

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

MARCH 3, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 10:30.A.M. on Monday, March 3, 2014, at the Metro Development Center, 444 S. 5th Street, Conference Room 101, Louisville, Kentucky.

Members present were:

David Proffitt, Chair
*Mike Allendorf, Vice Chair
Rosalind Fishman, Secretary
*Frederick Liggin
Betty Jarboe
Dean Tharp

Members absent:

No one.

Staff members present were:

Jim Mims, Director of Codes and Regulations
Emily Liu, Director of Planning & Design Services
John Carroll, Legal Counsel
Jessica Wethington, Public Information Specialist
Steve Hendrix, Planning Supervisor
Jon Crumbie, Planner II
Latondra Yates, Planner II
Jessica Butler, Planner I
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

The meeting started at 10:30 a.m. due to inclement weather.

*Members Allendorf and Liggin left the meeting at 2:20 p.m.

The following cases were heard:

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APPROVAL OF MINUTES:

Minutes of the meeting held on February 17, 2014

On a motion by Member Fishman, seconded by Member Liggin, the minutes of the meeting conducted on February 17, 2014 were approved.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1004

Applicant/Owner: Robertson Built Homes, Inc.
Paul Robertson
8117 Springlake Drive
Louisville, Kentucky 40241

Subject: An application for a variance from the Land Development Code to allow a proposed house to exceed the front yard setback.

Premises affected: On property known as 8409 Saurel Drive and being in the City of Plantation.

COUNCIL DISTRICT 7—Ken Fleming
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Paul Robertson, 8117 Springlake Drive, Louisville, Kentucky 40241.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On January 27, 2014, Paul Robertson filed an application for a variation from the requirements of the Land Development Code to allow a proposed house to exceed the front setback.

On March 3, 2014, 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.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in

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advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the March 3, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the variance is to allow the construction of a new house to encroach into the front yard area due to sewer and drainage easements. Per Transportation Planning Review comments, the City of Plantation will need to review the plan for access. MSD has reviewed the plan and has no issue with the variance. Ms. Yates said the request meets the standard of review requirements.

SUMMARY OF TESTIMONY OF PROPONENTS:

Paul Robertson, the applicant and owner, said this is the only way he can position the house due to the easements and creek.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

After the public hearing in open business session, 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 5.3.1.C.1.a.ii of the Land Development Code to allow a proposed house to exceed the front yard setback; 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 placement of the house will preserve the intermittent stream channel that runs along the front of the lot; and because the applicant will be screening the house with landscaping and trees along the creek; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed house appears to be compatible in design and scale with the other homes in the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the house will be set back in a manner that preserves the creek as well as avoid the sanitary sewer easements on the lot; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because of the creek and easements on the lot that impact placement of the house; 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 of the creek; sewer and drainage easements on the lot that impact the placement of the house; 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 unique constraints that exist on the lot; 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 due to the creek and existing drainage and sewer easements that impact the placement of the house;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed house to be 108.37 feet from the front property line.

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The vote was as follows:

YES: Members Proffitt, Jarboe, Fishman, Tharp, Allendorf 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. 14VARIANCE1005

Applicants/Owners: Robert & Ann Margaret Gutterman & Lois Ann Koontz
5228 Mercury Drive
Louisville, Kentucky 40258

Subject: An application for a variance from the Land Development Code to allow an existing fence to be 76 inches tall in the front yard along Gabriel Drive.

Premises affected: On property known as 5228 Mercury Drive and being in Louisville Metro.

COUNCIL DISTRICT 12—Rick Blackwell
Staff Case Manager: Jessica Butler, Planner I

Appearances for Applicant:
Ann Margaret Gutterman, 5228 Mercury Drive, Louisville, Kentucky 40258.

Lois Ann Koontz, 5228 Mercury Drive, Louisville, Kentucky 40258.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On January 28, 2014, Robert & Ann Gutterman and Lois Koontz filed an application for a variation from the requirements of the Land Development Code to allow a fence to be 76 ½ inches tall in the front yard along Gabriel Drive.

On March 3, 2014, 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.

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In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the March 3, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant installed a privacy fence taller than allowed in their front yard along Gabriel Drive. She said the property is a corner lot; and that the house is oriented toward Mercury Drive. She said the applicant received a Notice of Violation regarding the height; and feels it does alter the character of the neighborhood. Ms. Butler said she received two phone calls from area residents that were opposed. Chair Proffitt asked if the fence could be that tall if it were a side yard. Ms. Butler said no, that the fence could be no taller than 48" without a variance. Member Allendorf asked if the people who called that were opposed are adjacent property owners. Ms. Butler said no, but that they live in the area.

