

MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT
FEBRUARY 17, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:55.A.M. on Monday, February 17, 2014, at the Mayors Gallery, 527 W. Jefferson Street, 4th Floor, Louisville, Kentucky.

Members present were:

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

Members absent:

No one

Staff members present were:

Emily Liu, Director, Planning & Design Services
Jonathan Baker, Legal Counsel
Jessica Wethington, Planning Information Specialist
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
Tammy Markert, Transportation Planning
Jon Crumie, Planner II
Chris Brown, Planner II
Mike Wilcher, Planner II
Jessica Butler, Planner I
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

The following cases were heard:

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APPROVAL OF THE MINUTES

APPROVAL OF THE MINUTES—FEBRUARY 3, 2014:

On a motion by Member Fishman, seconded by Member Jarboe, the minutes of the meeting conducted on February 3, 2014 were approved.

The vote was as follows:

YES: Members Jarboe, Fishman, Tharp and Proffitt.

NO: No one.

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

ABSTAINING: Members Allendorf and Liggin.

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BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 14VARIANCE1003

Applicant: Tommy & Karen McKechnie
3510 Wilderness Trail
Louisville, Kentucky 40299

Owner: Jerry Irwin
3508 Wilderness Trail
Louisville, Kentucky 40299

Subject: An application for a variance from the Development Code to allow the existing home to encroach into the required side yard setback due to a proposed addition to the existing house.

Premises affected: On property known as 3107 Evergreen Road and being in the City of Anchorage.

COUNCIL DISTRICT 17—Glen Stuckel

Staff Case Manager: Regina Thomas, Associate Planner

On February 17, 2014, at a meeting of the Board, this case was presented to the Board in open business session pursuant to KRS 100.241 and KRS 100.243. A drawing showing the premises affected and the existing structure was presented to each Board member.

On January 24, 2014, Tommy & Karen McKechnie applied for a variance from the Development Code to allow the existing home to encroach into the required side yard setback resultant from an addition to the existing house.

The recording of this hearing will be found on the DVD of the February 17, 2014 proceedings.

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DISCUSSION:

Steve Hendrix, Planning Supervisor, said the applicant is proposing a new, one-story addition to the rear of the existing house. He said the City of Anchorage has approved the request; and that adjacent property owners have signed the Non-Hearing Consent form and are not opposed.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Development Code to allow the existing home to encroach into the required side yard setback resultant from an addition to the existing home; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because it is a small addition and will be built code compliant; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the small one-story addition will unify the home returning it to the proper architectural look; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the addition with one single wall along the back will reduce hiding places or nooks; and will be built to code; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the house was built in 1954 when the side yard requirement was 20 feet; so the addition will continue the same amount on the north side; and

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WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the applicant could not build further east into the back yard or expand south because of the location of the septic system; and

WHEREAS, the Board finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because they would not be able to create a larger master bedroom due to not being able to expand to the east or south; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the house was built in 1954, when the side yard required was 20 feet; and with the addition will have the same unison setback;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed addition to be 19.46 feet at the closest point along the north side property line;

BE IT FURTHER RESOLVED, that this action be effective immediately.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE 1051

Applicant/Owner: Diane L. Yates
6206 Ree Court
Louisville, Kentucky 40216

Subject: A request for reconsideration of the denial by the Board on December 16, 2013, for a variance from the Land Development Code to allow an existing detached garage to encroach into the rear yard setback.

Premises affected: On property known as 6206 Ree Court and being in Louisville Metro.

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

Appearances for Applicant:
Diane Yates, 6206 Ree Court, Louisville, Kentucky 40216.

Betty Little, 6204 Ree Court, Louisville, Kentucky 40216.

Stephen Blackwell, 6206 Ree Court, Louisville, Kentucky 40216.

Appearances Interested Party:
No one.

Appearances Against Applicant:
Richard Storm, 5701 Ree Court, Louisville, Kentucky 40216.

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

On November 18, 2013, Diane Yates filed an application for a variation from the requirements of the Land Development Code to allow an existing garage to encroach into the rear yard setback.

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On December 16, 2013, a meeting was held on this case where the Board denied the variance. On January 13, 2014, this case went before the Board in business session to formally deny the variance. The applicant had already filed to have the case be reconsidered.

On February 17, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the February 17, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She explained that the applicant, Diane Yates, received a permit but was issued in error because the plan wasn't drawn to scale. Ms. Yates' contractor built the garage according to the faulty plan. Ms. Butler said the applicant received approval from the utility companies to encroach into the easements. The Transportation Department said there would be enough room to install landscaping and trees to mitigate the size of the garage.

SUMMARY OF TESTIMONY OF PROPONENTS:

Diane Yates, the applicant, submitted pictures of other garages in the neighborhood. She said she has received many compliments on her garage; and reiterated that she didn't know she was doing anything wrong since she received the permit. She said the garage is not that visible in the subdivision with the exception of one area. Chair Proffitt asked if the other garages in the neighborhood encroach into Lower Hunters Trace. Ms. Yates said she is not sure, but that there are other large garages in the area.

