

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

October 2, 2017

A meeting of the Louisville Metro Board of Zoning Adjustment was held on October 2, 2017 at 8:30 a.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Members Present:

Mike Allendorf, Chair
Betty Jarboe, Vice Chair
Rosalind Fishman, Secretary
Lula Howard
Lester Turner (left at approximately 11:30 a.m.)
Dwight Young

Staff Members Present:

Emily Liu, Planning & Design Director
Joe Haberman, Planning & Design Manager
Steve Hendrix, Planning & Design Supervisor
Brian Mabry, Planning & Design Supervisor
Jon Crumbie, Planning & Design Coordinator
Beth Jones, Planner II
Dante St. Germain, Planner I
John Carroll, Legal Counsel
Sue Reid, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

**SEPTEMBER 11, 2017 BOARD OF ZONING ADJUSTMENT MEETING
MINUTES**

00:05:40 On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on September 11, 2017.

The vote was as follows:

Yes: Members Fishman, Turner, Young, Vice Chair Jarboe, and Chair Allendorf

Absent: Member Howard

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BUSINESS SESSION

CASE NUMBER 17VARIANCE1058

Request:	Variance to allow a structure to encroach into the required side yard setback
Project Name:	521 E. St. Catherine Street Renovation
Location:	521 E. St. Catherine Street
Owner:	Douglas Sharp
Applicant:	Douglas Sharp
Representative:	Douglas Sharp
Jurisdiction:	Louisville Metro
Council District:	4 – Barbara Sexton Smith
Case Manager:	Dante St. Germain, Planner I

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

00:07:16 Dante St. Germain presented the case and showed the site plan. Ms. St. Germain responded to questions from the Board Members (see recording for detailed presentation).

00:09:46 On a motion by Member Fishman, 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 renovated section will be constructed to comply with all building codes, including fire codes, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the renovated section will be

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constructed on the footprint of the existing structure, which is part of the essential character of the neighborhood, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed renovation will be constructed according to building codes, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed renovation will replace the existing room on the existing footprint, with no change proposed to the footprint of the building, 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 as the renovated section of the house is proposed to be located on the same footprint as the existing, unsound section of the house to be replaced, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring the applicant to move the renovated section to the side of the existing footprint, a costly change to the house's design, 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 applicant is requesting the variance and has not begun construction, and

WHEREAS, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17VARIANCE1058 does hereby **APPROVE** Variance from Land Development Code Section 5.1.10.F to allow a structure to encroach into the required side yard setback (**Requirement 2 ft., Request 0 ft., Variance 2 ft.**), based upon the presentation, the Staff Report, and the applicant's justification.

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The vote was as follows:

Yes: Members Fishman, Turner, Young, Vice Chair Jarboe, and Chair Allendorf

Absent: Member Howard

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BUSINESS SESSION

CASE NUMBER 17CUP1065

Request:	Modified Conditional Use Permit to allow an awning over a portion of the outdoor alcohol sales and consumption area in a C-1 zoning district
Project Name:	Tandoori Fusion
Location:	4600 Chamberlain Lane
Owner:	Purna Veer
Applicant:	Purna Veer
Representative:	Charles Podgursky
Jurisdiction:	Louisville Metro
Council District:	17 – Glen Stuckel
Case Manager:	Jon E. Crumbie, Planning and Design Coordinator

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

00:11:56 Jon Crumbie presented the case and showed the site plan. Mr. Crumbie responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in favor of the request:

Charles Podgursky, 7321 New Lagrange Road, Louisville, KY 40222

Summary of testimony of those in favor:

00:14:36 Charles Podgursky spoke in favor of the request and explained the operation of the awning (see recording for detailed presentation).

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00:16:09 On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal meets all applicable policies of the Comprehensive Plan. Additional signage and lighting will not be added. A landscape plan for the entire development has been approved and implemented, and

WHEREAS, the Board further finds that the subject site is located in a commercial area that has a mix of business services, retail, restaurants, medical office, and is a focal point for several surrounding neighborhoods. All the uses in the area have similar, scale, intensity, traffic, noise, and lighting, and

WHEREAS, the Board further finds that the proposal has been reviewed by Transportation Planning and MSD and both have approved the plan. The Worthington Fire Protection District reviewed the proposal and has no concerns, and

WHEREAS, the Board further finds that:

Outdoor alcohol sales and consumption for a restaurant may be permitted in the C-1 zoning district upon the granting of conditional use permit and compliance with the listed requirements; there are 8 requirements and 5 items will be met which are items A., C., E., F., and G. Items B., and D. do not apply.

- A. All outdoor areas for the sale and consumption of alcohol must have designated boundaries.
- B. Outdoor dining areas within the public right-of-way must receive approval from the agency responsible for transportation engineering and shall be designed in accordance with agency standards. **DOES NOT APPLY**
- C. Outdoor dining areas adjacent to the public right-of-way shall contain a physical barrier that is at least three feet in height. The barrier should be designed to permit existing legal access from building to the adjacent public right-of-way.
- D. Outdoor dining areas that include the sale and consumption of alcohol within 50 feet of a residentially zoned or used property shall provide a six foot continuous screen as part of the designated boundary for the areas of the outdoor area within 50 feet of residentially used or zoned property. The

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continuous screen shall be in conformance with the Chapter 10, Part 4 (Implementation Standards). **DOES NOT APPLY**