SUMMARY OF TESTIMONY OF PROPONENTS:

Ann Gutterman, the applicant and owner, submitted photographs of other similar fences in the area into the record. She said the neighbor behind her is not opposed; and is unsure who called in opposition. She said she needs the taller fence to contain her dog; for a proposed pool; and that there's a sex offender who lives across the street. She said she hired a licensed contractor to build the fence, who told her she didn't need a permit, just that she couldn't build it into right-of-way. Member Fishman asked why the sign noticing the public hearing came down. Ms. Gutterman said it blew down during a storm; and said she propped it back up. Member Jarboe asked if the other similar fences are in the subdivision. Ms. Gutterman said yes and just a couple of streets over. Chair Proffitt asked if there are any fences similar along Gabriel Drive. Ms. Gutterman said yes, on Gabriel and Galaxy. Chair Proffitt asked Ms. Gutterman if she told her contractor what happened. Ms. Gutterman said yes, and was told it would cost her \$5,000.00 to lower it; and that they couldn't do the job for four months.

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Lois Koontz said she is part owner of the house; and said their subdivision goes from Lower Hunters Trace to Greenwood Road. She said the homes are older along Greenwood Road.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Member Liggin said the fence will give the property owner the privacy they need. Member Fishman said she doesn't understand why fence companies don't know the regulations; and that they mislead the homeowners. Member Allendorf said the regulations should be changed to start fining fence companies that do this. He said it's a nice looking fence. Chair Proffitt said the need for the fence is not what the Board has to be concerned with; and said the fence height is wrong.

John Carroll, the Board's legal counsel, said if the Board is going to approve the request, they need to include findings of support, where the findings in the staff report are opposed.

After the public hearing in open business session, Member Allendorf made a motion to approve the variance with staff's findings of support and incorporate the applicant's justification for the findings in the staff report that were not supportive; and was seconded by Member Liggin.

The vote was as follows:

YES: Members Tharp, Allendorf and Liggin.

NO: Member Proffitt, Jarboe and Fishman.

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

ABSTAINING: No one.

The vote was tied, so the Board went back into discussion.

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DISCUSSION:

Member Jarboe said she doesn't like homeowners that build the fences and then ask for permission. Member Fishman said the fence is too tall, and realizes the applicant is trying to rectify the problem now.

BACK INTO PUBLIC HEARING:

Chair Proffitt asked Ms. Gutterman if the fence company could reduce the height. Ms. Gutterman said she asked them, and they told her that the entire fence would have to be redone. She said the fence company she hired has been in business over 30 years, and doesn't know why they didn't know the regulations. Member Jarboe asked if the fence company knew they put her in this position. Ms. Gutterman said yes, and that they told her it's not their job. She said she asked him to come to the public hearing, but said he couldn't. Chair Proffitt said the Board could subpoena him to come to another hearing to get his testimony. He said they've had too many of these types of cases and that something needs to be done.

BACK INTO BUSINESS SESSION:

Member Liggin said citizens depend on the professionals and is why people hire them. He said the applicant asked the right questions and doesn't think she should have to totally redo the fence and pay more money. Member Tharp said this company misinformed her; but feels it might set a precedent for others to build taller than allowed. He agreed that the Board should subpoena the fence company. Member Allendorf said the applicant could file a civil suit and complain to the Better Business Bureau. He said Lowe's and Home Depot's doesn't sell fencing material over 6 feet tall; and added that he believes the fence could be cut down to 48" as required. Chair Proffitt went over the options for motions stating that the Board could subpoena the fence company to testify; make another motion to approve; make a motion to deny or make the applicant reduce the fence to 48".

After the discussion, Member Allendorf made a motion to approve the requested variance as he did previously, and was seconded by Member Liggin.

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The vote was as follows:

YES: Members Jarboe, Allendorf and Liggin.

NO: Member Proffitt, Tharp and Fishman.

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

ABSTAINING: No one.

The vote was tied again.

Member Fishman made a motion for the County Attorney's Office to subpoena the applicant's builder and continue the hearing to a date after the subpoena has been received and was seconded by Member Liggin and the following resolution was adopted:

RESOLVED, that the Board does hereby direct the County Attorney's Office to **SUBPOENA** the applicant's fence builder to attend a public hearing to testify and **CONTINUE** the hearing after the subpoena has been received.

The vote was as follows:

YES: Members Jarboe, Fishman, Tharp and Liggin.

NO: Member Proffitt and Allendorf.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1006

Applicant/Owner: Michael Petrig
149 William Street
Louisville, Kentucky 40206

Representative: Bressoud Architecture
Ted Bressoud
230 South Hite Avenue
Louisville, Kentucky 40206

Subject: An application for a variance from the Land Development Code to allow a proposed structure to be built into the required side yard setback.

Premises affected: On property known as 149 William Street and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Jessica Butler, Planner I

Appearances for Applicant:
Mike Petrig, 149 William Street, Louisville, Kentucky 40206.

