

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

MARCH 2, 2015

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

Members present:

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

Members absent:

No one

Staff members present:

Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Jessica Wethington, Planning Information Specialist
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
Sherie Long, Landscape Architect
Jon Crumie, Planner II
Latondra Yates, Planner II
Chris Brown, Planner II
Regina Thomas, Associate Planner
Beth Stevenson, Management Assistant

Others Present:

WAVE 3 News
WDRB News
WHAS News
WLKY News

The previous February 16, 2015 meeting was cancelled due to inclement weather.

*Member Liggin arrived at 1:00 p.m.

The following cases were heard:

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APPROVAL OF MINUTES

FEBRUARY 2, 2015 BOARD OF ZONING ADJUSTMENT MINUTES

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting held on February 2, 2015.

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

NO: No one.

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

ABSTAINING: No one.

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BUSINESS SESSION

CASE NO. 14VARIANCE 1094

Request: Variances from the Land Development Code to allow a structure to exceed the maximum setback; and a waiver to not provide the required entrance and not provide 50% of the wall surface in clear glass windows and doors along the North Peterson Avenue frontage. **The Board approved two variances and one waiver with conditions of approval on November 3, 2014, one being that the applicant receives all necessary inspections and permits; and that a Code and Regulation Inspector/Building inspector report back to the Board regarding the status as a business session item. The Board then continued this case from February 2, 2015 to see renderings of the enlarged windows along North Peterson Avenue.**

Project Name: Chatsworth Park Apartments Office Addition

Location: 122 North Peterson Avenue

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

Applicant: Same as owner

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

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

Jurisdiction: Louisville Metro

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

(PREVIOUSLY APPROVED ON NOVEMBER 3, 2014 WITH CONDITIONS OF APPROVAL; AND CONTINUED FROM FEBRUARY 2, 2015)

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

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available in the Planning & Design Services offices. Please contact customer service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 2, 2015 public hearing proceedings.

Staff case manager, Sherie' Long said the Board previously approved the variances and waiver on November 3, 2014 with the following conditions of approval:

1. Additional landscaping shall be provided along the North Peterson Avenue side of the property.
2. The two existing windows along North Peterson Avenue shall be enlarged three times the current size with direction from staff's architect.
3. The applicant shall receive all necessary inspections and permits; and a Code and Regulation Inspector/Building Inspector shall report back to the Board regarding the status as a business session item on the agenda.

DISCUSSION:

Ms. Long said that conditions #2 and #3 have been met, but that the additional landscaping that was planted does not match what's on the landscape plan. She suggested just asking the applicant to change the landscape plan if the Board feels the species planted are acceptable.

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

WHEREAS, the Board finds from the file of this case, that the variances and waiver requests were previously approved by the Board on November 3, 2014 with conditions of approval; and the Board determined at today's hearing that the

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conditions of approval have been met once the applicant revises the landscape plan to reflect what was actually planted;

RESOLVED, that the Board does hereby **ACKNOWLEDGE** in Case No. 14VARIANCE1094, that the conditions of approval have been met once the applicant revises the landscape plan to reflect what was actually planted;

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

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 14VARIANCE1116

Request: Variances from the 2006 Land Development Code to reduce the required open space; to allow parking and drive aisles to encroach into the rear yard; and allow the proposed buildings to exceed the maximum height.

Project Name: The Vinings Apartments

Location: 9500 Williamsburg Plaza

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

Applicant: Hurstbourne Court, LLC
Brian Evans
320 Whittington Parkway, Suite 304
Louisville, KY 40222

Representative: Blomquist Design Group, LLC
Marv A. Blomquist
10529 Timberwood Circle, Suite D
Louisville, KY 40223

Jurisdiction: Hurstbourne

COUNCIL DISTRICT 18—Marilyn Parker

Staff Case Manager: Christopher Brown, Planner II

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

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

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Agency Testimony:

Staff Case Manager, Chris Brown discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing construction of three apartment buildings. He said he believes the existing trees will remain.

The following spoke in favor of this request:

Marv Blomquist.

