

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

JULY 21, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, July 21, 2014, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present were:

Mike Allendorf, Vice Chairperson
Rosalind Fishman, Secretary
Betty Jarboe
Paul Bergmann
Dean Tharp

Members absent:

David Proffitt, Chairperson
Frederick Liggin

Staff members present were:

Emily Liu, Director, Planning & Design Services
Jonathan Baker, Legal Counsel
Jessica Wethington, Planning Information Specialist
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
Jon Crumbie, Planner II
Latondra Yates, Planner II
Sherie Long, Landscape Architect
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

The following cases were heard:

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APPROVAL OF THE MINUTES:

1.) JULY 7, 2014 BOARD OF ZONING ADJUSTMENT MINUTES FOR THE ANNUAL ELECTION OF OFFICERS:

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

RESOLVED, that the Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on July 7, 2014 for the Annual Election of Officers.

YES: Members Tharp, Allendorf, Fishman and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: Member Jarboe.

2.) JULY 7, 2014 BOARD OF ZONING ADJUSTMENT MINUTES FOR THE REGULAR HEARING ITEMS:

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

RESOLVED, that the Board of Zoning Adjustment does hereby **APPROVE** the regular minutes of the meeting conducted on July 7, 2014.

YES: Members Tharp, Allendorf, Fishman and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: Member Jarboe.

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NEW BUSINESS:

CASE NO. 13CUP1019

Request: Conditional Use Permit to allow off-street parking in an R-4 zoning district.

Project Name: AT&T Parking Lot Expansion

Location: 411 Evergreen Road

Owner: AT&T
Joseph Estep
601 W. Chestnut Street, Room 1 NE
Louisville, KY 40203

Applicant: Same as owner

Representatives: EXP
Joseph Murphy
205 N. Michigan Ave., Ste. 3600
Chicago, IL 60601

J.R. Bowman Construction
Rick Smith
114 Bellamy Place
Stockbridge, GA 30281

Jurisdiction: Middletown

COUNCIL DISTRICT 19—Jerry Miller
Staff Case Manager: Jon Crumie, Planner II
(CONTINUED FROM 6/2/14)

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

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CASE NO. 13CUP1019

Agency Testimony:

Staff case manager, Jon Crumbie said the applicant is present today to discuss why they are withdrawing their case.

The following spoke in favor of this request:

David Pike, Pike Legal Group, 1578 Highway 44 East, Ste. 6, Shepherdsville, KY 40165.

Summary of testimony of those in favor:

David Pike, the applicant's attorney, said they are withdrawing this case since the applicant didn't have legal counsel at the onset. Mr. Pike said he will notify staff when they will proceed; and is also working with Steve Porter, Attorney, for the neighborhood group.

The following spoke neither for nor against the request:

No one.

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

No one spoke neither for nor against.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one spoke in opposition.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 21, 2014 public hearing proceedings.

This case has been withdrawn by the applicant.

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NEW BUSINESS:

CASE NO. 14VARIANCE1051

Request: Variances and Waivers for a proposed building addition.

Project Name: Meredith Dunn Learning Center

Location: 3023 Melbourne Avenue

Owner: Meredith Dunn School
Kathy Beam, Authorized Agent
3023 Melbourne Avenue
Louisville, KY 40220

Applicant: Same as owner

Representative: Alex Rosenberg, P.E.
2518 Hermitage Way
Louisville, KY 40242

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 26—Brent Ackerson
Staff Case Manager: Latondra Yates, Planner II

(Previously removed by staff on 7/7/14)

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

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

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Agency Testimony:

Staff Case Manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the requests are associated with a Category 2B review (Docket No. 2-23-14) for consolidation of lots, a street closure for a portion of Rosemont Avenue; and an addition to the Meredith Dunn School. They will be eliminating 10 of the 20 parking spaces; adding a 6-ft. sidewalk which will leave no room for the Landscape Buffer Area (LBA).

The following spoke in favor of this request:

Alex Rosenberg, P.E., 2518 Hermitage Way, Louisville, KY 40242.

Mark Litchtefeld, 908 S. 8th Street, Louisville, KY 40203.

Summary of testimony of those in favor:

Alex Rosenberg, the applicant's representative, said they will be installing a sidewalk and building right up to the setback. He said approval of the requests will allow them to keep some of their parking.