Appearances Interested Party:
Scott Kremer, 10825 Bluegrass Parkway, Louisville, Kentucky 40299.

Appearances Against Applicant:
No one.

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

On January 29, 2014, Michael Petrig filed an application for a variation from the requirements of the Land Development Code to allow a proposed structure to be built into the required side yard setback.

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NEW BUSINESS:

CASE NO. 14VARIANCE1006

On March 3, 2014, 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.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the March 3, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant requires a 3 ft. variance to build a second story addition to the rear of the existing house. She said it will be camelback style. She said the house is currently sitting at a non-conforming 0' setback to the neighboring house to the south; and that the addition will be built straight back, in line with the current setback. The Clifton Architectural Review Committee approved the design with conditions on February 12, 2014. Member Liggins asked if the neighbor to the left has a similar addition and style. Ms. Butler said yes.

SUMMARY OF TESTIMONY OF PROPONENTS:

Mike Petrig, the applicant, said he is present to answer any questions the Board may have. Chair Proffitt asked if it would be similar to what his adjacent neighbor has. Mr. Petrig said yes, but it's not as big.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

Scott Kremer with Studio Kremer Architects said he is the Chairman of the Clifton Architectural Review Committee and supports the request.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Chair Proffitt reiterated that the Clifton ARC has approved the design.

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After the public hearing in open business session, Member Allendorf made a motion to approve the requested variance and was seconded by Member Liggin. Chair Proffitt said he wanted further discussion.

DISCUSSION:

Chair Proffitt said he wanted the applicant to know that there will be no gutters etc. hanging over into the adjacent property owners' yard.

The motion carried, and 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 3 feet from Chapter 5.4.1.6b, of the Land Development Code to allow a home addition to be built at 0 feet along the south side property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the neighborhood is currently built with similar setback reductions and similar designs (camelback style); and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are similar style homes in the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the addition is entirely to the rear of the original structure and is built with ample setbacks from the alleyway or other public areas; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because lot sizes are small in this historic neighborhood, and most any modification of a house would need a variance or waiver; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the subject house is currently sitting on a non-conforming setback and the applicant only wants to continue the lines of the house for conformity; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the design of any addition would need to come in further from the sidewall than the house currently does, making for design complexities; 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 lots in the area are small and the applicant only wants to continue the lines of the house for camelback style conformity;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow an addition to the rear of the structure to be 0 feet from the south side property line **ON CONDITION** that no gutters or other structures hang over into the adjacent neighbors' yard to the south.

The vote was as follows:

YES: Members Proffitt, Jarboe, Fishman, Tharp, Allendorf 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. 14VARIANCE1008

Owners: Jason & Crystal Voll
8712 Shepherdsville Road
Louisville, Kentucky 40219

Applicant: Dennis Atkinson
4708 Andrea Way
Louisville, Kentucky 40219

Subject: An application for a variance from the Land Development Code to allow a proposed structure to encroach into the required front yard setback using infill standards.

Premises affected: On property known as 1595 Raydale Drive and being in Louisville Metro.

COUNCIL DISTRICT 24—Madonna Flood
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Dennis Atkinson, 4708 Andrea Way, Louisville, Kentucky 40219.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On February 6, 2014, Dennis Atkinson filed an application for a variation from the requirements of the Land Development Code to allow a proposed structure to encroach into the required front yard setback using infill standards.

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NEW BUSINESS:

CASE NO. 14VARIANCE1008

On March 3, 2014, 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.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the March 3, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jon Crumbie gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is requesting a variance to build a new residence on a vacant lot in an established neighborhood. He said the infill standards apply so the residence should be 70 feet from the front property line, or a 15 ft. variance. Chair Proffitt asked what the rear yard requirement is. Mr. Crumbie said 30 feet.

SUMMARY OF TESTIMONY OF PROPONENTS:

Dennis Atkinson said he is buying the property to build a new house. Chair Proffitt asked why he couldn't move the house back to meet the infill standards. Mr. Atkinson said it will line up with the existing homes and look more natural with the variance.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition to the request.

BUSINESS SESSION:

No discussion.

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

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WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow a proposed structure (new residence) to encroach into the required front yard setback using the infill standards; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the structure will be new construction and code compliant; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the lots at 1587 and 1591 Raydale Drive are bigger and have greater setbacks than the rest of the neighborhood; and because the proposal will be compatible with the existing surrounding residential neighborhood; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the encroachment will allow a similar front yard setback as the surrounding neighborhood; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are several encroachments of this type in the general area; 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 lots at 1587 and 1591 Raydale Drive are bigger and have greater setbacks than the rest of the neighborhood; 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 rear yard would be reduced further; 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

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which relief is sought because the lots at 1587 and 1591 Raydale Drive are bigger and have greater setbacks, and because of this, the placement of the home will match the existing setbacks and look more compatible; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed new residence to be 55 feet from the front property line.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: Member Allendorf.