- E. This conditional use permit shall be limited to restaurant uses in the C-1 that hold the following types of ABC licenses:
1. Restaurant liquor and wine license by the drink for 100 plus seats
 2. Restaurant wine license by the drink for restaurants with seating for 100 and receives at least 70 percent gross receipts from food sales
- F. The use of outdoor dining areas for the sale and consumption of alcohol shall cease by 1 A.M.
- G. The entertainment activity shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).
- H. The Board may require additional and more restrictive requirements than those listed above based on the conditions of the specific location and the characteristics of the specific restaurant, and

WHEREAS, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17CUP1065 does hereby **APPROVE** Modification of an approved Conditional Use Permit to allow the addition of awning over a portion of the outdoor dining area, based upon the Staff Report, the applicant's justification, the letter of approval from the Neighborhood Association and the Fire Department, and **SUBJECT** to the following Conditions of Approval:

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 outdoor alcohol sales and consumption without further review and approval by the Board.

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The vote was as follows:

Yes: Members Fishman, Turner, Young, Vice Chair Jarboe, and Chair Allendorf

Absent: Member Howard

NOTE: Member Howard arrived at approximately 8:46 a.m., after the voting on this case was recorded.

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PUBLIC HEARING

CASE NUMBER 17VARIANCE1046

Request:	Variance to allow a structure to encroach into the required street side yard setback
Project Name:	11101 Chapel Hill Road Addition
Location:	11101 Chapel Hill Road
Owner:	Bruce & Janet Ramsey
Applicant:	Steven Neyer
Representative:	Steven Neyer
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
Case Manager:	Dante St. Germain, Planner I

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

00:21:36 Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Steven Neyer, 8304 Pennsylvania Run Road, Louisville, KY 40228

Summary of testimony of those in favor:

00:25:14 Steven Neyer spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

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CASE NUMBER 17VARIANCE1046

00:29:23 Board Members' deliberation

00:29:46 On a motion by Vice Chair Jarboe, seconded by 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 not obscure sight lines at the corner, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as there are no other structures on this block face of David Way, with the result that the encroachment will not be readily obvious, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed addition will not encroach into the sight triangle at the corner, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the addition is needed in order to accommodate the applicant's family, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the property is rectangular and almost identical to the other lots at the same intersection, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by preventing the applicant from adding onto the existing residence, 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 applicant is requesting the variance and has not begun construction, and

WHEREAS, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

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CASE NUMBER 17VARIANCE1046

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17VARIANCE1046 does hereby **APPROVE** Variance from Land Development Code Table 5.3.1 to allow a structure to encroach into the required street side yard setback (**Requirement 30 ft., Request 24 ft., Variance 6 ft.**), based upon the Staff Report, the applicant's justification statement and the site plan.

The vote was as follows:

Yes: Members Fishman, Turner, Howard, Young, Vice Chair Jarboe and Chair Allendorf

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PUBLIC HEARING

CASE NUMBER 17VARIANCE1049

Request:	Variance to allow an accessory structure to encroach into the required street side yard setback
Project Name:	11700 Wetherby Avenue Garage
Location:	11700 Wetherby Avenue
Owner:	Jeffrey & Michelle Gamwell
Applicant:	Charlie Williams
Representative:	Charlie Williams
Jurisdiction:	City of Middletown
Council District:	19 – Julie Denton
Case Manager:	Dante St. Germain, Planner I

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

00:31:44 Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

No one spoke.

The following spoke in opposition of the request:

No one spoke.

00:38:46 Board Members' deliberation

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PUBLIC HEARING

CASE NUMBER 17VARIANCE1049

00:39:38 On a motion by Vice Chair Jarboe, seconded by 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 is relatively small and is not likely to adversely impact sight lines down the block face, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as there are there are other accessory structures with similar setbacks farther down Bliss Avenue, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed garage will not obstruct sight lines at the corner, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the encroachment is relatively small and will allow the applicant to minimize the amount of green space to be converted to impervious surface, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the property is rectangular and has no known topographical constraints, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the addition would not be able to be built as proposed limiting usable rear yard for the owner, 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 applicant is requesting the variance and has not begun construction, and

WHEREAS, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

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PUBLIC HEARING

CASE NUMBER 17VARIANCE1049

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17VARIANCE1049 does hereby **APPROVE** Variance from City of Middletown Land Development Code Table 5.3.1 to allow an accessory structure to encroach into the required street side yard setback (**Requirement 25 ft., Request 22.5 ft., Variance 2.5 ft.**), based upon the Staff Report, the applicant's justification statement, the site plan and elevations.

The vote was as follows:

Yes: Members Fishman, Turner, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

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PUBLIC HEARING

CASE NUMBER 17VARIANCE1057

Request:	Variance to allow a structure to encroach into the required side yard setback
Project Name:	1133 Reutlinger Avenue Residence
Location:	1133 Reutlinger Avenue
Owner:	David Beach
Applicant:	Clifford Ashburner
Representative:	Clifford Ashburner
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Dante St. Germain, Planner I

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

00:42:25 Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Cliff Ashburner, 101 S. Fifth Street, Suite 2500, Louisville, KY 40202

Summary of testimony of those in favor:

00:46:28 Cliff Ashburner spoke in favor of the request and showed a Powerpoint presentation. Mr. Ashburner stated the request has been amended to delete the Variance Request for the left side of the property. Therefore, the Variance Request is only for the right side of the property. Mr. Ashburner responded to questions from the Board Members (see recording for detailed presentation).

