

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

JUNE 1, 2015

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:37.A.M. on Monday, June 1, 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
Paul Bergmann
Lester Turner, Jr.

Members absent:

Dean Tharp

Staff members present:

Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Brian Davis, Planning Supervisor
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Manager
Sherie Long, Landscape Architect
Jon Crumble, Planner II
Chris Brown, Planner II
Julia Williams, Planner II
David Wagner, Planner II
Beth Stevenson, Management Assistant

Others present:

David Marchal, Assistant Director/Construction Review Manager

*Member Fishman left the meeting at approximately 5:00 p.m.

The following cases were heard:

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SWEARING IN LESTER TURNER, JR.

John Carroll, Assistant County Attorney, read the oath of office to Mr. Lester Turner, Jr.; and was sworn in as a Louisville Metro Board of Zoning Adjustment Officer.

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APPROVAL OF MINUTES

MAY 18, 2015 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

On a motion by Member Bergmann, 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 May 18, 2015.

YES: Members Allendorf, Fishman, Proffitt and Bergmann.

NO: No one.

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

ABSTAINING: Members Jarboe and Turner.

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NEW BUSINESS:

CASE NO. 15VARIANCE1025

Request: Variance from the Land Development Code to allow a proposed free-standing sign to exceed the maximum height.

Project Name: New Signage

Location: 2825 Lexington Road

Owner: Southern Baptist Theological Seminary
Dave Bearden
2825 Lexington Road
Louisville, KY 40206

Applicant: Same as owner

Representative: Signarama Downtown
Kenny Schindler
909 East Market Street, Suite 400
Louisville, KY 40206

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 9—Bill Hollander

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.

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 wants to replace the existing 14' tall sign on Grinstead Drive. The Board discussed the style of the sign.

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The following spoke in favor of this request:

Kenny Schindler.

Summary of testimony of those in favor:

Kenny Schindler, the applicant's representative, said the existing sign is 14 feet tall and will be using LED lighting. He said the new vertical sign will be more visible to direct people to the campus.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Bergmann said the vertical sign will be harder to read. Other Board members liked the design.

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 June 1, 2015 public hearing proceedings.

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 applicant's justification, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance

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from Chapter 8, Section 8.3.2, Table 8.3.1 of the Land Development Code to allow a proposed free-standing sign to exceed the maximum height; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed sign will not block views or impede traffic; plus, the entrance will be more visible from a safer distance on approach in either direction; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the new sign will be replacing an existing sign that is of the same height; and because materials being used to construct the new sign will be brick and limestone, are more compatible with the surrounding structures; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the new sign will be located out of the site triangle and will not impede traffic; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the new sign will be replacing an existing sign; 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 a college campus located in a heavy residential area is allowed but not typical of all residential neighborhoods; and because the new sign is replacing and existing sign; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the new sign has been designed to provide an adequate text size for the signage to be visible from a distance providing enough time to execute a safe turn into the campus from Grinstead Drive; 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 applicant is requesting a variance prior to construction;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed free-standing sign to exceed the maximum height.

YES: Members Allendorf, Fishman, Jarboe and Turner.

NO: Members Bergmann and Proffitt.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1026

Request: Variance from Chapter 5, Section 5.3.1.C.ii of the Land Development Code to allow a proposed garage (accessory structure) to encroach into the required front yard.

Project Name: New Garage

Location: 8007 Laughton Lane

Owner: Charles Warner
8007 Laughton Lane
Louisville, KY 40222

Applicant: Same as owner

Representative: C.R.P. Associates, Inc.
Charles Podgursky
7321 New LaGrange Road, #111
Louisville, KY 40222

Jurisdiction: City of Hurstbourne

COUNCIL DISTRICT 18—Marilyn Parker

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.

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 received signatures of support from two adjacent property owners. Ms. Long said that they will be keeping the existing garage in addition to the new one; and that it

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won't be noticeable with the landscape buffer. Member Fishman said she would like to see a rendering. Ms. Long said she wasn't provided one.

The following spoke in favor of this request:

Charles Podgursky, Representative

Ron Bataha. Didn't sign in.

Charles Warner, Owner.

