

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

AUGUST 17, 2015

CASE NO. 15VARIANCE1029 ONLY

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:38 A.M. on Monday, August 17, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

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

Members absent:

No one

Staff members present:

- Emily Liu, Director, Planning & Design Services
- Jonathan Baker, Legal Counsel
- Steve Hendrix, Planning Supervisor
- Brian Davis, Planning Supervisor
- Sherie Long, Landscape Architect
- Jon Crumble, Planner II
- Chris Brown, Planner II
- Matthew Doyle, Planner II
- Beth Stevenson, Management Assistant

*Chair Proffitt arrived at 10:00 a.m. and Member Tharp left the meeting at approximately 10:45 a.m.

The following cases were heard:

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NEW BUSINESS:

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Request: Variances from the Land Development Code to allow a proposed building to exceed the maximum setback and height; and waivers from the Land Development Code to not provide the required building entrances facing the abutting streets; and to not provide the required vehicle and pedestrian connections to the abutting properties.

Project Name: Southeast Christian Chapel in the Woods

Location: 1200, 1302 Watterson Trail & 1401 Moser Road

Owner: Southeast Christian Church of Jefferson County KY, Inc.
Gary Whitenack, Director of Finance/Jeff Long
920 Blankenbaker Parkway
Louisville, KY 40243

Applicant: Same as Owner

Representatives: Milestone Design Group, Inc.
Doug Ernst
108 Daventry Lane
Louisville, KY 40223

Bayus Design Works
Tony Bayus, Architect
2908 Eastpoint Parkway
Louisville, KY 40223

Jurisdiction: City of Middletown

COUNCIL DISTRICT 19—Julie Denton

Staff Case Manager: Sherie' Long, Landscape Architect

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.

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The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the 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, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant is proposing a 52,761 SF Chapel along with 307 parking spaces where the main entrance will be off Watterson Trail. Board members had concerns about the traffic in the area and possible issues with the property being in the floodplain.

The following spoke in favor of this request:

Jeff Long with Southeast Christian Church.

Doug Ernst, Milestone Design Group.

Tony Bayus, Bayus Design Works.

Summary of testimony of those in favor:

Jeff Long with Southeast Christian Church said although their church is large, they would like to build the chapel to accommodate the elderly, youth and use for special events.

Doug Ernst, the applicant's representative, said the proposed parking will not be used for overflow parking from the main church; and that Public Works did not require a trip generation report. He said they are still actively working with MSD to improve the site since the water shed comes through the property. He said they will also be building bridge crossings so they don't disturb the streambeds.

Tony Bayus, the applicant's architect, presented a color rendering in the PowerPoint presentation. He explained the materials that will be used; and that they will be adding a gazebo by the stream.

The following spoke neither for nor against the request:

No one.

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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.

Discussion:

Ms. Long said the applicant asked if they could move this case through since the City of Middletown has to approve their landscape plan. Jon Baker, the Board's legal counsel said the minutes for this case could be approved at the special hearing on August 24, 2015.

Deliberation:

Member Bergmann has issue with the amount of traffic in the area. Member Jarboe said she appreciates the applicant working with MSD. Overall, the Board was pleased with the development. Chair Proffitt said to have the minutes ready to be approved on Monday, August 24, 2015.

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 August 17, 2015 public hearing proceedings.

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

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.3.1.C.5 and Table 5.3.2 of the Land

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Development Code to allow the building to exceed the maximum setbacks along Watterson Trail and Moser Road; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since safe vehicular and pedestrian access are being provided from public right-of-way to the building entrances and parking lot areas; and because the location of the building is not in the 100 year or local regulatory floodplain areas of the site; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the location of the proposed chapel is centered on the site out of the existing floodplain; and because the distance from adjacent properties reduces the impact of the building location; in addition, the impact of the development, buffer plantings, screening and parking lots will be provided along with 17% preservation of the tree canopy; and because Southeast Christian Church is located across the street; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the building and parking lots will be screened by both new plantings and the preservation of 2.2 acres of existing tree canopy; and because safe vehicular and pedestrian access will be provided from the public right-of-way to the building entrances and parking lots; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since physical site restrictions prevent compliance with the setback requirements; and because the shape of the lot and the location of the existing streams and floodplain limit the buildable area; and

WHEREAS, the Board finds that variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because there are physical site restraints preventing compliance with the setback requirement; and because both stream and floodplain location limits the development area of the site; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because of the physical site restraints which will not allow compliance with the setback requirement; and

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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 due to the site restraints;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the building to be 436.2 feet from the east property line along Watterson Trail; and 421.8 feet from the west property line along Moser Road.

