

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

October 15, 2018

A meeting of the Louisville Metro Board of Zoning Adjustment was held on October 15, 2018 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Members Present:

Rosalind Fishman, Chair
Dwight Young, Vice Chair
Lula Howard, Secretary (left at approximately 4:22 p.m.)
Lester Turner, Jr.
Kimberly Leanhart
Richard Buttorff

Staff Members Present:

Joe Haberman, Planning & Design Manager
Chris French, Planning & Design Supervisor
Steve Hendrix, Planning & Design Coordinator
Jon Crumbie, Planning & Design Coordinator
Dante St. Germain, Planner II
Zach Schwager, Planner I
Beth Jones, Planner II
Travis Fiechter, Legal Counsel
Sue Reid, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

OCTOBER 1, 2018 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

00:05:17 On a motion by Member Howard, seconded by Vice Chair Young, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on October 1, 2018.

The vote was as follows:

Yes: Members Turner, Leanhart, Howard, Vice Chair Young, and Chair Fishman

Abstain: Member Buttorff

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PUBLIC HEARING

CASE NUMBER 18NONCONFORM1028

Request: A change in nonconforming use from a pool supply company to multi-family residential
Project Name: Franklin Street Change in Nonconforming Use
Location: 935 Franklin Street
Owner/Applicant: Hilltech Properties, LLC
Representative: Cliff Ashburner, Dinsmore & Shohl, LLP
Jurisdiction: Louisville Metro
Council District: 4 – Barbara Sexton Smith
Case Manager: Chris French, Planning Supervisor

NOTE: Item #9 on the agenda was heard prior to this case.

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

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

Agency testimony:

00:35:34 Chris French presented the case and showed a Powerpoint presentation. Mr. French responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Cliff Ashburner, 101 S. 5th St., Suite 2500, Louisville, KY 40202
Mitchell Kersting, 231 N. 19th Street, Louisville, KY 40203
Jonathan Pauly, 415 E. Market St., Unit 404, Louisville, KY 40202
Scott Howe, 911 Franklin St., Louisville, KY 40206
Chris Eldridge, 931 E. Main St., Louisville, KY 40206

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Summary of testimony of those in favor:

00:47:59 Cliff Ashburner spoke in favor of the request and showed a Powerpoint presentation. Mr. Ashburner explained why they believe the requested use would be no more odious than the current use. Mr. Ashburner responded to questions from the Board Members (see recording for detailed presentation).

01:07:33 Mitchell Kersting spoke in favor of the request in regard to the square footage of each proposed condominium unit (see recording for detailed presentation).

01:08:51 Cliff Ashburner spoke in regard to density of the proposed units. Mr. Ashburner responded to questions from the Board Members (see recording for detailed presentation).

01:10:23 Jonathan Pauly spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

01:14:40 Mr. Ashburner spoke in favor of the request (see recording for detailed presentation).

01:15:32 Scott Howe spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

01:18:57 Mr. Ashburner responded to questions from the Board Members (see recording for detailed presentation).

01:22:28 Chris Eldridge spoke in favor of the request (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

01:24:07 Chris French responded to questions from the Board Members (see recording for detailed presentation).

01:25:19 **Board Members' deliberation**

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01:30:57 Public Hearing was reopened to allow Mr. French an opportunity to respond to a question from Legal Counsel (see recording for detailed presentation).

01:32:55 Mr. Ashburner responded to Mr. French's comments (see recording for detailed presentation).

01:33:30 Board Members' deliberation

01:47:00 On a motion by Member Howard, seconded by Member Buttorff, the following resolution, based upon the case file, and the evidence and testimony presented today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the new nonconforming use (eight residential dwelling units) is in the same or more restrictive classification than current nonconforming use (pool supply use), and

WHEREAS, the Board further finds that the new nonconforming use (eight residential dwelling units) will be no more odious or offensive to surrounding properties than the current nonconforming use (pool supply use); now therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18NONCONFORM1028 does hereby **APPROVE** Change in Nonconforming Use (pool supply company) to another nonconforming use (eight dwelling units and pool supply use).

The vote was as follows:

Yes: Members Buttorff, Howard, Leanhart, and Chair Fishman

No: Member Turner and Vice Chair Young

01:49:42 Meeting was recessed.

01:50:03 Meeting was reconvened.

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CASE NUMBER 18DEVPLAN1129

Request: Variance to allow a dumpster to encroach into the required non-residential-to-residential setback
Project Name: Brownsboro Road Plaza Variance
Location: 10000 Brownsboro Road
Owner/Applicant: Hogan Holdings 42 LLC
Representative: Land Design & Development
Jurisdiction: Louisville Metro
Council District: 17 – Glen Stuckel
Case Manager: Dante St. Germain, Planner II

NOTE: Item #8 on the agenda was heard prior to this case.

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

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

Agency testimony:

02:59:15 Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Mike Hill, 503 Washburn Ave., Louisville, KY 40222

Summary of testimony of those in favor:

03:05:32 Mike Hill spoke in favor of the request and showed a Powerpoint presentation. Mr. Hill responded to questions from the Board Members (see recording for detailed presentation).

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The following spoke in opposition of the request:

No one spoke.

03:11:45 Board Members' deliberation

03:11:53 On a motion by Member Turner, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, the testimony heard today, and the applicant's justification, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the existing building, which was constructed prior to the adoption of the current zoning regulations, encroaches into the setback by a similar amount as the proposed dumpster, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the property is screened from the abutting residential use by a line of evergreen trees and a six-foot privacy fence, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed encroachment is similar to the encroachment of the existing building, which has caused no known hazard or nuisance, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the dumpster will be positioned next to a building which already encroaches into the rear yard setback, as it was constructed prior to the adoption of the current zoning regulations, and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the property was fully developed prior to the adoption of the current zoning regulations, and there is no other location on the lot for a second dumpster which would not reduce parking on the lot below the minimum required for the use, and

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WHEREAS, the Board further finds that the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring the applicant's tenants to use a single dumpster, which has become insufficient for the property's uses, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

WHEREAS, the Board further finds that the variance will not adversely affect the public health, safety or welfare because there is an existing 6' privacy fence and a vegetative screen to block this new dumpster. The dumpster will also be enclosed in a screened enclosure, and

WHEREAS, the Board further finds that the variance will not alter the essential character of the general vicinity because the existing building is already encroaching into this setback, since it was developed under a previous Land Development Code, and

WHEREAS, the Board further finds that the variance will not cause a hazard or a nuisance to the public because the dumpster will be screened from the public right-of-way as well as the adjacent residential property, and