Summary of testimony of those in favor:

Marv Blomquist, the applicant's representative, said the 10' screen wall will be provided along the rear property line. He said a pool and clubhouse will be provided which reduces the open space; and the architectural features create the extended height of the buildings. He said most of the tall white pines and landscaping on the site will remain; and will add more if needed.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Chair Proffitt said to add a condition of approval that the 10 ft. masonry wall the applicant proposed, continues along the entire southwestern portion of the site.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 2 2015 public hearing proceedings.

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Variances—To reduce the required open space and allow parking and drive aisles to encroach into the required rear yard:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.4.1.G.1.c and 5.11.4.A of the 2006 Land Development Code to reduce the required open space from 10% to 6.9%; and a variance from Chapter 5.7.1.B.2 of the 2006 Land Development Code to allow parking and drive aisles to encroach into the required 15' rear yard; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare since the encroachment is adjacent to a 10' screen wall that will be provided along the rear property perimeter and both reductions allow the required parking and circulation to be provided on the property; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity since the buildings face the street and follow the required traditional form by locating the parking to the side and rear of the property; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public since the encroachment is adjacent to a 10' screen wall that will be provided along the rear property perimeter and both reductions allow the required parking and circulation to be provided on the property; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations since the reductions result from the need to meet the required building and parking placement as required within the traditional form while maintaining minimum required parking and proper circulation through the site; and

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WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone due to the odd size and shape of the lots; 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 preventing adequate parking and circulation from being provided on the site; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the pattern of development for the area was established prior to the current proposal and the odd shaped lots existed prior to the current code regulations;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances **ON CONDITION** that the 10' screen wall continue along the entire southwest property line.

The variances allow:

1. The open space to be 6.9%.
2. The parking and drive aisles to be 0 feet from the rear property line.

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

NO: No one.

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

ABSTAINING: No one.

Variance—To allow the building height to exceed the maximum height:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the

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PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.7.1.B.1 of the 2006 Land Development Code to allow the proposed buildings to exceed the maximum height of 45' to 55' 7"; and

WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare since the buildings will be located along the roadway with sufficient separation and screening from adjacent residential uses; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since it follows the pattern of varying building heights within the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the buildings will be located along the roadway with sufficient separation and screening from the adjacent residential uses; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since it follows an established pattern of additional building height within the area; and

WHEREAS, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since additional height is allowed within the Town Center Form District outside the transition zone and the odd shape of the lots determines the transition 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 by not allow the needed height for the layout of the proposed units; 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 odd shape of the lots led to the buildings being located within the transition zone and the buildings will be within the height range of Town Center form district properties;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed buildings to be 55 feet 7 inches **ON CONDITION** that the 10' screen wall continue along the entire southwest property line.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 14VARIANCE1115

Request: Variances to allow the proposed detached 2-story garage to encroach into the required side yards.

Location: 726 East Kentucky Street

Owner: Charles Phillip Richards
726 East Kentucky Street
Louisville, KY 40203

Applicant: Same as owner

Representative: No one

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Jon Crumbie, Planner II

(Rescheduled from February 16, 2015 due to inclement weather)

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

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

Agency Testimony:

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant will need to discuss where the gutters and downspouts will be placed; and that the water needs to be contained on the applicant's property. Member Bergmann asked what the distance from the rear property line to the alley. Mr. Crumbie said there

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did not appear to be any sight distance issues from the site inspection. Member Fishman questioned what type of siding will be used.

The following spoke in favor of this request:

The applicant was not present.

Deliberation:

The Board decided to continue this case since they had various questions for the applicant.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 2, 2015 public hearing proceedings.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 14VARIANCE1115 to **APRIL 6, 2015** due to the applicant not being present for questioning.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 15VARIANCE1001

Request: Variance from the Land Development Code to allow a reduction in the required 30% private yard; and a waiver to allow the length of the accessory structure to exceed 50 feet in depth.

Location: 2415 Griffiths Avenue

Owner: Douglas W. Sr. & Mary Leonard
2415 Griffiths Avenue
Louisville, KY 40212

Applicant: Same as owner

Representative: Chenoweth Construction
Larry Raidt
3213 College Drive
Louisville, KY 40299

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 5—Cheri Bryant Hamilton
Staff Case Manager: Latondra Yates, Planner II

(Rescheduled from February 16, 2015 due to inclement weather).

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

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

Agency Testimony:

Staff Case Manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the variance and waiver

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are for the construction of a proposed garage and meets the applicable guidelines and standards of the Land Development Code and Cornerstone 2020.

