

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

FEBRUARY 2, 2015

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, February 2, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

David Proffitt, Chairperson
Mike Allendorf, Vice Chairperson
Rosalind Fishman, Secretary
Betty Jarboe
Frederick Liggin
Dean Tharp
Paul Bergmann

Members absent:

No one

Staff members present:

Emily Liu, Director, Planning & Design Services
Jonathan Baker, Legal Counsel
Steve Hendrix, Planning Supervisor
Sherie Long, Landscape Architect
Jon Crumble, Planner II
Latondra Yates, Planner II
Beth Stevenson, Management Assistant

Others present:

April Robbins, Code Enforcement Supervisor

The following cases were heard:

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APPROVAL OF MINUTES

JANUARY 12, 2015 BOARD OF ZONING ADJUSTMENT MINUTES

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting held on January 12, 2015.

YES: Members Proffitt, Bergmann, Jarboe, Allendorf, Fishman and Liggin.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: Member Tharp.

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BUSINESS SESSION:

NON-HEARING CASES

CASE NO. 14CUP1049

Request: An application for the modification of an existing Conditional Use Permit to add 20 compressed natural gas (CNG) time fill refueling stations; add equipment to the existing equipment compound; and to delineate 27 existing parking stalls as future refueling stations.

Project Name: Waste Management of Kentucky, LLC

Location: 7501 Grade Lane

Applicant: Stantec
Jason Carr
482 Payne Road
Scarborough, ME 04074

Owner: Waste Management of Kentucky, LLC
P.O. Box 1450
Chicago, IL 60690

Representative: Land Design & Development
Ann Richard, RLA
503 Washburn Avenue
Louisville, KY 40222

Jurisdiction: Louisville Metro

**COUNCIL DISTRICT 13—Vicki Aubrey Welch
Staff Case Manager: Jon Crumbie, Planner II**

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

The recording of this hearing will be found on the DVD of the February 2, 2015 proceedings.

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CASE NO. 14CUP1049

On December 22, 2014, the applicant requested a modification of the approved Conditional Use Permit to allow minor site plan revisions to add 20 compressed natural gas time fill refueling stations, add equipment to the existing equipment compound and to delineate 27 existing parking stalls as future refueling stations.

On February 2, 2015, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

WHEREAS, the Board finds that the applicant has requested a modification of an approved Conditional Use Permit to add 20 compressed natural gas time fill refueling stations; add equipment to the existing equipment compound; and to delineate 27 existing parking stalls as future refueling stations; and

WHEREAS, the Board finds that the Modified Conditional Use Permit and Revised Detailed District Development Plan was approved for Case No. 16307 on October 6, 2011, for the addition of the initial CNG refueling stations both time fill and retail pumps to the existing Waste Management site;

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives; and it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the modification of the existing Conditional Use Permit is hereby **APPROVED**, to allow revisions to the site plan to allow the addition of 20 compressed natural gas (CNG) time fill refueling stations, add equipment to the existing equipment compound and to delineate 27 existing parking stalls as future CNG refueling stations based on the applicable previously approved conditions of approval.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: Member Allendorf.

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BUSINESS SESSION:

NON-HEARING CASES

CASE NO. 14VARIANCE1094

Request: Variances from the Land Development Code to allow a structure to exceed the maximum setback; and a waiver to not provide the required entrance and not provide 50% of the wall surface in clear glass windows and doors along the North Peterson Avenue frontage. **The Board approved two variances and one waiver with conditions of approval on November 3, 2014, one being that the applicant receives all necessary inspections and permits; and that a Codes and Regulations Inspector/Building Inspector report back to the Board regarding the status as a business session item.**

Project Name: Chatsworth Park Apartments Office Addition

Location: 122 North Peterson Avenue

Owner: Brown Noltemeyer Co.
Bill Bardenwerper, Agent & Attorney
122 N. Peterson Avenue
Louisville, KY 40206

Applicant: Same as owner

Attorney: Bill Bardenwerper, Esq.
1000 N. Hurstbourne Pkwy., Ste. 200
Louisville, KY 40223

Representative: Keal & Associates
Mike Keal
410 W. Chestnut Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT: 9—Bill Hollander
Staff Case Manager: Sherie' Long, Landscape Architect

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NON-HEARING CASES

CASE NO. 14VARIANCE1094

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 in the Planning & Design Services offices. Please contact customer service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the February 2, 2015 public hearing proceedings.