WHEREAS, the Board further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the existing building is already encroaching into this setback because it was developed under the previous Land Development Code, and

WHEREAS, the Board further finds that the variance arises from special circumstances as the existing dumpster is on fulfilling the needs of the development, so a second dumpster is necessary. The existing building is located within this setback since it was developed under a previous land development code, and

WHEREAS, the Board further finds that the strict application of the provision would create an unnecessary hardship on the developer because the development currently provides the minimum amount of parking spaces, so they could not lose a space to accommodate the dumpster. The proposed location is the most suitable for the user, and

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WHEREAS, the Board further finds that the existing building is located within the setback because it was developed under a previous version of the Land Development Code and this proposed dumpster location correlates with the existing building location; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1129 does hereby **APPROVE** Variance from Land Development Code Section 5.5.5 to allow a dumpster to encroach into the required 50-foot non-residential-to-residential rear yard setback (**Requirement 50 feet, Request 15 feet, Variance 35 feet**).

The vote was as follows:

Yes: Members Turner, Buttorff, Leanhart, Vice Chair Young, and Chair Fishman

Absent: Member Howard

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Request:	Variances to allow the proposed building to exceed the corner setback, encroach into the rear yard setback, and the dumpster to encroach into the side yard setback and parking and landscape waivers
Project Name:	Dixie Highway Variances and Waivers
Location:	3611 Dixie Highway
Owner/Applicant:	Amrinderjit Singh
Representative:	Chris Brown, BTM Engineering Inc.
Jurisdiction:	City of Shively
Council District:	3 – Mary C. Woolridge
Case Manager:	Zach Schwager, Planner I

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

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

Agency Testimony:

03:13:45 Zach Schwager presented the case and showed a Powerpoint presentation. Mr. Schwager responded to questions from the Board Members (see staff report and recording for detailed presentation).

03:23:51 Chris French, Planning Supervisor, provided clarification on the proposed Condition of Approval (see recording for detailed presentation).

03:24:27 Mr. Schwager provided the Board Members with information regarding interested party comments related to a telephone call he had received this morning concerning traffic issues (see recording for detailed presentation).

The following spoke in favor of the request:

Chris Brown, 3001 Taylor Springs Drive, Louisville, KY 40220

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Summary of testimony of those in favor:

03:25:46 Chris Brown spoke in favor of the request and showed a Powerpoint presentation. Mr. Brown responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

03:50:31 Board Members' deliberation

03:54:19 On a motion by Vice Chair Young, seconded by Member Leanhart, the following resolution, based upon the Standard of Review and Staff Analysis, the testimony heard today, and the variance justification statement, was adopted:

Variance #1 from City of Shively Land Development Code Section 5.2.3.D.3.d to allow a reduction in the required 15 ft. rear yard setback to 5 ft.:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the structure will be constructed to comply with all building codes, including fire codes, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as there are other corner commercial lots in the vicinity that are designed in the same manner, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed use is the same as the previous use and is permitted within the existing zoning district, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the location of the principal structure will provide buffering from the proposed gas canopy and drive aisles to the abutting residential property to the east, and

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WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring them to apply for a parking waiver, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

WHEREAS, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare since safe access is provided from the public rights-of-way to the site and building entrance. The variance allows proper circulation around the site. The rear yard reduction allows the required parking to be provided for the site, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the follow both the established pattern of development on the subject site and within the surrounding area. The subject site is currently a vacant gas station with a similar pattern of development as the proposed with pavement from property line to property line outside of the existing rear sewer and drainage easement with the canopy and associated station laid out with the canopy toward the street and the associated station in the rear of the site. The nearest non-residential corner properties to the north and south also follow a pattern of extended setbacks similar to the request for the subject site, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public safe access is provided from the public rights-of-way to the site and building entrance. The variance allows proper circulation around the site. The rear yard reduction allows the required parking to be provided for the site, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulation since the proposed development since they follow an established pattern within this portion of the Dixie Highway corridor and follow the existing pattern of development on the site for the vacant gas station, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed

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parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use that would be prevented by the strict application of the provisions of the regulation, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the lot existed prior to the adoption of the current zoning regulation; and

Variance #2 from City of Shively Land Development Code Section 5.2.3.D.3.b to allow dumpster and pavement to encroach into the required 5 ft. side yard setback:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the dumpster will be screened in accordance with chapter 10 and section 5.5.1.A.4.a of the City of Shively LDC, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as there are many dumpsters on this corridor and this one will be screened in accordance with chapter 10 and section 5.5.1.A.4.a of the City of Shively LDC, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed location of the dumpster and concrete pad will be screened in accordance with chapter 10 and section 5.5.1.A.4.a of the City of Shively LDC, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed location of the dumpster is unobtrusive, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as this is the only alternative location for the dumpster, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

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WHEREAS, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare since safe access is provided from the public rights-of-way to the site and building entrance. The variance allows proper circulation around the site. The rear yard reduction allows the required parking to be provided for the site, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the follow both the established pattern of development on the subject site and within the surrounding area. The subject site is currently a vacant gas station with a similar pattern of development as the proposed with pavement from property line to property line outside of the existing rear sewer and drainage easement with the canopy and associated station laid out with the canopy toward the street and the associated station in the rear of the site. The nearest non-residential corner properties to the north and south also follow a pattern of extended setbacks similar to the request for the subject site, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public safe access is provided from the public rights-of-way to the site and building entrance. The variance allows proper circulation around the site. The rear yard reduction allows the required parking to be provided for the site, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulation since the proposed development since they follow an established pattern within this portion of the Dixie Highway corridor and follow the existing pattern of development on the site for the vacant gas station, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use that would be prevented by the strict application of the provisions of the regulation, and

WHEREAS, the Board further finds that The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the lot existed prior to the adoption of the current zoning regulation; and

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Variance #3 from City of Shively Land Development Code Section 5.5.1.A.2 to allow the proposed building to exceed the required zero ft. corner setback:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the structure will be constructed to comply with all building codes, including fire codes, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as there are other corner commercial properties in the area where the building is setback from the corner. The City of Shively LDC and the Dixie Highway Corridor Master Plan require the building to be near or at the street(s). However, if the building was placed at the street the gas canopy would need to be placed closer to the residential property to the east. The proposed location of the building will act as a buffer for the canopy, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed location of the building is in the southeast corner of the property, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed location of the building will act as a buffer for the gas canopy and drive aisles for the adjacent residential property, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by preventing the applicant from constructing a new garage, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