Mark Litchtefeld, was sworn in but didn't speak.

The following spoke neither for nor against the request:

No one.

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

No one spoke neither for nor against the requests.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one spoke in opposition.

Deliberation:

Board of Zoning Adjustment deliberation.

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Variance to allow pavement to encroach into the street side yard:

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

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance of Table 5.3.1 and Section 9.1.4 of the Land Development Code to allow pavement to encroach into the required 25 ft. street side yard along Midland Avenue; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the parking will be revised per the Transportation Planning Team to make it diagonal, rather than straight in parking, which will eliminate half of it, and to provide a 6-ft. sidewalk; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there is existing parking in this area and half of it will be eliminated with the restriping; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the parking will be revised per the Transportation Planning Team to make it diagonal, rather than straight in parking, which will eliminate half of it, and to provide a 6-ft. sidewalk; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because of the existing parking in the area; and

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WHEREAS, the Board finds that the variance arises from special circumstances, which do not generally apply to land in the general vicinity because it will allow the existing parking spaces to remain as is which are currently located within the building setback and pose no effect to the public health, safety or welfare; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because it would require removal of required parking for the site;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow pavement to be 0 feet from the street side yard along Midland Avenue.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

Waiver to not provide the required 5-ft. Vehicular Use Area (VUA) along Midland Avenue:

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

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds from the file of this case, the staff report including the standard of review; the site plan; the PowerPoint presentations; the applicant's justification; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver of Sections 10.2.10 and 10.2.11 of the Land Development Code to not provide the required 5-ft. VUA along Midland Avenue; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because improving the existing parking layout and providing the sidewalk will be safety improvements to the site; and

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WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the waiver meets applicable guidelines of Cornerstone 2020; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant given the existing parking are needed to provide the minimum required for the site; and

WHEREAS, the Board 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 (net beneficial effect) because they have worked with the Transportation Planning Review Team to revise this portion of the site in a manner that will be safer;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the required 5-ft. VUA along Midland Avenue.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1050

Request: Variances and Waivers associated with a church expansion.

Project Name: New Birth Church of Louisville

Location: 3301 Linda Lane & 3926 Cane Run Road

Owner: New Birth Church of Louisville, Inc.
Ebony R. Pryor
3301 Linda Lane
Louisville, KY 40211

Applicant: Same as owner

Representative: Evans/Griffin, Inc.
Jim Griffin
4010 Dupont Circle, Suite 478
Louisville, KY 40207

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 1—Attica Scott

Staff Case Manager: Latondra Yates, Planner II

(Previously Removed by Staff on 7/7/14)

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

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

Agency Testimony:

Staff Case Manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the variances and

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waivers are associated with a Category 2B review (Docket No. 2-4-14) for the expansion of the church for the construction of a 2-story, 14,736 sf addition including the consolidation of two lots; and 76 additional parking spaces.

The following spoke in favor of this request:

Jim Griffin, 4010 Dupont Circle, Suite 478, Louisville, KY 40207.

Summary of testimony of those in favor:

Jim Griffin, the applicant's representative, said they will be installing landscaping along Cane Run Road instead of the required wall for mitigation.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Jarboe said the requests seem reasonable considering the lot locations.

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Variances to allow the proposed addition to not be built at the corner:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of

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review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.5.1A.2 of the Land Development Code to allow the proposed addition to be 22.62 feet from Linda Lane; and a variance from Section 5.5.1.A.2 from the Land Development Code to allow the proposed addition to be 306 feet away from Cane Run Road; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the addition will be built at the rear of the lot, away from adjacent residential; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because there are surrounding non-residential uses with similar layouts; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the required LBAs are proposed along both frontages; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because there are surrounding non-residential uses with similar layouts; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity because the general character of the neighborhood does not match the intention of the development code; and because the proposed site layout is consistent with the existing development; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the existing building creates challenges to the layout of the remainder of the site;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

The variances allow:

1. The proposed addition to be 22.62 feet at its closest point along Linda Lane.
2. The proposed addition to be 306 feet from Cane Run Road.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

