

MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT
DECEMBER 16, 2013

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30 A.M. on Monday, December 16, 2013, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present were:

David Proffitt, Chairperson
*Michael Allendorf, Vice Chairperson
Rosalind Fishman, Secretary
Betty Jarboe
*Frederick Liggin
Carrie Bauer

Members absent:

No one

Staff members present were:

Emily Liu, Director
Jonathan Baker, Legal Counsel
John Carroll, Legal Counsel
Jessica Wethington, Public Information Specialist
Steve Hendrix, Planning Supervisor
Latondra Yates, Planner II
Jon Crumbie, Planner II
Christopher Brown, Planner II
Matthew Doyle, Planner I
Jessica Butler, Planner I
Lee Wells, Planning Technician
Regina Thomas, Associate Planner
Beth Stevenson, Management Assistant

The JAVS system is off by an hour. The correct time is reflected in these minutes.

*Member Allendorf arrived at 8:58 a.m. and Member Liggin left the meeting at 5:55 p.m.

The following cases were heard:

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APPROVAL OF MINUTES:

Minutes of the meeting held on December 2, 2013:

838:05 On a motion by Member Fishman, seconded by Member Jarboe, the minutes of the meeting conducted on December 2, 2013 were approved.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: Member Bauer.

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NEW BUSINESS:

CASE NO. 13VARIANCE1050

Owner/Applicant: Suzanne & Charles Harper
3101 Horton Avenue
Louisville, Kentucky 40220

Subject: An application for a variance from the Land Development Code to allow an existing fence to exceed the maximum height.

Premises affected: On property known as 3101 Horton Avenue and being in Louisville Metro.

COUNCIL DISTRICT 26—Brent Ackerson
Staff Case Manager: Jessica Butler, Planner I

Appearances for Applicant:
Charles Harper, 3101 Horton Avenue, Louisville, Kentucky 40220

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On November 18, 2013, Suzanne & Charles Harper filed an application for a variation from the requirements of the Land Development Code to allow an existing fence to exceed the maximum height.

On December 16, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

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

The recording of this hearing will be found on the DVD of the December 16, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:

8:39:05 Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant would like to complete a 6 ft. tall fence around the rear yard; but that a 6 ft. tall fence is not allowed along Rosemont Avenue. Member Fishman asked if there were any other similar fences in the neighborhood. Ms. Butler said no, and that the fence would be visible to properties across the street. Member Liggins asked if anyone called to complain. Ms. Butler said no.

SUMMARY OF TESTIMONY OF PROPONENTS:

8:44:50 Charles Harper, the owner, said he and his wife bought the house out of foreclosure and thought a 6 ft. tall fence would benefit them more. He said the 25 ft. setback would take up his entire backyard; and would like the fence for privacy and security. Chair Proffitt said a 4 ft. tall fence wouldn't suffice. Mr. Harper said no, because people travel through the area to get to K-Mart and Kroger. He said he has two small children and two dogs. He said there is another privacy fence that encroaches into the setback; and pointed out other 6 ft. tall fences in the area on the PowerPoint. Member Fishman asked what the fence is made of. Mr. Harper said cedar. Member Jarboe asked if he was going to paint it. Mr. Harper said no and that it would weather to a natural gray.

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:

8:52:26 Member Jarboe said she doesn't normally like these types of fences, but understands considering the layout of the lot. Chair Proffitt said he doesn't like the way it will look along Rosemont Avenue; and feels the fence is out of character.

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8:53:17 After the public hearing in open business session, on a motion by Member Liggin, seconded by Member Jarboe, 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 applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 4.4.3.a.9.1 of the Land Development Code to allow the completion of a fence to exceed the maximum height along Rosemont Avenue; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the fence will not be encroaching into any sight triangle; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because fences are built at privacy heights in others' back yards; and because the fence will be fitting with the character of the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because it is not at the corner of the intersection and does not encroach into the 25 ft. sight triangle or the right-of-way along Rosemont Avenue; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the privacy fence is only limited along the Rosemont Avenue side since it's a corner lot; also, the lot is pie-shaped and adhering to the setback to allow for the height, would leave a very small back yard; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the subject property is a corner lot property so a 6 ft. tall fence would not be allowed along Rosemont Avenue; and

WHEREAS, the Board finds the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create

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an unnecessary hardship on the applicant because a 4 ft. tall fence wouldn't serve their purpose for establishing privacy; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a fence to be 6 ft. tall along Rosemont Avenue.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Bauer.

NO: Member Proffitt.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Allendorf.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13DEVPLAN1062

Applicant: Jefferson Development Group
Brian Evans
9505 Williamsburg Plaza, Suite 200
Louisville, Kentucky 40222

Owner: JHS Vinings, LLC
Aaron Thompson
11411 Park Road
Anchorage, Kentucky 40223

Representative: Blomquist Design Group, LLC
Marv Blomquist
10529 Timberwood Circle, Suite D
Louisville, Kentucky 40223

Project Name: Panera Bread Restaurant

Subject: An application for a variance from the 2006 Land Development Code to allow the proposed building to exceed the 0' setback at the corner of South Hurstbourne Parkway and Williamsburg Plaza.

Premises affected: On property known as 500 South Hurstbourne Parkway and being in the City of Hurstbourne.

COUNCIL DISTRICT 18—Marilyn Parker
Staff Case Manager: Christopher Brown, Planner II

Appearances for Applicant:
Marv Blomquist 10529 Timberwood Circle, Suite D, Louisville, Kentucky 40223.

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 September 9, 2013, Jefferson Development Group filed an application for a variation from the requirements of the 2006 Land Development Code to allow the proposed building to exceed the 0' setback at the corner of South Hurstbourne Parkway and Williamsburg Plaza.

On December 16, 2013, 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 December 16, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:

8:55:06 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 4,300 SF restaurant with a drive-thru. He said the location of the parking is why the variance is needed. Mr. Brown said the request meets the standard of review.

SUMMARY OF TESTIMONY OF PROPONENTS:

9:00:32 Marv Blomquist, the applicant's representative, said the property is a corner lot and said the design will allow enough room for interior circulation. He said once the back area develops they will request a minor plat and cross-over access agreement. Chair Proffitt asked if they would be doing any landscaping along the Hurstbourne Lane side. Mr. Blomquist said yes, that there is 50-60 feet of grass and will install a 3-4 foot berm. Member Liggin inquired about the maximum seating capacity of the restaurant and having enough parking. Mr. Blomquist said they need around 59 parking spaces. Chair Proffitt

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asked if there is an elevation difference. Mr. Blomquist said yes, that Hurstbourne Lane 5-6 feet lower.

9:04:05 Steve Porter said he represents neighbors in the area; and that they are not opposed to the setback request. He said they have do have one minor issue, but will work this out before the City of Hurstbourne review it.

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:

9:05:23 Member Liggin said he thinks they might need more parking. Member Fishman said she likes that the circulation area is large for cars to maneuver around in.

9:06:00 After the public hearing in open business session, on a motion by Member Liggin, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.5.1.A.2 of the 2006 Land Development Code to allow the proposed building to exceed the 0' setback at the corner of South Hurstbourne Parkway and Williamsburg Plaza; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the additional setback allows proper maneuvering on the site utilizing existing access and allows for the creation of the parkway buffer along Hurstbourne Parkway; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since it will allow the addition of the parkway buffer and

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berm following the pattern along South Hurstbourne Parkway with a circulation pattern similar to other uses along the corridor; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the additional setback allows proper maneuvering on the site utilizing existing access from Williamsburg Plaza and allows for the creation of the required parkway buffer along Hurstbourne Parkway; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since it will allow the intent of the landscaping requirements to be met while maintaining the needed circulation pattern for the drive-thru on the site; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the general vicinity was located in a suburban style form district and the site was previously developed under those conditions; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring them to maintain a 0' corner setback and also provide a 30' parkway buffer and berm that cannot both be met along the street frontage; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the property existed in its current state prior to ownership;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed building to be 130' at the corner intersection of South Hurstbourne Parkway and Williamsburg Plaza.

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The vote was as follows:

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

NO: No one.

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

ABSTAINING: Member Allendorf.

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NEW BUSINESS:

CASE NO. 13VARIANCE1056

Applicant/Owner: Meridian Group, LLC
Jeff Hensel
P.O. Box 991263
Louisville, Kentucky 40269

Representative: Milestone Design Group, Inc.
Mark Madison
108 Daventry Lane, Suite 300
Louisville, Kentucky 40223

Project Name: Grey Ledge

Subject: An application for variances from the Land Development Code to allow the buildings on Lots 2, 3, 6 and 7 to encroach more than 30% into the 25' rear yard setback.

Premises affected: On property known as 203, 205, 211 and 213 Grey Ledge Circle and being in Louisville Metro.