The following spoke in favor of this request:

Douglas Leonard.

Summary of testimony of those in favor:

Douglas Leonard, the applicant, said he needs the variance and waiver for the construction of a garage for storage. He said he needs the space so he can still store his trailer in the back without removing the existing concrete pad. Mr. Leonard said the gutters and downspouts will be positioned away from adjacent property owners.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Fishman and Member Proffitt agreed that this was the best plan, so the owner doesn't have to remove existing pavement.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 2, 2015 public hearing proceedings.

Variance to allow a reduction in the required 30% private yard:

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

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WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance of Section 5.4.1.D.2 of the Land Development Code to allow a reduction in the required 30% private yard area (1,800sf.) to 20% (1,200 sf.); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the majority of the private yard will be provided; and

WHEREAS, the Board find variance will not alter the essential character of the general vicinity because the private yards of other lots in the area appear to be similar in size; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the majority of the private yard will be provided; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the private yards of the other lots in the area appear to be similar; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because of the relatively small size of the garage in relation to the size of the lot;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a reduction in the private yard area to 1,200 square feet.

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

NO: No one.

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

ABSTAINING: No one.

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CASE NO. 15VARIANCE1001

Waiver—To allow the length of the accessory structure to exceed 50 feet in depth:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.4.1.E.1 of the Land Development Code to allow the length of the accessory structure to exceed 50 feet in depth to 67 feet; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the structure appears to be situated in a manner that will not impede sight distance or negatively affect the view of neighboring properties; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the building materials and height of the garage appear to be compatible with other structures in the area; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because of the relatively small size of the garage in relation to the lot; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because of the relatively small size of the garage in relation to the lot;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the accessory structure to be 67 feet in depth.

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

NO: Member Bergmann.

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

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 15VARIANCE1002

Request: Variance from the Development Code to allow a proposed addition to encroach into the required rear yard.

Project Name: Communications Arts Center Addition

Location: 113 North Sherrin Avenue

Owner: Trinity High School Foundation
Dr. Robert Mullen, President
4011 Shelbyville Road
Louisville, KY 40207

Applicant: Same as owner

Representative: Land Design & Development, Inc.
Kevin Young/Ann Richard
503 Washburn Avenue
Louisville, KY 40222

Jurisdiction: St. Matthews

COUNCIL DISTRICT 9—Bill Hollander

Staff Case Manager: Jon Crumbie, Planner II

(Rescheduled from February 16, 2015 due to inclement weather)

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

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

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CASE NO. 15VARIANCE1002

Agency Testimony:

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing to build an addition onto the existing communications building, which will serve as a vestibule.

The following spoke in favor of this request:

Kevin Young.

Summary of testimony of those in favor:

Kevin Young, the applicant's representative, said Trinity acquired the property and requests an addition which will include an elevator and stairwell. He said the addition will be ADA compliant. Member Fishman asked if they would be planting any landscaping in the front of it. Mr. Young said yes, because there isn't any at the present time.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Fishman said the Board should add a condition of approval for landscaping in front of the addition.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 2, 2015 public hearing proceedings.

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CASE NO. 15VARIANCE1002

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the 2001 Development Code, Section 6.4.C.2.d to allow a proposed addition to be 0 feet from the rear property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because there will be no change from the existing condition except for the addition which matches the existing building in placement within the rear yard setback and is an improvement to the existing building; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the addition will be compatible with the existing structure and match the existing building alignment along the back property line; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed addition will not affect adjacent residential properties to the east; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are similar encroachments of this type along the rear property line; 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 was developed before the adoption of the Development Code and did not have a rear yard requirement; and because the existing building was built within, what is today considered the rear yard; and the variance will allow the building addition to be more cohesive with the existing building; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant because the rear yard setback requirement would not allow the building addition to be aligned with the existing building's rear wall and structural columns; 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 site was developed before the adoption of the Development Code and did not have a rear yard requirement;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed addition to be 0 feet from the rear property line **ON CONDITION** that the applicant provide landscaping along the front of the building per the rendering submitted by the applicant.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 15VARIANCE1003

Request: Variance from Section 4.4.3.A.1.a.i of the Land Development Code to allow an existing wood fence to exceed the maximum height in the front yard along Lincoln Court.