DISCUSSION:

Staff case manager, Sherie Long, stated that the applicant received all necessary inspections and permits as the Board requested and that this information was submitted to the Board prior to the hearing. Chair Proffitt said he wanted to see renderings of the enlarged windows pertaining to Condition of Approval #2 for the waiver.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 14VARIANCE1094 to **FEBRUARY 16, 2015** as a business session item, to allow the applicant time to submit renderings of the enlarged windows along North Peterson Avenue (Waiver, COA #2).

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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FEBRUARY 2, 2015

NEW BUSINESS:

CASE NO. 14VARIANCE1105

Request: Variance from the Land Development Code to allow a proposed structure to encroach into the side yard.

Project Name: Carport

Location: 123 East Amherst Avenue

Owner: Truc-Mai T. Tran
123 E. Amherst Avenue
Louisville, KY 40214

Applicant: Same as owner

Representative: Nguyen Investment, LLC
Thinh Nguyen
4705 S. First Street
Louisville, KY 40214

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 21—Dan Johnson

Staff Case Manager: Latondra Yates, Planner II

(CONTINUED FROM 12/15/14. APPLICANT IS NOW REQUESTING THAT THE CASE BE CONTINUED TO 2/16/15)

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 February 2, 2015 public hearing proceedings.

DISCUSSION:

Chair Proffitt said he does not want to continue it to February 16, 2015 due to the amount of cases on the agenda and suggested March 2, 2015 instead. Ms. Yates said she would inform the applicant.

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

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NEW BUSINESS:

CASE NO. 14VARIANCE1105

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 14VARIANCE1105 to **MARCH 2, 2015**.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1113

Request: Variances to allow the Vehicle Use Area (VUA) to encroach into the required setbacks.

Project Name: Speckman Road Strip Center

Location: 719 Speckman Road

Owner: Speckman Commercial, LLC
Donald Duane
7410 New LaGrange Road, #100
Louisville, KY 40222

Applicant: Same as owner

Jurisdiction: City of Middletown

COUNCIL DISTRICT 20—Stuart Benson

Staff Case Manager: David Wagner, 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).

Agency Testimony:

Staff Case Manager, David Wagner discussed the case summary, standard of review and staff analysis from the staff report. He said the proposal is for the construction of the Speckman Road Strip Center and the creation of a drive-thru along the north side of the building. He said the development will include a 10,920 SF building with a restaurant comprising 3,000 SF, and the remainder being retail space. Member Bergmann said it appears the applicant is counting landscaping from adjacent properties. He said he doesn't like the design being mostly impervious surface with little to nil landscaping.

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The following spoke in favor of this request:

Donald Duane.

Summary of testimony of those in favor:

Donald Duane said he is the owner, developer, engineer and designer of the project. He said the restaurant requires a lot of parking, but is providing 20% of the tree canopy behind the apartments. Chair Proffitt asked if he would agree to a condition of approval to submit a landscape plan to staff for review and approval adding landscaping between the apartments and shopping center (east side). Mr. Duane agreed.

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 February 2, 2015 public hearing proceedings.

Variance—To allow the VUA to be 0 feet from the west property line:

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 the Land Development Code, Table 5.3.2, to allow the VUA to be 0 feet from the west property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the nearest adjoining property owner that would be affected is across two streets and includes a grassy median; and because the home across the street is not directly across from the parking spaces and would not be affected by vehicles facing their property; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the encroachment is similar to the encroachment of the VUA on the bank to the south if Speckman Road had not been closed in front of that lot; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the nearest adjoining property owner that would be affected is across two streets and includes a grassy median; and because the home across the street is not directly across from the parking spaces and would not be affected by vehicles facing their property; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the distance between the encroachment and the nearest adjoining property owner ensures that the property owner will not be negatively affected; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because this lot does not have as much space on the front of the lot as the bank to the south does due to Speckman Road being closed there; and