Summary of testimony of those in favor:

Charles Podgursky, the applicant's representative, said they want to extend the driveway and put the garage there. Chair Proffitt asked if they would be removing trees. Mr. Podgursky said possibly two, but could relocate them.

Ron Bataha, said they could relocate the trees on the property. He submitted elevations into the record but said the landscaping is not shown.

Charles Warner, the owner, said part of his property is in the right-of-way. He said two trees will have to be removed, but that he'll be planting more landscaping for a buffer.

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 they need to replace the deteriorating landscaping.

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Variance—To allow a proposed garage to encroach into the required front 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, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, Section 5.3.1.C.1.ii to allow a proposed garage to encroach into the required 30 ft. front yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed garage will be screened by the existing evergreen vegetation along both the side yard and the front yard perimeters; and because the garage will be accessed from the existing driveway, therefore, not impeding traffic; and because the applicant has obtained signatures of the adjacent abutting property owners stating that they have no objection to the new garage or its location; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the new garage will be screened from the street and the abutting property owner located closest to the new structure by the existing evergreen vegetation located along the street frontage and side yard; and because the construction materials will be compatible with the existing houses in the vicinity; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the new garage will be screened by the existing vegetation; and

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WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the lot configuration limits the location of the new garage; 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 location of the existing house and the lot configuration (corner lot) limit the area for a new garage; 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 new garage location is limited by the configuration of the lot and location of the existing structures; 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 applicant is requesting the variance prior to construction;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed garage to be 15.5 feet from the front (west) property line.

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

NO: No one.

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

ABSTAINING: No one.

Waiver—To allow a proposed garage to be located in the front yard:

After the public hearing in open business session, 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 a waiver from Chapter 5, Section 5.4.2.D.2 of the Land Development Code to allow a proposed garage to be located in the front yard; and

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WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the new garage will be screened from view by the existing evergreen vegetation located along the perimeters of the property; and because the garage construction materials will be compatible with the existing materials of the existing structures and with the neighborhood; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 1 and 2 calls for the compatibility of all new development and with the pattern of development within the form district; and because the type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code; and because when assessing compatibility, it is appropriate to consider the choice of building materials; and because Guideline 3, Policy 21 and 22 calls for the proposal to provide appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions, or setback requirements; and to mitigate the impacts caused when incompatible developments unavoidably occur adjacent to one another by using buffers that are of varying designs such as landscaping, vegetative berms and or walls, and that addresses those aspects of development that have the potential to adversely impact existing area developments; and because the proposal meets the Cornerstone 2020 guidelines since the applicant is providing an evergreen buffer to reduce the impact of the new garage; and because the applicant is also using building materials that are compatible with the surrounding structures;

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 location of the new garage is limited by the existing structures and the lot configurations; and because the new garage will be screened by the existing evergreen vegetation which helps to minimize the impact on the neighborhood; and

WHEREAS, the Board finds that the applicant has provided other design measures that exceed the minimum for non-compliance with the requirements because the applicant is providing an evergreen screen along the front yard and side yard to screen the new garage from the street view and the adjacent neighbor;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the proposed garage to be located in the front yard.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15CUP1010

Request: Conditional Use Permit to allow a nursing home/home for the infirmed or aged in an R-4 zoning district.

Project Name: Exceptional Senior Living

Location: 6813, 6901, 6903 Carslaw Court and 6904, 6908, 6909 and 6912 Beech Avenue.

Owner: Charles W. & Carol W. Hebel
5806 Orion Road
Louisville, KY 40206

Applicant: Exceptional Living Centers
1050 Chinoe Road, Suite 350
Lexington, KY 40502

Attorney: Wyatt, Tarrant & Combs, LLP
Cliff Ashburner, Attorney
500 W. Jefferson Street, Ste. 2800
Louisville, KY 40202

Representative: Carman
John Carman/Carrie Read
639 E. Jefferson Street, Ste. 102
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 16—Kelly Downard

Staff Case Manager: Jon Crumbie, Planner II

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

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

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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 proposed facility will contain 85 apartment units of which 24 will be dedicated to memory care. The units will be a mixture of studio, one bedroom, and two-bedroom apartments. There will be approximately 25 employees; and the facility will receive an average of 2 to 3 deliveries per week. He said he received an e-mail from a concerned neighbor; and another letter he just received today. Chair Proffitt asked if the applicant submitted a traffic study. Mr. Crumbie said no.