COUNCIL DISTRICT 19—Jerry Miller
Staff Case Manager: Matthew R. Doyle, Planner I

Appearances for Applicant:
Mark Madison, 108 Daventry Lane, Suite 300, Louisville, Kentucky 40223.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

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CASE NO. 13VARIANCE1056

On November 25, 2013, Jeff Hensel filed an application for a variation from the requirements of the Land Development Code to allow buildings on Lots 2, 3, 6 and 7 to encroach more than 30% into the 25' rear yard setback.

On December 16, 2013, 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 December 16, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:

9:07:52 Staff case manager, Matt Doyle gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is revising the plan to accommodate the new developer's building design. He said the proposed buildings on Lots 2, 3, 6 and 7 will encroach 30% into the required 25 ft. rear yard setback. Mr. Doyle said proposed buildings on Lots 1-8 will encroach into the 15' LBA requiring a landscape waiver, so the revised plan and waivers will be heard at the Development Review Committee on December 18, 2013. He said the proposal meets the standard of review and complies with Cornerstone 2020 and the Land Development Code. Member Allendorf asked to see the elevations. Chair Proffitt said the buildings could be moved forward.

SUMMARY OF TESTIMONY OF PROPONENTS:

9:13:39 Mark Madison, the applicant's representative, said this was previously a condominium project that fell through. He said his client just purchased the property and realized they needed a variance due to a water line easement. Mr. Madison said they can't change anything, unless they totally redesign the new project. He said the closest affected property is the adjacent church, which abuts their parking lot. Chair Proffitt asked if he could change the design and move the building up. Mr. Madison said no, because of the water easement.

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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.

9:18:23 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Liggin, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.4.2.A.2.a of the Land Development Code to allow the buildings on Lots 2 and 3 to encroach 39% and Lots 6 & 7 to encroach 37% into the 25' rear yard setback; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the proposed buildings are in approximately the same location as those in the previously approved plans; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the design of the proposed buildings are consistent with those in the previously approved plans; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the design and location of the proposed buildings are consistent with those in previously approved plans; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the design and location of the proposed buildings are consistent with those in previously approved plans; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the design and location of the proposed buildings are consistent with those in previously approved plans;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the buildings on Lots 2 and 3 to encroach 39% and the buildings on Lots 6 and 7 to encroach 37% into the 25' rear yard setback.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE1047

Applicants/Owners: LaFollie, LLC/Eyedia Designit, LLC
Diane Stege & Martha Neal Cooke
1631 Mellwood Avenue
Louisville, Kentucky 40206

Project Name: Eyedia Banners

Subject: An application for a variance from the Land Development Code to allow 6 projecting signs to hang lower than allowed; and a waiver to allow a greater number of projecting signs on the front façade of the building than allowed.

Premises affected: On property known as 1631 Mellwood Avenue and being in Louisville Metro.

COUNCIL DISTRICT 4—David Tandy & 9—Tina Ward-Pugh
Staff Case Manager: Jessica Butler, Planner I

Appearances for Applicant:
Diane Stege & Martha Neal Cooke, 1631 Mellwood Avenue, Louisville, Kentucky 40206.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On November 8, 2013, Diane Stege and Martha Neal Cooke filed an application for a variation from the requirements of the Land Development Code to allow 6 projecting signs to hang lower than allowed; and a waiver to allow a greater number of projecting signs on the front façade of the building than allowed.

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On December 16, 2013, 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 December 16, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:

9:19:51 Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the owners received a Notice of Violation for the number and height of the signs above the sidewalk; and are requesting a variance and waiver to bring into compliance. She said the requests meets the standard of review requirements, and that Mellwood is becoming more pedestrian friendly. She said there are also nice looking planters in front of the business which meets ADA regulations. Ms. Butler said she received a call from Councilwoman Tina Ward-Pugh, who is in support of the request. Member Fishman asked how far the planters are from the curb. Ms. Butler said there's about 7 feet remaining from the planters out.

SUMMARY OF TESTIMONY OF PROPONENTS:

9:26:24 Diane Stege and Martha Neal Cooke were sworn in. Ms. Stege said they bought the building about 10 years ago; and that their business is steadily growing. She said the existing signage looks nice and initiates curiosity from persons driving by. They have made a significant investment in the property and even worked with MSD to create a unique rain garden. She said they want more aesthetic appeal to this street and neighborhood.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one.

BUSINESS SESSION:

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9:28:35 John Carroll, the Board's legal counsel, said for the Board to make individual motions for the variance and waiver.

WAIVER—Number of projecting signs:

9:28:42 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Liggin, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from the Land Development Code, Chapter 8, Section 3.3.A.1 to allow a greater number of projecting signs on the front façade of the building (6 total); and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the size and shape of the signs are proportionate with the scale of the structure to which that are attached; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020, because the property is still compatible with the general vicinity; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the subject property is on a major arterial road which might hinder visibility; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived because the applicant has installed vibrant and well designed signage;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to allow 7 signs along the store frontage on Mellwood Avenue.

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The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

VARIANCE:

9:30:02 After the public hearing, in open business session, on a motion by Member Allendorf, seconded by Member Liggin and the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 8, Section 3.3.a.6. of the Land Development Code to allow 6 projecting signs to hang lower than allowable (to 26"); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the signs are hung in a pedestrian friendly, safe manner and do not project into the right-of-way; and because pedestrian head clearance is not an issue because the signs only project 21" into a 9'6" sidewalk; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because these signs are vibrant along a corridor that is becoming more occupied by businesses and pedestrians; and because the signs and their location enhance the commercial area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because although the signs are projecting 21" from the façade, they are recessed from planters that are along the storefront; and

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WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the signage is placed at a reasonable height for pedestrian and automotive visibility; and because this is a commercial area becoming more pedestrian friendly; and

WHEREAS, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity because the subject property is on a major arterial road, but becoming more pedestrian friendly with more commercial businesses; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the signage would have to be removed and come into compliance with the Land Development Code, which would decrease visibility of the business in this unique area; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the signage would have to be removed and come into compliance with the Land Development Code, which would decrease visibility of the business in this unique area;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow 6 signs to be 26" above the sidewalk along Mellwood Avenue **ON CONDITION** that the existing planters remain where they are currently located, since they do not encroach too far into the sidewalk per ADA requirements.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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CASE NO. 13VARIANCE1051

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

Project Name: Detached garage

Subject: An application for a variance from the Land Development Code to allow an existing accessory structure to encroach into a 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 and Stephen Blackwell, 6206 Ree Court, Louisville, Kentucky 40216.

Appearances Interested Party:
No one.

Appearances Against Applicant:
Richard Storm, 5701 Ree Drive, 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 detached garage to encroach into the rear yard setback.

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NEW BUSINESS:

CASE NO. 13VARIANCE1051

On December 16, 2013, 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 December 16, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:

9:45:15 Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the existing garage encroaches into the rear property line; and has also been built across a 30' rear building limit line which will have to be moved by minor plat. She said the LG&E and Water Company easements have been released. Ms. Butler added that the owners received a permit, but the plan wasn't drawn to scale and submitted this into the record.

SUMMARY OF TESTIMONY OF PROPONENTS:

9:50:45 Diane Yates said she has never built a garage until now and doesn't know the zoning regulations. She said her boyfriend, Mr. Blackwell, drew the plan but wasn't to scale. She said they still received a permit to build and didn't realize they were doing anything wrong. Member Allendorf asked if Mr. Blackwell built the garage. Ms. Yates said no, that he drew the plan but a contractor built the garage. Member Fishman asked if the contractor built according to the faulty permit. Ms. Yates said yes.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

9:52:57 Richard Storm said he has concerns over the size of the building and what it will be used for. He said it is too close to Lower Hunters Trace and out of character with the area considering the size. He said the materials do not match the home; and that the garage is almost as large as the house. Mr. Storm

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said the owners are also parking their cars on the grass instead of in the garage; and submitted photographs of this into the record. Member Jarboe asked if he could see the garage from his home. Mr. Storm said no, but can see it when he enters the area. Member Jarboe asked him what the applicant could do to minimize the impact. Mr. Storm said he doesn't think they can landscape because it would be in the right-of-way. He said he's had other people come up to him and ask what the building is.

REBUTTAL:

9:59:41 Ms. Yates reiterated that they didn't build the garage thinking they were doing anything wrong, especially since they received a permit. She said the reason they are not parking their cars in the garage is because of the Notice of Violation. She said her fiancée will be storing an old truck of his fathers in the garage, in addition to their cars and a trailer. She said they haven't put the fence back up until they get the variance approved; and said they could provide landscaping to soften the appearance. Ms. Yates said there is a similar structure in the area. Member Fishman asked if she looked at other garages in the area. Ms. Yates said yes, and that they used metal due to the expense. Chair Proffitt asked Ms. Butler what the maximum height allowable is. Ms. Butler said 30 ft. tall. Member Allendorf asked if they would be extending the driveway. Ms. Yates said yes. Member Allendorf asked if they would be using the garage for any commercial uses. Ms. Yates said no. Mr. Blackwell said they were following instructions from the city.