WHEREAS, the Board finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land because this development has been planned before the current regulations were in effect;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the VUA to be 0 feet from the west property line along Speckman Road.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Variance—To allow the VUA to be 18 feet from the north property line:

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 review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code, Table 5.3.2, to allow the VUA to be 18 feet from the north property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the encroachment by the VUA is along an adjacent property that is heavily wooded with the home being a good distance away; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the encroachment is along a lot that is heavily wooded; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations as the adjoining lot is heavily wooded and the nearest home will be buffered by the existing trees on their lot; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because most

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adjoining lots do not have as many trees and the home is located more closely to the encroachment; and

WHEREAS, the Board finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land as this encroachment does not affect the adjoining property owner;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the VUA to be 0 feet from the west property line.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Variance—To allow the VUA to be 0 feet from the east property line:

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 review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow the VUA to be 0 feet from the east property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the encroachment by the VUA is necessary to connect the private street at the rear of the site; and because landscaping will be provided on the east side, adjacent to the apartment complex which is also owned by the owner of the subject lot; and because the owner has agreed to submit a landscape plan for staff's landscape architect to review and approve for enhanced landscaping along the east side of the property; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the encroachment is next to a detention basin with surrounding landscaping; and because the owner has agreed to submit a

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landscape plan for staff's landscape architect to review and approve for enhanced landscaping along the east property line; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because it is necessary to allow the site to have a rear connection to the private street; and because there is existing landscaping for buffering; and because the owner has agreed to provide increased landscaping along the east property line and will submit a landscape plan for staff's landscape architect to review and approve; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations as the adjoining lot will not be greatly affected by the encroachment; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot has a private street connection at the rear that is used for vehicle circulation; and because the adjoining lot has a detention basin and existing landscaping to help buffer the encroachment; and because the owner has agreed to provide increased landscaping along the east property line and will submit a landscape plan for staff's landscape architect to review and approve; 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 encroachment does not affect the adjoining property owner;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the VUA to be 0 feet from the east property line **ON CONDITION** that the owner increase the landscaping along the east property line and submit a landscape plan for staff's landscape architect to review and approve.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1095

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

Project Name: Existing Fence

Location: 1801 Lauderdale Road

Owners: K. Michael & Julia B. Roberts
1801 Lauderdale Road
Louisville, KY 40205

Applicants: Same as owners

Attorney: Frost Brown Todd, LLC
Glenn Price, Esq.
400 W. Market Street, Ste. 3200
Louisville, KY 40202

Representative: Ops Engineering, LLC
Joel B. Latta
4530 Bishop Lane, Ste. 109
Louisville, KY 40218

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Sherie' Long, Landscape Architect

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

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

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Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the existing fence exceeds the required maximum height; and that the owners' were cited by Codes and Regulations. Public Works approved the plan and stated that it doesn't obstruct traffic or pedestrian views; but that Codes and Regulations has a different opinion.

April Robbins, Code Enforcement Supervisor, said the fence is within the required 15 ft. setback, so a Notice of Violation was issued. She said she is not opposed to the height of the fence. Ms. Robbins said she received one complaint from the public

The following spoke in favor of this request:

Glenn Price, Attorney.

Julia Roberts, Owner.

Summary of testimony of those in favor:

Glenn Price, attorney for the applicant, said no immediate neighbors' are opposed to this fence that was built four years ago. He said the encroachment already existed before his client purchased the property. He said Jeff Brown, with Public Works said they did not need a Licensing Agreement for the encroachment. Chair Proffitt asked if they could submit one. Mr. Price agreed and said the Board could add this as a condition of approval.

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:

Jack Jezorski, 1635 Cowling Avenue, Louisville, KY 40205.

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Summary of testimony of those in opposition:

Jack Jezorski, said he has lived in the area 30 years; and said he is opposed to the fence encroaching into the public right-of-way and the height. He said the old fence was not in the same location as the subject fence per PVA records and older aerial pictures. He said there are no other fences like it in the area, so it is out of character with the neighborhood. He also feels it does create safety issues for people in the neighborhood; and asked the Board to deny the request.