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CASE NUMBER 17VARIANCE1057

The following spoke in opposition of the request:

Jean Acton, P.O. Box 22605, Louisville, KY 40252

Anne Acton, P.O. Box 22605, Louisville, KY 40252

Summary of testimony of those in opposition:

00:56:25 Jean Acton spoke in opposition of the request and responded to questions from the Board Members (see recording for detailed presentation).

01:05:00 Anne Acton spoke in opposition of the request and responded to questions from the Board Members (see recording for detailed presentation).

REBUTTAL:

01:06:59 Cliff Ashburner spoke in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

01:13:17 Board Members' deliberation

01:16:51 On a motion by Member Howard, seconded by Vice Chair Jarboe, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variances will not adversely affect the public health, safety or welfare as the building must be constructed according to all applicable building codes, including fire codes, and

WHEREAS, the Board further finds that the requested variances will not alter the essential character of the general vicinity as the neighborhood is characterized by narrow homes with variable separations between the buildings, including buildings that are constructed very close together, and

WHEREAS, the Board further finds that the requested variances will not cause a hazard or nuisance to the public as the proposed residence will be mid-block and will not obstruct any sight lines or interfere with pedestrian or vehicular traffic, and

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WHEREAS, the Board further finds that the requested variances will not allow an unreasonable circumvention of the zoning regulations as the lot is unusually narrow, constraining the width of the proposed home more than is typical, and

WHEREAS, the Board further finds that the requested variances do not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as nearby lots vary in width, with some as narrow as 17 feet wide, and residences were constructed on those very narrow lots, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by reducing the square footage of the proposed house, 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 applicant is requesting the variance and has not begun construction, and

WHEREAS, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17VARIANCE1057 does hereby **APPROVE** Variance from Land Development Code Section 5.1.10.F to allow a structure to encroach into the required side yard **(RIGHT SIDE ONLY)** setback **(Requirement 2.4 ft., Request 1 ft., Variance 1.4 ft.)**, based upon the amended Staff Report, the elevations showing the Variance Request is for the RIGHT SIDE ONLY, and that the applicant will amend the site plan showing that the Variance on the left side will be withdrawn, and the applicant's justification.

The vote was as follows:

Yes: Members Fishman, Turner, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

01:20:41 Meeting was recessed.

01:21:00 Meeting was reconvened.

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PUBLIC HEARING

CASE NUMBER 17VARIANCE1060

Request:	Variance to allow a structure to encroach into the required side yard setback
Project Name:	4006 Leland Avenue Garage
Location:	4006 Leland Avenue
Owner:	Deborah Walker
Applicant:	Deborah Walker
Representative:	Deborah Walker
Jurisdiction:	City of St. Matthews
Council District:	9 – Bill Hollander
Case Manager:	Dante St. Germain, Planner I

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

01:21:29 Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Jan Helson, 304 Mockingbird Valley Road, Louisville, KY 40207
Deborah Walker, 4006 Leland Road, Louisville, KY 40207

Summary of testimony of those in favor:

01:26:09 Jan Helson spoke in favor of the request. Ms. Helson stated the addition has already been approved and is under construction, but the rebuilding of the garage was contingent upon getting the variance. Ms. Helson responded to questions from the Board Members (see recording for detailed presentation).

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CASE NUMBER 17VARIANCE1060

NOTE: Deborah Walker was sworn in, but did not speak due to having laryngitis.

The following spoke in opposition of the request:

No one spoke.

01:28:33 Board Members' deliberation

01:29:23 On a motion by Vice Chair Jarboe, seconded by 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 setback of the new garage will be the same as the setback of the existing garage, which has caused no known adverse effects, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the garage has been in its current position for many years and other properties in the neighborhood have garages with similar setbacks, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed garage will have the same setback as the existing garage, which has caused no known hazard or nuisance, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the current setback is an existing condition which is proposed to be maintained, 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 as a garage exists with the proposed setback already, although the proposed garage is to be a new replacement when the existing garage is removed, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by

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requiring the applicant to relocate part of the driveway leading to the garage after the garage is shifted to the side, 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 applicant is requesting the variance and has not begun construction, and

WHEREAS, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17VARIANCE1060 does hereby **APPROVE** Variance from St. Matthews Development Code Section 4.6.C.2.b to allow a structure to encroach into the required side yard setback (**Requirement 5 ft., Request 2 ft., Variance 3 ft.**), based upon the Staff Report, the applicant's justification and the site plan.

The vote was as follows:

Yes: Members Fishman, Turner, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

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CASE NUMBER 17DEVPLAN1084

Request:	Variances and waivers from the Land Development Code to allow additions to an existing structure
Project Name:	Cat2B 3122 Dixie
Location:	3122 Dixie Highway.
Owner:	Ahmed Albakri
Applicant:	Bill Schroll – Schroll Land Surveying LLC.
Representative:	Bill Schroll – Schroll Land Surveying LLC.
Jurisdiction:	City of Shively
Council District:	4 – Barbara Sexton Smith
Case Manager:	Ross Allen, Planner I

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

01:32:00 Steve Hendrix presented the case on behalf of the Case Manager, Ross Allen, and showed a Powerpoint presentation. Mr. Hendrix responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Bill Schroll, 5450 Southview Drive, Louisville, KY 40214
Abdulrahman Hathnawi, 3122 Dixie Highway, Louisville, KY 40216

Summary of testimony of those in favor:

01:44:15 Bill Schroll and Abdulrahman Hathnawi spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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01:50:28 Mr. Hathnawi responded to questions from the Board Members (see recording for detailed presentation).