WHEREAS, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare since safe access is provided from the public rights-of-way to the site and building entrance. The variance allows proper circulation around the site. The rear yard reduction allows the required parking to be provided for the site, and

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WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since they follow both the established pattern of development on the subject site and within the surrounding area. The subject site is currently a vacant gas station with a similar pattern of development as the proposed with pavement from property line to property line outside of the existing rear sewer and drainage easement with the canopy and associated station laid out with the canopy toward the street and the associated station in the rear of the site. The nearest non-residential corner properties to the north and south also follow a pattern of extended setbacks similar to the request for the subject site, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public safe access is provided from the public rights-of-way to the site and building entrance. The variance allows proper circulation around the site. The rear yard reduction allows the required parking to be provided for the site, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulation since the proposed development since they follow an established pattern within this portion of the Dixie Highway corridor and follow the existing pattern of development on the site for the vacant gas station, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use that would be prevented by the strict application of the provisions of the regulation, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the lot existed prior to the adoption of the current zoning regulation; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1001 does hereby **APPROVE** Variance #1 from City of Shively Land Development Code Section 5.2.3.D.3.d to allow a reduction in the required 15 ft. rear yard setback to 5 ft., Variance #2 from City of Shively Land Development Code Section 5.2.3.D.3.b to allow dumpster and pavement to encroach into the

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required 5 ft. side yard setback, and Variance #3 from City of Shively Land Development Code Section 5.5.1.A.2 to allow the proposed building to exceed the required zero ft. corner setback.

The vote was as follows:

Yes: Members Turner, Leanhart, Vice Chair Young, and Chair Fishman

No: Member Buttorff

Absent: Member Howard

03:55:20 On a motion by Vice Chair Young, seconded by Member Turner, the following resolution, based upon the Standard of Review and Staff Analysis, the testimony heard today, and the waiver justification, was adopted:

Waiver #1 from City of Shively Land Development Code Section 5.5.1.A.5 to allow a gas canopy and drive aisles to be located between the street and primary structure:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners because if the building was placed at the street the gas canopy would need to be placed closer to the residential property to the east. The proposed location of the building will act as a buffer for the canopy and drive aisles, and

WHEREAS, the Board further finds that Guideline 2, Policy 15 encourages the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, Policy 1 ensures compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 9, Policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. Safe pedestrian access is provided through the proposed sidewalk along Dixie Highway and Luken Drive, as well as striped pedestrian access across the parking area on Luken Drive and in front of the proposed building. The waiver is compatible with the pattern of development within the form district, and therefore appears to be compliant with

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the regulation to be waived. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the proposed location of the gas canopy and drive aisles is the only other option than placing them behind the building. The proposed location of the building will act as a buffer for the canopy and drive aisles, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because there is not a better option for placement of the gas canopy and drive aisles, and

WHEREAS, the Board further finds that the waiver will not adversely affect adjacent property owners since the waiver follows the existing pattern of development on the site while providing screening along the rear yard adjacent to the nearest residential property owner, and

WHEREAS, the Board further finds that Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized,

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suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The subject site is currently a vacant gas station with a similar pattern of development as the proposed with pavement from property line to property line outside of the existing rear sewer and drainage easement with the canopy and associated station laid out with the canopy toward the street and the associated station in the rear of the site. The nearest non-residential corner properties to the north and south also follow a pattern of extended setbacks similar to the request for the subject site. The parking is placed to not affect the Dixie Highway frontage while being maintained outside of the existing underground tanks and sewer and drainage easement. Screening and buffering will be provided along the rear non-residential to residential property perimeter as allowed within the existing 15' sewer and drainage easement that serves as a sewer connection point to both properties. There is also a grade change along the rear of the site that separates the residential and non-residential sites which will enhance the screening separation after the retaining wall being proposed for the subject site. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020, and

WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use. Landscape buffering is being provided to the fullest extent possible outside of the required parking for the use and the existing 15' sewer and drainage easement. Screening will be provided to create an appropriate separation between the proposed use and the existing residential, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use that would be prevented by the strict application of the provisions of the regulation; and

Waiver #2 from City of Shively Land Development Code Section 5.5.1.A.3.a to allow parking to be in front of the proposed building along Dixie Highway and Luken Drive:

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WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners as the proposed parking between the building and Dixie Highway and Luken Drive are in locations that will help buffer them from adjacent residential uses, and

WHEREAS, the Board further finds that Guideline 2, Policy 15 encourages the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, Policy 1 ensures compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 9, Policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially in the Traditional Neighborhood, Village, Marketplace Corridor, Traditional Workplace Form Districts close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. Safe pedestrian access is provided through the proposed sidewalk along Dixie Highway and Luken Drive, as well as striped pedestrian access across the parking area on Luken Drive and in front of the proposed building. The waiver is compatible with the pattern of development within the form district, and therefore appears to be compliant with the regulation to be waived. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the proposed location of parking along Dixie Highway and Luken Drive is the only other option than placing them behind the building. The proposed location of the building will act as a buffer for the parking areas, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant by not providing any parking on the property and requiring a parking waiver, and

WHEREAS, the Board further finds that the waiver will not adversely affect adjacent property owners since the waiver follows the existing pattern of development on the site while providing screening along the rear yard adjacent to the nearest residential property owner, and

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WHEREAS, the Board further finds that Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The subject site is currently a vacant gas station with a similar pattern of development as the proposed with pavement from property line to property line outside of the existing rear sewer and drainage easement with the canopy and associated station laid out with the canopy toward the street and the associated station in the rear of the site. The nearest non-residential corner properties to the north and south also follow a pattern of extended setbacks similar to the request for the subject site. The parking is placed to not affect the Dixie Highway frontage while being maintained outside of the existing underground tanks and sewer and drainage easement. Screening and buffering will be provided along the rear non-residential to residential property perimeter as allowed within the existing 15' sewer and drainage easement that serves as a sewer connection point to both properties. There is also a grade change along the rear of the site that separates the residential and non-residential sites which will enhance the screening separation after the retaining wall being proposed for the subject site. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020, and

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WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use. Landscape buffering is being provided to the fullest extent possible outside of the required parking for the use and the existing 15' sewer and drainage easement. Screening will be provided to create an appropriate separation between the proposed use and the existing residential, and

WHEREAS, the Board further finds that The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use that would be prevented by the strict application of the provisions of the regulation; and

Waiver #4 from City of Shively Land Development Code Section 10.2.4.B to allow overlap of required landscape buffer area and utility easements by more than 50%:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners as the applicant is providing a reduced LBA over an existing easement on the rear of the property, and