Rebuttal:

Mr. Price said Mr. Jezorski doesn't live near his client and questioned why he is opposed, since his client rebuilt the fence four years ago. Mr. Price added that Ms. Roberts spent a lot of money on the renovations and the neighbors' think it looks nice and complements the neighborhood.

Julia Roberts, the owner, said she's lived in her house for 10 years; and excavated the patio, turned the garage into a family room and replaced the fence, which was in disrepair. She testified that the new fence is as tall as the old fence. Chair Proffitt asked if she used the same builder for the renovations and fence. Ms. Roberts said yes; and that they had permits. She said there aren't any sidewalks along the street and no safety issues.

Deliberation:

Member Allendorf said the fence is well designed and likes the weathered look. He said Public Works and Transportation said there were no safety issues, so he's okay with it. Member Jarboe said she is pretty rigid when it comes to certain fences, but that this one makes sense. Chair Proffitt said the existing trees dwarf the fence. He asked Mr. Price if he would agree to a conditions of approval that the trees and vegetation remain and if any of it dies will be replaced; that the applicant receive a Licensing Agreement from Public Works; and that the height of the existing fence remain as is (no taller).

Public Hearing:

Mr. Price and his client agreed.

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

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obtain a copy. The recording of this hearing will be found on the CD of the February 2, 2015 public hearing proceedings.

Variance—To allow the existing fence to exceed the maximum height from 4 ft. tall to 8 ft. tall:

After the public hearing in open business session, on a motion by Member Liggins, 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 the Land Development Code, Chapter 4, Section 4.4.3.A.1.a.i., to allow an existing fence to exceed the maximum height of 4 ft. tall to 8 ft. tall (a variance of 4 ft.); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the Metro Public Works staff has determined that the existing fence can remain where currently located, approximately 37” from the front of the street curb and encroaching approximately 7.5 feet into the Speed Avenue right-of-way; and because the existing fence will not need a license agreement to remain in the Speed Avenue right-of-way, although, the applicant has agreed to submit it; and because Metro Public Work’s staff has also determined the location of the fence does not impede the traveling public since the fence is not located at the intersection of two streets or an alley; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the existing 8 ft. tall wooden fence is a replacement of a similar wooden fence which existed in the same location before the current owner purchased the property in 2004; and because the existing landscaping including several large trees located around the patio and fence area are to remain; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the existing fence is similar to the fence it replaced and is in the same location as the original fence; also, because Metro Public Works staff

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has determined the fence can remain in the right-of-way and does not impede public travel; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the existing fence is similar to the fence it replaced; and because the lot configuration has created a situation where the private yard area (rear of the house) is adjacent to a street, therefore, the taller fence is necessary to provide screening and separation of the private patio area from the public street; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because this is a corner lot with a triangular shape which has created a situation where the rear of the house or private yard area is located adjacent to a street; and, in order to create privacy in the rear of the house, the addition of a taller fence is necessary; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because without the taller fence, the rear yard loses privacy and the use of the patio as a private space would be disrupted; 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 because the existing fence is a replacement of a fence which was similar in height and was in the same location, so the owner did not willfully violate the zoning regulation;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow an existing fence to be 8 ft. tall along the north property line **ON CONDITION:**

1. The applicant will submit a license agreement from Public Works.
2. The existing landscaping including large trees located around the patio and fence are to remain. If any of this landscaping should die, the applicant will replace it.

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3. The height of the fence panels will remain as the current existing height.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1027

Request: Variances from the Land Development Code to allow the proposed Indian Springs Hotel to exceed the maximum height and be located beyond the maximum setback; and for the Vehicle Use Area (VUA) and dumpsters to encroach into the required side yard.