Location: 4305 Lincoln Court

Owners: Richard A. & Charlotte A. Vowels
4305 Lincoln Court
Louisville, KY 40213

Applicants: Same as owners

Representative: Ford, Klapheke & Meyer
David Cary Ford
239 S. 5th Street, Ste. 900
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 10—Steve Magre
Staff Case Manager: Latondra Yates, Planner II

(Rescheduled from February 16, 2015 due to inclement weather)

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

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

Agency Testimony:

Staff Case Manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant was cited for the height of the fence; but hasn't received any interested party comments.

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LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

MARCH 2, 2015

NEW BUSINESS

CASE NO. 15VARIANCE1003

The following spoke in favor of this request:
Charlotte Vowels.

Richard Vowels.

Summary of testimony of those in favor:

Charlotte Vowels said she was told by Codes and Regulations that she could build the 8 ft. tall fence without a permit. Steve Hendrix, Planning & Design Supervisor, said he believes Codes and Regulations considered Lincoln Court the side yard instead of the front.

Richard Vowels said he received approvals from various neighbors. He said he built the fence to keep car lights from shining in his bedroom.

The following spoke neither for nor against the request:
No one.

Summary of testimony of those who spoke neither for nor against:
No one.

The following spoke in opposition to this request:
No one.

Summary of testimony of those in opposition:
No one.

Deliberation:

Member Bergmann said the fence looks a bit out of character, but that the applicant's property is on a corner lot near the expressway.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 2, 2015 public hearing proceedings.

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 and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 4.4.3.A.1.a.i of the Land Development Code to allow a fence to exceed the maximum 48-inch height in the front side yard along Lincoln Court to 96 inches; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because it appears to be situated in a manner that will not impede sight distance or negatively affect the views of neighboring properties; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are other fences of similar height in the neighborhood; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the fence is situated in a manner that not impede sight distance or negatively affect the view of neighboring properties; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are other fences in the area of similar heights; and

WHEREAS, the Board finds that the strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because it would require removal of the fence or costly modifications; also because the applicant feels a taller fence is needed so the family can enjoy their yard since the lot is close to the expressway;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow an existing fence to be 96 inches along the front property line along Lincoln Court.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS

CASE NO. 14VARIANCE1025

Request: Variances from Section 5.2.5.C.3 of the Land Development Code to allow the proposed building to exceed the maximum setback of 25 feet along West Broadway and Dixie Highway.

Project Name: Wal-Mart Supercenter

Location: 1800 & 1824 W. Broadway
744 Dixie Highway
712-734 S. 20th Street
713-735 Kendall Court

Owner: Newbridge Development, LLC
Frank A. Bridgewaters
2350 New Millennium Drive
Louisville, KY 40216

Applicant: Wal-Mart Real Estate Business Trust
Kevin Thompson
1075 Broad Ripple Avenue, #118
Indianapolis, IN 46033

Attorney: Wyatt, Tarrant & Combs, LLP
Deborah Billitski, Attorney
500 W. Jefferson Street, Suite 2800
Louisville, KY 40202

Engineer/Designer: Carlson Consulting Engineers, Inc.
Pov Chin
7068 Ledgestone Commons
Bartlett, TN 38133

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Joe Reverman, AICP, Planning & Design Manager
(This case was rescheduled from Feb. 16, 2015 due to inclement weather)

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

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

Agency Testimony:

Staff Case Manager, Joe Reverman discussed the case summary, standard of review and staff analysis from the staff report. He said the street and alley closures were approved by the Planning Commission on December 18, 2014; and the Revised Detailed District Development Plan with amended binding elements and three waiver requests were approved by the Planning Commission on January 29, 2015. Mr. Reverman submitted the most recent justification from the applicant into the record. He said the proposed site design does not meet the intent of the Traditional Workplace form district considering the excessive building setback with parking between the building and street; and has encouraged the applicant to redesign the plan. He concluded that the applicant has agreed to install a signaled light at Dixie Highway. Member Fishman questioned setbacks of other buildings in the area. Mr. Reverman said there are some businesses that have parking in the front, but are not as large as this development.

The following spoke in favor of this request:

John Gant, Director, Louisville Metro Economic Development, 444 South 5th Street, Louisville, KY 40202.

Deborah Bilitski, Attorney for the applicant.