01:50:47 Mr. Schroll responded to questions from the Board Members (see recording for detailed presentation).

01:55:33 Mr. Hathnawi and Mr. Schroll responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

02:05:46 Board Members' deliberation

02:08:38 On a motion by Vice Chair Jarboe, seconded by Member Howard, the following resolution was adopted:

Variance #1 from the LDC (City of Shively) Section 5.5.1.A.2 to allow the proposed addition to be 6 feet 2 inches beyond the Gillette Avenue Setback:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since sight distance concerns are not affected, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity because there is existing commercial land use on the subject property, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since sight distance along Gillette Avenue will remain basically the same, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the Traditional Marketplace Corridor Form District design elements require the buildings to be placed zero to five feet from the right of way, the variance allows the applicant to modify the existing building at its present location, and

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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 location of the existing convenience store, being on a corner and within a Traditional Marketplace Corridor Form District, 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 design of the proposed modifications might not be feasible with the existing convenience store location, 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 regulations, since the convenience store is existing and the applicant is requesting modifications; and

Variance #2 from the LDC (City of Shively) Section 5.5.1.A.2 to allow the existing building and proposals to be 84 feet beyond the Dixie Highway setback:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since sight distance concerns will not change, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity, since the existing convenience store has been at this location for approximately 10 years, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since parking access will remain the same along Dixie Highway, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the majority of commercial uses along Dixie Highway have similar setbacks, 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 location of the existing convenience store and being on a corner lot within a Traditional Marketplace Corridor Form District, and

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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 design of the modifications might not be feasible with the existing convenience store location, 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 regulations, since modifications are proposed for the existing convenience store; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17DEVPLAN1084 does hereby **APPROVE** Variance #1 from the LDC (City of Shively) Section 5.5.1.A.2 to allow the proposed addition to be 6 feet 2 inches beyond the Gillette Avenue setback (**Requirement 5 feet, Request 11 feet, 2 inches, Variance 6 feet 2 inches**), and Variance #2 from the LDC (City of Shively) Section 5.5.1.A.2 to allow the existing building and proposals to be 84 feet beyond the Dixie Highway setback (**Requirement 5 feet, Request 89 feet, Variance 84 feet**), based upon the Staff Report, the site plan and the rationale for Variance #2 is reasonable in that the two buildings proposed will be at the same setback as the existing building.

The vote was as follows:

Yes: Members Fishman, Turner, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

02:10:44 On a motion by Vice Chair Jarboe, seconded by Member Howard, the following resolution was adopted:

Waiver #1 from the LDC (City of Shively) Section 5.5.1.A.3.a to allow the parking to be permitted in the front (east) of the proposed additions to the existing building:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners, since there is a vacant parcel to the north, Gillette Avenue will provide a buffer from the apartments to the south and Dixie Highway will provide a separation from the car rental business and apartment house to the east, and

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WHEREAS, the Board further finds that Guideline 3, Policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearly existing development and with the pattern of development within the form district. The existing structure and additions will be in character with the surrounding areas based upon setbacks of adjacent properties in the general vicinity, 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 parking and the proposed parking are basically the same in design, with the elimination of parking along the Gillette Avenue side, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, due to the location of the existing convenience store and being able to make modifications; and

WAIVER #2 from the LDC (City of Shively) Section 5.5.1.A.3.a to provide a 50 foot long, 3 foot tall masonry wall along Gillette Avenue and Dixie Highway, instead of 89 feet along Gillette Avenue and 125 feet along Dixie Highway:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners, since most of the apartment units across Gillette Avenue will be facing the side of the proposed laundromat. Parking will also be more than 100 feet from the apartment house that is across Dixie Highway that has a C-1 zoning classification, and

WHEREAS, the Board further finds that the waiver will not violate specific guidelines of Cornerstone 2020, since Guideline 2, Policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, pedestrian, environmental and aesthetic considerations. The wall establishes the corner, encloses most of the parking and at the same time balances safety and pedestrian considerations, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to provide some relief to the applicant, since a wall will extend from the corner 50 feet along Gillette Avenue and Dixie Highway, but at the same time defining that corner, and

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WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant due to cost factor; and

WAIVER #3 from the LDC (City of Shively) Section 5.8.1.B not to provide a sidewalk along Gillette Avenue for an approximate distance of 184 feet:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver does not violate the intent of the Land Development Code. The applicant intends to provide safe pedestrian access from the Dixie Highway to the entrance. During the field inspection it was noticed that extensive pavement exists along the south side of Gillette Avenue, opposite of the proposed development that would provide ample room for pedestrians, and

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. As noted above, pavement exists across the Gillette Avenue right of way for pedestrians, bicyclists, and transit users, and

WHEREAS, the Board further finds that the granting of the waiver will not have an impact on the adjacent property owners, since there is ample space for pedestrians on the south side of Gillette Avenue, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulations would create an unnecessary hardship for the applicant, with the additional cost of more concrete; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17DEVPLAN1084 does hereby **RECOMMEND APPROVAL** to the City of Shively Waiver #1 from the LDC (City of Shively) Section 5.5.1.A.3.a to allow the parking to be permitted in the front (east) of the proposed additions to the existing building, Waiver #2 from the LDC (City of Shively) Section 5.5.1.A.3.a to provide a 50 foot long, 3 foot tall masonry wall along Gillette Avenue and Dixie Highway, instead of 89 feet along Gillette Avenue and 125 feet along Dixie Highway, and Waiver #3 from the LDC (City of Shively) Section 5.8.1.B not to provide a

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sidewalk along Gillette Avenue for an approximate distance of 184 feet, based upon the applicant's testimony, the Staff Report, and the site plan.

