

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

MARCH 7, 2016

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, March 7, 2016, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

Betty Jarboe, Vice Chairperson
Rosalind Fishman, Secretary
*Dean Tharp
Paul Bergmann
Lester Turner

Members absent:

Mike Allendorf, Chairperson

Staff members present:

Emily Liu, Director, Planning & Design Services
Joe Reverman, Assistant Director, Planning & Design Services
John Carroll, Legal Counsel
Steve Hendrix, Planning Supervisor
Brian Davis, Planning Manager
Jon Crumbie, Planning Coordinator
Laura Mattingly-Humphrey, Planner I
Joel Dock, Planner I
Ross Allen, Planner I
Sherie Long, Landscape Architect
Beth Stevenson, Management Assistant

*Member Tharp left the meeting at 12:48 p.m.

The following cases were heard:

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

MARCH 7, 2016

APPROVAL OF MINUTES

**1.) FEBRUARY 1, 2016 BOARD OF ZONING ADJUSTMENT MEETING
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 conducted on February 1, 2016.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

**2.) FEBRUARY 15, 2016 BOARD OF ZONING ADJUSTMENT MEETING
MINUTES:**

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on February 15, 2016.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1089

Request: Variance from the Land Development Code (LDC), Section 5.4.1.D to allow a reduction in the private yards of the resultant lots of minor subdivision case, 15MINORPLAT1057.

Project Name: Two L Properties, LLC

Location: 1662 W. Kentucky Street

Owner: Two L Properties, LLC
R. Lynn Biggers
2800 West Riley Road
Floyd Knobs, IN 47119

Applicant: Same as Owner

Attorney: Bert M. Edwards, Esq.
119 S. 7th Street, #200
Louisville, KY 40202

Representative: Alan Harley Land Surveys
Alan Hartley
3512 Burkland Blvd.
Shepherdsville, KY 40165

Jurisdiction: Louisville Metro

COUNCIL DISTRICT: 6—David James
Staff Case Manager: Joel P. Dock, Planner I

(DEFERRED FROM FEBRUARY 15, 2016—Due to Lack of a Quorum)

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

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1089

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 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 7, 2016 public hearing proceedings.

Agency Testimony:

Staff case manager, Joel Dock presented this case again to the Board since there was not a quorum at the February 15, 2016 meeting. He discussed the case summary, standard of review and staff analysis from the staff report including a PowerPoint presentation.

DISCUSSION:

Member Jarboe said she didn't see any issues with this case from the February 15, 2016 hearing and recommended that the Board approve the request.

Variances—To allow a reduction in the private yards of the resultant lots of minor subdivision Case No. 15MINORPLAT1057:

On a motion by Member Tharp, 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; and discussion at the public hearing that the applicant is requesting a variance from Section 5.4.1.D of the Land Development Code to allow a reduction in the private yards of the resultant lots of minor subdivision case, 15MINORPLAT1057; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare as no new structures are being proposed in this request that will alter the existing conditions; additionally, the Development Review Committee (DRC) found that the proposal to create each lot will promote the public health, safety or welfare by facilitating development or rehabilitation compatible with the surrounding neighborhood as the creation of these lots provides options for both sale or rent and for the parcels to be either owner-occupied or renter-occupied; and

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1089

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity as no structures are being proposed and existing conditions with respect to the total size of yard or green space is unchanged from the current lot to the resultant lots; and because DRC found that the resultant lots will not conflict with the established pattern in the neighborhood and will promote the public health, safety or welfare by facilitating development or rehabilitation of such property compatible with the surrounding neighborhood; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public as no structures are being proposed and neither pedestrian or vehicular mobility is not impacted; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations as the two units on the property are in compliance with all other applicable regulations and the resultant lots have been reviewed and approved by DRC; 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 as DRC found that the creation of Tracts 1 and 2 allows options for either sale or rent and for the parcels to be either owner-occupied or renter-occupied, which promotes the public health, safety or welfare by facilitating development or rehabilitation with the surrounding neighborhood;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

The variances allow:

1. The private yard area on Tract 1 to be 424 square feet.
2. The private yard area on Tract 2 to be 260 square feet.

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

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1089

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1087

Request: Variance from Section 4.8 and Table 4.8.1 of the Land Development Code to allow the construction of a private access easement in the Protected Waterway Buffer of Little Goose Creek.

Project Name: 4319 Barbour Lane

Location: 4319 Barbour Lane

Owner: CFA Sunnyview, LLC
Kendall Cogan
9913 Shelbyville Road
Louisville, KY 40223

Applicant: Same as Owner

Representative: Bluestone Engineers, PLLC
Chris Crumpton, PE
3703 Taylorsville Road, Ste. 205
Louisville, KY 40220

Jurisdiction: Louisville Metro

COUNCIL DISTRICT: 16—Kelly Downard
Staff Case Manager: Joel P. Dock, Planner I

(DEFERRED FROM FEBRUARY 15, 2016 DUE TO LACK OF A QUORUM)

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

Agency Testimony:

Staff case manager, Joel Dock presented this case again to the Board since there was not a quorum at the February 15, 2016 meeting. He discussed the case summary, standard of review and staff analysis from the staff report

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1087

including a PowerPoint presentation. He said there were people in opposition that testified at the previous hearing that were concerned about erosion and destruction to the environment. Mr. Dock said the minor plat approval is contingent upon the outcome of the Board's decision today. He said he also received a letter last Friday from the Adams Law Group, who is representing an adjacent property owner, Joseph Hertzman.

Discussion:

John Carroll, the Board's legal counsel, said the Board would have to re-open the case to include Mr. Hertzman's letter since the record was closed on February 15, 2016. Member Jarboe agreed that this case should be re-opened to allow submittal of the letter; and the Board unanimously agreed.

Mr. Dock presented various photos to the Board that was received at the previous hearing, including a picture showing Mr. Hertzman's flooded driveway. Mr. Dock said if the Board chooses to approve the request, that a condition of approval be added stating that a Geotechnical Report be prepared and submitted to staff. Member Jarboe said she would allow testimony.

The following spoke in favor of this request:

Kendall Cogan, CFA Sunnyview, LLC, 9913 Shelbyville Road, Louisville, KY 40223.

Summary of testimony of those in favor:

Kendall Cogan, the applicant and owner, said he is in the process of getting the Geotechnical Report done and will submit this to staff. He said he has had a good relationship with Mr. Hertzman conveying that he wants to do an attractive development. He said Mr. Hertzman has 20 acres and that you cannot see his house from the subject site. He said he will be improving the drainage with underground pipes; and eliminating above ground electrical poles putting them underground for further beautification.

Discussion:

Member Turner said he has concerns about flooding when there's a heavy rain. Member Bergmann suggested moving the development north to get it further away from the floodplain. Mr. Cogan said the existing power lines will not allow him to do this. Member Fishman asked if he would be replacing trees and

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1087

buffering. Mr. Cogan said yes, that he's required to do a landscape and tree preservation plan.