WHEREAS, the Board further finds that Guideline 3, Policy 9 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design

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standards for different land uses within urbanized, suburban, and rural areas. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The applicant is still providing a reduced buffer area as well as utilizing the building as a form of buffer between parking and driving areas. The waiver is compatible with the pattern of development within the form district, and therefore appears to be compliant with the regulation to be waived. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as the reduced buffer area is located on an existing easement, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant reducing the proposed LBA needed for the adjacent residential use, and

WHEREAS, the Board further finds that the waiver will not adversely affect adjacent property owners since the waiver follows the existing pattern of development on the site while providing screening along the rear yard adjacent to the nearest residential property owner, and

WHEREAS, the Board further finds that Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 23 states that

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setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The subject site is currently a vacant gas station with a similar pattern of development as the proposed with pavement from property line to property line outside of the existing rear sewer and drainage easement with the canopy and associated station laid out with the canopy toward the street and the associated station in the rear of the site. The nearest non-residential corner properties to the north and south also follow a pattern of extended setbacks similar to the request for the subject site. The parking is placed to not affect the Dixie Highway frontage while being maintained outside of the existing underground tanks and sewer and drainage easement. Screening and buffering will be provided along the rear non-residential to residential property perimeter as allowed within the existing 15' sewer and drainage easement that serves as a sewer connection point to both properties. There is also a grade change along the rear of the site that separates the residential and non-residential sites which will enhance the screening separation after the retaining wall being proposed for the subject site. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020, and

WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use. Landscape buffering is being provided to the fullest extent possible outside of the required parking for the use and the existing 15' sewer and drainage easement. Screening will be provided to create an appropriate separation between the proposed use and the existing residential, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use that would be prevented by the strict application of the provisions of the regulation; now, therefore be it

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RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1001 does hereby **RECOMMEND FOR APPROVAL** to the City of Shively Waiver #1 from City of Shively Land Development Code Section 5.5.1.A.5 to allow a gas canopy and drive aisles to be located between the street and primary structure, Waiver #2 from City of Shively Land Development Code Section 5.5.1.A.3.a to allow parking to be in front of the proposed building along Dixie Highway and Luken Drive, and Waiver #4 from City of Shively Land Development Code Section 10.2.4.B to allow overlap of required landscape buffer area and utility easements by more than 50%.

The vote was as follows:

Yes: Members Turner, Leanhart, Vice Chair Young, and Chair Fishman

No: Member Buttorff

Absent: Member Howard

03:56:22 On a motion by Vice Chair Young, seconded by Member Turner, the following resolution, based upon the applicant's testimony, and waiver justification, was adopted:

Waiver #3 from City of Shively Land Development Code Section 10.2.4 to reduce the required rear landscape buffer area from 15 ft. to 5 ft. and eliminate the required plantings in the existing 15 ft. sanitary sewer and drainage easement along the rear of the proposed building:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since the waiver follows the existing pattern of development on the site while providing screening along the rear yard adjacent to the nearest residential property owner, and

WHEREAS, the Board further finds that Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for

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appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The subject site is currently a vacant gas station with a similar pattern of development as the proposed with pavement from property line to property line outside of the existing rear sewer and drainage easement with the canopy and associated station laid out with the canopy toward the street and the associated station in the rear of the site. The nearest non-residential corner properties to the north and south also follow a pattern of extended setbacks similar to the request for the subject site. The parking is placed to not affect the Dixie Highway frontage while being maintained outside of the existing underground tanks and sewer and drainage easement. Screening and buffering will be provided along the rear non-residential to residential property perimeter as allowed within the existing 15' sewer and drainage easement that serves as a sewer connection point to both properties. There is also a grade change along the rear of the site that separates the residential and non-residential sites which will enhance the screening separation after the retaining wall being proposed for the subject site. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020, and

WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use. Landscape buffering is being provided to the fullest extent possible outside of the required parking for the use and the existing 15' sewer and drainage easement. Screening will be provided to create an appropriate separation between the proposed use and the existing residential, and

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WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use that would be prevented by the strict application of the provisions of the regulation; and

Waiver #5 from City of Shively Land Development Code Section 10.2.9 to omit the required 5 ft. vehicular use area landscape buffer area along the south property line adjacent to residential use and along the north property line between the vehicular use area and a roadway (Luken Drive):

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since the waiver follows the existing pattern of development on the site while providing screening along the rear yard adjacent to the nearest residential property owner, and

WHEREAS, the Board further finds that Guideline 2, policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations. Guideline 3, policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized,

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suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The subject site is currently a vacant gas station with a similar pattern of development as the proposed with pavement from property line to property line outside of the existing rear sewer and drainage easement with the canopy and associated station laid out with the canopy toward the street and the associated station in the rear of the site. The nearest non-residential corner properties to the north and south also follow a pattern of extended setbacks similar to the request for the subject site. The parking is placed to not affect the Dixie Highway frontage while being maintained outside of the existing underground tanks and sewer and drainage easement. Screening and buffering will be provided along the rear non-residential to residential property perimeter as allowed within the existing 15' sewer and drainage easement that serves as a sewer connection point to both properties. There is also a grade change along the rear of the site that separates the residential and non-residential sites which will enhance the screening separation after the retaining wall being proposed for the subject site. Therefore, the waiver will not violate specific guidelines and policies of Cornerstone 2020, and

WHEREAS, the Board further finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use. Landscape buffering is being provided to the fullest extent possible outside of the required parking for the use and the existing 15' sewer and drainage easement. Screening will be provided to create an appropriate separation between the proposed use and the existing residential, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant since the proposed development is laid out to allow the use of the pavement and curb cuts while providing needed parking for the use. The location of the tanks and needed circulation for the fuel islands dictates needed elements of the proposed use that would be prevented by the strict application of the provisions of the regulation; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1001 does hereby **RECOMMEND FOR APPROVAL** to the City of Shively Waiver #3 from City of Shively Land Development Code Section 10.2.4 to reduce the required rear landscape buffer area from 15 ft. to 5 ft. and eliminate the required plantings in the existing 15 ft. sanitary sewer and drainage

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easement along the rear of the proposed building, and Waiver #5 from City of Shively Land Development Code Section 10.2.9 to omit the required 5 ft. vehicular use area landscape buffer area along the south property line adjacent to residential use and along the north property line between the vehicular use area and a roadway (Luken Drive), **SUBJECT** to the following Condition of Approval:

Condition of Approval:

1. A total of 6 ft. of privacy fencing, including the height of the retaining wall, shall be provided along the south property line to within 5 ft. of the last pole of the current chain link fence, and the east property line to the 5 ft. section of the rear LBA.