The vote was as follows:

Yes: Members Fishman, Turner, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

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CASE NUMBER 17CUP1047

Request:	Conditional Use Permit to allow a short term rental of a dwelling unit in the TNZD
Project Name:	Short-Term Rental
Location:	323 W. St. Catherine
Owner:	Rivers Edge Two Story Limited Partnership
Applicant:	Rivers Edge Two Story Limited Partnership
Representative:	Rivers Edge Two Story Limited Partnership
Jurisdiction:	Louisville Metro
Council District:	6 – David James
Case Manager:	Beth Jones, AICP, Planner II

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

02:14:05 Beth Jones presented the case and showed a Powerpoint presentation. Ms. Jones responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Myrna and John Parsley, 211 Rivers Edge Way, Gahanna, OH 43230
Bettie Miesner, 3304 Brownsboro Vista Drive, Louisville, KY 40242

Summary of testimony of those in favor:

02:18:41 Myrna and John Parsley spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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02:25:42 Bettie Miesner spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

02:26:44 Myrna Parsley spoke in favor of the request (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

02:27:43 Board Members' deliberation

02:28:06 On a motion by Member Fishman, seconded by Vice Chair Jarboe, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with Comprehensive Plan policies, and

WHEREAS, the Board further finds that the existing structure is compatible with surrounding development. No exterior alterations or other development are proposed as part of this application, and

WHEREAS, the Board further finds that the subject property is served by existing public utilities and facilities. Existing public facilities are adequate to serve the proposed short term rental, and

WHEREAS, the Board further finds that:

A short term rental of dwelling unit that is not the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and a short term rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.

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- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. **According to the applicant, the dwelling unit has two bedrooms. As such, the dwelling unit can accommodate up to eight individuals.**
- D. The dwelling unit shall be a single-family residence, duplex or condominium. This provision shall not be waived or adjusted. **The dwelling unit is within a duplex building.**
- E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.
- F. Outdoor signage which identifies the short term rental is prohibited.
- G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. **The minimum parking requirement for a duplex is one space for each dwelling unit. There is an off-street parking area located to the east of the duplex building consisting of nine parking spaces. This includes one space assigned to the subject dwelling unit and two additional spaces open to use by any condominium resident or guest. In addition, there is on-street parking located along W. St. Catherine Street in front of the duplex building. The frontage of the structure on W. St. Catherine is approximately 65 feet, which can accommodate up to three vehicles.**
- H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.
- I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6; now, therefore be it

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CASE NUMBER 17CUP1047

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17CUP1047 does hereby **APPROVE** Conditional Use Permit to allow short term rental of a dwelling unit in the Traditional Neighborhood Zoning District (TNZD), based upon the Staff Report, the discussion, and **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental with Develop Louisville and with the Louisville Metro Revenue Commission. If the short term rental is not registered with Develop Louisville and with the Revenue Commission within 60 days of the approval of the minutes of this case, then the Conditional Use Permit shall be deemed null and void.
2. The short term rental and host shall meet all additional provisions set forth in the Louisville Metro Code of Ordinances.

The vote was as follows:

Yes: Members Fishman, Turner, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

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CASE NUMBER 17CUP1054

Request:	Conditional Use Permit for a cemetery/mausoleum
Project Name:	Louisville Memorial Gardens
Location:	11601 Ballardsville Road
Owner:	Saber Management Co
Applicant:	Renaissance Design Build, Inc.
Representative:	Renaissance Design Build, Inc.
Jurisdiction:	Louisville Metro
Council District:	16 – Scott Reed
Case Manager:	Beth Jones, AICP, Planner II

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

02:31:45 Beth Jones presented the case and showed a Powerpoint presentation. Ms. Jones responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Rita Augenstein, 2306 Edgin Court, Louisville, KY 40216

Summary of testimony of those in favor:

02:41:05 Rita Augenstein spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

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02:45:00 Board Members' deliberation

02:47:32 On a motion by Vice Chair Jarboe, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with the Comprehensive Plan, and

WHEREAS, the Board further finds that the proposal is compatible with surrounding single-family residential uses, and

WHEREAS, the Board further finds that the subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site, and

WHEREAS, the Board further finds that:

Cemeteries, Mausoleums, and Crematories may be allowed in any district upon the granting of a Conditional Use Permit and compliance with the following requirements:

- A. Fences - A fence, with a minimum height of 6 feet, shall be erected around the premises with openings only for ingress and egress to a public way. **The proposal does not include a fence. The applicant is requesting relief from this requirement under LDC 10.2.4.B., Exception 8 due to uncertainty about the precise location of existing gravesites, which might be disturbed by the installation of a fence.**
- B. Required Yards - No required yard shall be occupied by graves. There shall be a 30 foot space buffer between the property line and any building, structure, or gravesite. No gravesites shall be placed closer than 30 feet from any property line and at least 30 feet from the right-of-way line for existing and planned public streets. This shall not apply to roads designed for internal circulation within the cemetery, mausoleum or crematory property. **The applicant is requesting relief from these requirements under LDC 10.2.4.B., Exception 8, due to uncertainty about the precise location of existing gravesites, which might be located within the required yard. The applicant will honor the 30 ft. buffer requirement for all future site development and placement of gravesites, and will maintain the existing tree line along the**

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shared property line with residences at the west side of the site, as stated in the Conditions of Approval.