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:

The Board had concerns about flooding and other environmental concerns, but felt the applicant will develop responsibly. Conditions of approval were discussed.

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 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 7, 2016 public hearing proceedings.

Variance—To allow the construction of a private access easement in the Protected Waterway Buffer of Little Goose Creek:

On a motion by Member Fishman, 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; and discussion at the public hearing that the applicant is requesting a variance from Section 4.8 and Table 4.8.1 of the Land Development Code (LDC) to allow the construction of a private access easement in the Protected Waterway Buffer of Little Goose Creek; and

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1087

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare as the proposed encroachment into the buffer appears to be the minimum necessary to provide access to the proposed lots that are outside the buffer area, while reusing the existing grade of a previous roadway; and because the purpose and intent of protecting these waterways is outlined in LDC 4.8.1 and applicable parts of this section can be summarized as follows: development should be located where possible, in areas that do not have severe environmental limitations, natural areas should be protected, and features surrounding buffer areas shall be designed to guide future development adjacent to protected waterways; water pollution, including sediment and other pollutants in surface runoff, should be minimized to promote bank stabilization and protect riparian wetlands and their wildlife habitats; and generally to promote land use policies which will maintain or improve water quality levels; and, in considering the purpose and intent of protected waterway buffers and the long-term impact of development within, and surrounding, these buffers it is hard to convincingly state that the granting of this variance will not adversely affect the public health, safety or welfare; and because using the existing grade would eliminate the need to excavate and disturb land just beyond the buffer to provide access to these lots which fall outside the buffer; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity as the subject site is surrounded by R-4, Single Family Residential lots in the Suburban Neighborhood form district; and

WHEREAS, the Board finds that the variance will not cause a direct hazard or nuisance to the public because the easement will serve single family residential lots; and because long term environmental impact of altering the vegetation and run-off flowing into the stream within the limits of the buffer may have substantial negative impacts on the stability of this watershed, ecosystem, and water quality; and because Section 4.8.6.J of the Land Development Code requires that any land disturbance and/or removal of vegetation within the buffer be restored; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations as the proposed easement and drive is intended to serve five single family residential lots and homes that will not fall within the protected waterway buffer; and

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1087

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 as the proposed lots and future homes would be outside the protected waterway buffer and the easement is the minimum necessary encroachment to provide access; and

WHEREAS, the Board finds that additional considerations for protected waterway buffer variance, Section 4.8.4.B of the Land Development Code is necessary because the requirements of this section represent an extreme hardship such that minimal or no reasonable economic use of the land is available without reducing the width of the required Buffer Area as the drive is intended to serve single family residential homes that do not fall within the protected waterway; and

WHEREAS, the Board finds that because of the size, shape or topography of the property, as of March 1, 2003, is such that it is not possible to construct a single family detached dwelling without the private access easement and pavement encroaching into the required buffer area; and

WHEREAS, the Board finds that the encroachment into the required buffer area has been limited to the minimum necessary to accommodate the proposed use as the encroachment into the buffer appears to be the minimum necessary to provide access to the proposed lots that are outside the buffer area, while reusing the existing grade of a previous roadway; and

WHEREAS, the Board finds that the applicant will commit to the satisfaction of the County, or as requested by the Board of Zoning Adjustment, to mitigation measures that substantially offset any potential adverse impacts of the proposed encroachment during site preparation, construction and post-construction;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the construction of a private access easement in the Protected Waterway Buffer of Little Goose Creek **ON CONDITION:**

1. The applicant shall submit a Geotechnical Report to staff for review.
2. Any land disturbance and/or removal of vegetation within the buffer shall be restored.

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 15VARIANCE1087

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 16VARIANCE1000

Request: Variances from the Land Development Code to allow parking and an existing structure to encroach into required yards.

Project Name: Glenmary Pointe Apartments

Location: 11304 Professional Park Drive

Owner: Pleasants Mason Group, LLC
Daniel M. Perkins
6001 Claymont Village Drive, Unit 7
Crestwood, KY 40014

Applicant: Orthober Custom Homes
Jason Orthober
P.O. Box 436964
Louisville, KY 40253

Attorney: Dinsmore & Shohl
Cliff Ashburner
101 S. 5th Street, #2500
Louisville, KY 40202

Representative: BlueStone Engineers, PLLC
Christopher T. Crumpton, PE
3703 Taylorsville Road, Suite 205
Louisville, KY 40220

Jurisdiction: Louisville Metro

COUNCIL DISTRICT: 22—Robin Engel
Staff Case Manager: Laura Mattingly-Humphrey, Planner I

(DEFERRED FROM FEBRUARY 15, 2016 DUE TO LACK OF A QUORUM)

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 16VARIANCE1000

is part of the case file maintained at Planning and Design Services offices, 444 South 5th Street.)

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available 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 7, 2016 public hearing proceedings.

Agency Testimony:

Staff case manager, Laura Mattingly-Humphrey presented this case again to the Board since there was not a quorum at the February 15, 2016 meeting. She discussed the case summary, standard of review and staff analysis from the staff report including a PowerPoint presentation. She said the required waivers and development plan were heard by the Development Review Committee on February 17, 2016. She said the applicant will be submitting a Joint Parking Agreement to satisfy the required parking for Tract 1. She said the required minor plat to create the new tracts has been submitted by the applicant and is currently under staff review.

DISCUSSION:

Member Jarboe recommended that the Board approve the requests.

Variance #1—To allow parking to encroach into side yard setbacks on Tract #1:

On a motion by Member Fishman, seconded by Member Tharp, 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; and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.3.1, Table 5.3.1 of the Land Development Code to allow parking to encroach into the side yard setbacks on Tract 1; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare as the parking is an existing condition and the lot lines will not be physically marked to obstruct any parking or visibility; and

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 16VARIANCE1000

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity as the division of lots is within the existing development and parking location is not changing from the originally approved plan; in addition, the parking is typical for similar developments within the Neighborhood Form District; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public as the parking is in compliance with parking standards and there are no obstructions in visibility caused by the variance; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations as the encroachments are a result of new lot lines being drawn for financing and conveyance purposes; 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 as they are a result of new lot lines being drawn for financing purposes in order to further develop this, otherwise mostly vacant property; 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 applicant would have to erect buffers and lose parking spots that are needed for the development;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow parking to be 0 feet from the side yards on Tract 1

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 16VARIANCE1000

Variance #'s 2, 3 & 4—To allow 30' Non-Residential to Residential Setbacks on Tracts 2, 3 and 4:

On a motion by Member Fishman, seconded by Member Tharp, 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; and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.3.1, Table 5.3.2 of the Land Development Code to allow an existing structure and parking to encroach into the 30' non-residential to residential setback along the southern and eastern property lines of Tract 2; and a variance from Chapter 5.3.1, Table 5.3.2 of the Land Development Code to allow an existing structure and parking to encroach into the 30' non-residential to residential setback along the northern and western property lines of Tract 3; and a variance from Chapter 5.3.1, Table 5.3.2 of the Land Development Code to allow an existing structure and parking to encroach into the 30' non-residential to residential setback along the western and southern property lines of Tract 4; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare as the non-residential structures and parking already exist; and because the new lot lines will not be physically marked and the tracts are only being created for financial purposes; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity as the division of lots is within the existing development and the basic layout of the development is not changing; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public as the residential and non-residential uses are both allowed within the OR-1 zone and would be in compliance if the new lot lines were not being drawn; and