The vote was as follows:

Yes: Members Turner, Leanhart, Vice Chair Young, and Chair Fishman

No: Member Buttorff

Absent: Member Howard

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PUBLIC HEARING

CASE NUMBER 18VARIANCE1083

Request: Variance to allow a proposed addition to encroach into the required east side yard setback
Project Name: East Washington Street Addition
Location: 917 East Washington Street
Owner: Anne Marie Bauscher
Applicant: Charlie Williams, Charlie Williams Design Inc.
Jurisdiction: Louisville Metro
Council District: 4 – Barbara Sexton Smith
Case Manager: Steve Hendrix, Planning and Design Coordinator

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

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

Agency Testimony:

03:58:52 Steve Hendrix presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Charlie Williams, 1626 Windsor Place, Louisville, KY 40204

Summary of testimony of those in favor:

04:01:04 Charlie Williams spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

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04:02:30 Board Members' deliberation

04:02:40 On a motion by Member Turner, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, the testimony heard today, and the applicant's justification, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the one story addition will allow for access along the western side of the property, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity, since the side setback is similar to other ones along this section of Washington Street and Butchertown, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public, since the addition is one story at the rear of the house, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations, since this is the only location for any type of addition, and

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

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, since the addition would have to be re-designed and possibly not flow with the existing floor plan, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, but are a result of the size and shape of the lot and the existing location of the house, and

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

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CASE NUMBER 18VARIANCE1083

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1083 does hereby **APPROVE** Variance from Land Development Code Chapter 5.2.2.C.2 to allow a proposed one story addition to be 0.5 feet from the east side property line (**Requirement 3.0 ft., Request 0.5 ft., Variance 2.5 ft.**).

The vote was as follows:

Yes: Members Turner, Buttorff, Leanhart, Vice Chair Young, and Chair Fishman

Absent: Member Howard

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PUBLIC HEARING

CASE NUMBER 18VARIANCE1089

Request: Variance to allow a proposed fence to exceed the maximum height in the street side yard setback
Project Name: South Barbee Way Fence Height
Location: 728 South Barbee Way
Owner/Applicant: Michael Clancey
Jurisdiction: Louisville Metro
Council District: 15 – Marianne Butler
Case Manager: Steve Hendrix, Planning and Design Coordinator

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

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

Agency Testimony:

04:04:42 Steve Hendrix presented the case and showed a Powerpoint presentation. Mr. Hendrix responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Michael Clancey, 728 South Barbee Way, Louisville, KY 40217

Summary of testimony of those in favor:

04:07:34 Michael Clancey spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

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PUBLIC HEARING

CASE NUMBER 18VARIANCE1089

04:12:51 Board Members' deliberation

04:13:03 On a motion by Member Buttorff, seconded by Vice Chair Young, the following resolution, based upon the Standard of Review and Staff Analysis, the testimony heard today, and the applicant's justification, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the new wooden privacy fence will not create any type of sight distance concerns, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity, since the new fence will be replacing an existing privacy fence that has deteriorated, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public, but will provide a safer backyard and improve the visual appearance along this section of South Shelby Street, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations, since the proposal is a replacement, and

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

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, since the backyard would not be secure and the noise from both vehicular traffic and pedestrians would be a nuisance, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, since the placement of the house and shape of lot are existing, and

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

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CASE NUMBER 18VARIANCE1089

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1089 does hereby **APPROVE** Variance from Land Development Code Chapter 4.4.3.A.1.a.i to allow a proposed seven (7) foot wooden privacy fence with a one (1) foot lattice top in the street side yard (Shelby Street), **(Requirement 42 inches, Request 96 inches, Variance 54 inches)**.

The vote was as follows:

Yes: Members Turner, Buttorff, Vice Chair Young, and Chair Fishman

No: Member Leanhart

Absent: Member Howard

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PUBLIC HEARING

CASE NUMBER 18VARIANCE1088

Request: Variance to allow a proposed detached structure to encroach into the required side and rear yards
Project Name: Dean Parking and Storage Area
Location: 1122 Ellison Avenue
Owner/Applicant: Garrett Dean
Jurisdiction: Louisville Metro
Council District: 10 – Pat Mulvihill
Case Manager: Jon E. Crumbie, Planning & Design Coordinator

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

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

Agency Testimony:

04:21:23 Jon Crumbie presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Garrett Dean, 6630 Sun Ray Drive, Louisville, KY 40272

Summary of testimony of those in favor:

04:23:34 Garrett Dean spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

04:25:24 Board Members' deliberation

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CASE NUMBER 18VARIANCE1088

04:25:31 On a motion by Vice Chair Young, seconded by Member Leanhart, the following resolution, based upon the Standard of Review and Staff Analysis, the applicant's justification, and the testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the proposed addition will be attached to the existing wall of the residence which causes no known adverse effects, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as reduced side and rear yard setbacks are common in the general vicinity, and

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

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as reduced side and rear yards are common in the general area, and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the existing residence on site is built toward the rear property line while every other house on the block is built toward the front property lines, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring the applicant to move the parking and storage area toward the front of the existing residence and/or reduce the size, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

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

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PUBLIC HEARING

CASE NUMBER 18VARIANCE1088

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18Variance1088 does hereby **APPROVE** Variance from Land Development Code Table 5.2.2 to allow a proposed structure to encroach into the required side yard setback (**Requirement 3 ft., Request 1 ft., Variance 2 ft.**), and Variance from Land Development Code Table 5.2.2 to allow a proposed structure to encroach into the required rear yard setback (**Requirement 5 ft., Request 1 ft., Variance 4 ft.**).

The vote was as follows:

Yes: Members Turner, Buttorff, Leanhart, Vice Chair Young, and Chair Fishman

Absent: Member Howard

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PUBLIC HEARING

CASE NUMBER 18CUP1076

Request: Conditional Use Permit to allow a short term rental of a dwelling unit that is not the primary residence of the host

Project Name: Morton Avenue Short Term Rental

Location: 1419 Morton Avenue

Owner: Daniel Gilmer Roberge

Applicant: Jonathan Klunk

Jurisdiction: Louisville Metro

Council District: 8 – Brandon Coan

Case Manager: Steve Hendrix, Planning and Design Coordinator

NOTE: This case was heard out of order, prior to Item #3 on the agenda.