Waivers to not provide the required 3 ft. wall in front of parking along Cane Run Road and Linda Lane; and to allow parking in front of the building:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review; the applicant's justification; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Waiver of Section 5.5.1.A.3.a. of the Land Development Code to not provide the required 3-ft tall wall in front of the parking along Cane Run Road and Linda Lane; and a Waiver of Section 5.5.1.A.3.a. of the Land Development Code to allow parking in front of the building; and

WHEREAS, the Board finds that the requested waivers will not adversely affect adjacent property owners because the required LBAs are proposed along both frontages; and

WHEREAS, the Board finds that the waivers will not violate specific guidelines of Cornerstone 2020 because the proposal is in compliance with Guideline 3 because the parking and circulation areas will be buffered with the required

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plantings; and because the plantings will be provided and the setbacks from Linda Lane and Cane Run Road will be compatible with nearby properties; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief given the location of the existing church and need to meet the minimum parking requirement; and because the required plantings will be provided between the parking lot and public streets; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the required plantings will be provided; and because the site layout and building size is necessary for a successful and compatible expansion; and

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waivers.

The waivers allow:

1. The applicant will not provide the required 3-ft. wall in front of the parking along Cane Run Road and Linda Lane.
2. Parking will be allowed in front of the building.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

Waiver to not provide the plantings and screen within the 15-ft. expressway buffer:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review; the applicant's justification; the site plan; the PowerPoint

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presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Waiver of Sections 10.2.4 and 10.2.7 of the Land Development Code to not provide the plantings and screen within the 15-ft. expressway buffer; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because there are existing trees and screening from the expressway; and because the expressway also sits higher than the site; and

WHEREAS, the Board finds that the waiver will not violate Cornerstone 2020 because the access to the site will not change; and the tree canopy requirements will be met; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant since there is ample existing vegetation in the Watterson Expressway right-of-way; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the applicant would have to provide plantings in an area where an ample amount already exists in the Watterson Expressway right-of-way;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the plantings and screen within the 15-ft. expressway buffer.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1055

Request: Variance from the Land Development Code to allow a reduction in the required private yard, a result of a new carport with deck.

Project Name: New Carport with Deck

Location: 1824 Eastern Parkway

Owner: Bob German & G.B. Carter
1824 Eastern Parkway
Louisville, KY 40204

Applicant: Same as owners

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Sherie' Long

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

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant is proposing to construct a carport with an upper deck at the rear of the property. The applicant is also proposing landscape plantings around the perimeter of the carport.

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The following spoke in favor of this request:

Bob German, 1824 Eastern Parkway, Louisville, KY 40204.

Summary of testimony of those in favor:

Bob German, the applicant and owner, said there is no defined parking in the back which he is trying to resolve. He said people that live in the rental homes and duplexes in the area are using this parking. He said all of the adjacent neighbors are in support.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 21, 2014 public hearing proceedings.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, Section

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5.4.1D.3, of the Land Development Code to allow a reduction in the required 20% private yard area; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the carport is not obstructing views of motorists; encroaching into any easements or eliminating any access for emergencies; and because the proposed carport with upper deck will provide designated parking spaces and rear access to the existing house; plus, the upper deck will serve as the private open space for the property improving the existing condition; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity but improve the current condition; and because the carport will provide designated parking spaces, plus the proposed improvements will create additional green space which will be landscaped with trees and shrubs; and because in addition to the new green space around the carport, large planters will be located on the upper deck which will contain additional trees and shrubs; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the cantilevered design of the structure will not obstruct the view of motorists; plus, the improvements will create designated parking spaces which will be an improvement to the existing condition; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since a variance is required to put any additional structures on the site; and

WHEREAS, the Board finds that the variance arises from special circumstances which are present along this section of Eastern Parkway; and because the front of the properties are along a parkway, the buildable area of the lot is small, therefore creating very small private yard areas which have been basically serving as parking locations; and because the applicant is proposing to improve the conditions by providing both a carport for parking and creating a private outdoor open space on the upper deck; and

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

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proposed carport and upper deck would not be able to be built, therefore, the proposed improved parking and outdoor space would not be possible; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the applicant is requesting a variance prior to construction;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the private yard area to be 0 square feet.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1057

Request: Variance from the Land Development Code to allow an existing fence to exceed the maximum height.