Betty Little stated that she doesn't object to the garage at all.

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Stephen Blackwell said he has old cars of sentimental value to him that he wants to store in the garage, including his first Mustang, his father's car and a boat. He said he is not a mechanic, but wants to restore the vehicles.

Member Jarboe asked Ms. Yates if she would plant landscaping, since the Transportation Department said there's enough room. Ms. Yates said yes. Member Jarboe asked Ms. Yates if any commercial type business would be going on in the garage. Ms. Yates said no.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one.

SUMMARY OF TESTIMONY OF OPPONENTS:

Richard Storm said he has been talking to Councilman Blackwell about the large structures being built in the neighborhood and how obtrusive they are. He said the Board should uphold their previous decision, denying the variance. He said it's more like a warehouse than a garage; and completely out of character with the area. Mr. Storm submitted the original deed restrictions that prohibit this size structure; and said most of the garages in the area are brick garages attached to the homes.

Member Jarboe asked Mr. Storm what he would want to conceal the garage. Mr. Storm said it will take a long time for trees to mature to conceal it.

REBUTTAL:

Diane Yates said the first house in the subdivision has a large red barn style garage; and doesn't see how the garage she built is a detriment to anyone. She reiterated that she didn't know they built into the easement area, but said this has been released by the utility companies. She said the size is to store the cars and boat, and said it will look better being hidden in the garage than out in the open.

There was more discussion about the flawed plan and permit issued.

BUSINESS SESSION:

Member Liggin said he thinks they made an honest attempt to build the garage correctly; and the proposed landscaping will mitigate the size. Member Jarboe asked Jon Baker, the Board's legal counsel, if they should include conditions of

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approval. Mr. Baker said they could for the landscaping but not for a commercial use going on—that there are laws already in place for this. Member Fishman said she is not sure if landscaping will conceal it enough. Member Allendorf said he gets plans written on napkins sometimes that the fire department has to approve. He said the garage is nice looking and likes the color scheme. Chair Proffitt said someone made a mistake regardless and said he still feels the denial was appropriate. Member Jarboe said the city's permitting agency is also at fault in this situation.

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

WHEREAS, the Board finds from the file of this case, the staff report including some of the standard of review items, the applicant's justification, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a reconsideration of the Board's decision to deny the variance from Chapter 5.4.2.D.3.a of the Land Development Code to allow an accessory structure to encroach 1 foot into the rear yard setback; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the garage, although encroaching setback and building-limit lines, the existing easements of record have granted encroachment of this structure, and they remain 1'16" off of the right-of-way; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the garage has a nice appearance and blends with other buildings in the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because it is entirely within the property owner's lot lines, and they have received permission to encroach into the easements of record; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because all utility companies have released the easements to allow the garage to remain; and

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WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the subject property has a pentagon shape odd rear yard; and because the applicant received a permit in error due to a faulty plan; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship because it would require the applicant to remove their garage and move it into the western portion of the rear yard;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **OVERTURN** their original decision to deny the variance; and does hereby **GRANT** the variance to allow the existing garage to be 1 foot from the rear property line **ON CONDITION** that the applicant work with staff's landscape architect to work on landscaping including trees along Lower Hunters Trace and that this landscaping be completed within one year of today's date.

The vote was as follows:

YES: Members Jarboe, Fishman, Allendorf and Liggin.

NO: Members Proffitt and Tharp.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE 1052

Applicant: Clean Energy
Monica Ultreras, National Planning Mgr.
4657 MacArthur Court, Suite 300
Newport Beach, CA 92660

Owner: Pelco Associates, Inc.
9712 Old Six Mile Lane
Louisville, KY 40299

Representative: Fiedler Group
Ben Steckler, Entitlement Mgr.
2322 W. Third Street
Los Angeles, CA 90057

Project Name: LNG Fueling Station

Subject: An application for variances from the Land
Development Code to allow attached signage to exceed the maximum allowed.

Premises affected: On property known as 4626 Preston Highway and
being in Louisville Metro.

COUNCIL DISTRICT 21—Dan Johnson
Staff Case Manager: Christopher Brown, Planner II

Appearances for Applicant:
Ben Steckler with the Fiedler Group, 2322 W. Third Street, Los Angeles, CA
90057.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On Nov. 22, 2013, Clean Energy filed an application for a variation from the requirements of the Land Development Code to allow attached signage to exceed the maximum allowed.

On February 17 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the February 17, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Chris Brown gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing to construct a 900 SF gas canopy with fueling dispensers and two 42.7' tall above ground storage tanks on the subject site. The applicant is proposing 3 attached canopy signs along the north, south and west which exceed the maximum area allowed. He said the proposal meets the requirements of the Land Development Code and Cornerstone 2020, including the standard of review. Member Fishman asked if there were any pictures of what the signage would look like. Mr. Brown said he didn't have any renderings but said it would be their logo. Member Allendorf asked if the fuel would be loaded by tankers. Mr. Brown deferred this question to the applicant.