The following spoke in favor of this request:

Cliff Ashburner, Attorney.

Tom Watts, 2312 The Woods Lane, Lexington, KY 40502.

Carrie Read, Architect, Carman, 639 E. Jefferson Street, Suite 102, Louisville, KY 40202.

Summary of testimony of those in favor:

Cliff Ashburner, the applicant's attorney, introduced Tom Watts, President of Exceptional Living Centers.

Tom Watts discussed the market study which indicated that people moving here will be within a 7 mile radius. He said most tenants will not drive. Mr. Watts said they've been in the senior living care business for 25 years.

Mr. Ashburner presented a PowerPoint presentation to the Board. He said this will be a good transitional use between the commercial uses. He said they will install an 8 ft. tall brick wall to screen the adjacent property owner from the parking area. Mr. Ashburner said that emergency vehicles will have access along Carslaw Court; and that the fire chief will review this again during the construction phase.

Carrie Read, the applicant's architect, said they will try to save as many trees as they can in addition to enhanced landscaping. Member Fishman asked if they would be cleaning up the area in back of the wall, so the adjacent property owner

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doesn't have to do it. Ms. Read said yes, and that they want it to look as residential as possible.

Mr. Watts said they will be providing an exercise area, courtyard and gardens.

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:

David Shepherd, 6900 Beech Avenue, Prospect, KY 40059.

Summary of testimony of those in opposition:

David Shepherd, the adjacent property owner, said he owns three properties in the area. He said the wall the applicant is proposing has gaps, which will look terrible and leave his property vulnerable. He said he does not want to pay for any clean up during or after the site is constructed. Mr. Shepherd said he was told by the fire chief, that one of the roads would have to be widened to allow for fire trucks or emergency vehicles. He said the parking will be insufficient during the holidays.

Rebuttal:

Mr. Ashburner said breaking up the wall will be more aesthetically pleasing or less institutional looking. He said he doesn't know what Mr. Shepherd would want to make it better for him. Mr. Ashburner said they will plant conifers where the wall gaps are.

Board of Zoning Adjustment Deliberation:

The Board was concerned that the width of Beech Avenue is not wide enough for emergency vehicles. Member Allendorf said the fire department prefers 18 feet wide and will re-inspect once the permits are received. The Board said the applicant agreed to plant conifers where the wall gaps.

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

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obtain a copy. The recording of this hearing will be found on the CD of the June 1, 2015 public hearing proceedings.

Conditional Use Permit to allow a nursing home/home for the infirm and aged in an R-4 Zoning District:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, 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 a nursing home/home for the infirm and aged in an R-4 Zoning District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because the proposed development of the site will be consistent and compatible with the character of the area; and because the Neighborhood Form District is characterized by predominantly residential uses that vary from low to high density and blend compatibly into the existing landscape and neighborhood areas; and because accessibility and connectivity will be provided between adjacent uses and neighborhoods; and because the site will incorporate low level lighting and adequate landscaping and buffering from adjoining properties; 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, scale, intensity, lighting and appearance; and

WHEREAS, the Board finds that the necessary public facilities (both on and off-site) such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation etc. are adequate to serve the proposed use because the plan has been reviewed and preliminarily approved by Public Works and MSD;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a nursing home/home for the infirm and aged in an R-5 Zoning District on the site **SUBJECT** to the following Conditions of Approval:

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1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so “exercised”, the site shall not be used for a nursing home/home for the infirm and aged without further review and approval by the Board.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1039

Request: Conditional Use Permit to allow a commercial greenhouse and plant nursery in an R-4 Zoning District.

