Allendorf, and Tharp

Absent: Fishman

Abstain: None

No: None

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PUBLIC HEARING

CASE NUMBER 16APPEAL1008

Project Name:	Nonconformance
Location:	2747 South Seventh Street Road
Owner:	Gary & Mary Ruark
Representative:	William B. Bardenwerper
Size:	0.29 acres
Existing Zoning District:	R-7 & R-5
Existing Form District:	Traditional Neighborhood
Jurisdiction:	Louisville Metro
Council District:	6 –David James
Case Manager:	Steve Hendrix, Planning Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

04:20:34 Steve Hendrix presented the case and stated that a Notice of Refusal was received because staff could not approve to establish nonconforming rights and to change from one nonconforming use to another (see Staff Report and recording for detailed presentation).

The following spoke in favor of the appeal:

Nick Pregliasco, 1000 N Hurstbourne Pkwy., Louisville, KY 40223
Gary S. Ruark, 9211 Wooddale Drive, Louisville, KY 40272
Mary E. Ruark, 5216 Rollingwood Trail, Louisville, KY 40214
Paula Ruark, 9211 Wooddale Drive, Louisville, KY 40272
Casey Krill, 600 W Main Street, Suite 500, Louisville, KY 40202

Summary of testimony of those in favor:

04:26:11 Nick Pregliasco spoke on behalf of the appellant and showed a presentation. He stated that the intent of this request is to lease the front of the

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CASE NUMBER 16APPEAL1008

subject property to a beauty salon. The building used to house a heating and cooling shop, but the shop now resides exclusively in the back of the property. The second story of the building is made up of residential apartments.

04:36:43 Gary Ruark came to the podium and responded to questions from Mr. Pregliasco and the Board. He stated that the building was originally built to house a heating and cooling business. He has resided there since 1956, and there are five apartments in the second floor. There is a separate electric meter for each apartment and for the first floor. He confirmed he understands that once he is granted a less intense use, he cannot return to a more intense use.

04:43:32 Mary Ruark stated she has lived in the second floor of the building since 1956.

04:45:21 In response to the Board, Mr. Ruark stated that there is a small office in both the front and back portions of the building as well as restrooms.

04:47:23 Paula Ruark testified that the property has always housed a business on the first floor and that the property has never been vacant.

04:48:57 Casey Krill spoke on behalf of Arness Middleton, owner of the proposed beauty shop. The shop will operate with three chairs, a lobby, and a washing area, and the dimensions will be 32 ft. by 37 ft. Neither Mr. Middleton nor the Ruarks were aware of the zoning issues when he contracted to open the shop. He has personally funded the renovations that have already taken place, at nearly \$10,000.

04:51:53 Mr. Hendrix stated there is no rebuttal at this time.

04:51:56 Deliberation

04:57:49 On a motion by Vice Chair Jarboe, seconded by Board Member Bergmann, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16APPEAL1008, does hereby **APPROVE** the appeal of a Notice of Refusal from Planning & Design concerning the change of 1,184 square ft. from one nonconforming use (heating & air conditioning shop) to another nonconforming use (beauty salon) in an R-7 zoning district, based on the fact

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that the staff report, affidavits, and testimony of witnesses have determined that the nonconforming use of a heating and air conditioning shop has not been abandoned at this location and the beauty salon is less onerous than the original nonconforming use.

The vote was as follows:

Yes: Jarboe, Bergmann, Tharp, Turner, and Allendorf

Absent: Fishman

Abstain: Howard

No: None

04:59:53 On a motion by Vice Chair Jarboe, seconded by Board Member Bergmann, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby acknowledge that the Notice of Refusal issued by Planning and Design Services was **PROPER** at the time based on the fact that staff cannot approve a change in nonconforming use.

The vote was as follows:

Yes: Jarboe, Bergmann, Tharp, Turner, and Allendorf

Absent: Fishman

Abstain: Howard

No: None

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PUBLIC HEARING

CASE NUMBER 16APPEAL1009

Project Name:	Nonconformance Claim
Location:	14009 Dixie Highway
Owner:	Kenneth L. Hagan
Applicant:	SteelHorse Package Liquor & Saloon
Representative:	Kenneth L. Hagan
Size:	0.35 acres
Existing Zoning District:	C-1
Existing Form District:	Suburban Marketplace Corridor
Jurisdiction:	Louisville Metro
Council District:	14 – Cindi Fowler
Case Manager:	Steve Hendrix, Planning Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

05:01:46 Steve Hendrix presented the case and stated that this is an appeal of a Uniform Citation issued by the Louisville metro Alcoholic Beverage Control concerning the nonconforming rights for the consumption of beer inside and outside of a package store in a C-1 district. The outdoor alcohol consumption takes place under a canopied area on the southeast corner of the property as well as a back porch area on the rear side of the building. The applicant purchased the property in 2005 and believed that alcohol consumption was allowed indoors and outdoors.