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

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

Agency Testimony:

01:53:05 Steve Hendrix presented the case and showed a Powerpoint presentation. Mr. Hendrix responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

William Harris, 522 S. 14th Street, Nashville, TN 37206
Jonathan Klunk, 1372 S. 6th Street, Louisville, KY 40208

Summary of testimony of those in favor:

01:57:46 William Harris spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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01:59:53 Jonathan Klunk spoke in favor of the request. Mr. Klunk provided the Board Members with parking requirements that are provided to guests. Mr. Klunk responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

Coy Travis, P.O. Box 573, Hillview, KY 40129

Ann Hannon, 1407 Morton Ave., Louisville, KY 40204

Lisa Wilbanks, 1404 Christy Ave., Louisville, KY 40204

Phillip Crowther, 1404 Christy Ave., Louisville, KY 40204

02:05:17 Chair Fishman swore in all parties who were present to speak in opposition.

Summary of testimony of those in opposition:

02:05:25 Coy Travis spoke in opposition of the request and responded to questions from the Board Members (see recording for detailed presentation).

02:12:34 Ann Hannon spoke in opposition of the request and responded to questions from the Board Members (see recording for detailed presentation).

02:16:24 Mr. Travis added statements regarding the Highlands Neighborhood Plan (see recording for detailed presentation).

02:17:14 Lisa Wilbanks spoke in opposition of the request and responded to questions from the Board Members (see recording for detailed presentation).

02:27:45 Phillip Crowther spoke in opposition of the request (see recording for detailed presentation).

REBUTTAL:

02:29:36 Jonathan Klunk spoke in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

02:52:29 Board Members' deliberation

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02:52:53 On a motion by Vice Chair Young, seconded by Member Turner, the following resolution, based upon the Standard of Review and Staff Analysis, and the applicant's testimony, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal does not conflict with Comprehensive Plan policies, and

WHEREAS, the Board further finds that when appropriately managed, the proposed use is compatible with surrounding development and land uses. No exterior construction or alterations to the building or the site will be required, and

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

WHEREAS, the Board further finds that:

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

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.
- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. The applicant states that the residence has two bedrooms that will allow a maximum number of eight guests. **The applicant states that the unit will be marketed with a six occupant maximum.**
- D. The dwelling unit shall be a single-family residence or duplex. This provision shall not be waived or adjusted.

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- E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.
- F. Outdoor signage which identifies the short term rental is prohibited.
- G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. **The site appears to have two on-street parking spaces.**
- H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.
- I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1076 does hereby **APPROVE** Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the host in an UN Zoning District and Traditional Neighborhood Form District, **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental with Develop Louisville and with the Louisville Metro Revenue Commission. If the short term rental is not registered with Develop Louisville and with the Revenue Commission within 60 days of the approval of the minutes of this case, then the Conditional Use Permit shall be deemed null and void.
2. The short term rental and host shall meet all additional provisions set forth in the Louisville Metro Code of Ordinances.
3. Quiet time starts at 10:00 p.m. nightly; there shall be no outside noise, music, or conversation after this time until 7:00 a.m.
4. The maximum number of guests is six, (6).

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The vote was as follows:

**Yes: Members Buttorff, Turner, Howard, Leanhart, Vice Chair Young, and
Chair Fishman**

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PUBLIC HEARING

CASE NUMBER 18CUP1094

Request: Conditional Use Permit to allow a short term rental in the TNZD
Project Name: Hoffman Short Term Rental
Location: 1106 S. 3rd Street
Owner/Applicant: Cortney Hoffman
Jurisdiction: Louisville Metro
Council District: 6 – David James
Case Manager: Jon E. Crumbie, Planning & Design Coordinator

NOTE: This case was heard out of order, prior to Item #2 on the agenda.

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

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

Agency Testimony:

00:06:40 Jon Crumbie presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Cortney Hoffman, 1106 S. 3rd Street, Louisville, KY 40203

Summary of testimony of those in favor:

00:10:45 Cortney Hoffman spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

00:21:54 Travis Fiechter, Legal Counsel, responded to questions from the Board Members regarding number of occupants and parking (see recording for detailed presentation).

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00:23:30 Joe Haberman, Planning & Design Manager, spoke in regard to the Board Member's question and Mr. Fiechter's response regarding parking. The Board Members discussed parking issues (see recording for detailed presentation).

00:26:03 Ms. Hoffman responded to additional questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

00:27:34 Board Members' deliberation

00:28:15 On a motion by Member Howard, seconded by Member Leanhart, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal does not conflict with Comprehensive Plan policies, and

WHEREAS, the Board further finds that when appropriately managed, the proposed use is compatible with surrounding development and land uses. No exterior construction or alterations to the building or the site will be required, and

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

WHEREAS, the Board further finds that:

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

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- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.
- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. **The applicant states the unit on the main level has two bedrooms that will allow a maximum number of eight guests. The applicant states the upstairs unit has three bedrooms that will allow a maximum number of ten guests.**
- D. The dwelling unit shall be a single-family residence or duplex. This provision shall not be waived or adjusted.
- E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.
- F. Outdoor signage which identifies the short term rental is prohibited.
- G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. **The site has credit for one on-street parking space and does not have off-street parking at the rear.**
- H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.
- I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1094 does hereby **APPROVE** Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the owner in the TNZD and Traditional Neighborhood Form District, **SUBJECT** to the following Conditions of Approval:

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Conditions of Approval:

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

The vote was as follows:

Yes: Members Buttorff, Howard, Leanhart, Vice Chair Young, and Chair Fishman

No: Member Turner

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PUBLIC HEARING

CASE NUMBER 18CUP1081

Request: Conditional Use Permit to allow short term rental of a dwelling unit in the TNZD
Project Name: S. 2nd Street Short-Term Rental
Location: 1208 S. 2nd Street
Applicant/Representative: Idea's Abyss LLC
Jurisdiction: Louisville Metro
Council District: 6 – David James
Case Manager: Beth Jones, AICP, Planner II

NOTE: Item #11 on the agenda was heard prior to this case.

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

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

04:19:38 On a motion by Vice Chair Young, seconded by Member Buttorff, Case Number 18CUP1081 was **CONTINUED** to the November 5, 2018 Board of Zoning Adjustment meeting since the applicant was not present at this time.

06:44:36 **NOTE: The Board Members agreed to hear this case today since the applicant was now present.**

06:46:49 A motion was made by Vice Chair Young, seconded by Member Buttorff, that the original motion to continue Case Number 18CUP1081 to the November 5, 2018 Board of Zoning Adjustment meeting be **WITHDRAWN**.