Member Allendorf abstained because the property is in his fire district.

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NEW BUSINESS:

CASE NO. 14DEVPLAN1115

Applicant/Owner: Qaudrant Hospitality, LLC
Rajesh Krishnani, Member
1041 Zorn Avenue
Louisville, Kentucky 40207

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

Representative: Milestone Design Group, Inc.
Mark Madison
108 Daventry Lane
Louisville, Kentucky 40223

Project Name: 4-Story Hotel

Subject: A Category 3 Review and variances from the Land Development Code to allow a proposed building to exceed the maximum setbacks and building height.

Premises affected: On property known as 1041 Zorn Avenue and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Bill Bardenwerper, Attorney, 1000 N. Hurstbourne Pkwy., Ste. 200, Louisville, Kentucky 40223.

Mark Madison, 108 Daventry Lane, Louisville, Kentucky 40223.

Scott Kremer, Studio Kremer Architects, 10825 Bluegrass Parkway, Louisville, Kentucky 40299.

Appearances Interested Party:
No one.

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CASE NO. 14DEVPLAN1115

Appearances Against Applicant:

Meme Sweets Runyon, River Fields, 455 South 4th Street, Suite 990, Louisville, Kentucky 40202.

Raymond Smith, President of the Mockingbird Valley Preservation Alliance, 400 W. Market Street, Ste. 2300, Louisville, Kentucky.

Ms. Lee Cory, President of the Board of Trustees, River Fields, 455 South 4th Street, Ste. 990, Louisville, Kentucky 40202.

Bill Bartley, 5407 River Creek, Louisville, Kentucky 40059.

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

On January 27, 2014, Quadrant Hospitality, LLC, filed an application for a Category 3 Review and variances to allow a proposed building to exceed the maximum setbacks and building height.

On March 3, 2014, 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.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the March 3, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. Ms. Yates submitted letters of opposition that she recently received for the Board to review. She said the requests are for the construction of a 4story hotel with 99 rooms on Zorn Avenue.

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She said a 100-ft. LG&E easement runs along the front of the property which impacts how the buildings can be placed. She said the applicant has submitted elevations that meet the building and site design standards for the Category 3 Plan; and the parking is within the minimum and maximum on both tracts. Landscaping, a tree canopy and internal pedestrian connections are proposed. She said the sidewalk along Zorn Avenue will be constructed upon development of the adjacent property. Ms. Yates said the site is part of a commercial node by the River Road Scenic Byway Corridor Management Plan, which characterizes the commercial uses as being relatively small in scale. She said there are service stations, restaurants, general retail and a car repair shop. She said River Fields is opposed to the request. Ms. Yates said the requests meet the standard of review for the setbacks, but not the height considering the River Road Scenic Byway; and the Water Tower which is a National Historic Landmark site. The Category 3 Plan meets the applicable sections of the Land Development Code.

Member Fishman asked how many stories the existing Ramada Hotel has. Ms. Yates said two.

SUMMARY OF TESTIMONY OF PROPONENTS:

Bill Bardenwerper, Attorney for the applicant, said the Quadrant Hospitality will be a companion hotel to the existing Ramada Inn. He said there are other commercial businesses in the area such as the gas stations, Galen College, the Lebanese Club and the Henry Potter Condominium Building that overlooks the river. He said the roof height of their project is 39.6' and with the parapet will be 53.10', where the maximum allowed is 30 feet. Mr. Bardenwerper explained that buildings can be taller considering the footprint; and that an apartment building could be 60 feet tall. He said Galen College is a 6-story building, 80 feet tall; and said there is another new development that will be built at 60 feet tall. Mr. Bardenwerper added that they have enough parking.

Mark Madison discussed the placement of the buildings and design. He said the setbacks are due to the 100 ft. wide LG&E easement and significant grade changes on the property. He said height has not been the issue; and reiterated that they could develop the site with an 80 ft. tall apartment building without a variance. Member Allendorf questioned what the use would be on the lower portion of the building.