Kevin Thompson, Wal-Mart representative.

Richard Wimsatt, Brown-Forman Corp., 850 Dixie Highway, Louisville, KY 40210.

DeVone Holt, 100 Fontaine Landing Court, Louisville, KY 40212.

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Pastor Milton Seymore, 2906 Aspendale Court, Louisville, KY 40241.

Pastor Jerry Stephenson, 2115 Garland Avenue, Louisville, KY 40211.

David Tomes, 9418 Norton Commons Blvd., Prospect, KY 40059.

Rev. Charles Elliott, King Solomon Baptist Church, 1620 Anderson Street, Louisville, KY 40210.

James Howland, 1800 Dixdale Avenue, #46, Louisville, KY 40210.

Roy Streeter, 11315 Top Walnut Loop, Louisville, KY 40229.

Karen King, 413 Louis Coleman Jr. Drive, Louisville, KY40212.

Ruben Pulliam, 4314 Plantus Place, Louisville, KY 40213.

Elizabeth Heiles, 7068 Ledgestone Commons, Bartlett, TN 38133.

Toni Rodriguez, 321 Schoolside Drive, Brandenburg, KY 40108.

Summary of testimony of those in favor:

John Gant, Director, Louisville Metro Economic Development, said this property has been vacant since 2002; and that this development will provide 300 jobs and be a catalyst for other business opportunities in the area.

Deborah Bilitski, Attorney for the applicant, explained the background of this blighted property and said Wal-Mart has been the only serious prospect. Ms. Bilitski explained the changes they've made to the plan to make it as urban as possible and blend with other businesses in the area. She said Wal-Mart has been working with TARC regarding the bus stop amenities; and is willing to contribute \$50,000.00 for a signaled intersection. She said there are 4100 people who are in support; and that the regulations can also provide flexibility considering the economic growth for the community.

Kevin Thompson, Wal-Mart representative, said they have received great support and feedback from the community and the city. He said starting salaries will be \$9.00 an hour with an increase to \$10.00 in February.

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Richard Wimsatt with the Brown-Forman Corporation, said he supports this proposal for the economic growth for the area including their employees.

DeVone Holt said he supports the proposal.

Pastor Milton Seymore said he has worked hard the last 18 years trying to create jobs in the area; and that Wal-Mart will create 300 jobs people can walk to.

Pastor Jerry Stephenson, said he grew up in the area and remembers neighbors enjoying the area out shopping and kids playing in the street. He said they need the support of an anchored business, which will also help smaller businesses thrive and the community as a whole.

David Tomes said he worked on Cornerstone 2020; and is a builder for old and new development. He discussed form districts and that particularly "Special Districts" were created to allow parking in front of businesses and read this into the record. He said there are other large businesses in the downtown area (Courier-Journal; Nucleus etc.) and questioned if they should not have been built. He said this is a big opportunity for the area and asked the Board for their support.

Rev. Charles Elliott, King Solomon Baptist Church said this proposal will reduce the crime rate in the area.

James Howland said he has worked as a bus and truck driver in addition to loading and unloading railroad cars. He said if the building were closer to the street, that Wal-Mart would lose three sides of the building and increase operating costs. He said West Louisville is Louisville, and said he's tired of hearing don't go past 9th Street.

Roy Streeter said he would want the Board to approve the variances even if only created 2 jobs. He said he's been in the real estate industry for 50 years and that if this isn't approved would be a serious act of injustice. He said the elderly could work as "greeters" and overall the residents need shopping closer to their homes.

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Karen King said she is not speaking in behalf of Wal-Mart, but said she has raised four children and bought a home with her earnings. She said Wal-Mart promoted her several times; and also works with the community as a whole.

Ruben Pulliam said the young people need this business for jobs; and said how beneficial to even be able to walk or take a short bus ride to work.

Elizabeth Heiles, the applicant's engineer, stated that they will be incorporating a brick façade and landscaping to hide the truck wells.

Toni Rodriguez discussed the drop-off areas in front of the store.

DISCUSSION:

The Board asked various questions to certain speakers regarding their testimony.

The following spoke neither for nor against the request:

No one.

Summary of testimony of those who spoke neither for nor against:

No one spoke as an interested party.