The motion carried by general consensus of the Board Members.

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Agency testimony:

06:47:35 Beth Jones presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Julia Smith, 7003 Green Spring Dr., Louisville, KY 40241

Summary of testimony of those in favor:

06:50:41 Julia Smith spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

06:56:39 Board Members' deliberation

06:56:57 On a motion by Member Buttorff, seconded by Member Leanhart, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

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

WHEREAS, the Board further finds that when appropriately managed, the proposed use is compatible with surrounding development and land uses. No exterior construction or alterations to the building or the site will be required, and

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

WHEREAS, the Board further finds that:

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

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.
- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. **The residence includes four bedrooms; regulations permit up to 12 guests.**
- D. The dwelling unit shall be a single-family residence, duplex or condominium. This provision shall not be waived or adjusted. **PVA lists the existing structure as a single-family residence.**
- E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.
- F. Outdoor signage which identifies the short term rental is prohibited.
- G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. **LDC regulations credit the 35 ft. property frontage with one on-street parking space. A parking pad for three vehicles is accessible via the rear alley.**
- H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.
- I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6; now, therefore be it

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RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1081 does hereby **APPROVE** Conditional Use Permit to allow short term rental of a dwelling unit located within the TNZD (LDC 4.2.63), **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

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

The vote was as follows:

Yes: Members Turner, Buttorff, Leanhart, Vice Chair Young, and Chair Fishman

Absent: Member Howard

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PUBLIC HEARING

CASE NUMBER 18CUP1103

Request: Conditional Use Permit to allow a short term rental in the R-5A zoning district
Project Name: David Short Term Rental
Location: 201 S. Birchwood Avenue
Owner/Applicant: Chris David
Jurisdiction: Louisville Metro
Council District: 9 – Bill Hollander
Case Manager: Jon E. Crumbie, Planning & Design Coordinator

NOTE: This case was heard out of order, prior to Item #10 on the agenda.

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

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

Agency Testimony:

04:27:17 Jon Crumbie presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

04:31:37 Chair Fishman swore in all parties who were present to speak on this case (support, neutral, and opposed).

The following spoke in favor of the request:

Chris David, 201 S. Birchwood Ave., Louisville, KY 40206
Makayla Elder, 201 S. Birchwood Ave., Louisville, KY 40206

Summary of testimony of those in favor:

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04:32:02 Chris David spoke in favor of the request. Mr. David stated he does live at this address, although Mr. Crumbie's presentation indicated that he does not (see recording for detailed presentation).

04:32:49 Joe Haberman, Planning & Design Manager, stated that is what the applicant has applied for, that he does live there and that is his position. However, for the record, there is a separate appeal that's pending that relates to whether or not it's the primary residence, which is irrelevant, possibly, based on the Board's decision today (see recording for detailed presentation).

04:33:19 Mr. David stated he read some of the stuff that was online, and he was surprised by what he was reading. Mr. David stated the people that are mentioned in some of the documentation were renters that were about two years ago. Mr. David stated they were long term renters, not short term. Mr. David reviewed some of the questions and concerns from his neighborhood meeting, and his responses to those concerns. Mr. David showed photographs of the interior and exterior of the property. Mr. David responded to questions from the Board Members. Mr. David was asked if he had had short term renters here previously, and if so, when. Mr. David stated about three years ago he filled out the paperwork, and asked Mr. Haberman if he had any idea. Mr. Haberman stated the history to this property is more complicated than with other cases the Board has worked with before. Mr. Haberman stated the applicant was granted a registration in 2017 so he had lawful rentals. Mr. Haberman stated he didn't want to go too much into it because it could be an appeal that comes before the Board at a separate time, but there were questions about residency because that was through the by-right registration not the one that needs the Board's approval, so that was rescinded and he filed an appeal and that's pending because he then submitted this application because residency becomes a moot point if the Board grants the CUP. Mr. Haberman stated as of right now he can't do short term rentals and some citations have been issued when there was evidence of short term rentals taking place. Chair Fishman asked Mr. David if he had any pictures of his back yard, and he stated he had some on his phone. Mr. David stated he could get this onto a USB, and Mr. Haberman stated that may be overly complicated, and suggested we just find it on Google map. Mr. David showed an aerial of his back yard. Mr. Crumbie provided photographs from the file to the Board Members. Mr. David stated there are two piles of wood in the back yard from where they've taken down trees. Mr. Haberman located a Lojic map of the property with less tree cover. Mr. David explained what was in the back yard as it relates to ongoing interior renovations. Mr. David stated they currently have a hot tub, and explained goals for further improvements to landscaping. Member Turner asked Mr. David if he had had any civil or criminal complaints at this

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property. Mr. David explained issues with prior long term tenants (see recording for detailed presentation).

05:09:06 Makayla Elder spoke in favor of the request (see recording for detailed presentation).

The following spoke in opposition of the request:

Bill Wetterer, 2933 Bowman Ave., Louisville, KY 40205
Councilman Bill Hollander, 601 W. Jefferson St., Louisville, KY 40202
Mark Willmoth, 205 S. Birchwood Ave., Louisville, KY 40206
Rob Schenkenfelder, 210 S. Birchwood Ave., Louisville, KY 40206
Marcia Lewis, 218 S. Birchwood Ave., Louisville, KY 40206
Heather Drake, 209 S. Birchwood Ave., Louisville, KY 40206
James Lewis, 218 S. Birchwood Ave., Louisville, KY 40206
Cheri Sims, 336 S. Birchwood Ave., Louisville, KY 40206
Shawn Wheatley, 215 S. Birchwood Ave., Louisville, KY 40206
Lynda Clark, 205 S. Birchwood Ave., Louisville, KY 40206
Patricia Speer, 328 S. Birchwood Ave., Louisville, KY 40206
Rae Taylor, 214 Gibson Rd., Louisville, KY 40207

Summary of testimony of those in opposition:

05:14:23 Bill Wetterer spoke in opposition of the request. Mr. Wetterer stated his client is the Crescent Hill Baptist Church, which is immediately adjacent to the subject property. Mr. Wetterer stated they also have a tenant, which is the Highlands Latin School. Mr. Wetterer stated, on behalf of the church, they are not opposed to short term rentals. Mr. Wetterer stated there are other short term rentals in the neighborhood, and that's understood. Mr. Wetterer stated they are, however, objecting to this particular operator of this particular short term rental. Mr. Wetterer provided photographs of the property that were taken within the last three days to the Board Members. Mr. Wetterer stated a lot of these were taken yesterday. Mr. Wetterer stated the condition of the property that is shown in these pictures is not something that has just occurred in the last day; this has been an ongoing situation for weeks and months. Mr. Wetterer stated at the rear of the property there's trash, debris, and tents that have been at the back of the property for a long, long time. Mr. Wetterer provided the Board Members with a list of IPL violations within the last fifteen months. Mr. Wetterer stated there are six from 2018, the most recent from August, 2018. Mr. Wetterer stated the Board has been provided a number of