SUMMARY OF TESTIMONY OF PROPONENTS:

Ben Steckler, the applicant's representative, said yes, that the fuel will be loaded by tanker trucks. He said their product is a liquid form for diesel trucks or a natural gas compound which comes from the United States. Member Fishman

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had questions regarding the product. Mr. Steckler said it's the same gas that would be used for a stove, but liquefied. He said they are building these stations every 250 miles along interstate freeways. Member Fishman asked if he had any renderings of what the signage would look like. Mr. Steckler said he thought he had a rendering, but was a development plan.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances from Chapter 8.3.3, Table 8.3.2 of the Land Development Code to allow attached canopy signage along the north, south and west sides of the subject property; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare since the canopy areas with the additional signage square footage will be located facing other commercial uses as well as the interstate right-of-way (ROW) and have no effect upon residential uses; and

WHEREAS, the Board finds that the requested variances will not alter the essential character of the general vicinity since signage of varying sizes exist along this portion of Preston Highway and the signage will not exceed the maximum number of allowed signage; and

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WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public by locating the additional square footage signage to the north, south and west while not along the front facing canopy façade; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations since the additional signage square footage follows a pattern of varying sized signage within the commercial vicinity of the subject property; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the subject property has frontage on both Preston Highway and Grade Lane corridors as well as the I-65 corridor to the west with signage needed to direct traffic from all three corridors; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since signage would have to be reduced along the major roadway corridors surrounding the subject site; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since signage of varying sizes exist along this corridor prior to this proposed use; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variances.

The variances allow:

1. The attached canopy signage to be 31.4 SF along the north side elevation.
2. The attached canopy signage to be 32.4 SF along the south side elevation.
3. The attached canopy signage to be 19.8 SF along the west side elevation.

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The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1011

Applicant/Owner: JBS USA, LLC
John W. Cliff, Authorized Agent
1700 Promontory Circle
Greeley, Colorado 80634

Attorney: Frost Brown Todd, LLC
Glenn A. Price, Jr.
400 West Market Street, Suite 3200
Louisville, Kentucky 40202

Subject: An application for a Modified Conditional Use Permit to allow a proposed fence along Story Avenue; a covered break area; a proposed 162 sq. ft. expansion to the existing stunning and bleeding building; a determination whether additional conditions of approval are necessary for the unloading chute area; and a privacy fence near the Mellwood Avenue entrance.

Premises affected: On property known as 1200 Story Avenue and being in Louisville Metro.

COUNCIL DISTRICT 4—David Tandy
Staff Case Manager: Steve Hendrix, Planning Supervisor

Appearances for Applicant:
Glenn Price, Attorney, 400 W. Market Street, Ste. 3200, Louisville, Kentucky 40202; who previously submitted exhibit books and a PowerPoint presentation for the Board to review prior to the hearing; and at the hearing submitted photographs and an e-mail into the record.

Dwayne Towles, MS, CSHM, Advanced Safety & Health, LLC, 2309 Watterson Trail, Suite 100, Louisville, Kentucky 40299; who submitted his resume into the record.

Glee Goudner, 2400 14th Street S.W., Austin, MN 55912-1736.

Jack Jeffries, 1200 Story Avenue, Louisville, Kentucky 40206.

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Dr. Ned Ostojic, Odor Science & Engineering, Inc., 1350 Blue Hills Avenue, Bloomfield, CT 06002.

Bob Krebs, 5803 Lake Short Drive, Okoboji, Iowa, 51355-5005.

Chris Sanders, General Counsel for UFCW Local 227, 3330 Pinecroft Drive, Louisville, Kentucky 40219-3055.

Andy Blieden, Owner of the Butchertown Market, 1201 Story Avenue, Louisville, Kentucky 40206.

Mike Cecil, 1200 Story Avenue, Louisville, Kentucky 40206.

Appearances- Interested Parties:

John Moore, 120 Adams Street, Louisville, Kentucky 40206-3055.

Appearances Against Applicant:

Jon Salomon, Attorney for the Butchertown Neighborhood Association, Tauchau Meek, PLC, 3600 National City Tower, 101 S. 5th Street, Louisville, Kentucky 40202-3120; who submitted a copy of his PowerPoint presentation prior to the hearing for the Board to review.

Will Carle, 1331 E. Washington Street, Louisville, Kentucky 40206.

Emily Boone, 102 Pope Street, Louisville, Kentucky 40206.

Keith Kemble, 1406 Quincy Street, Louisville, Kentucky 40206.

Kate Bringardner, 803 E. Washington Street, Louisville, Kentucky 40206.

Larry Cox, 821 E. Washington Street, Louisville, Kentucky 40206

Leah McKinley, 1515 E. Washington Street, Louisville, Kentucky 40206.

Cornelius Shane, 806 E. Washington Street, Louisville, Kentucky 40206.