Project Name: Indian Springs Hotel

Location: 3501 Indian Lake Drive (Tentative)

Owners: Indian Springs Green Space, LLC
Brent Nash, President
9462 Brownsboro Road
Louisville, KY 40241

Indian Springs, LLC
David E. Wren, Managing Member
3408 Indian Lake Drive
Louisville, KY 40241

Applicant: M & T, LLC
Pat Madden
P.O. Box 12128
Lexington, KY 40580

Attorney: Bardenwerper, Talbott & Roberts, PLLC
Nick Pregliasco, Esq.
1000 N. Hurstbourne Parkway, 2nd floor
Louisville, KY 40223

Representative: Mindel Scott & Associates
David Mindel
5151 Jefferson Blvd.
Louisville, KY 40223

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

FEBRUARY 2, 2015

NEW BUSINESS:

CASE NO. 14CUP1027

Jurisdiction: Louisville Metro
COUNCIL DISTRICT 17—Glen Stuckel
Staff Case Manager: Jon Crumbie, Planner II
(PREVIOUS CUP AND WAIVERS WERE APPROVED ON DEC. 15, 2014)

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, John Crumbie discussed the case summary, standard of review and staff analysis from the staff report. Mr. Crumbie explained that a Conditional Use Permit and Waivers were previously approved on December 15, 2014; and that the applicant now needs 3 variances. Member Bergmann asked why the building was moved further east from the road. Mr. Crumbie said that this was probably discussed at the previous Development Review Committee meeting, and could ask the applicant.

The following spoke in favor of this request:

Nick Pregliasco, Attorney.

Summary of testimony of those in favor:

Nick Pregliasco, the applicant's attorney, said the requested variances were part of the previously approved plan. He said some of the neighbors' wanted a fence and additional landscaping, and that the Board could add this as a condition of approval (COA). Chair Proffitt said they already included a condition of approval for landscaping at the previous hearing; and asked if they needed another one. Mr. Pregliasco said they increased the trees from 26 to 41 and added the fence along the common property line. Member Allendorf suggested adding the new COA with the third variance.

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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 February 2, 2015 public hearing proceedings.

Variance #1—To allow the proposed structure to exceed the maximum height requirement:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review 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 to allow the proposed structure to exceed the maximum height requirement to 67 feet tall (a variance of 7 feet); and

WHEREAS, the Board finds that the will not adversely affect the public health, safety or welfare since it's for aesthetic purposes; and

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WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity as the site sits in a depression that is lower than surrounding land which means the hotel would ultimately only be at most two or three stories taller than the apartments; and because the single family residences to the south of the apartments will be buffered by the apartment complex and the development to the north and west will soon be commercial sites if they are not already; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since it's for aesthetic purposes; and there is no evidence that a taller building at the intersection of a major arterial and interstate highway will adversely impact anyone or lead to any kind of hazard or nuisance; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are tall hotels located elsewhere in the area; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity as the site sits in a depression that is lower than surrounding land and is at the intersection of a major arterial level road and interstate; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the applicant would be left with a smaller hotel building that would not be attractive to many hotels which are otherwise suitable for this interstate interchange location, or additional golf course land would have to be taken to accommodate a more expansive building instead of taller; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought but rather the result of this being an interstate interchange location;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed structure to be 67 feet tall.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Variance #2—To allow the proposed structure to exceed the maximum setback from Indian Lake Drive:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review 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 to allow the proposed structure to exceed the maximum setback from Indian Lake Drive to 235 feet (a variance of 142 feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because there is no purpose served by locating the hotel building up along the I-265 on-ramp, especially anything relating to the public health, safety or welfare; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because this is the only property located along the I-265 on-ramp, and it is a common practice to require buildings to be located right up along interstate highways or even major arterials where sidewalks are not located and no pedestrian traffic exists; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because locating the building up along Westport Road and the I-265 on-ramp, might actually cause more of a nuisance than if the hotel building were set back; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because this is an effort to locate the hotel/restaurant building where one would logically be located and where it is

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best situated for purposes of access, circulation, limiting walking distances and addressing existing grade conditions; 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 if the hotel/restaurant building was located closer to Indian Lake Drive, then access and circulation would be made more difficult; walking distances would increase and grade conditions would be more challenging to address; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought, but rather is a result of this property being proposed for a hotel/restaurant at a location that is optimal for these uses—that being at a major arterial and interstate highway;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed structure to be 235 feet from Indian Lake Drive.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Variance #3—To allow the proposed structures to encroach into the required south yard:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review 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 to allow a dumpster and the Vehicle Use Area (VUA) to encroach into the 30 ft. side yard (south line) setback; and