WHEREAS, the Board finds that the variances will now allow an unreasonable circumvention of the zoning regulations as the encroachments are a result of new lot lines being drawn for financing and conveyance purposes; and

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

MARCH 7, 2016

BUSINESS SESSION:

CASE NO. 16VARIANCE1000

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 as they are a result of new lot lines being drawn for financing purposes in order to help create a mixed-use development; 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 as the newly created tracts are allowing further development of this property;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

The variances allow:

1. Existing structure and parking to be 0 feet along the southern and eastern property lines of Tract 2.
2. Existing structure and parking to be 0 feet along the northern and western property lines of Tract 3.
3. Existing structure and parking to be 0 feet along the western and southern property lines of Tract 4.

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

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1042

Request: An application for a Conditional Use Permit to allow off-street parking in an OR-1 zoning district; and landscape waivers.

Project Name: Texas Roadhouse Parking Expansion

Location: 3332 Old Outer Loop

Owner: Gilbert & Wilma Rogerson
4313 Saratoga Hill Road
Louisville, KY 40299

Applicant: Texas Roadhouse Holdings, LLC
Caitlin Kincaid
6040 Dutchmans Lane
Louisville, KY 40205

Attorney: Texas Roadhouse Holdings, LLC
Sean Renfro, Esq.
6040 Dutchmans Lane
Louisville, KY 40205

Representative: GreenbergFarrow
Marisa Kolman
21 S. Evergreen Avenue, Suite 200
Arlington Heights, IL 60005

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 13—Vicki Welch

Staff Case Manager: Jon Crumbie, Planning Coordinator

(CONTINUED FROM FEBRUARY 15, 2016 DUE TO LACK OF A QUORUM)

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.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1042

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 subject property was purchased by the applicant who wants to demolish the old daycare business to add 58 parking spaces for the restaurant. Mr. Crumbie said he received a letter from the adjacent apartment building that would prefer extending the existing fence for privacy over shrubs. Mr. Crumbie pointed out where the waivers are being requested on the PowerPoint picture. Member Jarboe asked about buffering between the parking lot and the apartment building. Mr. Crumbie said the applicant will still have to provide the required landscaping, but reducing the width of the LBA's.

The following spoke in favor of this request:

Marisa Kohlman.

Summary of testimony of those in favor:

Marisa Kohlman, the applicant's representative, said the landscaping will meet the code as required. She said her client agreed to extend the existing 8 foot tall fence down the entire south and east property line per the request of the apartment complex.

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.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1042

Deliberation:

Member Fishman reiterated adding the condition of approval for the fence; and to modify Item C. Member Jarboe asked what the height of the fence is. Mr. Crumbie said 8 feet tall; and can't exceed this without a variance.

Back into public hearing:

Ms. Kohlman said the extension with match the height of the existing 8 ft. tall fence; and 4 ft. tall along the front of the property.

Deliberation again:

Member Turner asked if the applicant submitted a landscape plan. Mr. Crumbie said no, but they are required to with any CUP.

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 7, 2016 public hearing proceedings.

Conditional Use Permit to allow off-street parking in an OR-1 zoning district:

On a motion by Member Fishman, seconded by Member Tharp, 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 Conditional Use Permit to allow off-street parking in an OR-1 zoning district; and

WHEREAS, the Board finds that the subject site is within a Neighborhood Form District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan; and because the lighting will be compliant with the Land Development Code; and

WHEREAS, the Board finds that the subject site is located in an area that abuts a residential neighborhood but will be compatible with the use to the east with

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1042

respect to intensity, traffic, noise, drainage, lighting and appearance; and because landscaping will be planted that will be code compliant; and

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

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the Conditional Use Permit where Item C will be modified because OR-1 requires a 15 ft. front yard and the proposed off-street parking will be 6 feet from the front property line; and because this modification will allow the parking to line up along Old Outer Loop;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow off-street parking in an OR-1 zoning district on the site **SUBJECT** to the following Conditions of Approval:

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 off-street parking without further review and approval by the Board.
3. The applicant shall extend the maximum 8 ft. tall fence down the entire southern and eastern property lines.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1042

Landscape Waivers—To reduce the required Landscape Buffer Areas (LBA's) along the north, south and east property lines:

On a motion by Member Fishman, 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; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting landscape waiver to reduce the required LBA from 10 feet to 4.4 feet (a waiver of 5.6 feet) along Old Outer Loop; and a landscape waiver to reduce the required LBA from 25 feet to 6.9 feet (a waiver of 18.1 feet) along the south property line; and a landscape waiver to reduce the required LBA from 25 feet to 20 feet (a waiver of 5 feet) along the east property line; and

WHEREAS, the Board finds that the requested waivers will not adversely affect adjacent property owners since overall, more landscaping will be provided than required by the Land Development Code; and because currently there is no method of screening between the existing daycare and the adjacent properties; and because the waivers will allow a reduction in the yard widths, but the required landscape materials will be installed in order to completely screen adjacent property from the parking area; and because screening materials include an 8-foot tall hedge screen along the south and east property lines as well as a combination of trees as required by code; and because the north yard VUA width is continuing what currently exists for the restaurant parcel and the required 3-foot shrub row will be continued as well; and because the proposed landscaping materials will improve the aesthetics of the existing site conditions while providing adequate screening measures beyond what exists at the site today; and

WHEREAS, the Board finds that the Comprehensive Plan depicts the existing Texas Roadhouse site and adjacent daycare parcel as commercial land uses; and because the waivers will not violate the Comprehensive Plan as required screening methods are being installed to address the different adjacent land uses; 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 of the success of the restaurant there is a lack of parking and customers are parking on residential

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1042

streets; and because the proposed parking layout is designed to maximize the number of parking stalls on site and alleviates street congestion for the neighboring residents; and because the yard widths being proposed are the maximum widths possible in order to achieve an adequate addition of parking stalls to serve the restaurant; and

WHEREAS, the Board finds that the applicant is proposing a 37% tree canopy coverage, while only 20% tree canopy is required by code, as well as a proposed 2,382 SF of interior VUA landscape area, while only 1,635 SF is required by the LDC; and because in terms of additional design measures, the proposed landscaping for the site is exceeding the LDC by double the minimum requirements; and if the waivers were not approved to reduce the yard widths, onsite parking would not be maximized to its fullest benefit, resulting in the continuation of the vehicular congestion problem on neighboring streets;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waivers.