Cherise Williams, P.O. Box 4825, Louisville, Kentucky 40204.

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CASE NO. 13CUP1011

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

On September 9, 2013, JBS USA, LLC filed an application for a Modified Conditional Use Permit to allow a proposed fence to be installed along Story Avenue; a covered break area; a proposed 162 square foot expansion to the existing stunning and bleeding building; and a determination whether additional conditions of approval are necessary for the unloading chute area and a privacy fence near the Mellwood Avenue entrance.

This case was continued from the December 16, 2013.

On August 31, 2009 the Board approved the boiler room expansion public hearing.

On February 17, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The audio/visual recording of this hearing will be found on the DVD of the February 17, 2014 proceedings available in the Planning and Design Services Office.

DISCUSSION:

Jon Salomon, Attorney for the Butchertown Neighborhood Association, and opposed to this request said the notice sent out to adjacent property owners regarding the public hearing was not legal because it didn't include the case number for the hogs chutes and boiler room (Case No. B-12323-09). Chair Proffitt said although the case number was not in the notice, all issues to be heard were, so feels they have met the legal requirement.

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Glenn Price, Attorney for the applicant, said Planning & Design has been undergoing changes to the case and/or docket numbers. Mr. Price read the public hearing notice into the record and said all issues are mentioned. Mr. Price said the Board approved the boiler room August 31, 2009; and the city issued a permit. Jon Baker, the Board's legal counsel agreed. He said the Board added a condition of approval for extensive monetary landscaping for starting the illegal construction of the hog chutes, where Circuit Court deemed this out of the Board's authority, and remanded back to the Board. Mr. Baker said the applicant recently filed the present modifications to the existing CUP; and the Board requested that all the outstanding issues be heard at once under Case No. 13CUP1011. Mr. Baker said if Mr. Salomon feels the public hearing notice is not legally sufficient, can take this before Circuit Court.

Chair Proffitt said he would allow support 25 minutes for their presentation; and 30 minutes to the opposition; and 5 minutes for rebuttal.

Mr. Salomon request an hour each side.

Chair Proffitt said he would allow 45 minutes for support; 50 minutes for opposition with 5 minutes for rebuttal.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Steve Hendrix, gave a brief presentation of the requests to the Board, which included a PowerPoint presentation. Mr. Hendrix said there are 5 items the Board needs to consider: a proposed fence along Story Avenue; a covered break area; a 162 square foot expansion of the existing stunning and bleeding building; a determination whether additional conditions of approval are necessary for the unloading chute area; and a privacy fence near the Mellwood Avenue entrance. Mr. Hendrix presented a photograph of the proposed wrought iron fence with brick columns which will replace an existing chain link fence with vinyl slates along Story Avenue. He said the fence along Mellwood will be extended and match the existing fence which will provide an additional visual barrier to the covered livestock staging area. He said the 162 square foot expansion of the stunning and bleeding building will not be visible along Mellwood Avenue or Story Avenue. Mr. Hendrix said the requests meet the policies and guidelines of the Comprehensive Plan and the Land Development

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CASE NO. 13CUP1011

Code; in addition to the Butchertown Neighborhood Plan. He concluded that there are also 4 conditions of approval on page 9 of the staff report.

SUMMARY OF TESTIMONY OF PROPONENTS:

Glenn Price, Attorney, for the applicant, JBS/Swift, asked that the December 16, 2013 exhibits etc. be incorporated into this record. He said the additional stunning line was discussed at great length at the December 16, 2013 hearing. He said the small expansion will not be seen from Story Avenue or Mellwood; and will provide safe working conditions for the employees and more humane treatment when the animals are stunned. He said the employees have filed a grievance with their union because the working conditions are unsafe for two employees stunning the pigs being so close together. Mr. Price said there are other violations with regard to OSHA standards that his client is trying to rectify. Mr. Price said his client hired an OSHA representative, who is present today if the Board should have any questions. Mr. Price explained numerous times to the Board that they cannot increase their production of the number of hogs slaughtered per day per the condition of approval; and also because the plant doesn't have any more room to store the hogs in the cooler. Mr. Price said enclosing the chutes will reduce the smell from the plant and allow orderly and quicker off-loading of the hogs. He said his client also hired an Odor Analyst, Dr. Ned Ostojic, who concluded that enclosing the hog chutes will decrease the odor and a 55% reduction in emissions from the trucks waiting to off-load. He said Dr. Ostojic concluded that the odor is not that noticeable unless someone is "looking for it". Member Jarboe asked Mr. Price to clarify this statement. Chair Proffitt interjected and said the odor would probably not be that noticeable unless someone was consciously trying to smell it. Mr. Price said there will also not be any additional noise coming from the site; and the fences will block view from the street and enhance the appearance along the sidewalk. Mr. Price discussed the change in the condition of approval regarding the number of hogs slaughtered per day, stating that they added that Codes and Regulations upon reasonable notice not to exceed 24 hours shall have on-site access to JBS records showing the number of hogs slaughtered etal. Mr. Price submitted this condition of approval into the record where the Director of Codes and Regulations, Mr. James Mims, agreed to it in an e-mail dated February 15, 2014. Member Allendorf had questions regarding the 162 sq. ft. addition with regard to OSHA standards and Fire Codes.