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WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the dumpster will sit at a lower elevation than the adjacent apartments and will be closer to the adjacent maintenance building serving the apartments; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because all other requirements relating to dumpsters will be provided and ample landscaping will be provided along the south property line; and

WHEREAS, the Board finds that variance will not cause a hazard or nuisance to the public because the dumpster will be properly screened and located near the restaurant use; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the proposed location of the dumpster will not be noticeable from Indian Lake Drive, the Gene Snyder Freeway or Westport Road; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the proposed restaurant is located on the east end of the structure and the dumpster will need to be close by; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the dumpster would have to be moved to a more visible location on the site;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed dumpster and VUA to be 15 feet from the south property line **ON CONDITION:**

1. The Applicant shall install and subsequently maintain a three-board wood "horse" fence along the South property line of Tract 2 and the South property line of Tract 3 on the subject Minor Subdivision Plat for the property dated February 4, 2015, being the property line in common with

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that certain Indian Legends apartment property directly to the South encompassing approximately 1,034 linear feet. It is understood and agreed that the total length of the fence also includes the common boundary line that will exist in the event that the Applicant exercises its option to purchase Tract 3.

2. The Applicant shall install and subsequently maintain one tree (approximately forty-one (41) total trees) every 25 feet on center along the common boundary line between Tract 2 and Tract 3 on the subject Minor Subdivision Plat for the property dated February 4, 2015 and that certain Indian Legends apartment property directly to the South. It is understood and agreed that no less than twenty-one (21) of the foregoing trees will be evergreen trees with a minimum height of 6 feet at planting that will grow to a height of at least forty (40) feet at maturity. The remaining trees will be deciduous trees that will likewise grow to a height of forty (40) feet at maturity.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1026

Request: Conditional Use Permit, variances and waivers from the Land Development Code to allow a rehabilitation home.

Project Name: The Healing Place

Location: 1020-1030 W. Market Street

Owner: The Healing Place, Inc.
Karyn Hascal, President
1020 W. Market Street
Louisville, KY 40202

Applicant: Same as owner

Attorney: Stites & Harbison
Greg Ehrhard
400 West Market Street, Suite 1800
Louisville, KY 40202

Representative: Sabak, Wilson & Lingo, Inc.
Matthew S. Wolff, Landscape Architect
608 S. Third Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Latondra Yates, 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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Agency Testimony:

Staff case manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the CUP, variances and waiver are for an expansion of the Healing Place men's campus to include an additional 202 beds for a total of 426 beds. She said the building will wrap around an internal courtyard for the residents. Ms. Yates said the requests meet the applicable policies of the Comprehensive Plan and the Land Development Code requirements.

The following spoke in favor of this request:

Greg Ehrhard, Attorney.

Karen Hascal, President, The Health Place Inc.

Bob Haffermann, K. Norman Berry Associates Architects, 611 W. Main Street, Louisville, KY 40202.

Matt Wolff, Landscape Architect.

Summary of testimony of those in favor:

Greg Ehrhard, the applicant's attorney, said everyone present today is in favor of the proposal.

Karen Hascal, the applicant, said they have had long waiting lists for men who need help with various addictions. She said the expansion will not shut down the existing facility; and will increase the number of beds from 224 to 426. She said there will be a nice internal courtyard for the residents to socialize. She said there will be security cameras and there will be professional staff present at all times. Member Jarboe asked about federal funding. Ms. Hascal said they only receive state grants and generous donations. Member Tharp asked if they will be using local businesses for construction.

Bob Haffermann, the applicant's architect, said they will be using local contractors and possibly someone from Lexington.

Greg Ehrhard discussed the conditions of approval in the staff report and requested changes to comply with the regulatory requirements of the

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Commonwealth of Kentucky with regard to security, supervision, visitation and hours of operation.