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statements in opposition to this operator and attached to those letters is a list of Louisville Metro Police Department calls to this property; it's a two and a half page list for everything from prostitution to other criminal activity that's occurred thereon. Mr. Wetterer stated he would also like to provide what he would guess would be the fourth offense citation for operating this property as an Airbnb, even after this body has told him to stop. Mr. Wetterer stated in fact, today he went online at Airbnb and printed off what he believes is this particular property still being advertised by Chris. Mr. Wetterer stated it is his belief that he is still operating this property as an Airbnb in violation of this body's order even as we speak, so he clearly has no respect for the rulings of this body. Mr. Wetterer stated the staff report, specifically subsection I which talks about civil or criminal complaints which would give the Board the authority to deny this application, that would be the easiest and best avenue to decide that this particular operator is not entitled to a short term rental CUP. Mr. Wetterer stated there have been numerous civil and criminal complaints. Mr. Wetterer stated on behalf of the Crescent Hill Baptist Church, they are strongly opposed to this particular Airbnb being allowed. Mr. Wetterer responded to questions from the Board Members (see recording for detailed presentation).

05:21:58 Councilman Bill Hollander spoke in opposition of the request. Councilman Hollander stated he has spent more time dealing with problems at this property than any other private property in his district. Councilman Hollander stated the substantiated complaints, violation notices and unpaid penalties about this property and its occupants are very relevant to the Board's decision today. Councilman Hollander stated the activity recounted in the dozen or so letters in opposition and that will be testified to today involving tenants and numerous, frequent visitors to the property was seen and reported by many other residents. Councilman Hollander stated police officers have confirmed to him that there were very legitimate complaints about the property. Councilman Hollander stated in the first half of 2017 there were at least two felony arrests associated with the property. There were investigations of other criminal conduct at the property as well. Councilman Hollander stated there were also concerns about the short term rental registration for the property; the owner had registered claiming that the property was his principal residence, but the neighbors noticed advertisements that made this appear to be false. Councilman Hollander requested the Board note that the staff report states that four notices of violations have been sent to the property owner, and penalties remain unpaid. Councilman Hollander stated he believes its \$1,100 or so unpaid by this property owner who is now asking for a Conditional Use Permit. Councilman Hollander stated the concerns about the property have been shared with him by numerous neighbors, by the school, by the church, and he would note also that it's very near the

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Crescent Hill Branch of the Louisville Free Public Library. Councilman Hollander stated at the neighborhood meeting and tonight the owner has stated he wants to have a short term rental because he thinks he can better deal with tenants short term than he could long term. He did not deny that the long term tenants that he had cause severe problems for the neighborhood and has had an adverse effect on the neighboring property, but he's here saying if he can just do this short term when he's not living there that would avoid the problem that he has with being unlicensed. Councilman Hollander stated here is where the Board has the option tonight to say no. Councilman Hollander stated Metro Council has always been concerned about civil and criminal violations and complaints at short term rental locations. Councilman Hollander stated the Land Development Code that the Council passed provides that even if a short term rental has been approved, it can be revoked for substantiated civil or criminal complaints. Councilman Hollander stated the language was included because none of us wanted neighbors to have to put up with what has happened at this building. Councilman Hollander stated there is more than enough evidence of substantiated complaints and violations, and he would urge the Board to deny this application. Councilman Hollander responded to questions from the Board Members (see recording for detailed presentation).

05:27:31 Mark Willmoth spoke in opposition of the request and responded to questions from the Board Members (see recording for detailed presentation).

05:31:43 Rob Schenkenfelder spoke in opposition of the request (see recording for detailed presentation).

05:35:19 Marcia Lewis spoke in opposition of the request (see recording for detailed presentation).

05:38:46 Heather Drake spoke in opposition of the request (see recording for detailed presentation).

05:42:54 James Lewis spoke in opposition of the request (see recording for detailed presentation).

05:43:50 Cheri Sims spoke in opposition of the request (see recording for detailed presentation).

05:46:10 Shawn Wheatley, principal of Highlands Latin School, spoke in opposition of the request. Mr. Wheatley stated the space between the church and school that adjoins the subject property has been used as a carpool lane, but

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once there was so much bad activity going on in this location at 6:30 and 7:00 in the morning, but also at 3:00 in the afternoon, they just decided to move that procedure all the way down much further to the end of the street to just avoid it. Mr. Wheatley stated he got calls from their families saying what it happening, what's going on at this house down at the end of the street, so he just didn't speculate, he just said we will move our carpool down there. Mr. Wheatley indicated on the aerial map the path that students would take to get to the playground, but he no longer lets them come down that path due to the eyesore that's in the background there, the hot tub that's back there. Mr. Wheatley stated at the public meeting the applicant said he was going to build a privacy wall, he didn't say a fence, he said a privacy wall, which he thinks would protect their students from seeing what's going on in the back yard (see recording for detailed presentation).

05:52:23 Lynda Clark spoke in opposition of the request (see recording for detailed presentation).

05:55:15 Patricia Speer spoke in opposition of the request (see recording for detailed presentation).

05:59:24 Rae Taylor spoke in opposition of the request and responded to questions from the Board Members (see recording for detailed presentation).

REBUTTAL:

06:02:28 Chris David spoke in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

06:33:32 Board Members' deliberation

06:43:20 On a motion by Vice Chair Young, seconded by Member Buttorff, the following resolution, based upon the opposition testimony, the Standard of Review and Staff Analysis, specifically Number 2 that the proposal is not compatible with surrounding land uses and the general character of the area specifically including the factor of noise, was adopted:

BOARD OF ZONING ADJUSTMENT MINUTES
October 15, 2018

PUBLIC HEARING

CASE NUMBER 18CUP1103

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1103 does hereby **DENY** Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the owner in R-5A zoning district and Traditional Neighborhood Form District.

The vote was as follows:

Yes: Members Turner, Buttorff, Leanhart, Vice Chair Young, and Chair Fishman

Absent: Member Howard

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The meeting adjourned at approximately 8:25 p.m.

Chair

Secretary