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FEBRUARY 17, 2014

NEW BUSINESS:

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Dwayne Towles, MS, CSHM, Advanced Safety & Health, LLC, said he was hired by JBS/Swift to identify safety violations. He said it is not safe to have two stunning operators with 2.8 amp stunners, to be so close to each other. He said if the stunner should accidentally touch one of the employees, could cause death. Chair Proffitt asked if OSHA regulations are retroactive. Mr. Towles said businesses must comply when the regulations change.

Mr. Salomon asked Mr. Towles how long they've had two stunning operators. Mr. Towles said he's not sure, maybe a year. Mr. Salomon said if they went back to one stunner, there wouldn't be any hazard or violation. Mr. Price said the width of the working area is not large enough per OSHA regulations. Chair Proffitt asked how many hogs were stunned with one employee. Mr. Price said in 2012, 2,049,000 hogs but added that this amount has been reduced with a second stunner.

Glee Goudner said JBS/Swift said the maximum number of hogs that they can kill is approximately 1106 in a 10 hour shift. Mr. Price said Mr. Goudner is an expert in the dual restraining system and asked why JBS/Swift would implement this. Mr. Goudner said there are many elements, but mostly so the stunners can render a longer more effective stun before the animal is killed so there will be no pain. He said it is safer for the employees; and provides better meat quality. Mr. Salomon said two lines are created for safety and better meat quality. Mr. Goudner said the dual restrainer has become common practice in this industry. Mr. Salomon said it isn't about the humane treatment of animals. Mr. Goudner said yes, The Humane Slaughter Act, states that the animal must be rendered insensible to pain before they are killed. Mr. Salomon asked if there were any violations with one stunner. Mr. Goudner said he was aware of regulatory action. The number of hogs slaughtered per hour was discussed again considering lunch and other breaks for the employees. Mr. Price said the federal limit is capped at 11,500 per day. Mr. Salomon asked if this is per inspector or overall. Mr. Goudner said overall. Mr. Salomon asked if they could increase this number if they had a double shift. Mr. Goudner said yes, but that they already agreed to limit the number. Mr. Price reiterated, that their coolers won't hold anymore hogs than what they've agreed to per condition of approval; and that they couldn't go to a double shift. Mr. Salomon asked if they are upgrading their cooling equipment at the plant. Mr. Goudner said not that he's aware of. Member Fishman asked how many hogs can fit into a truck. Mr. Price said 180. Member

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Fishman questioned the off-loading procedure. Mr. Price said there are three chutes which takes about 30 minutes to offload. He said if they utilize the fourth chute will reduce this time to 20 minutes, reducing transient odors and more orderly for hogs since they naturally follow each other. Member Fishman asked if JBS/Swift plans to increase their cooler capacity. Mr. Price said no, but if they did, would have to be approved by the Board.

Jack Jeffries JBS/Swift's plant engineer was questioned by Mr. Salomon. Mr. Salomon asked him if the barn is always at capacity. Mr. Jeffries said not always and said they can't increase their barn capacity. Mr. Salomon asked how often the barn is at capacity. Mr. Jeffries said seldom. Mr. Price asked Mr. Jeffries how many hogs can be stored in the cooler. Mr. Jeffries said 10,500. He said they are updating the 30 year old cooler with new electrical components and transformer on the roof. Mr. Price said this will not increase capacity and that the Director of Planning & Design Services, Emily Liu approved this. Mr. Jeffries said yes.

Dr. Ned Ostojic principal of Odor Science & Engineering, Inc. said he was hired to perform the odor analysis for JBS/Swift. Member Jarboe said that Mr. Price said he said odor would not be detected unless someone is expecting it. Dr. Ostojic explained that he performed a systematic odor survey observing density and concentration. He said he did a 4 day study taking one hour per day to gather data from the furthest point being $\frac{1}{4}$ of a mile away from the plant. He said the scale is from 0 to 8; and at $\frac{1}{4}$ of a mile away would be less than 1. The closer people are to the facility the higher the intensity, which is subjective. Member Proffitt asked if it would reduce the odor by adding a fourth hog chute. Mr. Ostojic said yes; and will decrease the time to off-load the hogs. Mr. Ostojic said wind is also a factor and could have an impact. Member Jarboe asked about the odor during hot, humid days. Dr. Ostojic said they use evaporator cooler which sprays water mist and evaporates to cool. He said the plant could open the doors where the pens are to cool the building but said one of his recommendations would be to improve the sprayers and enclose the south side. Member Jarboe and Fishman questioned what the number would be in the summer. Mr. Ostojic said he did not measure the odor in the summer months, but said performing the study in October is still balanced since it isn't winter or summer.