Project Name: Wilson's Farm and Greenhouse

Location: 3903 Blanton Lane

Owners: Gregory & Gail Wilson
3903 Blanton Lane
Louisville, KY 40216

Applicants: Same as owners

Representative: R.W. Moore Consulting Engineers, P.S.C.
Richard W. Moore, P.E.
10213 Linn Station Road, Suite 3
Louisville, KY 40223

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 12—Rick Blackwell
Staff Case Manager: Jon Crumbie, Planner II

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

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

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 has been in business for about 20 years, and that they sell plants, mulch, landscape stones and other landscaping materials. He said the owners' were cited by Codes and Regulations for being in violation of the Land Development Code for the retail

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sales. Mr. Crumbie said the applicant is asking for modifications of the listed requirements A., C., and D; and that the applicant's justification is included in the staff report. The applicant also supplied a letter from LG&E that they can plant trees in their easement.

The following spoke in favor of this request:

Richard Moore.

Gail Wilson.

Summary of testimony of those in favor:

Richard Moore, the applicant's representative, explained the request and the modifications of the listed requirements.

Gail Wilson, the owner, said the greenhouse is framed with plastic over it.

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.

Board of Zoning Adjustment Deliberation:

Member Jarboe said the business is good for the area; and is not opposed to the modifications.

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Conditional Use Permit to allow a commercial greenhouse and plant nursery in an R-4 Zoning District:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit (CUP) to allow a commercial greenhouse and plant nursery in an R-4 Zoning District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because landscaping and tree canopy will be provided; and

WHEREAS, the Board finds that the proposal is compatible with the surrounding land uses and the general character of the area because the site is surrounded by residential uses and is the largest tract of land in the surrounding area; and because all residential uses in the area have similar scale, intensity, traffic, noise and lighting; and

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

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the conditional use permit, specifically Chapter 4.2.16.A (Setbacks) because the setbacks are compliant in that all buildings, structures and outdoor sales/display and storage of materials shall be at least 50 feet from the front and/or street-side property line; and a minimum of 20 feet from any other property line; and

WHEREAS, the Board finds that the applicant is requesting a modification from Chapter 4.2.16.A (Buffers and Screening) to eliminate the required 8 ft. tall screen within the property perimeter buffer area; and because the owner has installed a three-board fence and planted a row of trees along a portion of Blanton Lane in front of the Wilson's Farm as well as along the Romania Drive

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property line; and because these features serve to screen the Wilson's Farm operations from the surrounding neighbors; and because the owner has also agreed to plant trees along the east property line to screen their property; and because at the required neighborhood meeting the neighbors agreed to this and expressed that they did not want an 8 ft. tall screen within the property perimeter buffer area; and because the neighbors signed a petition pertaining to this which is in the minutes of the neighborhood meeting; so the modification will not adversely affect adjacent property owners; and

WHEREAS, the Board finds that the applicant is requesting a modification from Chapter 4.2.16.A (Buffers and Screening) for the use of Type "C" trees along the property perimeter buffer area along the east property line and instead will be providing a three-board horse fence and a row of trees because there is existing overhead electric transmission lines and existing underground natural gas, jet fuel and kerosene transmission lines located in the easements across the property and will therefore, not adversely affect adjacent property owners; and

WHEREAS, the Board finds that the applicant is requesting a modification from Chapter 4.2.16.C. of the Land Development Code to allow an existing freestanding sign, decorative canopy and landscape mound to remain where they are; and because the sign is 8 feet tall on the side facing Blanton Lane and 7 feet tall on the opposite and has been in existence; and because the features have not been added to make the sign taller, but softens the appearance; and

WHEREAS, the Board finds that the applicant is requesting a modification of Chapter 4.2.16.D (Attached Signs) to allow the existing 32 sq. ft. attached sign to remain on the existing Storage and Warehouse Building (Primary Building); and because the sign faces Blanton Lane and is 160 feet from the existing centerline and will not be obtrusive or adversely affect the adjacent property owners;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a commercial greenhouse and plant nursery 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.

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2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a commercial greenhouse and plant nursery without further review and approval by the Board.

3. The hours of operation will be 9:00 a.m. to 5:00 p.m. Monday through Friday; 9:00 a.m. to 4:00 p.m. on Saturdays; and 12:00 p.m. to 4:00 p.m. on Sundays.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15APPEAL1005

Request: Appeal of an administrative official action that issued a permit for construction of a 3-unit residential building.