The waivers allow:

1. The landscape buffer area along the north property line to be 4.4 feet.
2. The landscape buffer area along the south property line to be 6.9 feet.
3. The landscape buffer area along the east property line to be 20 feet.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

Waiver—To eliminate the 15-foot property perimeter landscape buffer area along the shared C-1 and OR-1 boundary line:

On a motion by Member Fishman, 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; the site plan; the PowerPoint presentations; the evidence,

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1042

testimony and discussion at the public hearing that the applicant is requesting a waiver to eliminate the required 15-foot property perimeter landscape buffer area along the shared C-1 and OR-1 boundary line to 0 feet (a variance of 15 feet); and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the approved CUP site is simply overflow parking that will be landscaped to meet the LDC; and

WHEREAS, the Board finds that Guideline 13, Policy 4, calls for ensuring appropriate landscape 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 the landscape buffer areas are to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants; and because approval of the CUP site will allow for overflow parking that will be landscaped to meet the LDC; 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 there is simply a zoning line between the parking areas; 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 parking area would be greatly reduced;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to eliminate the 15-foot property perimeter landscape buffer area along the shared C-1 and OR-1 boundary line to 0 feet.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1001

Request: Variances from the Land Development Code to allow a principal structure to encroach into the side yard; and to allow an accessory structure (garage) to encroach into the rear yard setback.

Project Name: 1627 Ruth Avenue

Location: 1627 Ruth Avenue

Owner: Mary Anne Hauck
1904 Milburt Drive
Louisville, KY 40223

Applicant: Vincent Abell Contracting
Brad Abell
4902 Meadow Creek Court
Crestwood, KY 40014

Representative: William Welch Architect
Barbara Quinn
961 Baxter Avenue
Louisville, KY 40204

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Ross Allen, Planner I

(CONTINUED FROM FEBRUARY 15, 2016 DUE TO LACK OF A QUORUM)

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

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1001

case file maintained at the Planning and Design Services offices located at 444 S. 5th Street).

Agency Testimony:

Staff Case Manager, Ross Allen discussed the case summary, standard of review and staff analysis from the staff report. He said one of the variances could be withdrawn if the applicant moves the garage back 1 foot.

The following spoke in favor of this request:

Brad Abell.

Summary of testimony of those in favor:

Brad Abell, the applicant's contractor, agreed to pull the garage back one foot to eliminate one of the variances. He said he is trying to keep the home addition aligned and maintain the historical aspects of the home. He said the garage will be one story cinder block.

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 Jarboe said the variance for the garage has been withdrawn since the applicant will move the garage back one foot.

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 7, 2016 public hearing proceedings.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1001

Variance—To allow the principal structure to encroach into the side yard setback:

After the public hearing in open business session, on a motion by Member Bergmann, seconded by Member Tharp, 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 Land Development Code to allow a principal structure to encroach into the required 3 ft. side yard setback to 2.9 feet; or a variance of .1 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the existing principal structure already has a setback of 2.9 feet from the parcel boundary and adjacent properties rear yards adjoin the applicant's property with no encroachment into any other nearby structures; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the applicant's addition has architecturally similar features to the existing home; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the principal structure has had a pre-existing setback of 2.9 feet; and is adjoining other residential parcels that set perpendicular to the applicant's residence; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the proposed addition will allow a uniform setback with the principal structure and no construction of either proposed additions has taken place to date; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the addition will allow additional square footage; and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1001

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 no construction has occurred on the proposed additions which the applicant is requesting relief;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the principal structure to be 2.9 feet from the side yard.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

Variance—To allow a proposed new garage to encroach into the rear yard setback:

THIS VARIANCE HAS BEEN WITHDRAWN.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1008

Request: Variance from the Land Development Code to allow a proposed wood privacy fence to exceed the maximum height.

Project Name: Café Press

Location: 11901 & 11909 Shelbyville Road

Owner: CafePress, Inc.
Garrett Jackson, CFO
6901 Riverport Drive
Louisville, KY 40258

Applicant: Same as Owner

Attorney: Bardenwerper Talbott & Roberts, PLLC
Nick Pregliasco, Esq.
1000 N. Hurstbourne Parkway, 2nd Floor
Louisville, KY 40223

Representative: Land Design & Development
Ann Richard
503 Washburn Avenue, Suite 101
Louisville, KY 40222

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 19—Julie Denton

Staff Case Manager: Jon Crumbie, Planning Coordinator

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

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1008

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 a Modified Conditional Use Permit was approved by the Board, with a condition of approval that the applicant apply for a variance to increase the height of the fence to 10 feet. He said this is what the neighbors requested for privacy from the parking area and office building. It was later found out that there was a Woodland Protection Area, so none of the trees or shrubs could be removed. Mr. Crumbie presented pictures to the Board showing that the single family homes are not visible from the existing office building. He said the additional height will not benefit the neighbors now.

The following spoke in favor of this request:

Nick Pregliasco, Attorney.

Summary of testimony of those in favor:

Nick Pregliasco, the applicant's attorney, agreed with what Mr. Crumbie said.

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 Jarboe said there were several area residents who attended the previous hearing who had privacy concerns. She said since the trees and shrubs cannot be disturbed in the WPA, that the 10 ft. tall fence wouldn't provide any more protection.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1008

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 7, 2016 public hearing proceedings.

Variance—To allow a proposed wood privacy fence to exceed the maximum height:

After the public hearing in open business session, on a motion by Member Bergmann, seconded by Member Tharp, 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 variance from the Land Development Code to allow a proposed wooden privacy fence to exceed the maximum height of 8 feet, to 10 feet; or a variance of 2 feet; and

WHEREAS, the Board finds that this variance is not needed for buffering of the single family homes because trees, bushes and other greenery cannot be removed from the Woodland Protection Area; and

WHEREAS, the Board finds that the variance will alter the essential character of the general vicinity because there are no other fences like this in the area; most of the fences are 4 ft. tall chain link; and

WHEREAS, the Board finds that the variance will allow an unreasonable circumvention of the zoning regulations because there is an existing 25 ft. Woodland Protection Area between the rear of the adjacent properties and the parking lot;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the variance to allow a proposed fence to be 10 feet tall.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1007

Request: An application for variances from the Land Development Code to allow two existing structures to encroach into the rear and side yard setbacks.

Project Name: 514 Baxter Avenue

Location: 509 & 514 Baxter Avenue

Owner: 514 Baxter Avenue, LLC
Anthony Gadlage
414 Christian Village Circle
Louisville, KY 40243

Applicant: Sabak, Wilson & Lingo, Inc.
John Thomas
608 South Third Street
Louisville, KY 40202

Representative: Same as Applicant

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Laura Mattingly-Humphrey, Planner I

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, Laura Mattingly Humphrey discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1007

is requesting to divide one parcel into two through a minor plat, thus changing the side and rear setbacks to 0 feet.

The following spoke in favor of this request:

John Thomas.

Summary of testimony of those in favor:

John Thomas, the applicant's representative, explained the requests.

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:

Board of Zoning Adjustment deliberation.

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 7, 2016 public hearing proceedings.