Cross-Examination:

Steve Porter, attorney for various citizens and architects who are opposed to this request questioned Mr. Gant with Economic Development. Mr. Porter said Wal-Mart only pays \$24,000.00 per year full-time and roughly \$10,000 part-time; and that their department said anything under \$36,000.00 is not a living wage. Mr. Gant said yes, but it's better than nothing. Mr. Porter asked Mr. Gant if he believes Wal-Mart will bring other businesses into the area. Mr. Gant said yes.

The following spoke in opposition to this request:

Steve Porter, Attorney, 2406 Tucker Station Road, Louisville, KY 40299.

Cassia Herron, 335 E. St. Catherine Street, Louisville, KY 40203.

Mr. Jackie Green, 107 W. Market Street, Louisville, KY 40202.

Martina Kunnecke, Neighborhood Planning & Preservation, 2729 Northwestern Parkway, Louisville, KY 40212.

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Summary of testimony of those in opposition:

Steve Porter said he is representing various groups including citizens and architects who are opposed to the variance requests. He said they are not opposed to Wal-Mart, but thinks they could add some restaurants and other businesses toward Broadway to change the streetscape to what it should be per Cornerstone 2020 including form districts and the Land Development Code. He said in 1859 houses and buildings were positioned closer to Broadway; and that Phillip Morris tore them down creating a large parking lot in front of the business. Mr. Porter submitted a plat into the record regarding this. Mr. Porter discussed newer businesses in the area that were built at the appropriate setbacks; and that a company as big as Wal-Mart should do the same. He said most citizens are not familiar with the regulations like Wal-Mart; and that it's the Board's job to protect the streetscape.

Cassia Herron said she used to work for the city as a planner, but now works independently. She said Wal-Mart is doing this across the country in lower income neighborhoods; and should be held to the standards regardless. She said Wal-Mart should be more innovative but only cares about making money.

Jackie Green suggested a condition of approval regarding the setbacks.

Martina Kunnecke said she is speaking on behalf of Neighborhood Planning & Preservation; and said developers just want to get things built, while preservationists want to preserve the unique characteristics of their neighborhood. She said this is a very walkable area and said she used to shop at Sears Roebuck and other shops. She said parking in the back of the business is not any more dangerous than being in the front; and that Wal-Mart would be responsible for security. She said the Board should hold them accountable and abide by the rules.

Discussion:

The Board asked the opposition various questions regarding discussions and concessions with Wal-Mart and the community; and why more architects from the community were not present today to testify. Mr. Porter said Wal-Mart has not offered enough concessions to comply with the code.

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Rebuttal:

Ms. Bilitski said the owner, Mrs. Bridgewater, would like to make a statement after her rebuttal. She said the Board has heard the overwhelming support of this proposal from people who live in the area. She reiterated that there are other large projects that are similar in the city, such as Nucleus, Slugger Field and the Courier-Journal. The outlot concept presented by Mr. Porter might be a possibility later, but not part of what they're offering now since most of the existing utilities are toward the back of the lot. She contested Mr. Porter stating that Wal-Mart is offering nothing, when this is a 30 million dollar investment in the community. She said this might be considered transformational, but in a good way.

Back Into Public Hearing:

Theresa Bridgewater with Newbridge Development expressed how difficult and time consuming it has been to find the right company to develop this site and go through this process. She said the city has spent a lot of money for various studies regarding retail gaps; balancing the economy in the area etc. She said she lives and shops in the area; and that this will become a new shopping destination and the beginning of revitalization.

Discussion:

There was discussion about a TARC stop in front of the store. The Board suggested a condition of approval incorporating a decorative fence or wall and more landscaping to create an urban look along Broadway. Ms. Bilitski agreed to this.

Deliberation:

The Board discussed their opinions with respect to this request.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 2, 2015 public hearing proceedings.