Project Name: Existing Fence

Location: 5802 Jeanine Drive

Owner: Jose Camacho
5802 Jeanine Drive
Louisville, KY 40219

Applicant: Same as owner

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 2—Barbara Shanklin

Staff Case Manager: Sherie' Long, Landscape Architect

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

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. The applicant has built a fence and columns reflecting the Cuban culture, in the front yard which exceeds the 48 inch requirement. The applicant has been cited for this in October 2012 and later summoned to appear in Jefferson County District Court in May, 2014. Ms. Long said Code Enforcement measured the fence at 63"; not 60" which is what is in the staff report.

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The following spoke in favor of this request:

Jose Camacho and interpreter Alejandro, 5802 Jeanine Drive, Louisville, KY 40219.

Summary of testimony of those in favor:

Jose Camacho and his interpreter Alejandro were sworn in. Alejandro said Mr. Camacho didn't build the fence illegally intentionally. He said Jefferson District Court is waiting for the Board's decision. He concluded that Mr. Camacho has a good relationship with his neighbors.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Jarboe said that the cultural differences may have been the reason for not obtaining the permit; and that a lot of people don't know they need a permit for a specific fence height.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 21, 2014 public hearing proceedings.

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

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CASE NO. 14VARIANCE1057

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 4, Section 4.4.3.A.1a(i) of the Land Development Code to allow an existing fence to exceed the maximum height; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the fence is not encroaching into any vision triangle area and it is placed within the applicant's property boundaries; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because an adjacent property has a fence around their property of a similar height; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the fence is within the applicant's property; 25 feet from the street pavement and 10 feet from the sidewalk; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the height of the columns is not sufficient cause or detriment to the neighborhood overall; and because there is an adjacent property has a similar fence height; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, because the fence consisting of stone and Doric columns are very expensive and would be a great financial loss;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow to allow the existing fence to be 63" in height along the front yard.

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YES: Members Allendorf, Jarboe, Fishman and Bergmann.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt
and Liggin.**

ABSTAINING: Member Tharp.

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JULY 21, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1048

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

Location: 8812 Terry Road

Owners: William & Marquita Pepper
8812 Terry Road
Louisville, KY 40258

Applicants: Same as owners

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 14—Cindi Fowler

Staff Case Manager: Sherie' Long, Landscape Architect

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

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. The applicant is proposing construction of a garage addition on the northern side of the house and will be approximately 8.84 feet from the adjacent house. The Board had questions about the gutters and possible water runoff onto adjacent property.

The following spoke in favor of this request:

William Pepper, 8812 Terry Road, Louisville, KY 40258.

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Summary of testimony of those in favor:

William Pepper, the owner, said he needs more room for bikes and mowers; and would like to park his wife's car in the garage during the winter months. He said there will be a 4 inch gutter; and that he's been trying to get a permit for 6 months.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Fishman said her biggest issue is possible water runoff onto the adjacent neighbors' property.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 21, 2014 public hearing proceedings.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, Table 5.3.1 of the Land Development Code to allow a garage addition to encroach into the required 6 ft. side yard; and

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WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare because the proposed garage addition is located on the side of the house; and because there will be approximately 8.84 feet between the adjacent structure and the new addition, plus, the new addition is set back 30 feet from the street; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the garage addition façade materials will match the materials used in the neighborhood and the location of the addition is on the side of the house with the front setbacks being maintained; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed garage addition is located on the side of the house and will be located 8.84 feet from the adjacent house; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the garage addition is encroaching into only a small portion of the side yard;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a garage addition to be 3.16 feet from the north side property line.

YES: Members Tharp, Allendorf, Jarboe and Fishman.

NO: Member Bergmann.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

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JULY 21, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1060

Request: Variances and a waiver from the Land Development Code to allow proposed signage to exceed the maximum area and amount.

Project Name: Darrell Griffith Athletic Center

Location: 3628 Virginia Avenue

Owner: West End School, Inc.
Robert Blair
3628 Virginia Avenue
Louisville, KY 40211

Applicant: Commonwealth Sign Company
Clara Bowman
1824 Berry Blvd.
Louisville, KY 40215

Representative: Ron James, Project Manager
106 E. Jefferson Street
LaGrange, KY 40031

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 1—Attica Scott

Staff Case Manager: Jon Crumbie, Planner II

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

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

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CASE NO. 14VARIANCE1060

Agency Testimony:

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is in the process of building a new 12,800 sq. ft. gymnasium and 900 sq. ft. storage building for the existing West End School; and need variances and a waiver for the signage.