BUSINESS SESSION:

10:08:32 Member Liggin said he doesn't want any commercial business going on in the building, but said Code Enforcement would catch this. Member Jarboe and Chair Proffitt said they couldn't see approving it. Member Fishman said it is out of character with the area. Member Allendorf said he is not opposed if the applicant agrees to meet with staff's landscape architect and decide what kind of landscaping would be best to conceal it; and that the applicant receive the minor plat. He said the Board could add these as conditions of approval.

10:14:46 Member Allendorf made a motion to grant the variance as requested on condition that the applicant receive a minor plat to rectify the building limit lines; and that the applicant work with staff's landscape architect to plant shrubs or other plant material/trees to conceal the garage; and was seconded by Member Liggin.

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10:16:22 Chair Proffitt said he wanted to go back into public hearing session to ask if the applicant would agree to the conditions of approval.

BACK INTO PUBLIC HEARING:

10:16:22 Chair Proffitt asked Ms. Yates if she would agree to the conditions of approval stated by Member Allendorf. Ms. Yates said yes.

BACK INTO BUSINESS SESSION:

10:16:42 Member Allendorf said he would substitute the applicant's justification for standard of review items (b) and (d) in the staff report.

The motion carried and the following resolution was adopted:

RESOLVED, that although the motion was to approve the variance to allow an existing garage to be 1 foot from the rear property line along Lower Hunters Trace, the vote taken was two (2) Yes votes and four (4) No votes.

The motion to approve failed.

The vote was as follows:

YES: Members Allendorf and Liggin.

NO: Members Bauer, Jarboe, Proffitt and Fishman.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE1057

Applicant/Owner: Churchill Downs Race Track
Ryan Jordan
700 Central Avenue
Louisville, Kentucky 40208

Representative: Encompass Develop Design & Construct
John Stewart, Owner
106 E. Jefferson Street
LaGrange, Kentucky 40031

Project Name: Churchill Downs LED Video Board

Subject: An application for a variance from the Land
Development Code to allow an LED video board to exceed the maximum 150-ft.
height to 170 feet.

Premises affected: On property known as 700 Central Avenue and being
in Louisville Metro.

COUNCIL DISTRICT 6—David James & 15—Marianne Butler
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
John Stewart, Encompass Develop Design & Construct, 106 E. Jefferson Street,
LaGrange, Kentucky 40031.

Susan Hughes, Legislative Assistant to Councilmember Marianne Butler, 601 W.
Jefferson Street, Louisville, Kentucky 40202.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE1057

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 25, 2013, Churchill Downs Race Track filed an application for a variation from the requirements of the Land Development Code to allow an LED video board to exceed the maximum 150-ft. height to 170 feet.

On December 16, 2013, 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 December 16, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:

10:18:57 Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said there are several zoning districts, but this portion is the OR-6 portion. Ms. Yates said it appears the video board is compatible, but the applicant should discuss site line studies and how the light might impact adjacent residential properties. Member Allendorf asked if the video board will be used to replay races etc. Ms. Yates said yes.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:22:42 John Stewart, the applicant's representative, said the video board will be used during broadcasting and rebroadcast races. He said the reader board is located on the backside of the track, so people in the infield will be able to see the races better. He said the video board will not be a nuisance to neighbors because there won't be a large amount of light coming off of it, will not be lit in the back of it and that standard lighting will be used just for maintenance issues. Numerous questions were asked by the board with regard to light nuisance, flashing signage, wind strength and the Federal Aviation

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Administration (FAA) approval. Mr. Stewart said they have preliminary approval from the FAA, and that the reader board will meet Kentucky Building Code regulations. Ms. Yates added that the board is internal to the track, so it shouldn't affect people living in the area. Mr. Stewart added that they will be proactive with the neighbors if they have any concerns.

10:32:34 Susan Hughes, Legislative Assistant to Councilmember Marianne Butler, said they support this request; and that Churchill Downs is a pillar to the community. She said they've attended various meetings and will work closely with the neighbors and Churchill Downs should any nuisances arise.

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:

10:34:14 Member Allendorf said he appreciates the applicant and Councilmember Butler's office stating that they will work with the neighbors if necessary. Member Fishman questioned the strength of the video board. Member Allendorf said it has to meet a specific standard (e.g. 90 mph wind speeds) and that the only other agency that could deny the applicant is the FAA; which they have preliminary approval from. Member Fishman said she doesn't want any blinking or fast reading advertising. Member Liggin said he thinks it's too large and the airport authority should be involved. Chair Proffitt said he is mostly concerned about the video board at night and accepts that the applicant will work with neighbors if it becomes an annoyance.

10:39:34 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification, the evidence, testimony

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and discussion at the public hearing that the applicant is requesting an LED video board to exceed the maximum height of 150-ft. height to 170 feet tall; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the LED video board is located within the confines of the Churchill Downs Race Track (CDRT) property away from the adjacent residential properties, not available to the general public; and because the video board will be used for CDRT events only; and because the applicant has agreed to work with adjacent neighbors if the light from the video board becomes a nuisance; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there is other similar signage in the area such as Papa John's Stadium; and because this proposal is fitting with the surrounding race track environment; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public due to the proposed location of the video board being well inside the property of CDRT, facing the grandstand and away from adjacent residential properties; and because the video board will only be used for CDRT events and is fitting with the surrounding race track environment; and because the applicant has agreed to work with adjacent neighbors if the light from the video board becomes a nuisance; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because it appears to be compatible with other uses and signage in the area; and because the video board will be located well within the confines of the CDRT property and is not located immediately adjacent to any residential structures; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because CDRT is not a residential property but a commercial entertainment venue similar to Papa John's Stadium which is within the area; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land because

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it would prevent CDRT the ability to modernize the race track and stay competitive with other racing venues;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow an LED video board to be 170 feet tall.

The vote was as follows:

YES: Members Jarboe, Fishman, Proffitt, Bauer, and Allendorf.

NO: Member Liggin.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13DEVPLAN1070

Applicant/Owner: West End School, Inc.
Paul Perconti, Board Chairman
3628 Virginia Avenue
Louisville, Kentucky 40211

Representative: Classickle-Blue Stone Engineers, PLLC
Christopher T. Crumpton, PE
3703 Taylorsville Road, Suite 205
Louisville, Kentucky 40220

Project Name: Darrell Griffith Athletic Center

Subject: An application for a Category 3 Review for an athletic center; variances from the Land Development Code for the location of a proposed gymnasium; and landscape waivers from the Land Development Code.

Premises affected: On property known as 3628 Virginia Avenue and being in Louisville Metro.

COUNCIL DISTRICT 1—Attica Scott
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Chris Crumpton, 3703 Taylorsville Road, Suite 2, Louisville, Kentucky 40220.

John Stewart, Encompass Develop Design & Construct, 106 E. Jefferson Street, LaGrange, Kentucky 40031.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

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On September 23, 2013, Paul Perconti with the West End School filed an application for a Category 3 Review for an athletic center; variances for the location of a proposed gymnasium and landscape waivers from the Land Development Code.

On December 16, 2013, 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 December 16, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:

10:43:41 Staff case manager, Jon Crumbie gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing to build a new 12,800 sq. ft. gymnasium and a 900 sq. ft. storage building for the existing West End School. He said parking will be located at the rear of the gym along with on-street parking, but said that the applicant may have to negotiate some parking later with the adjacent church. Mr. Crumbie pointed out the location of the buildings on the PowerPoint photo; and said that they want to retain the existing ball fields. He said there is currently quite a bit of landscaping near the right-of-way. Mr. Crumbie presented color renderings for the Board to review.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:48:39 John Stewart and Chris Crumpton, the applicant's representatives were sworn in. Mr. Stewart said he is doing pro-bono work for the school which offers free schooling and dormitories for boys from kindergarten through middle school who live in the west side of Louisville. He said some women live there with their son; and that some of the parents are in prison. He said donations the school received are allowing the expansion; and that the dormitories will be filled to capacity. Chair Proffitt asked how the school is laid out with the additions. Mr. Crumpton pointed this out on the plan and said the requests are needed so the

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school can keep the ball fields, adding that they have numerous sports programs for the boys to enjoy. Mr. Crumpton discussed existing access and sidewalks; and said they've been working with MSD to provide underground detention since flooding has occurred. Member Liggin asked what the capacity is for the gym. Mr. Crumpton said it will hold a couple thousand people. He said the adjacent church has an expansive parking lot and said the school could use it if needed.

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:

10:57:03 The Board said this is a good project and that they like the design.