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Scott Kremer, Studio Kremer Architects, said they wanted to put an indoor pool there, but cannot due to the floodplain. Mr. Kremer explained where the lobby would be; and said they will be screening the rooftop equipment with the parapet. Member Fishman asked if this company is part of the Ramada Hotel chain. Mr. Kremer said no, but the owners are in business together. He said they will also be tearing down some of the Ramada rooms to add more of the Candlewood Suites.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

Meme Sweets Runyon, Executive Director of River Fields, said River Fields has over 200 members over a large part of Louisville. She said they've invested a lot of money to keep the River Road area clean and green for the enjoyment of the citizens. She said they purchased two more properties along River Road to keep it park like; and that there are only small commercial businesses in the area (bike store etc.). She said this portion of River Road is the gateway to the scenic corridor and includes the historic Water Tower. She said this development is so close to River Road, it will appear to be on River Road. She said nothing has been approved here in 30 years and that the area needs to be protected. Ms. Runyon explained that Galen College is further away from River Road; and that this development could set a precedent for other taller structures to be built. She said the property is elevated, so the hotel will look even taller. She said she agrees with staff's analysis in that there are "no special circumstances" for the additional height; and that "it will alter the essential character of the area." She said staff's analysis also mentioned that the hotel could be redesigned to meet the height regulations, which she also agrees with. She said the request does not meet the River Road Scenic Byway Corridor Management Plan, the Ohio River Master Plan or parts of the Land Development Code. Member Fishman asked Ms. Runyon if she is opposed to the 4-story hotel. Ms. Runyon said yes, but would not be opposed to a two-story hotel. Chair Proffitt asked if she did a sight line study. Ms. Runyon said no, she didn't have enough time since she just received the notice of public hearing.

Raymond Smith, President of the Mockingbird Valley Preservation Alliance, said the Mockingbird Valley Plan was approved in 2006, and that this request doesn't meet the goals and objectives of this plan or the neighborhood plan. He said the

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regulations seem irrelevant if someone can build something taller by calling it something different (apartments). He asked the Board to deny the requests.

Ms. Lee Cory, President of the Board of Trustees of River Fields, said she has been a lifelong resident and said the area has become “greener” with less commercial businesses. She said there has been great effort, both public and private to maintain it. She said Mr. Bardenwerper criticized the code when he himself helped write it. Ms. Cory agreed with Ms. Runyon, that there are no “special circumstances” for this request; and that building 4 stories will set an irreversible precedent in the area.

Bill Bartley said he’s lived in the area for 55 years and said the area has improved with less trash and the docks being remodeled. He said River Fields bought more than 50 acres to create more green space; and are now seeing more walkers, runners and bicyclists. He said there is an abundance of wildlife in the area including turkeys, beaver, coyotes, bald eagles and great blue herons. He said this development will impact the wildlife and be an overall visual nuisance. Chair Proffitt said he didn’t think it would negatively affect the wildlife, since the hotel has been there for many years.

REBUTTAL SUPPORT:

Bill Bardenwerper said everyone enjoys the parks and wildlife, but said this site is already developed. He explained that the proposal will look nice with the improvements. He said the north side is approximately 432 feet back from River Road where Galen College is significantly taller and 225 feet from River Road. Chair Proffitt asked Mr. Bardenwerper if he conducted a sight line study. Mr. Bardenwerper said no--that he didn’t realize this was an issue. He said he doesn’t believe it can be seen from River Road. There was discussion regarding the view from the Water Tower. Mr. Bardenwerper read some of the findings of fact from the 2008 Galen College case into the record. He said the issue before the Board today is the setbacks and the height.

REBUTTAL OPPOSITION:

Meme Runyon said the hotel is not legally on River Road, but will interfere with the “spirit” of the area. She said the other buildings such as the VA Hospital and other taller buildings shouldn’t be taken into account because they are further away from River Road and already built. She reiterated that there are no special circumstances to receive a variance for the additional height; and said it will be

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seen from River Road. Chair Proffitt said the Water Tower hasn't come before the Board; and that the VA Hospital is unsightly so asked why she thinks this will be a detriment to the view shed. Ms. Runyon said if River Fields could get rid of some of these buildings they would. She said it just doesn't fit in this corridor.

BUSINESS SESSION:

Member Fishman said she doesn't have any issues with the setbacks, but is unsure about a 4-story hotel. Member Liggin said Galen College already exceeds this height. Member Jarboe said she agrees with staff's analysis-- that it will alter the character of the area; and said this is an instance where the Board could make a difference. Member Tharp agreed with Member Jarboe. Chair Proffitt said that staff said it "may" impact the view shed; and that he would be opposed to anything built on the north side. He said there are other blighted commercial businesses in the area; and thinks the improvements will look nice. He said he understands both sides of the issue. Member Allendorf said the site is in a commercial node; and reiterated that Galen College is quite taller than this request. He said this site did not flood in 1997.

VARIANCE—BUILDING HEIGHT:

After the public hearing in open business session Member Jarboe made a motion to deny the variance and was seconded by Member Fishman for discussion:

DISCUSSION:

There was discussion about the applicant coming back with a new plan if this variance is denied.

The motion carried, and the vote was as follows:

The vote was as follows:

YES: Members Jarboe and Fishman

NO: Members Liggin, Allendorf, Tharp and Proffitt.