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Mr. Salomon asked if the company's lawyer hired him. Mr. Ostojic said yes. Mr. Salomon said he performed a 4 day study. Mr. Ostojic said yes. Mr. Salomon asked if JBS/Swift knew when he was coming. Mr. Ostojic said yes, but this is irrelevant. Mr. Salomon asked if the study would have produced different numbers if performed on another day. Dr. Ostojic said he can only account for the days he performed the analysis. He said more data produces a smaller margin of error. Mr. Salomon said people living in the area that are further than ¼ of a mile can still smell odors; and asked where he took his measurements from. Mr. Ostojic said from the hog pens and truck area. Mr. Salomon said everyone's sense of smell is subjective. Mr. Ostojic said yes. Mr. Salomon asked if they asked him how to limit the odor and all future odors. Mr. Ostojic said yes, that he made recommendations. Mr. Price interjected and said enclosing the chutes will decrease the odor, but that there will still be some degree of odor coming from the plant and trucks. Mr. Price said their discussion today is limited to the stock pen odors and would like a ruling on this before they move forward.

Mr. Salomon said he objects to this and is fine with Mr. Ostojic's answers.

Mr. Price said their request will not increase the odor, but diminish it; and reiterated that Code Enforcement can inspect the number of hogs they're harvesting at any time. He said this is not a ruse to expand the number of hogs they kill. Member Jarboe asked why they didn't want the number disclosed. Mr. Price said for business reasons. Member Tharp asked how long they can hold the hogs in the pens. Mr. Goudner said if they are held more than 24 hours, they have to feed them. He said the pigs are held in the pens to rest, since moving them is stressful. Member Tharp asked if the market price affects production at the plant. Mr. Price said yes; and is why they included a rolling average. Bob Krebs said everything is market driven.

Chris Sanders, General Counsel for UFCW Local 227, said he represents the employees at the JBS/Swift plant and their interests. He said there are 1100 members in this union and that they are concerned with losing their jobs. He said JBS/Swift is the third largest manufacturing plant which provides good jobs, wages and retirement benefits. He said the employees filed a grievance because safety is important to them. Mr. Sanders said the second stunning line won't create more jobs, but make it safer for the current employees. Member

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Jarboe asked about the grievance. Mr. Sanders said the grievance was filed once a second person was added to the stunning line. Member Fishman asked when this occurred. Mr. Price interjected and said some time in 2013, but doesn't know the exact date. Chair Proffitt said, hence the previous "emergency" modification. Mr. Price said exactly.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

John Moore said he has lived in Butchertown since 2011; and is on the Butchertown Neighborhood Association. He said he doesn't support closing this business and respects the rights of the property owner and business and the jobs it's created. Mr. Moore said the property is not zoned for a pig slaughtering business though; and said the odor is either "horrific" or non-existent. He said the truck traffic has made the neighborhood more dangerous. He said he heard a truck last night going 60 mph; and other times, in the morning they drive slower. He said their requests should be granted because it would create a safer working environment. Mr. Moore said the plant could go to a 4-5 day work week; and not incorporate a rolling average but a set daily amount. Member Jarboe asked if he ever contacts the plant when the odor is bad. Mr. Moore said he was told to contact APCD, but nothing ever happens. Member Jarboe said there is not an ombudsman for the plant. Mr. Moore said not the he's aware of.

BACK TO SUMMARY OF TESTIMONY OF PROPONENTS:

Andy Blieden, Owner of the Butchertown Market, said he has an 85,000 sq. ft. building with 20 companies that rent from him. He said JBS/Swift is all around his property and that they've been a good neighbor, helping him out with additional parking and acquiring a certificate of occupancy. Mr. Blieden said he's in favor of the beautification with the proposed landscaping and fencing. He said Butchertown has always been industrial and residential combined.

SUMMARY OF TESTIMONY OF OPPONENTS:

Jon Salomon, Attorney for the Butchertown Neighborhood Association, Tauchau Meek, PLC, said they oppose the request to expand their facility. He said the conditions of approval from 2009 including mitigation of odor, emissions and noise should be changed to reduce the nuisances. Mr. Salomon went over the background of this case and said in the fall of 2008, JBS/Swift unlawfully started construction of a new high speed hog chute; and that they must revisit the expansions in 2009 regarding the boilers and hog chutes. He said now the