VARIANCE:

10:58:17 After the public hearing in open business session, on a motion by Member Liggin, 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 applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance to allow the proposed structure to not hold the corner of Dumesnil Street and South 36th Street by 262.49'; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure will be setback further away from residential properties and allow direct access to the school; and will also allow the gym to be behind the existing school; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the structure will be compatible with the school

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and allow additional improvements to be made to the site; and because it will still allow for open space and the existing ball fields to remain at their same locations; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the structure will be located near the right-of-way by the I-264 expressway and will not create a problem for motorists or pedestrians; and because the existing access points and sidewalks will remain in the same area; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the proposed location of the structure will allow the ball fields to remain on site as they currently exist; and

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

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the ball fields would have to be moved to the area adjacent to the I-264 right-of-way; and because the area slopes downward and would need to be modified; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought because the school has been in existence at this location for over 50 years;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed structure to not hold the corner of Dumesnil Street and South 36th Street by 262.49'.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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WAIVER:

11:00:12 After the hearing, in open business session, on a motion by Member Liggin, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentation(s); the evidence submitted; the applicant's justification, testimony and discussion at the public hearing, the applicant is requesting a waiver to omit the required 15-foot Landscape Buffer Area (LBA) along the west property line; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the area is abutting the I-264 right-of-way and can barely be seen by adjacent property owners; and because there is existing buffering in the right-of-way; and because the proposed gymnasium will look like an extension of the existing school and existing entrances to the property will remain the same; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020, because Guideline 3, Policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate; and because 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; and because 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; and because Guideline 13, Policy 4, call for ensuring appropriate landscaping design standards for different land uses within urbanized, suburban and rural areas; and because Guideline 13, Policy 6, calls for screening and buffering to mitigate adjacent incompatible uses; and because the intent of landscape buffer areas is to create suitable transitions

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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 air borne and water borne pollutants; and since existing vegetation along the property line is within the KTC right-of-way and will act as the LBA; and because the distance between the property line and the ramp is 65 feet and is more than adequate for a buffer area; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant in order to fit the required access drive and parking on the west side of the gymnasium which does not allow additional room for a landscape buffer area on this property; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring access and parking to be moved and plantings installed at an increased cost; and because the gymnasium access drive and parking are located in the best possible place to connect to the existing school via existing access of Dumesnil Street; otherwise, the existing access onto Dumesnil would have to be relocated along with impacting existing ball fields located to the east of the proposed gymnasium and preventing students from having full size ball fields for recreation;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to omit the required 15' landscape buffer area along the west property line.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13DEVPLAN1070

CATEGORY 3 REVIEW:

11:01:31 After the public hearing, in open business session, on a motion by Member Liggin, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the site plan, the PowerPoint presentation(s); the renderings, the evidence and testimony submitted at the public hearing, that the applicant is requesting a Category 3 Review for the construction of a new 12,800 square foot gymnasium and 900 square foot storage building; and

WHEREAS, the Board finds that the conservation of natural resources on the property proposed for development will follow the natural grades of the land; and because the tree canopy requirements will be met; and

WHEREAS, the Board finds that the provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community are met; and because there are existing sidewalks along Virginia Avenue, 36th Street and Dumesnil Street; and because sidewalks will also be built in the interior of the site; and

WHEREAS, the Board finds that the provision of sufficient open space (scenic and recreational) meet the needs of the proposed development because the site has two courtyards and a grass sports field that will be maintained; and because one courtyard will be further landscaped to preserve natural open space; and

WHEREAS, the Board finds that adequate drainage facilities on the subject site have been reviewed and approved by the Metropolitan Sewer District (MSD); and

WHEREAS, the Board finds that the compatibility of the overall site design and land use follow the projected future development of the area; and because the proposal will be an extension of the existing site and serve the surrounding community; and

WHEREAS, the Board finds that the development conforms to all the Land Development Code requirements and therefore follows the guidelines of Cornerstone 2020; and because the proposed structure will have attractive

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facades with the appropriate fenestration and materials; and because proposed sidewalks and a parking lot will be located in close proximity to the proposed structure, creating a safe environment for those visiting the site; and because there will be signage and lighting that will be code compliant;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **APPROVE** the Category 3 plan to construct a new 12,800 square foot gymnasium and 900 square foot storage building for the existing West End School.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1016

Applicant(s): The Islamic Center of Louisville, Inc.
Shahid Qamar
4007 River Road
Louisville, Kentucky 40223

Owner(s): Fegenbush Mini Storage, LLC
J. Kevin Currett, Manager
2351 Nelson Miller Parkway, Suite 2
Louisville, Kentucky 40223

Attorney: Wyatt, Tarrant & Combs, LLP
Cliff Ashburner, Esq.
500 W. Jefferson Street, Suite 2800
Louisville, Kentucky 40202

Engineer: Milestone Development Group, Inc.
Doug Ernst, P.E.
108 Daventry Lane, Suite 300

Project Area/Size: 4.1418 acres

Existing Use: Vacant

Proposed Use: Cemetery

Zoning District: R-4

Form District: Neighborhood

Subject: An application for a Conditional Use Permit to allow a cemetery in an R-4 zoning district; a variance to allow the existing garage to encroach into the required 30 ft. front setback; a waiver to reduce the property perimeter Landscape Buffer Area (LBA) from 35 feet to 30 feet and to provide a 6-ft. screen instead of the required 8-ft; and a waiver to allow the garage to encroach into the required LBA.

Premises affected: On property known as 4707 Fegenbush Lane and being in Louisville Metro.

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NEW BUSINESS:

CASE NO. 13CUP1016

COUNCIL DISTRICT 2—Barbara Shanklin
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:

Cliff Ashburner, Attorney, 500 W. Jefferson Street, Suite 2800, Louisville, Kentucky 40202; who presented a PowerPoint presentation to the Board.

Marian Taylor, 1021 Windsor Drive, Shelbyville, Kentucky 40065-7378.

Appearances- Interested Parties:

No one.

Appearances Against Applicant:

Joel Skaggs, 4501 Fegenbush Lane, Louisville, Kentucky 40228.

Morrison Lewellen, 4409 Fegenbush Lane, Louisville, Kentucky 40228.

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 November 18, 2013, The Islamic Center of Louisville, Inc., filed an application for a Conditional Use Permit to allow a cemetery in an R-4 zoning district; a variance and two waivers.

On December 16, 2013, 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 December 16, 2013 proceedings available in the Planning and Design Services Office.

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NEW BUSINESS:

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SUMMARY OF STAFF PRESENTATION:

11:06:40 Staff case manager, Latondra Yates, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the Louisville Islamic Center is requesting a Conditional Use Permit for a cemetery; a variance to allow the existing garage to encroach into the required 30 ft. front setback; a waiver to reduce the property perimeter Landscape Buffer Area (LBA) from 35 feet to 30 feet and to provide a 6-ft. screen instead of the required 8-ft; and a waiver to allow the garage to encroach into the required LBA. She said they are proposing a 2,000-plot cemetery that will include a covered pavilion and an access drive to and through the cemetery. An existing garage will remain and be used to store maintenance equipment for the cemetery. She said the site is zoned R-4 and surrounded by single family residential, except Resthaven Cemetery to the east and Fegenbush Mini Storage to the west. She said the requests were reviewed against the Land Development Code and Cornerstone 2020 and meets the standard of review.

SUMMARY OF TESTIMONY OF PROPONENTS:

11:11:59 Cliff Ashburner, the applicant's attorney, presented a PowerPoint presentation for the Board. He said he agrees with staff's analysis; and said what most people would see is a field with fencing, landscaping and a driveway. He said they held a neighborhood meeting where only 3 people showed up. He said Resthaven Cemetery has been at its location for years and that houses have been built around it. Mr. Ashburner said the trees will be preserved within the 30 ft. buffer; and that they will be adding more landscaping near the Moose Lodge. He said they have received support from various people and organizations. Member Allendorf asked about the fencing. Mr. Ashburner said they are proposing a 6 ft. tall wood fence. Chair Proffitt asked if the applicant would agree to an 8 ft. tall fence. Mr. Ashburner said he would like to ask the adjacent neighbors what they want first.

11:19:46 Marian Taylor, Executive Director of the Kentucky Council of Churches said the request is reasonable and is in support of the request. She said she wanted to attend the hearing today to make sure no religious discrimination occurs today.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

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NEW BUSINESS:

CASE NO. 13CUP1016

SUMMARY OF TESTIMONY OF OPPONENTS:

11:22:35 Joel Skaggs and Morrison Lewellen were sworn in together.

11:23:01 Mr. Lewellen said he canvassed the neighborhood and said a lot of people didn't receive a notice for the neighborhood meeting; and feels they are trying to push this through. He said they bury their people using no vaults or caskets and is concerned about runoff onto his property. He said a hard rain has flooded his garage; and is very concerned with health issues from the runoff.

11:24:21 Joel Skaggs said he also concerned with the runoff from the cemetery which also flows toward his property. He asked if anyone has tested the soil and water for bacteria fearing it will become contaminated along with the nearby creek. Mr. Skaggs pointed his house and Mr. Morrison's on the PowerPoint photograph.

REBUTTAL:

11:26:45 Mr. Ashburner said the water runoff will go into a roadside ditch long before it reaches Mr. Skagg's and Mr. Lewellen's property. He said the reason they didn't receive a notice of the neighborhood meeting is because they are not within the required 1st and 2nd tier property owners. He said this is also what the public hearing is for.