NOT PRESENT FOR THIS CASE AND NOT VOTING:

No one.

ABSTAINING: No one.

A new motion will be made for the building height variance, but the Board decided they wanted to vote on the first variance next.

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VARIANCE—Setback on Tract 1:

After the public hearing, in open business session, on a motion by Member Fishman, 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 from Table 5.3.2 of the Land Development Code to allow the existing building on Tract 1 to exceed the maximum 150-ft. setback for building footprints of 30,001 to 80,000 square feet, so the requested setback is 298 feet, or a variance of 148 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the building on Tract 1 exists and predates the current code; and because the LG&E easement affects placement of the buildings on both tracts; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are existing structures adjacent that observe similar setbacks; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the required access, drainage and other standards required by the reviewing agencies have been met, and the plan is subject to construction review; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because of the LG&E easement and lotting pattern that impact placement of the buildings; 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 due to the 100 ft. wide LG&E easement that crosses the site between the existing hotel and the Zorn Avenue road frontage; and because this easement has large transmission towers within it and cannot be released and relocated; 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 LG&E easement and lotting pattern which impact placement of the building;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the existing building on Tract 1 to be 298 feet from Zorn Avenue.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

VARIANCE--BUILDING HEIGHT AGAIN:

After the public hearing, in open business session, 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 from Table 5.3.2 of the Land Development Code to allow the proposed hotel on Tract 2, to exceed the maximum 30-ft. building height to 53 feet, 10 inches (a variance of 23 ft. 10 inches); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the proposed hotel is no more visually intrusive than other taller structures in the vicinity such as Galen and Webster Colleges among other tenants which has a maximum height at the elevator tower of 80 feet, and the roof height is 69 feet; and because this site has already been developed with a hotel for numerous years; and

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WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed hotel is no more visually intrusive than other taller structures in the area such as Galen College, which has a maximum height at the elevator tower of 80 feet and the roof height at 69 feet; and because this site has already been developed with a hotel for numerous years; and because the entrance for the proposed hotel faces Interstate 71; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the proposed hotel will be no more visually intrusive than other taller structures in the area such as Galen College, which has a maximum height at the elevator tower of 80 feet and the roof height at 69 feet; and because this site has already been developed with a hotel for numerous years; and because the proposed hotel faces Interstate 71; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because a two-story hotel has existed on this property for numerous years; and because the proposed hotel will be no more visually intrusive than other taller structures in the area such as Galen College, which has a maximum height at the elevator tower of 80 feet, with the roof height being 69 feet;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed hotel building height to be 53'10" on Tract 2.

The vote was as follows:

YES: Members Proffitt, Tharp, Allendorf and Liggin.

NO: Members Fishman and Jarboe.

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

ABSTAINING: No one.

VARIANCE—SETBACK ON TRACT 2:

After the public hearing, on a motion by Member Allendorf, seconded by Member Liggin, the following resolution was adopted:

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WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Table 5.3.2 of the Land Development Code to allow the proposed building on Tract 2 to exceed the maximum 80-ft. setback for building footprints of 5,001 to 30,000 sf.—the requested variance is 356 feet, or a variance of 276 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the building on Tract 1 exists and predates the current code; and because the LG&E easement affects placement of the buildings on both tracts; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are existing structures adjacent that observe similar setbacks; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the required access, drainage and other standards required by the reviewing agencies have been met, and the plan is subject to construction review; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because of the LG&E easement and lotting pattern that impact placement of the buildings; 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 due to the 100 ft. wide LG&E easement that crosses the site between the existing hotel and the Zorn Avenue road frontage; and because this easement has large transmission towers within it and cannot be released and relocated; 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 LG&E easement and lotting pattern which impact placement of the building;

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NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed hotel building on Tract 2 to be 356 feet from Zorn Avenue.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

CATEGORY 3 PLAN:

After the public hearing, in open business session, 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, the site plan, the PowerPoint presentation(s); the renderings, the evidence and testimony submitted at the public hearing, that the applicant is requesting a Category 3 Review for the construction of a hotel—Candlewood Suites;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **APPROVE** the Category 3 plan to construct a hotel.

The vote was as follows:

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

NO: Member Jarboe.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1023

Applicant/Owner: Twins Unlimited, LLC
Tim Mueller
23 Country Life Acres
St. Louis, MO 63131

Representative: ARC Construction Management
Eric Goodman, V.P. Development
1517 Fabricon Blvd.
Jeffersonville, IN 47130

Subject: An application for a Conditional Use Permit to allow a commercial greenhouse in an R-6 zoning district; and an alternative landscape plan.

Premises affected: On property known as 2601 Blankenbaker Road and being in Louisville Metro.