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Variance #1—To allow the proposed building to exceed the maximum front yard setback of 25 feet along West Broadway to 394 feet, a 369 ft. variance:

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 site plan; the PowerPoint presentations; the evidence including the applicant's justification/findings of fact, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.5.C.3 of the Land Development Code to allow the proposed building (Wal-Mart) to exceed the maximum 25 ft. setback from West Broadway to 394 feet; a 369 ft. variance; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the former Phillip Morris building on the subject property was set back significantly more from W. Broadway than the proposed Wal-Mart building; and because the entire area where Wal-Mart is proposed was previously the parking lot for the Phillip Morris plant; and because the immediate area contains a variety of site designs, including those where the building is set back behind the parking or surrounded by parking, and while there are some nearby properties with rear parking, they are the exception, not the rule, in the area; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the general vicinity because the surrounding area contains a mixture of uses and site designs following no predominant pattern; and because the subject property, being one of the largest open properties in the area, presents an opportunity to allow retail development on a scale that is not otherwise available in the urban core of Louisville; and allowing the proposed development to be consistent with the layout of the former Phillip Morris plant site will ensure that the character of the area is changed as little as possible while allowing for the redevelopment of the subject property; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed development is not directly surrounded by other buildings that are designed within the Land Development Code's maximum setback requirement; and because the proposed site design also eliminates an

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access point on W. Broadway and accommodates the future realignment of the W. Broadway/Dixie Highway intersection, improving traffic safety in the area; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the requirements of the Land Development Code because the Comprehensive Plan encourages flexible and creative site design along with a respect for the traditional pattern of development in the surrounding area in order to encourage reinvestment, rehabilitation and redevelopment in Traditional Workplaces; and because the proposed development represents a significant redevelopment and rehabilitation of an older and declining neighborhood in a manner that is consistent with the Traditional Workplace Form District; and because the proposed development is consistent with the historical development pattern on the subject property, and is compatible with development in the surrounding area, which does not follow a predominant pattern; and because the subject property is adequately served by public transportation, incorporates sidewalks and walkways throughout the proposed development, and bicycle parking will be provided in accordance with the Land Development Code requirements and, therefore, the proposed development accommodates all modes of transportation; and the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the subject property is located in the Traditional Workplace Form District and, in order to encourage reinvestment, rehabilitation and redevelopment in Traditional Workplaces, the Comprehensive Plan encourages flexible and creative site design along with a respect for the traditional pattern of development in the surrounding area; and because the proposed development represents a significant investment in the redevelopment and rehabilitation of an older and declining neighborhood in a manner that is consistent with the Traditional Workplace Form District; there is an historic pattern of development on the subject property with the parking area in front of the building; putting any parking in front of the building will exceed the maximum setback in the Traditional Workplace Form District; an additional special circumstance is the size of the subject property, there being few opportunities inside the Watterson Expressway

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to construct a large retail outlet; such outlets require easy truck access and maneuvering on all sides of the proposed building; should the proposed variance be denied, then it is unlikely that a large retail outlet would be constructed on the subject site; and

WHEREAS, the Board finds that the strict application of the maximum setback requirement would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant because the subject property was previously developed in the pattern proposed; there are several properties in the area that do not meet the maximum setback requirements, and placing such a burden on the subject property would complicate and potentially prevent the redevelopment of the subject property for many more years; requiring the building to be located within 25 feet of Dixie Highway and Broadway would not allow for adequate tractor-trailer maneuvering and delivery, and would create conflicts between delivery vehicles and customers; and if the building were shifted toward Dixie Highway, the throat length of the entrance drive would be shortened, causing vehicles exiting the site to stack in front of the building, increasing the potential of conflicts between vehicles and pedestrians; and

WHEREAS, the Board further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the Land Development Code because the subject property's previous development pattern and those of surrounding properties existed for many years before the applicant decided to develop the subject property;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed Wal-Mart building to be 394 feet from West Broadway property line **ON CONDITION**:

The Condition of Approval is as follows:

1. To mitigate the lack of urban streetscape shown on the plan, especially as it relates to the Broadway corridor, the Developer shall work with Planning & Design Staff to incorporate architectural features including but not limited to fencing, wall, buildings, art, enhanced landscaping and any other measures that can be utilized to break up the lack of the building façade fronting along the site's Broadway frontage.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one

ABSTAINING: No one.