11:28:34 Chair Proffitt asked Mr. Ashburner what the regulations are for burial grounds if caskets are not used. Mr. Ashburner said there has to be 3 feet of dirt above the body. Mr. Ashburner added that water and soil studies have been done and what they find contaminating is embalming fluid. He said they will comply with any and all state laws governing it. Member Jarboe asked about the drainage issues. Mr. Ashburner said the water will run down to the roadside ditch. Chair Proffitt asked if MSD has preliminarily approved this. Mr. Ashburner said yes. Member Allendorf asked about maintenance of the cemetery. Mr. Ashburner said the Islamic Center will maintain the grounds.

BUSINESS SESSION:

11:32:39 John Carroll, the Board's attorney, suggested adding the condition of approval regarding the applicant checking with the adjacent property owners to the west to see if they want a 6 or 8 ft. tall fence.

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DECEMBER 16, 2013

NEW BUSINESS:

CASE NO. 13CUP1016

11:34:02 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentations, the applicant's justification, evidence, and testimony at the public hearing that the applicant is requesting a Conditional Use Permit under Section 4.2.13 of the Land Development Code (LDC) to allow a cemetery in an R-4 zoning district; and because the property contains approximately 4 acres and is located adjacent to Resthaven Cemetery (rear) and residential properties to the sides and in front; and because the property will be surrounded by a 6 ft. tall fence with the possible exception of an 8 ft. tall fence along the properties to the west and will contain the required buffers, except as noted on the plan where an existing garage building encroaches into the buffer area; and also where the garage building encroaches, the buffer has been expanded to include approximately the same area as the requirement; and because as shown on the plan, the internal roads have been sized in accordance with the regulations; and

WHEREAS, the Board finds that the property is within a Neighborhood Form District characterized by residential and other low impact uses; and because the proposed cemetery will be very low intensity, with only two small buildings and a roadway on site; and because there will be no funeral or mortuary on site; and

WHEREAS, the Board finds that the proposed cemetery will be compatible with surrounding properties in accordance with Guideline 3; and because the use will be compatible with Resthaven Cemetery; and because the look of the property will also be compatible with the adjacent residential properties because there will only be two buildings on the property and the perimeter will be fenced in a way many residential lots are fenced; and

WHEREAS, the Board finds that the proposed cemetery will, even when full, appear like a park, preserving open space in accordance with Guideline 4; and because this is true of many cemeteries in the community, including Resthaven, which is directly adjacent to the property; and because there are no scenic or historic resources on the property, rendering the proposed cemetery compliant with Guideline 5; and

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WHEREAS, the Board finds that the proposed cemetery will comply with the requirements of Chapter 4.2.13 regarding access and internal roadways in compliance with Guideline 7; and because the property will be graded minimally but in such a way as to prevent any stormwater impact on adjacent properties, in accordance with Guideline 10; and because the proposed cemetery should not have any impact on water quality, in compliance with Guideline 11; and

WHEREAS, the Board finds that the proposed cemetery will contain 30' landscape buffers, as encouraged by Guideline 13 and required by Chapter 4.2.13; and because the waivers the applicant is requesting are to allow for an existing garage to encroach into the buffer and to allow fencing to be 6' tall (as set forth in Chapter 4.2.13) fence with the possible exception of an 8 ft. tall fence along the properties to the west; and because the applicant will provide landscaping in the buffer area; and

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

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

The conditions are as follows:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a cemetery without further review and approval by the Board.
3. The applicant will confer with the adjacent property owners to the west to see if they would prefer an 8 ft tall fence over a 6 ft. tall fence.

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The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

VARIANCE:

11:35:53 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations, the site plan; the PowerPoint presentation(s); the applicant's justification, the evidence submitted, testimony and discussion at the public hearing, the applicant is requesting a variance of Section 4.2.13.B. of the Land Development Code to allow the existing garage to encroach into the required 30-ft. front setback to 0 ft; and

WHEREAS, the Board finds that the requesting variance will not adversely affect the public health, safety or welfare because the garage is existing located to the rear of the property and away from the nearest residential structure and will be reused for the cemetery; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the garage is existing, thereby retaining its residential character; and because the area where the garage sits will be part of a landscape buffer as well; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because it will allow an existing garage to remain and be reused for the proposed cemetery; and because the garage is located to the rear of the property, away from the nearest residential properties and is proposed only as storage for the cemetery; and

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WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there will be no gravesites within the buffer; and because the buffer has also been widened around the garage; and because the variance will allow the reuse of the garage for storage for the cemetery; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to properties in the general vicinity because the yard requirements for a cemetery differ from those of nearby residential properties, even though the cemetery will not have many of the typical components like a funeral home or mortuary; and because the site, from the outside, will look like a well kept park with only a garage and gazebo in it; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because it would not allow the existing garage to be located within the setback, which could require possible demolition, shifting of property lines or other modifications to the plan; and because this would be wasteful, especially considering the garage has been in the existing location for some time and nicely landscaped; 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 it would be economical and beneficial for the cemetery to retain the existing garage that will be useful to the operation of the cemetery instead of removing it and rebuilding a similar building elsewhere on the site;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the existing garage to be 0 feet from the front property line.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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WAIVERS:

11:36:59 After the public hearing, in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the applicant's justification, the PowerPoint presentation(s); the evidence submitted, testimony and discussion at the public hearing, the applicant is requesting Waivers from Sections 10.2.4.A. and 4.2.1.3.B. of the Land Development Code to reduce the property perimeter LBA from 35 feet to 30 feet and to provide a 6-ft. screen instead of an 8-ft. screen; and a Waiver from Section 10.2.4.B. of the Land Development Code to allow the garage to encroach into the required Landscape Buffer Area (LBA); and

WHEREAS, the Board finds that the waivers will not adversely affect adjacent property owners because the proposed fence is more typical of a residential-style fence than an 8-ft. tall fence which will render it more compatible than the alternative; and because the garage will remain with a carport portion of the building removed; and because the garage will be behind the proposed fence, which should further protect adjacent property owners; and

WHEREAS, the waivers will not violate the Comprehensive Plan because the waivers are minor deviations from the requirements of the LDC, and the proposed cemetery will be a compatible use in any event; and because the applicant has addressed the applicable parts of the Comprehensive Plan through a separate justification that is part of this application; and

WHEREAS, the Board finds that the extent of the waivers is the minimum necessary to afford relief to the applicant, especially with regard to the encroachment of the garage building, which is an existing condition the applicant is attempting to accommodate; and because the applicant is proposing a fence that is called for in Chapter 4.2.13, the regulation that allows cemeteries in residential zones; and

WHEREAS, the Board finds that the strict application of the regulations would result in the need for the applicant to demolish a useful structure and rebuilt it 18'

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from its current location; and because a 6 ft. tall residential style fence will be more compatible with the area in general;

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

The waivers allow:

1. Reduce the property perimeter Landscape Buffer Area to 30 feet.
2. Provide a 6-ft. tall residential style fence.
3. The existing garage to encroach into the required Landscape Buffer Area.

The vote was as follows:

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1015

Applicant(s): h Environmental, LLC
Mark T. Hinton
12017 Springmeadow Lane
Goshen, Kentucky 40026

Owner(s): Rock Property Group, LLC
Jason James
3816 Bishop Lane
Louisville, Kentucky 40218

Attorney: Wyatt, Tarrant & Combs, LLP
Cliff Ashburner, Esq.
500 W. Jefferson Street, Suite 2800
Louisville, Kentucky 40202

Landscape Architect: Land Design & Development, Inc.
Ann Richard, RLA
503 Washburn Avenue, Suite 100
Louisville, Kentucky 40222

Subject: An application for a Conditional Use Permit to allow a Construction/Demolition Debris Facility and Indoor Recycling Facility in an M-2 zoning district; and a waiver to omit the required 5' Landscape Buffer Area along Bishop Lane.

Premises affected: On property known as 3816 Bishop Lane and being in Louisville Metro.

COUNCIL DISTRICT 10—Jim King
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Cliff Ashburner, Attorney, 500 W. Jefferson Street, Suite 2800, Louisville, Kentucky 40202; who presented a PowerPoint presentation.

Greg Charmoli, 510 E. Main Street, Louisville, Kentucky 40202.

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Appearances- Interested Parties:

No one.

Appearances Against Applicant:

Steve Porter, 2406 Tucker Station Road, Louisville, Kentucky 40299; who submitted information into the record.

Chuck Crush, 3810 Bishop Lane, Louisville, Kentucky 40218.

Carl Marilla, 4642 Pinewood Road, Louisville, Kentucky 40218.

Gary Young, 4624 Pinewood Road, Louisville, Kentucky 40218.

Terry Carter, 4012 Bishop Lane, Louisville, Kentucky 40218.

Rick Brown, 4705 Pinewood Road, Louisville, Kentucky 40218.