The following spoke in favor of this request:

Ron James, 106 E. Jefferson Street, LaGrange, KY 40031.

Clara Bowman, Commonwealth Sign Company, 1824 Berry Blvd., Louisville, KY 40215.

Summary of testimony of those in favor:

Ron James, the applicant's representative, said additional and larger signage is needed for the profitability of the school. He said three of the signs would be backlit with LED lights.

Clara Bowman said the LED lights will not be flashing or scrolling, but backlit so the sign is more visible.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Jarboe said she thinks the signs are larger than they have to be.
Member Allendorf said the signs won't be flashing.

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An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 21, 2014 public hearing proceedings.

Variances to allow proposed attached signs to exceed the maximum area on the east and west facades of the athletic center under construction:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the applicant's justification; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances to allow the proposed attached signs to exceed the maximum area on the east and west facades of athletic center under construction; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposed attached signs will allow identification of the structure from I-264, Dumesnil Street, and South 36th Street; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the proposed attached signs will be designed in a way to compliment the structure; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the proposed attached signs will allow motorists to locate the structure, especially along the adjacent I-264 stretch; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the proposed attached signs will allow clear, concise identification of the structure; and

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WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the site has access on Virginia Avenue, Dumesnil Street and 36th Street; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the proposed signs would need to be reduced in size and limit visibility;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

The variances allow:

1. The proposed sign on the east façade to be 216'.
2. The proposed 2 signs along the west facade to be 230'.

YES: Members Tharp, Allendorf, Fishman and Bergmann.

NO: Member Jarboe.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

Waiver to allow 2 attached signs on the west façade of the athletic structure facing the I-264 right-of-way:

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

WHEREAS, the Board finds from the file of this case, the staff report; the applicant's justification; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver to allow 2 attached signs on the west façade of the athletic structure facing the I-264 right-of-way; and

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WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the area is abutting I-264 right-of-way that is elevated higher than the site; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate; and because the waiver will not violate guidelines of Cornerstone 2020 due to the difference in elevation and no residential uses to the west of the site; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow for the proper identification of the structure; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring a reduction in the number of signs which would reduce identification of the structure;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow 2 attached signs on the west façade of the athletic structure facing the I-264 right-of-way.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1011

Request: Conditional Use Permit to allow a crematory addition to an existing funeral home in a CM zoning district. The Board must decide if the landscaping is sufficient.

Project Name: Newcomer Funeral Home Crematory

Location: 10304 Dixie Highway

Owner: Kentucky Funeral Services, LLC
Michael Land
520 SW 27th Street
Topeka, KS 66611

Applicant: Newcomer Funeral Service Group
Darren Miller
502 SW 27th Street
Topeka, KS 66611

Representative: Bill Bardenwerper, Esq.
Bardenwerper Talbott & Roberts
1000 N. Hurstbourne Pkwy., 2nd floor
Louisville, KY 40223

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 14—Cindi Fowler

Staff Case Manager: Jon Crumbie, Planner II

Member Fishman recused herself during business session.

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

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and was available to any interested party prior to the public hearing. (The staff report is part of the

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

Agency Testimony:

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is requesting to add an 885 sq. ft. crematory to an existing funeral home. He said the applicant is requesting to modify Item B (page 3 of staff report) to allow the crematory to be approximately 52 feet from residential properties. The requirement is 200 feet. Mr. Crumbie said he received petitions and letters of area residents in opposition; and more after he completed his staff report.

The following spoke in favor of this request:

Bill Bardenwerper, Attorney, 1000 N. Hurstbourne Parkway, Louisville, KY 40223; who presented a PowerPoint presentation.

Ren Newcomer, 502 SW 27th Street, Topeka, KS 66611.

Glen Lyle, American Crematory, 6017 Kipps Colony Drive East, Gulfport, FL 33707.

Jason Hall, Prism Engineering & Design Group, LLC, 2300 Plantside Drive, Louisville, KY 40299.

John Newcomer, Newcomer Funeral Home, 10304 Dixie Highway, Louisville, KY 40272.

Perry Hasslebech, 10304 Dixie Highway, Louisville, KY 40272.