Variances—To allow two existing structures to encroach into the rear and side yard setbacks:

After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Turner, 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

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1007

PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.2, Table 5.2.2 of the Land Development Code to allow an existing building to be 0 feet from the side yard on Tract 1; and a variance from Section 5.2.2, Table 5.2.2 of the Land Development Code to allow an existing building to be 0 feet from the rear yard on Tract 2; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare as the buildings are an existing condition and the division of land has received preliminary approval from Construction Review; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity as the design and function of the property are remaining unchanged; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public as all safety standards from Construction Review have been met; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations as the encroachment is a result of a new lot line being drawn in order for one of the existing buildings to be sold; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone as the variances are needed as a result of a new lot line being drawn where two abutting buildings currently exist; 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 applicant would not be able to sell the vacant building and would be faced with the financial burden of maintaining and finding a use for a vacant building; and

WHEREAS, the Board finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulations from

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1007

which relief is sought, but are reasonably justified considering the existing conditions and the reasons for which the new lot line is being drawn;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

The variances allow:

1. The existing building on Tract 1 to be 0 feet from the side property line.
2. The existing building on Tract 2 to be 0 feet from the rear property line.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1004

Request: Variances from the Land Development Code to allow a proposed rear addition to encroach into the north and south side setbacks.

Project Name: 1784 Mellwood Avenue

Location: 1784 Mellwood Avenue

Owner: Jason and Betty Nunn
1784 Mellwood Avenue
Louisville, KY 40206

Applicant: Designer Builders
Stefan Rumancik
1448 Hugh Avenue
Louisville, KY 40213

Representative: PART Studio LLC
Nathan Smith, Architect
3210 Dublin Lane
Louisville, KY 40206

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 9—Bill Hollander
Staff Case Manager: Ross Allen, Planner I

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).

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1004

Agency Testimony:

Staff Case Manager, Ross Allen discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing a rear addition to the principal structure.

The following spoke in favor of this request:

Nathan Smith, PART Studio, LLC (didn't sign in).

Summary of testimony of those in favor:

Nathan Smith, the applicant's representative, explained the design including the roof. Member Fishman asked about the gutters and if they will be pointed down and away from adjacent properties. Mr. Smith said he will have a gutter on the back and not on the sides since the roof only slopes in one direction, so the water will drain on the applicant's property. Member Turner asked about more of the details of the addition. Mr. Smith said the existing one story will be replaced with a two-story addition.

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:

Board of Zoning Adjustment deliberation.

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 7, 2016 public hearing proceedings.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1004

Variance—To allow a proposed rear addition to encroach into the north side yard setback:

After the public hearing in open business session, on a motion by Member Bergmann, seconded by Member Tharp, 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 5.2.2, Table 5.2.2 of the Land Development Code (LDC) to allow a proposed addition to encroach into the north side yard setback of the required 3' to 1'11" or a variance of 1' 1"; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the requested variance will not adversely affect the public health, safety or welfare since the proposed rear addition would be attached to the existing principal structure which currently has a setback of 1' 11" of the required 3' minimum as required by LDC; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since homes in the area have rear additions that are currently larger than what is proposed by the applicant and vary from one to two-story additions (abutting north and south properties'); and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the applicant is requesting 1' 1" which the principal structure currently sits; and as a result of the new addition being constructed at an equal setback, will require 1' 1" for uniformity; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the intent of the setback is to allow uniformity in the form district; 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 applicant's home sits in between two abutting properties that have rear additions; and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1004

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the abutting properties have rear additions with similar setbacks keeping the existing pattern of development; 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 addition has not been constructed to date;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the variance to allow the proposed rear addition to be 1' 11" from the north property line.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

Variance—To allow a proposed rear addition to the south side yard setback:

After the public hearing in open business session, on a motion by Member Bergmann, seconded by Member Tharp, 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 5.2.2, Table 5.2.2 of the Land Development Code to allow a proposed rear addition to encroach into the required 3 ft. setback to 2 ft. 10 inches or a variance of 2 inches;

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the proposed rear addition would be attached to the existing principal structure which currently has a setback of two feet ten inches; and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1004

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since homes in the area have rear additions that are larger than that proposed by the applicant and vary from one to two story additions; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the applicant is requesting two inches, which the principal structure currently sits; and as a result of the new addition being constructed at an equal setback, will require two inches for uniformity; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the intent of the setback is to allow uniformity in the form district; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the applicant's home sits in between two abutting properties that have rear additions; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the abutting properties have rear additions with similar setbacks which is the intent of the designated form district; 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 neither the applicant nor the representative have started construction to date;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed rear addition to be 2 feet 10 inches from the south property line.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1006

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

Project Name: 1124 East Burnett Avenue

Location: 1124 East Burnett Avenue

Owner: TCS Homes, LLC
Eric Toohey
11207 Newstone Court
Louisville, KY 40217

Applicant: Same as Owner

Representative: Cardinal Surveying
Kathy Matheny
9009 Preston Highway
Louisville, KY 40219

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 10—Patrick Mulvihill

Staff Case Manager: Ross Allen, Planner I

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).

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1006

Agency Testimony:

Staff Case Manager, Ross Allen discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is requesting a 3 inch variance to correct a construction error.

The following spoke in favor of this request:

Kathy Matheny.

Summary of testimony of those in favor:

Kathy Matheny, the applicant's representative, said they did a boundary survey and found the construction error. She said it would be very expensive to move the existing wall three inches.

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:

Board of Zoning Adjustment deliberation.

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 7, 2016 public hearing proceedings.

Variance—To allow a proposed addition to encroach into the required southeastern side yard:

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

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1006

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 5.2.2, Table 5.2.2 of the Land Development Code to allow a proposed addition to encroach into the required minimum 3 foot side yard setback to 2 feet 9 inches, or a variance of 3 inches; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the applicant is requesting a three inch variance which is similar to other setbacks in the area; and because the original front portion of the home sits on a lot 21 feet wide and is only 1.68 feet off the property line on the eastern side; and 3.09 feet off the property line on the western side; and because the rear addition will be new construction and was proposed to be the required 3 ft. off the property line on both sides based upon the existing house and fences to determine the placement of the addition led to a 3 inch error on the east side due to a construction error; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since homes located on the block with 20 to 23 ft. wide lots sit in close proximity to each other; and because the nature of the new addition is negligible when the existing structures in the area are considered; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the 3 inch encroachment is still within the applicant's property line and does not encroach upon the adjacent property; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the setbacks are established to provide consistent building placement; and because 3 inches is negligible on the eastern side of the home, while the western side has a setback greater than the required 3 feet; 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 applicant constructed the addition with the intent of having a 3 ft.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 16VARIANCE1006

setback but an error in construction upon using a relative boundary instead of an absolute boundary; and because the original portion of the front of the home has a setback of 1.68' which predates the current established setbacks; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the 3 inch encroachment would require the applicant to demolish a 15 foot wide by 44 foot long two-story structure to build to the Land Development Code regulations;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a two-story addition to be 2'9" from the southeast property line.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1081

Request: Variances from the Land Development Code to allow an existing freestanding sign to exceed the maximum size and height.