The following spoke in favor of the appeal:

Kenneth Hagan, 9806 Highcrest Ave., Louisville, KY 40272
Ronnie Dunlap, Louisville, KY 40272

Summary of testimony of those in favor:

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October 3, 2016

PUBLIC HEARING

CASE NUMBER 16APPEAL1009

05:11:28 Kenneth Hagan, owner of the subject property, stated that he did not receive notice of a change in the alcohol consumption law back in 2013. He was told that this was the proper channel to obtain consent for outdoor alcohol consumption. He also explained where on the property the consumption would take place and that consumption would only consist of malt beverages.

05:15:14 Ronnie Dunlap, a long-time customer, testified that he bought the property in 1991 and owned it until 2005. When he purchased the property, the outdoor consumption was “grandfathered in.”

05:20:34 Mr. Hendrix stated there is no rebuttal at this time.

05:20:40 Deliberation

05:21:24 On a motion by Vice Chair Jarboe, seconded by Board Member Howard, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16APPEAL1009, does hereby **APPROVE** the appeal of a Uniform Citation issued by the Louisville Metro Alcoholic Beverage Control concerning nonconforming rights for the consumption of beer inside and outside of a package store, noting that nonconforming rights do exist for the inside and outside consumption of beer and that the outside consumption of beer is limited to the seating area in the rear of the store and the canopied section and picnic tables of the rear portion of the property, based on the staff report and testimony heard today establishing that no evidence was provided of abandonment of the nonconforming use as defined.

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, Tharp, Turner, and Allendorf

Absent: Fishman

Abstain: None

No: None

05:23:56 On a motion by Vice Chair Jarboe, seconded by Board Member Howard, the following resolution was adopted:

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CASE NUMBER 16APPEAL1009

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby acknowledge that the Uniform Citation issued by the Louisville Metro Alcoholic Beverage Control was **PROPER** at the time based on the fact that only this Board can confirm nonconforming rights.

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, Tharp, Turner, and Allendorf

Absent: Fishman

Abstain: None

No: None

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PUBLIC HEARING

CASE NUMBER 16APPEAL1004

Project Name:	Nonconformance
Location:	6908 Southside Drive
Owner:	Bivin Property, LLC, by Patricia Wuest
Applicant:	J. Buckley Enterprise, Inc. by Shane Keith
Representative:	Nickolas R. Pregliasco
Size:	0.07 acres
Existing Zoning District:	C-1
Existing Form District:	Traditional Neighborhood
Jurisdiction:	Louisville Metro
Council District:	21 – Dan Johnson
Case Manager:	Steve Hendrix, Planning Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

NOTE: Board Member Tharp left at approximately 3:15 p.m.

Agency Testimony:

05:25:57 Steve Hendrix presented the case and stated that this is an appeal to establish nonconforming use rights for the indoor consumption of beer within a C-1 zoning district. There has been no opposition to the appeal (see Staff Report and recording for detailed presentation).

The following spoke in favor of the appeal:

Nick Pregliasco, 1000 N Hurstbourne Pkwy., Louisville, KY 40223
Shane Keith, 8418 Aberdeen Lane, Charlestown, IN 47111
Donald Richards, 167 Cemetery Road, Louisville, KY 40033
Timothy Probus, 603 S Main Street, Muldraugh, KY 40155
Adam Alvey, 412 Northgate Road, Fairdale, KY 40118
Jeffrey T Marquess, 7907 Candleglow Lane, Louisville, KY 40118

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Summary of testimony of those in favor:

05:31:18 Nick Pregliasco spoke on behalf of the appellant. This case is for indoor alcohol consumption only (see Staff Report and recording for detailed presentation).

05:38:50 Shane Keith responded to questions from Mr. Pregliasco. He has managed the liquor store for the last four years, during which malt beverage consumption has taken place inside the building. He stated that the bar area shown in the presentation is the only place in the building where alcohol is consumed, and alcohol consumption is not permitted outside.

05:41:01 Donald Richards stated that he purchased the store in 1975 and owned it for approximately 30 years. He testified that malt beverages were consumed at the location before he purchased it and while he owned it.

05:42:47 Timothy Probus stated that he has been a longtime customer of the liquor store has been consuming alcohol inside the building since he was 21 years old.

05:43:24 Jeffrey Marquess stated that he has been a customer of the liquor store since the 1980s and he has also consumed alcohol inside the building.

05:44:10 Adam Alvey is another longtime customer who testified that alcohol has been consumed inside the building since the 1980s. He feels that it is a good place for people to socialize.

05:49:10 Mr. Hendrix stated there is no rebuttal at this time.