COUNCIL DISTRICT 20—Stuart Benson
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Eric Goodman, 1517 Fabricon Blvd., Jeffersonville, IN 47130.

Appearances- Interested Parties:
No one.

Appearances Against Applicant:
No one.

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.

On January 15, 2014, Tim Mueller filed an application for a Conditional Use Permit to allow a commercial greenhouse in an R-6 zoning district; and an alternative landscape plan.

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On March 3, 2014, 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.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the March 3, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the request will allow the existing business to continue as a commercial greenhouse, plant nursery, and landscape material supply operation. The applicant received a Notice of Violation on September 24, 2013. There will be 7 parking spaces and the site will be buffered from adjacent property owners with a fence. The existing greenhouse will be relocated away from the adjacent residential property. Mr. Crumbie said the request complies with the Cornerstone 2020 and the Land Development Code, and that the applicant is requesting the Board to approve an alternative landscape/buffer plan. Mr. Crumbie said the applicant needs to disclose how many employees, the hours of operation and possible noise mitigation.

SUMMARY OF TESTIMONY OF PROPONENTS:

Eric Goodman, the applicant's representative, said his client didn't know he needed a CUP to operate his business. Mr. Goodman said his client removed all the equipment off the site and took down the greenhouse already. He said the applicant has had numerous on site visits with staff. Mr. Goodman said there is PEC and M-2 zoning in the area. The hours of operation will be from 8:00 a.m. to 5:00 p.m. Monday thru Saturday; and that there will be 2 to 7 employees. Mr. Goodman said noise will not be an issue; and that the applicant will need machinery to unload the trucks. Chair Proffitt asked Mr. Goodman if his client would agree that equipment shown in the photographs will not be stored or used on the site; and that a fence and landscaping will be installed between the

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business and adjacent property owners. Mr. Goodman agreed but said his client needs equipment to offload product. Chair Proffitt said this would be acceptable.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one.

BUSINESS SESSION:

Chair Proffitt reiterated that the only machinery that will be used is to offload product, but other machinery shown in pictures will not be used or stored on this site or any other similar equipment.

BACK INTO PUBLIC HEARING:

Mr. Goodman said he didn't think they had to go before the Development Review Committee. Mr. Crumbie said the Board can't approve the site plan.

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 Board finds, from the file of this case, the staff report, the PowerPoint presentation and the evidence and testimony submitted at the public hearing that the applicant is requesting a Conditional Use Permit to allow an existing commercial greenhouse to operate in an R-6 zoning district; and

WHEREAS, the Board finds that the property is within a Suburban Workplace Form District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan being compatible with the area; and because the site is located within a Suburban Workplace Form District with residential uses in the immediate area; and because adequate transportation infrastructure exists to accommodate the use; and because there are no natural, scenic, environmental, or historic resources on the subject property that would restrict the development; and because the subject site is not located in the 100-year floodplain and there are no streams, wetlands, or waterways on the site; and because necessary utilities, including water, electricity, telephone, cable and an

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adequate supply of potable water and water for fire-fighting purposes which is served by the Jeffersontown Fire Department; and

WHEREAS, the proposal is compatible with surrounding land uses and the general character of the area in terms of scale, intensity, drainage and appearance; and

WHEREAS, the Board finds that the proposal complies with the following specific standards required to obtain the conditional use permit; and because the applicant is requesting approval of an alternative landscaping and buffering plan, in addition to complying with setbacks, freestanding and attached signage; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION**.

The conditions are as follows:

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 as a commercial greenhouse; plant nursery and landscape material supply company without further review and approval by the Board.
3. The hours of operation will be from 8:00 a.m. to 5:00 p.m., Monday through Saturday.
4. The maximum amount of employees will be 7.

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5. No machinery equipment will be allowed on this site except for machinery to offload merchandise.

6. The alternative revised landscape plan dated on 1-3-14 shall be implemented.

The vote was as follows:

YES: Members Proffitt, Jarboe, Fishman and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf
and Liggin.**

ABSTAINING: No one.

ALTERNATIVE LANDSCAPE PLAN:

After the public hearing, on a motion by Member Fishman, seconded by Chair Proffitt, the following resolution was adopted:

RESOLVED, that the Board does hereby **APPROVE** the alternative landscape plan dated 1-3-14.

The vote was as follows:

YES: Members Proffitt, Jarboe, Fishman and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf
and Liggin.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14APPEAL1000

Appellant: George Meyers
2216 Wadsworth Avenue
Louisville, Kentucky 40205

Subject: An application for non-conforming use rights to allow a rear house (Notice of Violation refers to it as an accessory apartment) in an R-5 zoning district.

Premises affected: On property known as 4112 South Second Street and being in Louisville Metro.