Project Name: Arby's Freestanding Sign

Location: 11488 Preston Highway

Owner: BBM-I Properties, LLC
Chris Bowling
110 Knox Street, Suite B
Barbourville, KY 40906

Applicant: Same as Owner

Attorney: Kinkead & Stilz, PLLC—Shelby Kinkead
PNC Bank Tower
301 E. Main Street, Suite 800
Lexington, KY 40507

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 13—Vicki Welch

Staff Case Manager: Jon Crumbie, Planning & Design Coordinator

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).

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1081

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 constructed a new freestanding sign without a permit. He said there was some confusion between the applicant and the builder; and that Arby's is re-branding their signs.

The following spoke in favor of this request:

Chris Bowling.

Chris Dobbs, Lilly Sign Co., 16101 Eastwood Cut Off Road, Louisville, KY 40245.

Summary of testimony of those in favor:

Chris Bowling, the owner, said they contracted with a company in Tennessee, who then subcontracted the labor and thought the variance was already approved by BOZA on Dec. 9, 2015. Member Jarboe said 83 square feet is a big difference in size.

Chris Dobbs with Lilly Sign Company said this job was subcontracted to him from Tennessee, and that his brother used to handle this aspect of the business. He said it is not the owner's fault; and that the existing sign was larger in area than what they've installed. He said they did not need a permit for the corporate Arby's.

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.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1081

Deliberation:

Member Jarboe asked why the other Arby's did not need a permit. Steve Hendrix, Planning Supervisor, said it was in a different form district. Member Bergmann said the sign should come into compliance with the Land Development Code, but understands the miscommunication.

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 7, 2016 public hearing proceedings.

Variances—To allow an existing freestanding sign to be 143 square feet in area and 25 feet in height:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances from the Land Development Code to allow an existing freestanding sign to be 143 square feet in area (requirement 60 sq. ft. or a variance of 83 square feet); and to allow the sign to be 25 feet tall (requirement 12 feet; or a variance of 13 feet); and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposal will allow the sign to come more into compliance and display the new branding for the company; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the proposed sign will be compatible in style with the prior sign, but smaller; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the proposed sign will not be located near a sight triangle; and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1081

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because there are similar encroachments of this type throughout the surrounding area; 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 sign would have to be modified;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

The variances allow:

1. The existing sign to be 143 square feet in area.
2. The existing sign to be 25 feet in height.

YES: Members Fishman, Tharp, Turner, Bergmann and Jarboe.

NO: No one.

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

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1046

Request: Conditional Use Permit to allow off-street parking in an R-4 zoning district; and variances from the Land Development Code to allow a proposed structure to exceed the maximum height requirement; and to allow a proposed monument style sign to encroach into the required Dutchmans Lane front yard.

Project Name: Norton Medical Office Building

Location: 1001 Breckinridge Lane

Owners: Keges Realty Corporation; Louges Investment Corporation; Lumax Realty Corporation; Tomlin Development Corporation
c/o National Real Estate Management Corp., Matthias D. Renner
9986 Manchester Road
St. Louis, MO 63122

Applicant: Norton Properties, Inc.
Emmett C. Ramser, Authorized Agent
234 E. Gray Street, Suite 760
Louisville, KY 40202

Attorney: Law Offices of Michael Tigue, PLLC
Michael F. Tigue, Esq.
P.O. Box 729
LaGrange, KY 40031

Representative: Land Design & Development
Kevin Young, ASLA
503 Washburn Avenue, Suite 101
Louisville, KY 40222

Jurisdiction: St. Matthews

COUNCIL DISTRICT 26—Brent Ackerson
Staff Case Manager: Jon Crumbie, Planning Coordinator

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1046

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 is proposing a 3-story; 83,880 sq. ft. medical office building that will replace the existing commercial retail center. He said the property is within a floodplain, and said that the applicant will implement several measures to mitigate and improve management of storm water; and include landscaping in the interior and around the perimeter of the property. The applicant is requesting a modification of specific standard 4. C. (page 3 in the staff report) which requires front, street side and side yards to be maintained free of parking.

Member Fishman said the traffic is very congested along Dutchmans Lane. Mr. Crumbie said the Transportation Department didn't require a traffic study, and said that there will be a right in and a left out along Breckinridge Lane. Member Bergmann asked why they aren't having the property rezoned. Mr. Crumbie said he'll have to ask the applicant, but said that the parking is in R-4.

The following spoke in favor of this request:

Michael Tigie, Attorney.

Summary of testimony of those in favor:

Michael Tigie, the applicant's attorney, said that they did submit a traffic study and said it will not increase traffic. He said they researched this property and found that it was approved in the 60's or 70's for commercial and received a "Special Use Permit". He said approval of the CUP will clean up the record. Mr. Tigie said they decided not to rezone the property right now due to the sale and closing of this property. He said they will improve the drainage; and give

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1046

additional right-of-way along Dutchmans Lane per the Transportation Department request.

Member Fishman asked Mr. Tigue about the use adding more congestion along Dutchmans Lane. Mr. Tigue said it will create less traffic than the existing commercial use and trusts the findings of the traffic study.

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 she is concerned with increased traffic on Dutchmans Lane, but the traffic study states otherwise. Member Bergmann said he thinks a comprehensive study should be done for this area since there is a lot of traffic.

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 7, 2016 public hearing proceedings.

Conditional Use Permit to allow off-street parking in an R-4 zoning district:

On a motion by Member Bergmann, seconded by Member Turner, 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 Conditional Use Permit to allow off-street parking in an R-4 zoning district; and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1046

WHEREAS, the subject property is located within a Regional Form Center District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because the lighting plan will be code compliant; and variances are being requested; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise etc. because the subject site is located in an area that has a number of medical office/hospital uses; and because the proposal will be compatible with these uses with respect to intensity, traffic, noise, drainage, lighting and appearance; and because the landscaping will be code compliant; and

WHEREAS, the Board finds that the necessary facilities (both on and off site) are being provided such as transportation, sanitation, water, sewer, drainage, emergency services etc. because the proposal has been reviewed by Public Works and MSD and both have approved the plan; and because the applicant will be making drainage improvements on site; and because the applicant has agreed to dedicate more right-of-way along Dutchmans Lane at the request of the City of St. Matthews; and

WHEREAS, the Board finds that the proposal complies with 5 of the 6 specific standards required to obtain the Conditional Use Permit, where Item C shall be modified because the required front yard is 30 feet; and because the Transportation Planning Department will require additional right-of-way to be dedicated along Dutchmans Lane; and because the existing right-of-way is 50 feet and an additional 10 feet will be needed for the dedication; and because the proposed parking shall be 20 feet from the Dutchmans Lane property line;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow off-street parking in an R-4 zoning district on the site **SUBJECT** to the following Conditions of Approval:

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.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1046

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 off-street parking without further review

YES: Members Fishman, Turner, Bergmann and Jarboe.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Allendorf and Tharp.**

ABSTAINING: No one.