Jason Smith, 3906 Bishop Lane, Louisville, Kentucky 40218.

Ryon Kustes, 4623 Pinewood Road, Louisville, Kentucky 40218.

Barnie Elden, 3905 Bishop Lane, Louisville, Kentucky 40218

Robert Cunagin, 4610 Astor Road, Louisville, Kentucky 40218.

James Lowe, 4103 Bishop Lane, Louisville, Kentucky 40218.

Kevin Key, 4637 Pinewood Road, Louisville, Kentucky 40218.

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 October 28, 2013, h Environmental, LLC filed an application for a Conditional Use Permit to allow a Construction/Demolition Debris Facility and Indoor Recycling Facility in an M-2 zoning district; and a waiver to omit the required 5' Landscape Buffer Area along Bishop Lane.

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On December 16, 2013, 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 December 16, 2013 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

1:01:54 Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He explained the proposed use and said it is located in an area that is surrounded by industrial uses. He said he didn't receive a formal plan approved by the Director of Public Works from the applicant regarding an on-site vehicle cleaning area, listed requirement 4. B. He said the applicant has stated that the proposed facility is almost entirely paved so trucks will remain clean when maneuvering within the site; and that this could be modified by the Board. Mr. Crumbie said the Board may also consider modifying listed requirement, Item 2.b. regarding "That all work and storage areas shall be at least 100 feet from the exterior property lines. If there are any abutting residentially zoned or used parcels then all work and storage areas shall be at least 200 feet from the exterior property lines." Mr. Crumbie said the debris material will be 30 feet from the exterior property lines and the Quonset Huts will be 10 feet from exterior property line at its closest point. He said the Board may also want to include conditions of approval regarding noise from use of heavy machinery and grinding of materials since the site is within a ½ mile from residentially used or zoned property. He said a noise study or its equivalent was not submitted to staff. The applicant is working with APCD and the Jefferson County Waste Management District to ensure proper regulations be followed. The applicant will need to explain why the property will remain on two lots and not be consolidated.

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SUMMARY OF TESTIMONY OF PROPONENTS:

1:11:09 Cliff Ashburner, the applicant's attorney, presented a PowerPoint presentation to the Board. He said his client, h Environmental Company is requesting a Conditional Use Permit and waiver as both a Construction/Demolition Debris Facility and Indoor Recycling Facility. He said the facility will make Louisville more environmentally friendly, with the City's goals to increase recycling by 25%. He said he received a letter of support from Maria Koetter, Director of Sustainability who said "The facility is the first of its kind and will support Louisville Metro's green initiatives." Mr. Ashburner said the landfill only has 30 years left; and after that, Louisville will have to go to a surrounding community and ask them to take our trash. He said the use is allowed in the M-2 zoning district and that other, more intense uses could be allowed without a CUP such as: Lumber yard, railroad freight terminal, river terminal, equipment truck terminals, contractor shops, distilleries, breweries, auto repair etc.

1:34:37 Mr. Porter cross-examined Mr. Ashburner with the Board's approval. Mr. Porter had concerns about part of the recycling building being open on one side; outdoor construction piles being 30 feet from a property line when it is supposed to be 100 feet; type of materials recycled, dust and noise from the facility. Mr. Ashburner said he submitted 4 additional conditions of approval regarding what materials would not be processed on the property such as: pressure treated lumber, paint, oil or other petroleum products, food waste and any material listed as a hazardous substance under any state or federal environmental law. Mr. Ashburner said anything they can't recycle or sell will be go to the landfill; and said any businesses that bring in unrecyclable materials will not be allowed back to do business. Mr. Porter said there are numerous houses nearby and feels a sound study should have been provided.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

1:44:04 Steve Porter, the opposition's attorney, said he is very familiar with the area and said most of the residents have lived and created businesses here for a long time. He said there are over 50 residential properties within ½ mile radius; and that no noise/sound study has been submitted by the applicant. He said many of the buildings are old homes converted into offices and larger

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businesses. He said Councilmember Jim King sent a letter to his clients' stating that he is opposed to the request. Mr. Porter said the neighbors' do not want noise, odor, dust and stockpiled debris in their neighborhood. Mr. Porter cited numerous regulations that will be violated.

1:56:07 Chuck Crush said he's lived and worked in the area for 40 years; and his employees are like family. He said his business is along one of the property lines and that the tree line the applicant discussed is not there. He said he is concerned about dust coming from this site onto his property since part of the property is gravel; and that the tree grinders are actually hammer mills that are extremely loud. He said he is not opposed to a business on this property, just not this type of business.

2:00:10 Carl Marilla said he owns many properties in the area that are close to this property. He said there are too many unanswered questions with regard to pollution, solid waste, stockpiles and confusing details about permits. He said a lot of grinding could go on at this facility and that the CUP goes with the land. He said he's not opposed to a new business in the area because jobs are needed.

2:03:06 Gary Young said most of the people that live in the area have worked hard to build their businesses to where they are today. He said their small businesses are their livelihoods; and is concerned about the nuisances that could arise from this business.

2:04:19 Terry Carter said he's lived in the area since 1980; and said people take pride in their homes and businesses. He said the proposed use is not conducive to what exists; and that regulations were created for a reason.

2:06:21 Rick Brown said he also lives and owns a business in the area; and that most of the business owners have known each other for over 35 years.

2:07:40 Jason Smith said he is the service manager for Triple A; and read part of a letter into the record. He said the industrial aspect of the business will make the area undesirable. He said lumber can be treated with arsenic and other poisons. He said the applicant's attorney is great at explaining their plight, but that there's no protection in writing for the neighbors. He said he was in the army and worked with rock quarries where trucks go in and out and create

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mounds of dust. The noise dust and suppression concerns him. Chair Proffitt asked if his property is paved. Mr. Smith said yes, entirely.

2:10:52 Ryon Kustes said if this company will be recycling shingles, nails will flatten their tires. He said they don't want to breathe what is coming off of the grinding facility.

2:12:40 Barnie Elden said he is concerned that more accidents will occur with more trucks coming in and out of this business. He said two of his employees have already been in car wrecks. He said he owns several properties and that this business will make it hard for him to rent them out or retain tenants.

2:13:51 Robert Cunagin said he's concerned with one of the buildings being left open on one side; and wouldn't consider this an "Indoor Recycling Facility". He said the applicant is not the owner of the property and fears something worse could come in later. He said the business is not a good fit for the area and will forever change their neighborhood.

2:15:37 James Lowe said he has been in business in the area for 27 years and are expecting growth. He said they want to improve the area and that this business will have the opposite effect.

2:17:00 Kevin Key said he's in the construction business and is familiar with debris and refuse which is highly regulated. He said if they are stockpiling debris any airborne chemicals will blow toward his property. He said he is also concerned about higher traffic volumes.

2:18:51 Steve Porter concluded by stating that there are too many violations now with regard to the business that they are asking the Board to overlook. He said no vehicles or trucks will be cleaned, no noise control and stockpiling within 30 feet of the property line. He said if the 3 sided building would be closed, his clients' might not be as opposed.

SUMMARY OF TESTIMONY OF PROPONENTS AGAIN:

2:22:53 Greg Charmoli said he has great respect for the business owners present today but wanted to speak on behalf of the applicant. He said the owner of the business, Mark Hinton, has been his friend for many years and built numerous other developments also taking great pride in them. He said Mr.

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Hinton might buy the property and that he will operate the business as permitted and allowed.

REBUTTAL:

2:25:44 Mr. Ashburner said the tree line discussed has not been planted yet. He said they don't need a permit from MSD due to the amount of impervious surface; and if anything will decrease the runoff further by planting the trees. He said no one is dishonoring the small businesses and that his client is also a small business owner. He said they won't be grinding wood with chemicals and is in the conditions of approval he submitted. He said he will provide staff with what equipment will be used, but said at this point, they don't know. Mr. Ashburner said he doesn't think noise will be an issue considering the woods in the area. He said the stockpiles will be sand and dust but won't impact IMI's property. He said Mr. Porter asked the Board if the use fits the neighborhood but didn't mention the Comprehensive Plan or the Land Development Code regulations. He said recycling facilities have to be allowed somewhere in Louisville to reduce waste. Mr. Ashburner said they've included conditions of approval and will agree to another condition of approval to provide truck washing if necessary.