- C. All roads used solely for internal circulation shall have a minimum pavement width of 16 feet and a minimum shoulder width of 6 feet on each side of the pavement. Roads providing access to chapels or offices shall have minimum pavement width of 20 feet. **Existing site conditions meet this requirement;** now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17CUP1054 does hereby **APPROVE** Conditional Use Permit for a cemetery and mausoleum (LDC 4.2.13), based upon the Staff Report, the site plan, testimony of the applicant, and **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. All development shall be in accordance with the approved district development plan, including all notes thereon, and with all applicable sections of the Land Development Code (LDC). No further development shall occur on the site without prior review of and approval by the Board of Zoning Adjustment (BOZA).
2. The Conditional Use Permit shall be exercised as prescribed by KRS 100.237 within two years of BOZA approval. If not so exercised, the site shall not be used for a Cemetery or Mausoleum without further review of and approval by BOZA.
3. Landscaping on subject property shall comply with the following provisions:
 - a. All existing plantings along all property lines shall be maintained;
 - b. Any existing tree along a property line requiring removal due to safety concerns or to disease or death of the tree shall be replaced by a new tree within the immediate vicinity;
 - c. All future buildings, structures or gravesites shall be placed so as to avoid further removal of existing trees along property lines; and
 - d. No future building, structure or gravesite shall be placed within the required 30 foot buffer at property lines and at the right-of-way line for public streets.

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The vote was as follows:

**Yes: Members Fishman, Turner, Howard, Young, Vice Chair Jarboe, and
Chair Allendorf**

02:49:08 Meeting was recessed.

02:49:35 Meeting was reconvened.

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CASE NUMBER 17CUP1062

Request:	Conditional Use Permit to allow short term rentals of dwelling units not the primary residence of the host in an R-5A zone
Project Name:	Short-Term Rental
Location:	2021 Bonnycastle Avenue
Owner:	Glitter Bourbon Berries LLC
Applicant:	Glitter Bourbon Berries LLC
Representative:	Glitter Bourbon Berries LLC
Jurisdiction:	Louisville Metro
Council District:	8 – Brandon Coan
Case Manager:	Beth Jones, AICP, Planner II

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

02:50:30 Beth Jones presented the case and showed a Powerpoint presentation. Ms. Jones responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Anthony Raspberry, 2057 Douglass Blvd., Louisville, KY

Summary of testimony of those in favor:

02:54:11 Anthony Raspberry spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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The following spoke in opposition of the request:

No one spoke.

02:56:53 Board Members' deliberation

02:57:22 On a motion by Vice Chair Jarboe, seconded by Member Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is compatible with Comprehensive Plan policies, and

WHEREAS, the Board further finds that the proposed use is compatible with surrounding development. No exterior alterations to the existing structure or site are proposed, and

WHEREAS, the Board further finds that The subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site, and

WHEREAS, the Board further finds that:

A short term rental of dwelling unit that is not the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and a short term rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.
- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. **According to the applicant, the first floor unit has two bedrooms; LDC regulations permit up to**

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eight guests. The second floor unit has three bedrooms; LDC regulations permit up to ten guests.

- D. The dwelling unit shall be a single-family residence, duplex or condominium. This provision shall not be waived or adjusted. **The dwelling units are in a duplex.**
- E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.
- F. Outdoor signage which identifies the short term rental is prohibited.
- G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. **LDC regulations credit the property frontage of 31 ft. with one on-street parking space. Three additional off-street parking spaces are available on a parking pad off the rear alley.**
- H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.
- I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17CUP1062 does hereby **APPROVE** Conditional Use Permit to allow short term rentals of two dwelling units that are not the primary residence of the owner in an R-5A Multi-Family Residential Zone, based upon the Staff Report, the applicant's testimony and **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental with Develop Louisville and with the Louisville Metro Revenue Commission. If the short term rental is not

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registered with Develop Louisville and with the Revenue Commission within 60 days of the approval of the minutes of this case, then the Conditional Use Permit shall be deemed null and void.

2. The short term rental and host shall meet all additional provisions set forth in the Louisville Metro Code of Ordinances.

NOTE: Member Turner left at approximately 11:30 a.m.

The vote was as follows:

Yes: Members Fishman, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

Absent: Member Turner

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CASE NUMBER 17CUP1060

Request:	Conditional Use Permit to allow a short term rental of a dwelling unit in the TNZD
Project Name:	Short-Term Rental
Location:	1391 S. 2nd Street
Owner:	Bobby Simpson
Applicant:	Bobby Simpson
Representative:	Bobby Simpson
Jurisdiction:	Louisville Metro
Council District:	6 – David James
Case Manager:	Beth Jones, AICP, Planner II

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

02:59:46 Beth Jones presented the case and showed a Powerpoint presentation. Ms. Jones responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Bobby Simpson, 1391 S. 2nd Street, Louisville, KY

Summary of testimony of those in favor:

03:03:17 Bobby Simpson spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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03:06:07 Joe Haberman, Planning & Design Manager, responded to questions from the Board Members regarding a CUP on a property pending for sale (see recording for detailed presentation).