Variance—To allow the proposed structure to exceed the maximum height requirement:

On a motion by Member Bergman, seconded by Member Turner, 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 Land Development Code to allow a proposed structure (medical office building) to be 55 feet in height (requirement 35 feet in height; or a variance of 20 feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure will have a smaller footprint than the existing development on site; and

WHEREAS, the Board finds that the requested variance will not alter the essential character of the general vicinity because the proposed structure will be compatible with the surrounding medical office/hospital developments; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed structure will be built along an already established medical office/hospital corridor; and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1046

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 throughout the surrounding area; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the applicant requires a 3-story structure that will allow the proposal to be economically feasible and support the expanding need for new medical services; and

WHEREAS, the Board finds that the provisions of the regulation would create an unnecessary hardship on the applicant because the structure could not be built as requested to be economically feasible;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed medical office building to be 55 feet tall.

YES: Members Fishman, Turner, Bergmann and Jarboe.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Allendorf and Tharp.**

ABSTAINING: No one.

Variance—To allow a proposed monument style sign to encroach into the required Dutchmans Lane front yard setback at Entrance #2:

On a motion by Member Bergmann, seconded by Member Turner, 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 Land Development Code to allow a proposed monument style sign to encroach into the required Dutchmans Lane front yard setback to 0 feet at Entrance #2 (requirement 30 feet; or a variance of 30 feet); and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1046

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed monument style sign will not be located in a sight triangle; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed monument style sign will be compatible with the proposed structure and surrounding monument style signs; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed monument style sign will be approximately 25 feet from the Dutchmans Lane edge of pavement; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are several signs located in the required setbacks along Dutchmans Lane; 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 proposed monument style sign being close to Dutchmans Lane will allow for maximum visibility for the general public; 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 proposed monument style sign would have to be moved out of the required yard which would reduce visibility;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed monument style sign to be 0 feet from the Dutchmans Lane front yard setback.

YES: Members Fishman, Turner, Bergmann and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Allendorf and Tharp.

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

Request: Modified Conditional Use Permit for a proposed hospital expansion; a variance from the Land Development Code to allow a proposed structure to encroach into the required Poplar Level Road street side yard; a variance to allow a proposed structure to exceed the maximum height requirement; a variance to allow proposed off-street parking to encroach into the required side yards abutting Lots 1 and 2; and a landscape waiver to reduce the required Landscape Buffer Area (LBA) along Poplar Level Road to be between 0-5 feet

Project Name: Norton Hospital—Audubon Expansion

Location: One Audubon Plaza Drive

Owner: Norton Hospitals, Inc.
Douglas Winkelhake, President
4967 US Highway 42
Louisville, KY 40222

Applicant: Same as Owner

Attorney: Law Office of Michael Tigue, PLLC
Michael F. Tigue, Esq.
P.O. Box 729
LaGrange, KY 40031

Representative: BTM Engineering
John Addington
3001 Taylor Springs Drive
Louisville, KY 40220

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 10—Pat Mulvihill

Staff Case Manager: Jon Crumbie, Planning Coordinator

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

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 Norton Audubon is proposing to renovate the primary hospital facility on Lot 3 in order to convert its semi-private patient rooms to fully private in addition to other improvements. Mr. Crumbie said the revised plan was approved at the Development Review Committee with numerous binding elements added.

The following spoke in favor of this request:

Michael Tigue, Attorney.

David Boone, CEO, Norton Hospitals Inc.

Summary of testimony of those in favor:

Michael Tigue, the applicant's attorney, presented a PowerPoint presentation to the Board explaining the requests. He said the hospital is responding to the growth of patients' needs, which will not increase the number of beds but more floor space to accommodate private rooms. Member Turner asked where people would enter and exit since the parking will be moved.

David Boone, the applicant, said there will be entrances at each level of the hospital from the parking garage. He said they are adding parking for staff and patients.

The following spoke neither for nor against the request:

No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

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:

Board of Zoning Adjustment deliberation.

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 7, 2016 public hearing proceedings.

Modified Conditional Use Permit for a proposed hospital expansion:

On a motion by Member Fishman, 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, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a Modified Conditional Use Permit to allow a proposed hospital expansion; and

WHEREAS, the Board finds that the property is within a Neighborhood Form District; 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;

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Modified Conditional Use Permit for the expansion of Norton Audubon Hospital, Case No. 15CUP1049.

YES: Members Fishman, Turner, Bergmann and Jarboe.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Allendorf and Tharp.**

ABSTAINING: No one.

**Variance—To allow the proposed structure to encroach into the required
Poplar Level Road street side yard:**

On a motion by Member Fishman, 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 including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting variance from the Land Development Code to allow a proposed structure to encroach into the required Poplar Level street side yard to 0 feet (requirement 10 feet; or a variance of 10 feet); 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 matching the current condition on site; and

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

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed encroachment will not be noticeable from the street; and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the encroachment has been in existence for several years; 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 existing parking was developed before the current regulations and was allowed to be on or near the property line; 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 proposed structure could not be built as shown for maximum use of the property;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed structure to be 0 feet from the Poplar Level Road property line.

YES: Members Fishman, Turner, Bergmann and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Allendorf and Tharp.

ABSTAINING: No one.

Variance—To allow a proposed structure to exceed the maximum height:

On a motion by Member Fishman, 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 including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow a proposed structure to exceed the maximum height requirement to 69 feet tall (requirement 35 feet tall; or a variance of 34 feet); and

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare because the proposed structure will be matching the current condition on site; and

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

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the propose encroachment will not be noticeable from the street; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the encroachment has been in existence for several years; 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 existing parking garage was developed before the current regulations and was allowed to be on or near the property line;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building to be 69 feet tall.

YES: Members Fishman, Turner, Bergmann and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Allendorf and Tharp.

ABSTAINING: No one.

Variance—To allow proposed off-street parking to encroach into the required side yards abutting Lot 1 and Lot 2; and

On a motion by Member Fishman, 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

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow off-street parking to be 0 feet from the required side yards abutting Lot 1 and Lot 2 (requirement 6 feet; or a variance of 6 feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed parking will be located behind an existing parking garage; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed parking will be compatible with the existing parking on site; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed parking will not be noticeable from One Audubon Plaza Drive or Poplar Level Road; 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 throughout the entire 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 because the owner is trying to conform to the existing conditions on the site;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow proposed parking to be 0 feet from the required yards abutting Lot 1 and Lot 2.

YES: Members Fishman, Turner, Bergmann and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Allendorf and Tharp.

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

Landscape Waiver—To allow a reduction in the required Landscape Buffer Area (LBA) along Poplar Level Road to between 0-5 feet:

On a motion by Member Fishman, 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, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a landscape waiver to reduce the required LBA between 0 and 5 feet; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the hospital or other related entity own the property to the north and east; and because a park is located across Poplar Level Road to the west; and

WHEREAS, the Board finds that the waiver will not violate specific Guidelines of Cornerstone 2020 because Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban and rural areas; and because Guideline 12, Policy 6 call for screening and buffering to mitigate adjacent incompatible uses; and because the intent of the landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, the decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants; and because the required landscaping will be met; 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 required landscaping will be met; 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 the drive aisle and the proposed structure would need to be relocated;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the landscape waiver to reduce the required LBA along Poplar Level Road to be between 0 and 5 feet.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15CUP1049

YES: Members Fishman, Turner, Bergmann and Jarboe.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Allendorf and Tharp.**

ABSTAINING: No one.