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company wants to add a second hog stunning line to increase its slaughtering capacity and expand its hazardous and nuisance use. He said the Board previously approved the hog chutes with the condition of approval to include a high dollar amount of landscaping in the Butchertown area which was appealed in Circuit Court and remanded back to the Board. He said the company is picking and choosing what it wants; and covering up an increase in slaughtering capacity with issues relating to safety for their employees; and the humane treatment of animals. He said the single hog stunning line has been used for 33 years; and just recently added the second stunner this past year. He said JBS/Swift created their own safety issue and should go back to one line and one stunner. Mr. Salomon said from 1981 to 1991 the company significantly increased its slaughtering capacity; and now further increasing the number of hogs slaughtered, is inconsistent with the Butchertown Neighborhood Plan. He said in 2008, 2.73 million hogs were slaughtered at the JBS/Swift Story Avenue plant or an increase of 1800% since the last CUP modification. He said “the first year of JBS ownership, 1.1 million more hogs were slaughtered than 1991—enough hogs to fill every seat in the new KFC Yum Center every other day”. Mr. Salomon said new conditions of approval should be implemented with every new request to protect the public’s health, safety and welfare. Mr. Salomon suggested new conditions restricting the number of hogs slaughtered per year to 2,336,000 or 6,400 per day on a six day rolling average; and enclosure of all operations. He said if they truly are not planning on increasing the number of hogs slaughtered, they shouldn’t object to these conditions. Mr. Salomon then discussed modifying Conditional Use Permits according to KRS 100.237; the Comprehensive Plan and the Land Development Code. He said any use may be reconsidered by the Board; and feels this expansion should be treated as a new CUP. Chair Proffitt disagreed and said the Board modifies CUP’s and is common practice. Mr. Salomon said the use may still be reconsidered by the Board if creating more nuisances. Mr. Salomon then discussed the history of the Butchertown area, stating that only 15,000 hogs were killed in 1827. He said the area has changed significantly and is more of an urban area than industrial. Many positive changes have occurred in Butchertown, including the conversion of the Bourbon Stock Yards to the Home of the Innocents; Fischer Packing Company was converted into the Mellwood Arts Center; NuLu East Market Corridor improvements; Lincoln Elementary expansion, Waterfront Park, the Big Four Bridge; River Park Place which will include boat slips, apartments, condominiums and a restaurant; a planned Botanica gardens in a former landfill

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at River Road and Frankfort Avenue; Extreme Park etc. He said the population has grown over 25% from 1980 to 2010; and families with children have increased 170%. Mr. Salomon said the plant has had several violations regarding noxious odors and had to pay APCD fines. He said March 23, 2011, the plant had an ammonia leak and an evacuation took place. There have been significant environmental and health related risks for people living in the area. He said in 1883, Kentucky's highest court held that "Slaughter-houses are regarded as *prima facie* nuisances and their existence so near to dwellings as to impair their comfortable enjoyment is an actionable injury." *Seifried v. Hays*, 5 Ky, L. Rptr. (1883). He said "The defense of "coming to the nuisance" has long been rejected by Kentucky courts." Mr. Salomon said if the union opposes the working conditions, the company should take the second stunner off the line. In closing, Mr. Salomon said the Board should deny the requests to maintain the status quo. He said it is not appropriate to expand at all; and if this were a new request, the Board would deny it. Member Fishman questioned if the fences and proposed break area would be considered an expansion. She then questioned the hog chutes. Mr. Salomon said the hog chutes were built illegally and now they want to enclose them. Mr. Salomon said another recommendation would be to pull the trucks off-loading the hogs into the building, keeping everything enclosed. Chair Proffitt said due to their space would be an expansion. The Board then discussed capping the number of hogs slaughtered to 6,400 per day. Chair Proffitt said the company agreed to 10,500 previously and that they haven't exceeded this amount per their testimony. Mr. Salomon said there has still been a significant increase over the years. Chair Proffitt said that the applicant testified that they don't have enough room in the coolers for anymore hogs. Mr. Salomon said they are upgrading the refrigeration units and not sure if this will allow for storing more hogs. He said the company should revert back to the number of hogs slaughtered in 2008. Mr. Salomon said the Board needs to consider new conditions of approval to mitigate the nuisance issues.

Will Carle said his family has lived in the area for a long time and goes back 5 generations. He said he attended Lincoln Elementary as a kid. He said JBS/Swift needs to come up with a plan to keep people who live in the area safe. He said he doesn't let his kids play outside because of the odor, chemical spills and semi-trucks. Mr. Carle said there was a large ammonia chemical spill, and that they were told to shut windows and stay indoors. He said this company shouldn't be making their living conditions worse so they can do business.

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Emily Boone said she owns property and a business in the area; and uses her bike for transportation. She said she has called APCD regarding the odors which are stronger during the day, but nothing ever happens. Ms. Boone said she is not being paid to attend this hearing; and that she's also concerned about the safety of the employees who work at the plant.

Keith Kemble said he has lived in the area 36 years; and believes the rendering process is what smells so bad. He said the plant can't handle the amount of hogs they are slaughtering; and that they should reduce the number to 500 per day.

Kate Bringardner said she moved into the area 2 years ago; and that the growth in the area is good (NuLu etc.). She said she feels the company's odor expert is disingenuous; and said she has a cold and can still smell the strong odors. She said she is unsure whether closing the hog chutes will help or not; but that Butchertown is not the best place for this business anymore.