03:07:36 Bobby Simpson spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

03:09:37 Board Members' deliberation

03:15:35 Public Hearing was reopened to allow additional testimony from Mr. Simpson regarding registering the property with Develop Louisville and the Revenue Commission. Mr. Haberman and the Board Members discussed the process of registering the property. Chair Allendorf suggested Planning & Design Staff create some language to present to Metro Council regarding terminating a CUP upon sale of a property (see recording for detailed presentation).

03:24:30 On a motion by Vice Chair Jarboe, seconded by Member Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is compatible with Comprehensive Plan policies, and

WHEREAS, the Board further finds that the proposed use is compatible with surrounding development. No exterior alterations to the existing structure or site are proposed, and

WHEREAS, the Board further finds that the subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site, and

WHEREAS, the Board further finds that:

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A short term rental of dwelling unit that is not the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and a short term rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.
- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. **According to the applicant, the dwelling has two bedrooms; LDC regulations permit up to eight guests.**
- D. The dwelling unit shall be a single-family residence, duplex or condominium. This provision shall not be waived or adjusted. **The dwelling unit is a single-family residence.**
- E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.
- F. Outdoor signage which identifies the short term rental is prohibited.
- G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. **: LDC regulations credit the property frontage of approximately 23 ft. with one on-street parking space. Two additional off-street parking spaces are available in the garage, accessible via a rear alley.**
- H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.

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- I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17CUP1060 does hereby **APPROVE** Conditional Use Permit to allow short term rental of a dwelling unit in the TNZD, based upon the Staff Report, the applicant's testimony, and **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental with Develop Louisville and with the Louisville Metro Revenue Commission. If the short term rental is not registered with Develop Louisville and with the Revenue Commission within 60 days of the approval of the minutes of this case, then the Conditional Use Permit shall be deemed null and void.
2. The short term rental and host shall meet all additional provisions set forth in the Louisville Metro Code of Ordinances.

The vote was as follows:

Yes: Members Fishman, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

Absent: Member Turner

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CASE NUMBER 17APPEAL1003

Request:	Appeal of a Zoning Notice of Violation issued by Planning and Design Services finding that the short term rental is in violation of Section 4.2.63 of the Land Development Code
Project Name:	2211 Longest Ave. Appeal
Location:	2211 Longest Ave.
Owner:	Jocelyn Gonzalez
Applicant:	Christopher Payne
Representative:	Christopher Payne
Jurisdiction:	Louisville Metro
Council District:	8 – Brandon Coan
Case Manager:	Brian Mabry, Planning Supervisor

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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:

03:27:22 Joe Haberman presented the case on behalf of the Case Manager, Brian Mabry, and showed a Powerpoint presentation. Mr. Haberman stated the main decision the Board of Zoning Adjustment needs to make is whether or not the evidence the appellant presents is enough to overturn staff's decision that this is not the appellant's primary residence. Mr. Haberman stated the appellant is running some other short term rentals as well, so he has several addresses connected to him. Mr. Haberman stated we don't know how many short term rentals he's associated with, but at least two others he's come in for a Conditional Use Permit and made those applications. Mr. Haberman stated at least in those two instances the appellant made the statement that he does not live at those two. Mr. Haberman stated there are some properties that he is connected to in Jeffersonville as well, so there's a high degree of uncertainty as to where he claims primary residence. Mr. Haberman asked Mr. Mabry if he had anything to add, and Mr. Mabry stated he did not. Mr. Haberman responded to questions

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from the Board Members (see staff report and recording for detailed presentation).

03:44:07 Member Fishman asked for clarification as to whether the appellant has applied for a CUP for the address on Longest or the one on Hannah (see recording for detailed presentation).

03:44:17 Mr. Haberman stated he does not know the address of the other one, but it is his understanding that he has applied after receiving a Notice of Violation for a Conditional Use Permit for at least one other property associated with him being the host of, and he admitted in that application that it was not his primary residence (see recording for detailed presentation).

03:44:50 Brian Mabry stated he could provide a comment on that. Mr. Mabry stated that Item #1 on Page 3 of the Staff Report states that there has been a pre-application Conditional Use Permit submitted for short term rental at 4310 Hannah Avenue (see recording for detailed presentation).

03:45:55 Joe Haberman and Brian Mabry responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the appeal:

Ronald Gregg, 1289 Everett Avenue, Louisville, KY 40204

Christopher Owen, 2206 Longest Avenue, Louisville, KY 40204

Maureen Bearden, 1291 Everett Avenue, Louisville, KY 40204

Summary of testimony of those in opposition:

03:57:25 Ronald Gregg spoke in opposition of the appeal. Mr. Gregg stated this property backs onto his property. Mr. Gregg stated this property has had lots of renters in it, but there is no indication that this individual lives at the house. Mr. Gregg stated he shows up occasionally, disappears, parks his car there all day, but he's never seen him bring in groceries or do anything that you would think of as permanent residency. Mr. Gregg stated the property has been rented heavily, nine and ten individuals at a time. Mr. Gregg responded to questions from the Board Members (see recording for detailed presentation).

04:02:52 Christopher Owen spoke in opposition of the appeal. Mr. Owen stated he has very rarely seen this gentleman walking in or out of the house. Mr.

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Owen stated there have been multiple rentals. Mr. Owen stated to be fair he has been renovating his house, so he has not been there all the time, but usually every day to pick up mail, etc., and he has seen multiple renters, groups as large as fourteen. Mr. Owen responded to questions from the Board Members (see recording for detailed presentation).