Matt Wolff, the applicant's landscape architect said there will be low shrubbery for the residents to maintain. Member Jarboe asked if they could plant vegetables. Ms. Hascal said not at this facility, but that they do at the women's facility

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 spoke in opposition.

Deliberation:

The Board all agreed that this is a great program, especially considering the rise in heroin use.

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 February 2, 2015 public hearing proceedings.

Conditional Use Permit—To allow a rehabilitation home:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a

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Conditional Use Permit under Section 4.2.31 of the Land Development Code (LDC) to allow a rehabilitation home; and

WHEREAS, the Board finds that the proposed development meets the applicable policies of the Comprehensive Plan; and

WHEREAS, the Board finds that the proposed development is compatible in height, scale, design and intensity of some of the taller buildings in surrounding area and the neighboring Downtown Form District; and because the proposal will continue to be a low traffic generator as many of the residents do not drive; and

WHEREAS, the Board finds that the necessary public facilities (both on-site and off-site) such as transportation, sanitation, water, sewer, drainage, emergency services etc. because the plan has preliminary approval from the Transportation Planning Review Team and MSD, and is subject to construction approval; and

WHEREAS, the Board finds that the proposal is in compliance with applicable listed requirements; and

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a rehabilitation home on the site **SUBJECT** to the following Conditions of Approval:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a rehabilitation home without further review and approval by the Board.
3. The security, supervision, visitation and hours of operation of the rehabilitation home shall follow the required regulations of the Commonwealth of Kentucky.
4. The rehabilitation home shall have no more than 426 beds.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Variance—To allow the proposed building to encroach into the required 20-ft. rear yard:

On a motion by Member Allendorf, seconded by Member Liggin, 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 of Section 5.2.5.C.3.C. of the Land Development Code to allow the proposed building to encroach into the required 20-ft. rear yard where the requested setback is 15 feet, a variance of 5 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the majority of the setback will be observed; and because there will be screening provided between the proposed building and adjacent property; and the adjacent property is separated from the proposed development by an alley; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are other structures in the area that observes similar rear setbacks; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed setback allows the development to meet the required front setback; and will also allow for the larger building needed for this use; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the variance request is small and the majority of the setback will be provided; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because of the need for the larger building for the existing use due to the widespread, increased problem of addiction in the city;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building to be 15 feet from the south, rear property line.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Variance—To allow the proposed building to exceed the maximum 45-ft., 3-story height:

On a motion by Member Allendorf, seconded by Member Liggin, 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 of Section 5.2.5.C.3.D of the Land Development Code to allow the proposed building to exceed the maximum 45-ft., 3-story height; the proposed height is 56 feet tall, 4 stories—a variance of 11 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the building will be similar in height to other buildings in the area; and because it will be adequately screened from the residential at the rear; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because of the compatibility of the proposed building with others in the area; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because it will allow for a larger building needed for this use; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because of the compatibility of the proposed building with others in the area; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because of the need for the larger building for the existing use due to the widespread, increased problem of addiction in the city;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building be 4-stories and 56 feet tall.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

Waiver—To allow the applicant not to provide the trees within the required Landscape Buffer Area (LBA):

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review; the site plan; PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.4 of the Land Development Code to not provide the trees within the required rear LBA; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the proposed development is separated from adjacent residential to the rear by an alley; and because the required screening will be provided; and

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WHEREAS, the Board finds that the waiver will not violate the specific guidelines of Cornerstone 2020 because the rear yard will still contain the 8 ft. tall screen; and because planting the trees in this area would not produce the desired screening benefits because the rear yard adjoins the alley; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because of the underground electrical in this area; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because of the underground electrical in this area;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the applicant to not provide the trees within the required rear LBA.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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CLOSED SESSION

CASE NO. 09-CI-02734

Member Fishman made a motion to go into Closed Session and was seconded by Member Bergmann, and by general consent, was unanimously approved by all 8 Board Members.

The Board then came out of Closed Session.

No decision or any type of formal action was made regarding the litigation with regard to this case.

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The meeting adjourned at 12:26 p.m.

CHAIRPERSON

SECRETARY