Variance #2—To allow the proposed building to exceed the maximum street side yard setback of 25 feet along Dixie Highway to 179 feet, a 154 ft. variance:

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 site plan; the PowerPoint presentations; the evidence including the applicant's justification/findings of fact, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.5.C.3 of the Land Development Code to allow the proposed Wal-Mart building to exceed the maximum street side yard setback along Dixie Highway to 179 feet; a 154 ft. variance; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the former Phillip Morris building on the subject property was set back significantly more from Dixie Highway than the proposed Wal-Mart building; and because the entire area where Wal-Mart is proposed was previously the parking lot for the Phillip Morris plant; and because the immediate area contains a variety of site designs, including those where the building is set back behind the parking or surrounded by parking, and while there are some nearby properties with rear parking, they are the exception, not the rule, in the area; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the general vicinity because the surrounding area contains a mixture of uses and site designs following no predominant pattern; and because the subject property, being one of the largest open properties in the area, presents an opportunity to allow retail development on a scale that is not otherwise available in the urban core of Louisville; and allowing the proposed development to be consistent with the layout of the former Phillip Morris plant site will ensure

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that the character of the area is changed as little as possible while allowing for the redevelopment of the subject property; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed development is not directly surrounded by other buildings that are designed within the Land Development Code's maximum setback requirement; and because the proposed site design also eliminates an access point on W. Broadway and accommodates the future realignment of the W. Broadway/Dixie Highway intersection, improving traffic safety in the area; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the requirements of the Land Development Code because the Comprehensive Plan encourages flexible and creative site design along with a respect for the traditional pattern of development in the surrounding area in order to encourage reinvestment, rehabilitation and redevelopment in Traditional Workplaces; and because the proposed development represents a significant redevelopment and rehabilitation of an older and declining neighborhood in a manner that is consistent with the Traditional Workplace Form District; and because the proposed development is consistent with the historical development pattern on the subject property, and is compatible with development in the surrounding area, which does not follow a predominant pattern; and because the subject property is adequately served by public transportation, incorporates sidewalks and walkways throughout the proposed development, and bicycle parking will be provided in accordance with the Land Development Code requirements and, therefore, the proposed development accommodates all modes of transportation; and the stormwater detention design is required to receive approval from MSD prior to construction of the proposed development, and an Erosion Prevention and Sediment Control Plan utilizing best management practices as recommended by MSD will be implemented prior to commencing construction of the development; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the subject property is located in the Traditional Workplace Form District and, in order to encourage reinvestment, rehabilitation and redevelopment in Traditional Workplaces, the Comprehensive Plan encourages flexible and creative site design along with a respect for the traditional pattern of development in the surrounding area; and because the proposed development represents a

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significant investment in the redevelopment and rehabilitation of an older and declining neighborhood in a manner that is consistent with the Traditional Workplace Form District; there is an historic pattern of development on the subject property with the parking area in front of the building; putting any parking in front of the building will exceed the maximum setback in the Traditional Workplace Form District; an additional special circumstance is the size of the subject property, there being few opportunities inside the Watterson Expressway to construct a large retail outlet; such outlets require easy truck access and maneuvering on all sides of the proposed building; should the proposed variance be denied, then it is unlikely that a large retail outlet would be constructed on the subject site; and

WHEREAS, the Board finds that the strict application of the maximum setback requirement would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant because the subject property was previously developed in the pattern proposed; there are several properties in the area that do not meet the maximum setback requirements, and placing such a burden on the subject property would complicate and potentially prevent the redevelopment of the subject property for many more years; requiring the building to be located within 25 feet of Dixie Highway and Broadway would not allow for adequate tractor-trailer maneuvering and delivery, and would create conflicts between delivery vehicles and customers; and if the building were shifted toward Dixie Highway, the throat length of the entrance drive would be shortened, causing vehicles exiting the site to stack in front of the building, increasing the potential of conflicts between vehicles and pedestrians; and

WHEREAS, the Board further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the Land Development Code because the subject property's previous development pattern and those of surrounding properties existed for many years before the applicant decided to develop the subject property;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed Wal-Mart building to be 179 feet from the Dixie Highway property line.

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

NO: No one.

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

ABSTAINING: No one.

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CLOSED SESSION:

Case No. 09-CI-02734

Member Fishman made a motion to go into Closed Session and was seconded by Member Bergmann, and by general consent, was unanimously approved by all 7 Board Members.

The Board then came out of Closed Session.

The Board unanimously decided to accept the property settlement agreement regarding *Teddy Redmon, et al. v. Louisville Metro Board of Zoning Adjustment, et al.*,
Jefferson Circuit Court Case No. 09-CI-02734


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The meeting adjourned at 5:57 P.M.



CHAIRPERSON



SECRETARY