05:49:57 Deliberation

05:51:05 On a motion by Vice Chair Jarboe, seconded by Board Member Howard, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16APPEAL1004, does hereby **APPROVE** the appeal to establish nonconforming use rights for the indoor consumption of beer within a C-1 zoning district, based on the affidavits and the appellant's testimony heard today, noting

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that that malt beverage consumption will be confined to the inside of the building, and also noting that the Warning Notice issued by the Commonwealth of Kentucky Alcoholic Beverage Control was **PROPER** based on the fact that only this Board can confirm nonconforming rights.

The vote was as follows:

Yes: Jarboe, Howard, Bergmann, Turner, and Allendorf

Absent: Fishman and Tharp

Abstain: None

No: None

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CASE NUMBER 16APPEAL1007

Project Name:	Nonconforming Rights
Location:	613 Country Club Road
Owner:	Erwin and Teresa Davis
Applicant:	Davis Electronics Inc.
Representative:	Cliff Ashburner
Size:	0.21 acres
Existing Zoning District:	R-5
Existing Form District:	Neighborhood
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
Case Manager:	Steve Hendrix, Planning Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

05:53:03 Steve Hendrix presented the case and stated that this is an appeal of a decision issued by Planning & Design Services concerning nonconforming rights (see Staff Report and recording for detailed presentation).

The following spoke in opposition of the appeal:
Deloris Collins, 2904 Lindsay Ave., Louisville, KY 40206

Summary of testimony of those in opposition:

NOTE: Chair Allendorf permitted witness testimony prior to the appellant's testimony.

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06:00:03 Deloris Collins, President of Clifton Heights Community Council, stated that she has lived near the subject property for 55 years, and she has never seen a contractor shop at that address. There have been periods of inactivity/vacancy over the years, and she has no objections to an office operating on the property. In response to cross examination by Mr. Ashburner, Ms. Collins stated that she recalls Davis Electronics being located on this property.

The following spoke in favor of the appeal:

Clifford Ashburner, 101 S 5th Street, Suite 2500, Louisville, KY 40202
Gar Davis, 4801 River Road, Louisville, KY 40222

Summary of testimony of those in favor:

06:05:21 Clifford Ashburner presented the case on behalf of the appellant. The question before the Board is to decide if the nonconforming use should be limited to office use, as staff recommended, or whether it should be expanded to contractor shops or the other types of businesses mentioned. He feels the evidence will support that the building was used for a contractor shop, not just for office use (see recording for detailed presentation).

06:14:23 Gar Davis, owner of the subject property, stated that in 1981 he and his wife rented the property from the previous owner for approximately two years and started Davis Electronics. When the owner passed away, they purchased the property from his family. The business began to grow, and in 1983, they appeared before the Board and sought permission to put in a mobile office trailer behind the building (which is still on the property). They received a certificate from the City of Louisville for the trailer and nonconforming "grandfathered" C-1 zoning for the entire property, but they no longer have a copy of this certificate. He said this building has always been used commercially and has never been a residence.

06:21:25 In response to Mr. Ashburner, Mr. Davis described the kind of work that took place at the subject property. He stated that they sold, installed, and repaired commercial two-way radios. When he constructed a new building at another location, the front section of the subject building was leased while the remaining portion was still utilized by Davis Electronics.

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06:32:10 Mr. Ashburner informed the Board of the types of listings that are allowed with C-1 use and reviewed evidence that he feels shows that the appellant has nonconforming rights.

Rebuttal:

06:57:49 Mr. Hendrix stated that he would support the decision to grant nonconforming use of retail sales, office space, and electronic sales and service based on the evidence provided today by the appellant.

06:59:37 On a motion by Vice Chair Jarboe, seconded by Board Member Howard, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16APPEAL1007, does hereby **APPROVE** the appeal of a decision issued by Planning & Design Services concerning nonconforming rights, noting that the appellant has established credible evidence that the nonconforming rights have not been abandoned, and that the nonconforming use rights exist for commercial uses confined to office space, retail sales, and electronic sales and service, and further noting that the determination by staff was **PROPER** at the time based upon a lack of a determination by this Board.

The vote was as follows:

Yes: Jarboe, Howard, Turner, and Allendorf

Absent: Fishman and Tharp

Abstain: None

No: Bergmann

07:01:45 Meeting was recessed.

07:06:00 Meeting was reconvened.

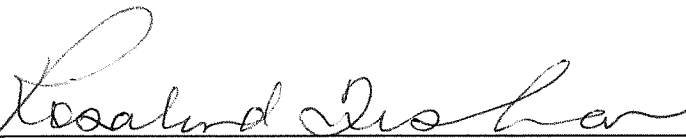
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ADJOURNMENT

The meeting adjourned at approximately 5:45 p.m.



Chair



Secretary