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

NO: No one.

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

ABSTAINING: No one.

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

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.3.1.C.5 and Table 5.3.2 of the Land Development Code to allow the building to exceed the maximum height; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since existing tree canopy is being preserved along the perimeter reducing the impact of the building height; and because the distance of the proposed building to the adjacent properties also reduces any adverse effects; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since 2.2 acres of existing tree canopy are to be preserved; and because all the required landscape plantings will be provided; and because the existing topography of the site and surrounding properties will also help to reduce the impact; and because Southeast Christian Church is located across the street; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the building will be located in the center of the site surrounded by existing trees and new landscape plantings which will reduce the impact of a taller building; and because the proposed building materials are compatible with the surrounding area; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the site has restrictions limiting the buildable area; and because the buildings across the street from the site have tall structures; and because the preservation of 17% of the existing trees and planting of new vegetation will lessen the impact of the proposed height; 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 site has physical restrictions limiting the location of the building to an area where the elevation of the ground falls toward the stream contributing to the overall height of the structure; 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 since the site has physical restraints not allowing compliance with the height requirement; and

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building to be 64 feet tall.

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

NO: No one.

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

ABSTAINING: No one.

Waiver—To not provide the required building entrances facing the abutting streets:

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

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WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentation(s) and the evidence and testimony submitted at the public hearing that the applicant is requesting a waiver from Section 5.5.2.A of the Land Development Code to not provide the required building entrances facing the abutting streets; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public right-of-way to the provided building entrances; and

WHEREAS, the Board finds that the requested waiver will not violate specific guidelines and policies of Cornerstone 2020 because several entrances are provided around the building perimeter providing adequate access; 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 several entrances to the building are provided from the parking lot and the public street allowing safe access to the building, even with the physical site restraints; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the applicant has provided several entrances around the perimeter of the proposed building for safe access; and because these entrances exceed the minimum to compensate for non-compliance with the requirements to be waived;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to not provide the required building entrances facing abutting streets.

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

NO: No one.

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

ABSTAINING: No one.

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Waiver—To not provide the required vehicular and pedestrian connections to the abutting properties:

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

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentation(s) and the evidence and testimony submitted at the public hearing that the applicant is requesting a waiver from Section 5.5.2.B of the Land Development Code to not provide the required vehicular and pedestrian connections to the abutting properties; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since safe pedestrian and vehicular access is provided from the public rights-of-way to the building entrances and parking areas; and because the adjacent properties are currently large lots containing a single home with potential to be developed in the future; and because if and when these lots develop, vehicular and pedestrian connections can be provided then if deemed necessary; and

WHEREAS, the Board finds that Guideline 2, Policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations; and because Guideline 7, Policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use, encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation facilities to be compatible with adjacent lands; also, to include at least one continuous roadway through the development, adequate street stubs, and relies on cul-de-sacs only as short side streets or where natural features limit development of “through” roads; and because Guideline 7, Policies 13 and 16 states that the proposal provides for joint and cross access through the development and to connect to adjacent development sites; and because Guideline 9, Policy 1, states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, close to the roadway to minimize the distance pedestrians and transit users have to travel so the waiver will not violate specific guidelines and policies

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of Cornerstone 2020 since connections to the adjacent properties can be provided when and if they develop in the future; 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 adjacent property connections can be provided when those properties develop in the future; and

WHEREAS, the Board finds that the applicant has incorporated other design measures to compensate for non-compliance with the requirements to be waived because existing tree canopy is being preserved along the southern perimeter to lessen the impact of the development on adjacent properties; plus, the addition of perimeter plantings will be provided along the northern perimeter to reduce the impact; and because the required sidewalk is being provided along both streets and sidewalk connections are provided throughout the interior of the site and to the street;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the required vehicular and pedestrian connections to the abutting properties.

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

NO: No one.

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

ABSTAINING: No one.

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CHAIRPERSON

SECRETARY