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1062

Request: Variance from the Land Development Code to allow the dumpsters and dumpster pad to encroach into the side yard setback; and a waiver to allow the dumpsters and concrete pad to encroach 5 ft. perimeter Landscape Buffer Area (LBA).

Project Name: Islamic Center

Location: 4104 River Road

Owner: Louisville Islamic Center Inc.
4007 and 4104 River Road
Louisville, KY 40206

Applicant: Ozair M. Shariff, Board Member
Louisville Islamic Center
400 West Market Street, Ste. 1800
Louisville, KY 40202

Attorney: Cliff Ashburner
Dinsmore & Shohl, LLP
101 S. 5th Street, #2500
Louisville, KY 40202

Jurisdiction: Indian Hills

COUNCIL DISTRICT 7—Angela Leet

Staff Case Manager: Sherie' Long, Landscape Architect

(Continued from November 16, 2015; December 7, 2015 and February 1, 2016)

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

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1062

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, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said this case was continued several times to allow the applicant time to work with River Fields on some of the issues. She said the applicant has received notice of violations. Ms. Long said the applicant has withdrawn several of the requests; and the requests are justified as long as they plant landscaping and River Oats and screen the dumpsters.

The following spoke in favor of this request:

Cliff Ashburner.

Summary of testimony of those in favor:

Cliff Ashburner, the owner's attorney, said his client didn't think they were doing anything illegal by not enclosing the dumpsters since there is thick vegetation; and poured a concrete pad for a basketball court. Mr. Ashburner said he received a site disturbance permit to pour the concrete for the basketball court.

Member Jarboe asked them to submit this for the record.

Member Bergmann asked why the dumpsters were not placed properly on the property to eliminate the need for a variance. Mr. Ashburner said they would have lost two handicapped parking spaces; and because the lot is long and narrow limits where they can put it.

The following spoke neither for nor against the request:

Meme Sweets Runyon, River Fields, 455 S. 4th Street, Ste. 990, Louisville, KY 40202.

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

Meme Sweets Runyon said River Fields is the largest and oldest river conservancy agency along 981 miles of the Ohio River. Ms. Runyon showed a picture of how close the wetlands come to this property on her cell phone. She said the applicant promised two years ago to plant River Oats and this still has

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1062

not been done this yet. Ms. Runyon feels that should install the plantings before the variance is approved; and that the dumpsters need to be screened.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Rebuttal:

Mr. Ashburner said they will plant the River Oats and submit pictures for the Board to see once complete.

Deliberation:

Member Bergman said he hasn't heard anything reasonable to approve the variance since they have a lot of land for parking spaces. Member Fishman said she is not opposed as long as they plant the River Oats; and the location of the dumpster is reasonable since the lot is long and skinny. Member Jarboe said she understands why the applicant placed the dumpster close to the building for convenience. The Board decided that conditions of approval be added that the applicant submit photographs of the planted River Oats and come back before the Board on June 6, 2016 for review; and that the dumpsters be enclosed by an 8 ft. tall wooden fence on all four side.

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 7, 2016 public hearing proceedings.

Variance—To allow the dumpster pad and dumpsters to encroach into the side yard setback:

After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Turner, 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

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1062

review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Article 4.6 of the Development Code to allow the dumpster pad and dumpsters to be 0 feet from east side property line (requirement 5 feet; or a variance of 5 feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the dumpsters and concrete pad are located behind the Mosque; and being screened by a wood fence and are located within the applicant's property; and because the encroachment into the side yard is minimal, plus the adjacent property to the east is undeveloped and heavily wooded; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the existing vegetation along the perimeters of the parking lot will be maintained along with the existing trees located along the River Road frontage; and because both of which lessen the impact of the location of the dumpsters on the adjacent property and eliminate any view of them from River Road; and because maintaining the existing vegetation preserves the character of the vicinity; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the dumpsters are to be located at the rear of the building and will be screened by an 8 ft. tall wooden fence and will not be visible along River Road; and because both the building and the existing vegetation separate the dumpsters from the adjacent properties and River Road the impact of any noise generated will be minimized; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the location of the dumpsters and concrete pad are at the rear of the building and located out of view from the street; 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 applicant expanded the parking area not providing provisions for the

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1062

dumpster, therefore, the dumpsters were pushed to the perimeter which is the required setback and landscape buffer area; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since there would be a loss of parking spaces to relocate the dumpsters;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the dumpsters and dumpster pad to be 0 feet from the east property line **ON CONDITION**:

1. The applicant shall submit photographs of the River Oats planted along the western perimeter of the subject property and come back before the Board on June 6, 2016 for review.
2. The dumpster shall be enclosed by an 8 foot tall wooden fence on all four sides.

YES: Members Fishman, Turner and Jarboe.

NO: Member Bergmann.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Allendorf and Tharp.**

ABSTAINING: No one.

Waiver—To allow the dumpsters and concrete pad to encroach into the 5 ft. perimeter Landscape Buffer Area (LBA):

On a motion by Member Fishman, seconded by Member Turner 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 including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Article 12.B.2 of the Development Code to allow the dumpsters and concrete pad to encroach into the 5 ft. perimeter Landscape Buffer Area; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the dumpsters are located out of view of the

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1062

street and currently the existing vegetation located on the adjacent properties also buffer the view of the dumpsters from the east and west; plus, the encroachment into the LBA is small; and

WHEREAS, the Board finds that 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, 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 and buffered; and because there is screening of the dumpsters since the dumpsters are in the rear of the site, located behind the existing building, and an enclosure is provided; plus, the existing vegetation on the adjacent property does provide additional screening; and because the encroachment of the dumpsters into the setback and LBA is minimal, therefore, the waiver request will not violate the guidelines and policies of Cornerstone 2020; 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 the dumpsters (service structures) are located at the rear of the building, currently not visible from the street or from the residential properties to the east and west; plus, the encroachment of the dumpsters into the setback area is minimal; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since there would be a loss of parking spaces;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the dumpsters and concrete pad to encroach into the required 5 ft. perimeter LBA **ON CONDITION:**

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

MARCH 7, 2016

NEW BUSINESS:

CASE NO. 15VARIANCE1062

1. The applicant shall submit photographs of the River Oats planted along the western perimeter of the subject property and come back before the Board on June 6, 2016 for review.
2. The dumpster shall be enclosed by an 8 foot tall wooden fence on all four sides.

YES: Members Fishman, Turner and Jarboe.

NO: Member Bergmann.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Allendorf and Tharp.**

ABSTAINING: No one.

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

MARCH 7, 2016

The meeting adjourned at 2:49 p.m.

CHAIRPERSON

SECRETARY