Larry Cox said he lives in the area and has a business in St. Matthews. He said he would love to expand his business, but can't and needs to be happy with what he makes. He said he can smell the odor on a regular basis and feels it is prohibiting other businesses from moving into the area.

Leah McKinley said her concern is not the odor coming from the hog chutes, but during the rendering process; and the 100 diesel trucks that travel the area daily. She said she now has chronic bronchitis and asthma and has to limit her outdoor activity. Ms. McKinley said she researched pollution that comes from diesel trucks and said the pollutants travel a long distance and cannot be seen. She said she noticed a black substance on some bushes which triggered an asthma attack.

Cornelius Shane read a letter into the record from Martina Kunnecke, President of Neighborhood Planning & Preservations, Inc. In her letter, Ms. Kunnecke said she opposes the request to expand the plant; and that laws and regulations exist to protect powerless people from those who have unlimited resources. She also explained that the employees at the company are indoctrinated and used to bully the neighborhood due to erroneous claims of possible job loss. She said the

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company should not be exempt from the rules, especially since JBS/Swift has exceeded its footprint and capacity a long time ago.

Cherise Williams said she doesn't live in Butchertown but can smell the odor all the way to her house. She said the trucks are filled with hogs and feces and very unpleasant. She said a house on Story Avenue collapsed due to the numerous trucks holding 180 hogs per load. She said the butchers originally chose this area, so they could discard the remains of the hogs into Beargrass Creek; and that the meat was transported on boats on the river—not trucks. She asked the Board to deny the requests; and said if this company needs to expand, has clearly outgrown their Butchertown roots.

REBUTTAL:

Mr. Price said the opposition keeps stating that the company is “expanding”, when it is not. He reiterated that they are limited to the number of hogs they slaughter per day. He said the need for pork has decreased since 2008; and that the business has to work within the limits of the marketplace. He said JBS/Swift trucks are not the only trucks that travel along Mellwood and Story Avenue. He said he disagrees with Mr. Salomon's argument about Kentucky law regarding modifying existing CUP's. He said if this were true, Planning & Design wouldn't have an application form to do so. He said the Butchertown Neighborhood Association did not hire one expert, when they hired several and the best in the country. Mr. Price said their requests are once again, for the safety of their employees; improve animal welfare and will not negatively impact the area. Mr. Price said when they used one stunner in 2012, they slaughtered 2,499,276 hogs; and in 2013, with two stunners, slaughtered 2,334,435 hogs; so an additional stunner will not increase their production. Mr. Price said they don't have to consult with the Butchertown Neighborhood Association every time they repair or update equipment. Mr. Price said there is no scientific evidence proving that there are environmental or health related risks due to the business. There are no personal injury or EPA lawsuits pending. Mr. Price said that enclosing the hog chutes and stock pens will reduce the odor. Member Fishman asked how many hours a day they kill the hogs.

Mike Cecil, with JBS/Swift, said it's a 10 hour day with an hour lunch and two, 15 minute breaks. Member Fishman asked if the trucks are idling all night. Mr. Cecil said no, that the hogs are off-loaded and the trucks leave. Chair Proffitt

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asked Mr. Price what would happen if the Board doesn't approve the requests. Mr. Price said it will not improve the odor in the neighborhood; the employees' safety will be at risk; and the animals may not be properly stunned.

Mr. Salomon asked Mr. Cecil if the trucks are staged along Mellwood Avenue; or immediately offloaded. Mr. Cecil said the trucks do have to wait sometimes to offload. The Board asked Mr. Cecil what the average wait time is. Mr. Cecil said 30 minutes to an hour but they want the hogs offloaded as soon as possible. Member Tharp asked if they are private haulers. Mr. Cecil said yes. Mr. Salomon said if they're independent truckers, the plant doesn't have any control over what they do or where they park. Mr. Cecil said they have to follow the schedule or they will be fired. Mr. Price said whatever staging is going on will be dramatically reduced with their requests. Chair Proffitt asked Mr. Price if there is any other area for the employee break area. Mr. Price said he could ask his client. Chair Proffitt said the proposed fence leads people to look at the unloading chutes. Mr. Price said Tammy Markert with Transportation said an automatic gate would not be recommended because it would be hard for the trucks to navigate in and out with a sharp turn. Member Allendorf asked if the company has a plan for chemical leaks. Mr. Price said yes; and that they've done their due diligence. Member Tharp asked about the work on the roof. Mr. Price said they are adding another electrical line because they are having cooling problems. He said it is maintenance only.

BUSINESS SESSION:

Chair Proffitt said there is no more time to discuss this case since the time is limited in the Mayors Gallery. He said the Board will continue this case and go into business session on March 17, 2014.

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

RESOLVED, that the Board does hereby **CONTINUE** Case No. 13CUP1011 to **MARCH 17, 2014**.

Note: This hearing will be held at the Metro Development Center, Conference Room 101, 444 S. 5th Street, Louisville, Kentucky.

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The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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The meeting adjourned at 4:20 p.m.

CHAIRPERSON

SECRETARY