2:32:39 Chair Proffitt asked Mr. Ashburner if they'd be willing to provide a noise study prior to the Board making a decision. Mr. Ashburner consulted with his client and said they will agree to perform the grinding operation in an enclosed building. There were more questions from the Board concerning dust, odor and types of recycling. Mr. Ashburner said the three sided building will allow the piles to be created and moved in and out, adding that this building is the furthest from Bishop Lane. Mr. Ashburner said they won't grind shingles stating that these would be taken to a recycling center on River Road. Member Allendorf asked about them consolidating the property. Mr. Ashburner said the applicant does not own the property to do this. Member Allendorf asked if there would be refueling of trucks on site. Mr. Ashburner said no. Member Jarboe asked if the front loaders would operating continuously. Mr. Ashburner said no, that the business will be closed at night. Chair Proffitt asked what other types of material would be ground here. Mr. Ashburner said asphalt and plastic material. Mr. Ashburner reiterated that they won't grind the wood outside until a basic noise study is completed; and said they could provide this information to staff a week before the January 13, 2014 BOZA hearing. Chair Proffitt asked that it be done by an acoustical engineer. Mr. Ashburner said that would be expensive and take longer than two weeks. Mr. Ashburner asked if the Board could vote

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today if no outdoor grinding occurs. Chair Proffitt said he doesn't see how the Board can vote before they know the outcome of the noise study. Mr. Ashburner said his client will modify the business if the noise study comes out unfavorable.

3:00:53 Mr. Porter said there isn't a condition of approval that no outside grinding will occur until the noise study is done. He asked if it would be in a totally enclosed building. Mr. Ashburner said yes. Mr. Porter said he doesn't feel it's appropriate for the Board to move forward without a noise and dust study. He asked if the Board could reverse their decision if the noise study isn't favorable. Mr. Ashburner felt submitting the noise study to the staff case manager is sufficient, other than it coming back before the Board after submitted.

BUSINESS SESSION:

3:08:25 Member Allendorf said he is not that concerned about submission of a sound study; that Poplar Level Road is already noisy. He said he's in the area about 3 times per week; and that the container yard in the area is probably noisier than this request. Member Fishman said she could move forward if the applicant agreed to submit the sound study and that no outdoor grinding occurs until then. She said she would like more information about dust suppression; but said the noise is her main concern. Member Jarboe said she feels a recycling center is needed, but questioned if this is the right location. Member Bauer said she doesn't feel the operation will be too noisy. Member Liggin said he wants the applicant to be a good neighbor; and feels he can make a decision today. Chair Proffitt said he has an issue voting on this before they know what kind of noise it could produce. He said the noise could be a serious nuisance. Jon Baker, the Board's legal counsel, said the Board could continue this case until they see the results of the noise study or condition the approval. Mr. Crumbie said two items in the requirements would have to be modified if the Board approves the request, where item c. will be covered by the condition of approval that no outside grinding of material will occur until the Board knows the results of the sound study.

WAIVER:

3:23:13 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

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WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the applicant's justification, the PowerPoint presentations; the evidence submitted, testimony and discussion at the public hearing, the applicant is requesting a waiver to omit the required 5' Landscape Buffer Area along Bishop Lane; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since there are no Landscape Buffer Areas along either side of Bishop Lane; and because there will be no material change to the site, especially in the area of the requested waiver; and

WHEREAS, the Board finds that the waiver will not violate the Comprehensive Plan because it will allow for the use of the subject property more fully than its current use and will allow for the existing appearance of the subject property to remain; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since additional right-of-way will need to be dedicated; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring pavement to be removed and plantings installed; and because an area of the subject property much larger than the required buffer would be taken due to the elimination of maneuvering area; and because there are no buffers on adjoining properties either;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to omit the Landscape Buffer Area along Bishop Lane.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman, Bauer, and Allendorf.

NO: Member Proffitt.

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

ABSTAINING: No one.

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CONDITIONAL USE PERMIT:

3:25:06 After the public hearing, in open business session, Member Allendorf made a motion to approve the request with several conditions of approval. More discussion occurred regarding modifications in the listed requirements, so Member Allendorf withdrew this motion.

3:27:43 Member Allendorf made another motion to approve and was seconded by Member Fishman and the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report including the standard of review, the PowerPoint presentations, the site plan; the applicant's justification, evidence; and testimony at the public hearing that the applicant is requesting a Conditional Use Permit to allow a Construction/Demolition Debris Facility and Indoor Recycling Facility in an M-2 zoning district; and

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

WHEREAS, the Board finds that the proposed development of the site will be consistent and compatible with the industrial character of the area; and because the site is located in the Suburban Workplace Corridor Form District with no residential uses in the immediate vicinity that will be impacted by the use; and because adequate transportation infrastructure exists to accommodate the use; and because there are no natural, scenic, environmental, or historic resources on the subject property that would restrict the development; and because the subject site is not located in the 100-year floodplain and there are no streams, wetlands or waterways on the site; and because all necessary utilities, including water, electricity, telephone, and cable are available, the development has adequate supply of potable water and water for fire-fighting purposes, and is served by the Camp Taylor Fire Protection District; and because although the subject property is in the Suburban Workplace Corridor Form District, it is in an area more characteristic of a Traditional Workplace, with many smaller industrial uses in close proximity to one another; and as stated in the Traditional Workplace Form District description, in existing areas, flexible site design should be encouraged to spur reinvestment; and because uses are encouraged to be set back from the

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road, where, the proposed recycling facility is locating most of its intense parts at the rear of the subject property; and

WHEREAS, the Board finds that the proposal is compatible with the general character of the surrounding area in terms of scale, intensity, drainage and appearance; and because the site will be fully enclosed by a 6-foot tall fence; and

WHEREAS, the Board finds that all necessary public facilities (both on and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services etc; and because the proposal has been reviewed by Public Works and MSD and both have preliminarily approved the plan; and

WHEREAS, the Board finds that the proposal complies with the listed requirements for a Construction/Demolition Debris Facility, Items A., B., C., D. and E; and because the applicant agreed to submit a formal plan to staff regarding a vehicle cleaning area on the site to prevent the tracking of mud, dirt, or other debris onto any public roadway which will be reviewed and approved by the Director of Public Works (Item B. on page 3 of the staff report); and

WHEREAS, the Board finds that a Construction/Demolition Debris Facilities will also be in compliance with conditions a. and c.; where the Board does hereby modify Item b. where the debris material will be 30 feet from the exterior property lines and the Quonset huts will be 10 feet from exterior property line at the closest point; and because the Board does modify Item c. because the site is within a ½ mile radius of residential used or zoned property, but the applicant has agreed to submit a sound study by a qualified sound expert for the Board to determine if noise levels from outside grinding of wood will not be intrusive to the nearby neighbors; and

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

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

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The conditions are as follows:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a Construction/Demolition Facility and Indoor Recycling Facility without further review and approval by the Board.
3. The following materials will not be processed at the subject property: pressure treated lumber, paint, oil or other petroleum products, food waste and any material that is listed as a hazardous substance under any state or federal environmental law.
4. No non-separated materials will be stored outside.
5. Any waste not processed at the subject property shall be delivered to an appropriate solid waste facility and disposed of in accordance with all local, state and federal laws.
6. Any grinding of any materials outside of the buildings on the property shall require consultation with the Air Pollution Control District about reasonable methods of dust suppression.
7. No outside wood grinding shall occur until the Board approves a sound study submitted by the applicant and performed by a qualified sound expert determining that the noise levels from the subject property will not be a nuisance to area residents

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman, Bauer, and Allendorf.

NO: Member Proffitt.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1011

Owner: JBS USA, LLC
1700 Promontory Circle
Greeley, Colorado 80634

Applicant: JBS, LLC
John Cliff
1200 Story Avenue
Louisville, Kentucky 40206

Attorney: Frost Brown Todd
Glenn Price, Jr.
400 West Market Street, 32nd floor
Louisville, Kentucky 40202-3363

Representative: Qk4
Ashley Bartley
815 W. Market Street, Suite 300
Louisville, Kentucky 40202

Subject: An application for a Modified Conditional Use Permit to allow a proposed 162 square foot expansion to the existing stunning and bleeding building.

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, Suite 3200, Louisville, Kentucky 40202; who presented a PowerPoint presentation.

Glee Goodner, Animal Welfare Specialist, Validus Verification Services, LLC, 10538 Justin Drive, Urbandale, Iowa 50322.

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Appearances- Interested Parties:

Nick Hart, Environmental Coordinator in the Enforcement Section, Louisville Metro Air Pollution Control District, 850 Barret Avenue, Suite 205, Louisville, Kentucky 40204; who submitted his statement and APCD Enforcement Status dated 12/12/13.

Appearances Against Applicant:

Jon Salomon, Tachau Meek, 3600 National City Tower, 101 South 5th Street, Louisville, Kentucky 40202.

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

The applicant submitted an application on September 9, 2013, that included a proposed fence along Story Avenue, a covered break area and the 162 sq. ft. building addition. The representative of the owner later informed staff, that the modification would only include the 162 sq. ft. expansion. At the August 19, 2013, hearing the Board was presented the same request as an emergency modification to resolve an issue regarding unsafe working conditions for employees; and inhumane treatment of the hogs during the stunning operation. The Board moved to deny the request, and was stated that a formal application for this expansion needed to be submitted. The Board also determined that they wanted to hear any other outstanding issues/requests for this site at once.

On December 16, 2013, 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 December 16, 2013 proceedings available in the Planning and Design Services Office.