Summary of testimony of those in favor:

Bill Bardenwerper, the applicant's attorney, said there is 0 emissions from the crematory; and doesn't believe there is anyone present today in opposition who lives 200 feet away. He said he submitted information from the Air Pollution Control District even though they weren't required to do so.

Ren Newcomer said this request is a natural extension of the services they want to provide. He said more people are choosing cremation today for a "greener" option. He said crematoriums burn cleaner than household appliances; and that

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there's no scientific evidence that they create emissions. Mr. Newcomer agreed to add landscaping in the fall to mitigate the noise along Dixie Highway for the neighbors.

Glen Lyle said he has been manufacturing crematoriums for 40 years, and said they burn extremely clean with no emissions.

Jason Hall, Prism Engineering & Design Group, said they will be adding 3 parking spaces in the rear; and a screened dumpster with evergreens. He said runoff will empty into an existing detention basin.

The following spoke neither for nor against the request:

Metro Councilwoman Cindi Fowler, 601 W. Jefferson Street, Louisville, KY 40202.

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

Metro Councilwoman, Cindi Fowler, said they had a neighborhood meeting at the library where a lot of area residents in opposition showed up. She said she understands both sides—the business aspect and the neighbors' concerns.

The following spoke in opposition to this request:

Marlene Turner, 10300 La Plaza Avenue, Louisville, KY 40272; who submitted information into the record.

Sheila Hays, 10301 La Plaza Avenue, Louisville, KY 40272.

Frank Lay, 10401 Villa Drive, Louisville, KY 40272.

Michael Bentley, 10312 La Plaza Avenue, Louisville, KY 40272; who submitted a petition of 500 area residents and other people who commute through the neighborhood that are opposed into the record.

Summary of testimony of those in opposition:

Marlene Turner, an area resident, said she is concerned about mercury and other toxic chemicals emitting from the crematory. Ms. Turner submitted numerous articles and reports into the record supporting this. She said other crematoriums in Jefferson County are in industrial areas and is where they should only be allowed.

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Sheila Hays said her backyard abuts the funeral home, and although the applicant put slats in the fence, can see everything that goes on. She said she has asthma, emphysema and COPD and that the emissions will further aggravate her illness.

Frank Lay said he is the third house up from the subject property and mostly concerned about harmful emissions and the crematory being so close to Valley High School, Dixie Elementary and residential homes. He said he has emphysema and doesn't want to breathe more pollutants than he has to.

Michael Bentley said he has his Master's Degree in Computer Science; and conducted research on emissions coming from crematoriums. He said the older studies cite inaccurate information; and that there is only one type of filter to capture the toxins, which cost \$500,000.00. Mr. Bentley also agreed that crematoriums should not be around residential areas and schools.

Discussion:

Member Allendorf asked the applicant to explain the cremation process.

Summary of testimony in support again:

John Newcomer, the applicant, explained the process of cremation to the Board in detail.

Rebuttal:

Bill Bardenwerper said cremation has been debated for many years and is becoming more debatable with the increase of cremations in the U.S.

Perry Hasslebech, Newcomer Funeral Home, discussed a case from Nobles, Georgia, where a third party contractor buried hundreds of bodies on his farm and gave family members concrete and other material for remains.

Glen Lyle said mercury hasn't been used in fillings for a long time; and discussed a study from England where no pollutants were found in the soil over a 10 year period from crematories. He said he could provide this for the Board.

Ren Newcomer agreed to plant more trees and shrubs to block the noise from Dixie Highway. Member Bergmann said they need a visual barrier too for the neighbors.

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Deliberation:

The Board decided to continue this case to look over all the information submitted today and have more time to think about their decision. Member Fishman decided to recuse herself. Member Allendorf said either side could submit more information to further clarify the issues.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 21, 2014 public hearing proceedings.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 14CUP1011 to **AUGUST 18, 2014**, allowing only new evidence to be discussed and that it be submitted to staff by August 4, 2014; 20 minutes per side with rebuttal; and that this case be put first on the agenda.

YES: Members Tharp, Allendorf, Jarboe and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Proffitt and Liggin.


ABSTAINING: No one.

RECUSED: Member Fishman


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The meeting adjourned at approximately 2:30 p.m.



CHAIRPERSON



SECRETARY