

**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. 5<sup>th</sup> 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

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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. 5<sup>th</sup> 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 Long said the applicant has withdrawn several of the requests; and the requests are justified as long as they plant landscaping and River Oats and screen the dumpsters.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. 4<sup>th</sup> 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

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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

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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

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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

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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:**

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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.**