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SUMMARY OF STAFF PRESENTATION:

3:47:44 Staff case manager, Steve Hendrix, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is requesting a modification of an existing Conditional Use Permit to allow a 162 sq. ft. expansion of the stunning and bleeding building. He said on August 19, 2013, the Board asked the applicant to file a formal application for the expansion instead of allowing Planning & Design's Director make the decision due to the contentiousness of the case. He said the Board also directed the applicant to include other outstanding issues or requests such as the hog chutes, so they could decide everything at once. Mr. Hendrix said the request today is only for the expansion. Mr. Hendrix said he received an e-mail and letter from Jon Salomon, the Butchertown Neighborhood Association's Attorney, after he completed his staff report. Mr. Hendrix gave this to the Board to review.

SUMMARY OF TESTIMONY OF PROPONENTS:

3:54:48 Glenn Price, the applicant's attorney, was sworn in. Chair Proffitt asked Mr. Price if the expansion is the only issue he wants heard today. Mr. Price said yes, due to unsafe working conditions for the employees who stun the hogs; and provide more humane handling of the animals. He said the balance of the other requests (hog chutes, Cabel Street Lot, outdoor break area and new fence) could be heard at a later date since not as urgent. He said the plant is not in compliance with OSHA, USDA and FSIS regulations and the business could be shut down. Chair Proffitt said the Board asked to hear everything at once. Mr. Price reiterated that this request is more important to them; and said there are other things that need to be worked out before they can proceed.

DISCUSSION:

3:58:07 Chair Proffitt said it is up to the Board if they want to consider just this item. Mr. Baker said the Board could do this or continue the hearing again to hear everything at once.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

5:32:41 Nick Hart, Environmental Coordinator in the Enforcement Section, Louisville Metro Air Pollution Control District, submitted a letter from APCD and asked the Board to settle all outstanding issues at once. He said this would include the partially built hog chutes, the Cabel Street lot and enclosing one of the barns to control odor.

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SUMMARY OF TESTIMONY OF OPPONENTS:

3:59:34 Jon Salomon, Attorney for the Butchertown Neighborhood Association, said the Board was very clear in August that the applicant was to bring all issues and requests at once (hog chutes, boilers, Cabel Street lot). He said there aren't any emergency issues.

DISCUSSION:

4:03:10 Mr. Price disagreed and said the situation is critical, but that the request is so minor that it will not create any problems for the area or residents.

4:07:10 Chair Proffitt said the applicant did submit the application; and decided to allow testimony giving each side 30 minutes. He said Mr. Price needs to explain why this request is more critical and let Mr. Salomon question it.

SUMMARY OF TESTIMONY OF PROPONENTS AGAIN:

4:10:08 Mr. Price presented a Power Point presentation to the Board, pointing out the building they want to expand. He said it will be completely invisible off site and will not create anymore nuisances. Mr. Price said his client is required by Federal Law under the Humane Animal Slaughter Act, that the hogs be rendered completely unconscious before killing them, so they don't feel any pain. He said people today are more concerned about the humane treatment of animals before slaughter, then the safety of the food they eat. The creation of two lines will be more humane for the animals not rushing them and ensuring an effective stun. Mr. Price explained the OSHA requirements for the safety of the employees, and said they should be at least 3 feet away from any electrical boxes; and that the width of the area where the employees stun is too small. He said the employees are using high voltage hand-held stunners which could kill a human if an accident were to occur. Mr. Price said his client hired an animal welfare specialist to conduct an audit of their practices; and is how they found out about non-compliance issues.

4:19:04 Glee Goodner, Animal Welfare Specialist with Validus Verification Services, said he was hired by JBS to identify improvements to the facility with regard to the humane treatment of the hogs. He said the addition of a second restrainer for the animals is a very common practice in this field, which allows the animals to walk in a single line at a normal pace and be stunned properly. Mr. Goodner cited this regulation and read it into the record. He said adding a second restrainer is more humane for the hogs and safer for the employees.

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4:25:19 Chair Proffitt asked why adding the second restrainer is an emergency situation. Mr. Price said the space is too small for two employees to stun the hogs; and that one restrainer rushes the animals through so they may not be stunned effectively. Chair Proffitt asked if the regulations are retroactive from the initiation of the law. Mr. Price said yes, that the new law must be adhered to. Mr. Price said the employees are also too close to the electrical boxes. Chair Proffitt said they could move the electrical boxes. The Board had more questions with regard to the regulations. Mr. Price reiterated that the request complies with the Comprehensive Plan and the Land Development Code; and that it deserves to be approved for the safety of the employees and the humane treatment of the animals. Mr. Price said the expansion is small and will not create anymore nuisances with regard to odor, noise, light etc.

SUMMARY OF TESTIMONY OF OPPONENTS AGAIN:

4:40:06 Mr. Salomon said there isn't a shred of new evidence that would justify this request being heard before the others. He said the Board was clear at the last meeting that they wanted to hear everything at once instead of piecemeal requests. He said the stunning line has operated the same since 1981 and feels the expansion could double the number of hogs they slaughter. He said the company won't request this, but mask it with purported violations they must correct. Mr. Salomon said JBS should go back to a one person stunning/bleeding line.

DISCUSSION:

4:47:01 Mr. Price said the main issue is the welfare of the animals and employees; and that this plant could be shut down over it. Member Fishman asked if there have been any accidents at the plant. Mr. Price said he believes so, but not sure since the OSHA regulations were adopted in 1910. He said the Humane Handling Act was adopted in 2011. Mr. Price added that the employees have filed a grievance over their work conditions, and is still pending. Member Liggin asked if they will be slaughtering more hogs. Mr. Price said no and that they have honored the 10,500 hogs per day average which is what the Board approved; and that the rate at which the hogs are moved through will not be increased. Chair Proffitt asked why they waited so long to make these improvements. Mr. Price said they found out once they hired the experts.

4:59:18 Mr. Goodner said 36 plants were shut down instantaneously due to non-compliance of federal regulations.

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5:01:15 Mr. Salomon said he still feels strongly that the applicant should have followed the Board's directive regarding hearing everything at once; and reiterated that they should just have one employee on the stunning line. He said there is no one here from OSHA or the other agencies verifying that the plant is out of compliance. Chair Proffitt asked what he wanted to discuss today. Mr. Salomon said he knows the Board doesn't want to get into details about the court cases, but said he thinks the CUP they are modifying is expired. He said he doesn't think the boiler room should have been built; and that the hog chutes were being built without a permit in 2009. He asked the Board if they would be modifying the 1981 permit; and said it's confusing for Codes and Regulations Enforcement staff to cite the property. He said some serious housekeeping needs to be done with this case. Chair Proffitt said there is an existing CUP and will be, until told otherwise by Circuit Court. Mr. Salomon said their APCD and EPA permits are also expired and that they shouldn't be asking for any other modifications because of this. Chair Proffitt said the Board doesn't get involved with EPA issues and asked Mr. Salomon to stay on point as to why the Board should not hear this request today. Mr. Salomon said the slaughterhouse is a nuisance to the residential area, and if they are adding another stunning line could double the amount of hogs they slaughter creating more waste and odor. Chair Proffitt said the applicant testified that they are not increasing the number of hogs. Mr. Salomon said this was a voluntary limit on a rolling average, and that they can't obtain data regarding this or even if they are complying with it. Chair Proffitt asked Mr. Price if they are exceeding slaughtering 10,500 hogs per day. Mr. Price said no.

BUSINESS SESSION:

5:45:09 Chair Proffitt asked Mr. Baker to go over their options today. Mr. Baker said the Board could approve, deny or continue the case to hear everything at once. Chair Proffitt said the request today won't change anything, and said he thinks the Board should make a decision today. He said the employees' safety concerns him and would make it less stressful for the hogs. He added that they are not killing anymore hogs than allowed per their testimony. Member Fishman agreed that she's concerned about the employees' safety. Mr. Hendrix interjected and said the Cabel Street lot is at a different location; and in the court system, so the Board cannot rule on that today. Member Allendorf said he doesn't feel there are any emergencies; and that OSHA wants enough room so electricians have enough space to work on the boxes/outlets. He said OSHA rarely shuts down businesses, but might fine them.

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BACK INTO PUBLIC HEARING:

6:02:46 Chair Proffitt asked Mr. Price if they continued this case, if he could include all the other requests. Mr. Price said yes, but only for the Story Avenue site.

BACK INTO BUSINESS SESSION:

6:07:32 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Bauer, the following resolution was adopted:

RESOLVED, that the Board does hereby **CONTINUE** this case to **February 17, 2014**, where the Board will consider all requests pertaining to the Story Avenue site (expansion, hog chutes, covered break area, fence, enclosing barn for odor control etc.).

The vote was as follows:

YES: Members Jarboe Fishman, Bauer, and Allendorf.

NO: Member Proffitt.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.

ABSTAINING: No one.

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The meeting adjourned at 6:14 p.m.

CHAIRPERSON

SECRETARY