COUNCIL DISTRICT 15—Marianne Butler
Staff Case Manager: Steve Hendrix, Planning Supervisor

Appearances Opposing the Appeal:
Ronald Geary, 216 W. Collins Court, Louisville, Kentucky 40214.

Appearances Interested Party:
No one.

Appearances in Support of the Appeal:
George Meyers, 2216 Wadsworth Avenue, Louisville, Kentucky 40205.

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, Louisville, Kentucky.

On December 4, 2013, the Louisville Metro Department of Codes and Regulations issued a Notice of Violation concerning the use of an accessory apartment on property zoned R-5, Single Family Residential.

On January 2, 2014, the appellant filed an appeal of this action.

On March 3, 2014, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the March 3, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Steve Hendrix gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the appellant is requesting non-conforming use rights to allow a rear house, but the Notice of Violation said it's an accessory apartment. He said the property was part of the Southern Parkway Area Wide Rezoning that changed the zoning from R-6, Apartments to R-5, Single Family Residential in 1985. The appellant must prove continuous use from 1985 on. He said the 1977 Sanborn map (Revised in 1990) shows two structures on the lot with subject one labeled as "A" private garage and "D" for the single family unit. Mr. Hendrix said from the information received from the appellant and staff's research appears that the rear structure has been used as a single family dwelling unit from 1985 or earlier. Chair Proffitt said it could have been an apartment but that the use has not changed. Mr. Hendrix said yes. Chair Proffitt asked if the evidence and staff's research is satisfactory. Mr. Hendrix said yes.

SUMMARY OF TESTIMONY OF OPPONENTS:

Ronald Geary said he lives two blocks from the subject property. He said the Wilder Neighborhood Association has a newsletter that goes out to 800 people. He said Codes and Regulations can't govern everything, but said the appellant's renters have been hard to deal with throwing late night parties where the Police had to be called; and junk vehicles in the yard. Mr. Geary said he believes the owner has evicted these tenants, and feels he should use more discretion when choosing tenants. He said the owner also needs to be more involved when disruptive incidences occur on his property. He said it is not a carriage house, but an old converted garage.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

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SUMMARY OF TESTIMONY OF APPELLANT(S):

George Meyers, the owner and appellant, said he evicted the tenants that were causing problems; and removed the vehicle and other junk off the property. He said he received a couple of other violations regarding the oak tree, which he eventually cut down. He said overall, he's had pretty good tenants until now. Mr. Meyers said the pictures show siding that was used in 1920-1940; and that he replaced it with new siding in addition to other improvements. Member Jarboe asked if he was aware of the noise from the parties. Mr. Meyers said yes; and that he received another complaint that too many people were at the residence at once. Mr. Meyers said he didn't know there was a neighborhood association. Member Jarboe asked if he would be willing to give Mr. Geary his phone number, so he can contact him if need be. Mr. Meyers said yes. Member Fishman said the neighborhood association says that you don't handle nuisance situations on your property. Mr. Meyers said he addresses every complaint he gets. Member Tharp asked if the unit is vacant now. Mr. Meyers said yes, that he's getting it cleaned up.

REBUTTAL MR. GEARY:

Mr. Geary said the Sanborn map states it's a garage; and said that is what the use should be

REBUTTAL MR. MEYERS:

Mr. Meyers showed earlier pictures of the property to present stating that it looks the same. He said he didn't add on to this property, but has just made improvements.

BUSINESS SESSION:

Chair Proffitt said the Board must decide if the owner has non-conforming use rights; and that staff agrees with the owner per the evidence and research. Member Jarboe said it's nice that the neighborhood association has become involved to improve the situation. Member Fishman said the owner needs to be a better neighbor and be more involved if there are any more complaints.

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

WHEREAS, the Board finds from the file of this case, the staff report, the evidence submitted, research and testimony given at the public hearing, this

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

MARCH 3, 2014

NEW BUSINESS:

CASE NO. 14APPEAL1000

appeal concerns non-conforming use rights for a rear house on the subject property; and

WHEREAS, the Board finds that this property was part of the Southern Parkway Area Wide Rezoning that changed the zoning from R-6, Apartments to R-5, Single Family Residential in 1985; and when the current owner purchased the property in 1995, were two structures being used as rental apartments; and because staff received a letter from John Ohnimus, stating that he knew the owner in 1962 (O.E. Alexander) who also had the second structure in the back rented; and because additional information submitted supports that the appellant's ownership time frame supports the fact that abandonment did not take place;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **ACKNOWLEDGE** that non-conforming use rights exist for a rear house/accessory apartment; and

BE IT FURTHER RESOLVED, that the Board does hereby **APPROVE** the Appeal.

The vote was as follows:

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

NO: Member Fishman.

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

ABSTAINING: No one.

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The meeting adjourned at 4:30 p.m.

CHAIRPERSON

SECRETARY