04:05:02 Maureen Bearden spoke in opposition of the appeal. Ms. Bearden stated just to add a comment, the fourteen people and two other groups of people were there after the Notice of Violation was issued on July 26. Ms. Bearden stated there are also reviews on the Airbnb site from August and September. Ms. Bearden responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in favor of the appeal:

Chris Payne, 2211 Longest Avenue, Louisville, KY 40204

Summary of testimony of those in favor of the appeal:

04:08:32 Chris Payne spoke in favor of the appeal. Mr. Payne responded to questions from the Board Members. Mr. Payne stated he does have five properties, three that he rents in Louisville. Mr. Payne stated he owns two in Southern Indiana (see recording for detailed presentation).

04:11:45 Mr. Haberman stated in follow up he has confirmed through Zoning Enforcement and they've received a copy of the lease which had a clause which is very standard that states no sub-letting without the landlord approval, and short term rentals are a form of sub-letting. Mr. Haberman stated they then followed up with the property owner and she sent an email basically stating that she was okay with it. Mr. Haberman stated they do have a copy of the lease, not with the appeal file, but with the enforcement file (see recording for detailed presentation).

04:12:46 Mr. Payne responded to questions from the Board Members. Mr. Payne stated he stays at this residence at least four nights a week, except for when the property is not rented; then he stays there seven nights per week. Mr. Payne showed some photos of the property, as well as photos of himself in the property which were date/time stamped (see recording for detailed presentation).

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04:21:51 Chair Allendorf stated we're needing more evidence other than a bunch of selfies saying you're there. Chair Allendorf stated most of these selfies came after he was given a citation, and there's really nothing before then (see recording for detailed presentation).

04:25:14 Mr. Payne responded to questions from the Board Members. Mr. Payne showed the Board Members correspondence on his phone from the property owner regarding the Cease and Desist Order (see recording for detailed presentation).

04:33:05 Joe Haberman stated they were going to get a copy of the lease from the enforcement file so the Board could see it (see recording for detailed presentation).

04:33:29 Chair Allendorf stated it seems Mr. Payne is acting more as a property manager than actually physically living there (see recording for detailed presentation).

04:33:39 Member Young stated he does believe he has the right to live there, but his issue is does he live there. Member Young asked the appellant if there have been any short term rentals since receiving the Zoning Notice of Violation (see recording for detailed presentation).

04:34:18 Mr. Payne stated there's been quite a few letters, but he has done a couple of Airbnb rentals, but he's not exactly sure of the dates. Mr. Payne continued to look for photos of the closet (see recording for detailed presentation).

04:35:49 Chair Allendorf asked Mr. Haberman if there was a copy of the lease agreement in the files (see recording for detailed presentation).

04:36:00 Mr. Haberman stated a staff member is going to get a copy of the lease so the Board could see it and it would probably take him about ten or fifteen minutes (see recording for detailed presentation).

04:37:00 Meeting was recessed.

04:37:24 Meeting was reconvened.

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04:37:30 Chair Allendorf stated staff was able to get the paperwork requested regarding the lease information (see recording for detailed presentation).

04:37:50 Mr. Payne stated he wanted to show his LG&E bill for the record. Mr. Payne reviewed his lease agreement for the property at 2211 Longest Avenue. Mr. Payne responded to questions from the Board Members (see recording for detailed presentation).

REBUTTAL:

04:48:58 Brian Mabry spoke in rebuttal (see recording for detailed presentation).

04:49:42 Joe Haberman responded to questions from the Board Members (see recording for detailed presentation).

04:53:47 Board Members' deliberation

04:57:57 Public Hearing was reopened to allow additional testimony from Mr. Payne. Mr. Payne stated he wanted to mention that two of the neighbors live on a different street, so he's never seen them carry in groceries either (see recording for detailed presentation).

04:58:35 Board Members' deliberation

05:06:00 On a motion by Vice Chair Jarboe, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the short term rental is in violation of Section 4.2.63 of the Land Development Code; now, therefore be it

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RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 17APPEAL1003 does hereby **DENY** the Appeal of a Zoning Notice of Violation issued by Planning and Design Services finding that the short term rental is in violation of Section 4.2.63 of the Land Development Code, based upon the Staff Report and the Staff Findings, the preponderance of evidence heard today regarding the discrepancies between the appellant's statements of primary residence and testimony of neighbors to the property who have testified that they are at home during the day and have not seen the appellant residing on the property for a period of six months since the lease signing of February of 2017; further, the submission of proof of residency and the application for recycling carts has listed a different address on Hannah Avenue and the applicant for recycling carts referred to 2211 Longest Avenue as though it were not the primary residence; in addition, the appellant does own properties in Clark County, Indiana that would be listed as the primary residence, and the appellant's own statement that he considers this his primary residence when he is in town and that was not clearly defined, and the Staff conclusions regarding the LDC Code.

The vote was as follows:

Yes: Members Fishman, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

Absent: Member Turner

05:11:33 On a motion by Vice Chair Jarboe, seconded by Member Fishman, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment finds that the Zoning Violation Notice was **PROPERLY ISSUED** on July 26, 2017, as case 17PM15650 because 2211 Longest Avenue is not the primary residence of the appellant.

The vote was as follows:

Yes: Members Fishman, Howard, Young, Vice Chair Jarboe, and Chair Allendorf

Absent: Member Turner

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05:13:20 Member Fishman suggested scheduling the holiday luncheon for December 4, 2017.

05:14:26 Chair Allendorf reminded the Board Members there will be two more meetings this month.

ADJOURNMENT

The meeting adjourned at approximately 3:04 p.m.

Chair

Secretary