Project Name: Rosewood Condominium

Location: 1505 Rosewood Avenue

Appellant: Elizabeth & Daniel Fauxpoint
1505 Rosewood Avenue, #7
Louisville, KY 40204

Owner: ?

Appellant's Attorney: Bill Seiller, Esq.
462 S. 4th Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Joe Reverman, AICP

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 Planning and Design Services offices located at 444 S. 5th Street).

On June 1, 2015, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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Agency Testimony:

Staff case manager, Joe Reverman, presented the case including a PowerPoint presentation. Mr. Reverman said the applicant received a permit for an additional 3-unit complex where 9 condominium units exist. He said the appellant asserts that the proposal does not comply with numerous portions of the Land Development Code.

David Marchal, Director of Construction and Review and Building Official for Develop Louisville spoke after the testimony.

The following spoke neither for nor against the request:

Metro Councilmember Tom Owen, District 8, 601 W. Jefferson Street, Louisville, KY 40202.

Ray Brundige, 1718 Edgeland Avenue, Louisville, KY 40204.

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

Councilmember Tom Owen said this house was a civil war hospital; and that several prominent families lived here. He said the proposal doesn't compliment the 160 year old condominium complex that the owner revitalized.

Ray Brundige, spoke as an interested party, but said he supports the appeal. He said he's a local historian and that the building is important to the neighborhood history. Mr. Brundige spoke specifically about the history and previous owners.

The following spoke in opposition to this request:

Gene Crawford, Developer—Didn't sign in.

Summary of testimony of those in opposition

Gene Crawford, the developer, said he worked two years to get the permits; and said he turned a transient home into nice condominiums. He said the master deed noted that he could still build up to 10 years; and feels the new owners of the existing condos, didn't read this when they purchased the units. He said Mr. Owen was in support in 2005.

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The following spoke in favor of the request:

Bill Seiller, Attorney for the appellant.

Daniel Fauxpoint, the appellant.

Jon Solomon, Attorney for the Rosewood Condominium Council, 3600 National City Tower, 101 S. 5th Street, Louisville, KY 40202.

Jeff DeReamer, 1435 Rosewood Avenue, Louisville, KY 40204.

Robert Mann, D.M.D., 1505 Rosewood Avenue #4, Louisville, KY 40204.

Michael Kubarich, 1505 Rosewood Avenue #6, Louisville, KY 40204.

Morris Shaw, 1506 Goddard Avenue, Louisville, KY 40204.

Summary of testimony of those in favor:

Bill Seiller, Attorney for the appellant, said this is a complex case.

Daniel Fauxpoint, the appellant, presented a PowerPoint presentation to the Board. Mr. Fauxpoint went over all the areas of non-compliance with the Land Development Code. The Board interjected with questions.

Jon Solomon, Attorney for the Rosewood Condominium Council, said the proposal does not meet the Floor Area Ratio requirements with the new definition, and for this reason alone, the permits should be revoked.

Jeff DeReamer said his property adjoins the subject property; and doesn't want more condominiums 3 feet from his property line. He said parking will be a problem and stated that people already park in front of his home. He said he has magnolia trees that have an unusual root system; and that this proposal will kill his trees. He concluded stating that the proposal will diminish the architectural integrity.

Robert Mann, D.M.D., said the condominium association owns the land now. He said the developer applied for an additional one unit condominium when he knew he was going to build three. He said the Board needs to consider all the correct information.

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Michael Kubarich said he is a resident and the condominium association president, and is complete agreement with this appeal. He said the proposal needs a comprehensive review with correct FAR calculations.

Morris Shaw said this has been a piecemeal development, averting the regulations. He said the Board needs to look at all the previous approvals or actions taken. He said since 1970 there have only been 6 units; and that this is the only multi-family development in the single family neighborhood.

Rebuttal:

Bill Seiller said his clients have a compelling case, and even if the Board approves the appeal, feels this won't be the end. He said the Board should initiate a compromise that would end this dispute.

Discussion and Questioning:

Member Bergmann asked how the developer can build, when he doesn't own the property. Jon Salomon, said he is not the owner once the condo regime vests. He said the information in the Master Deed reserved for development rights is not within the scope of the Board's duty.

Dave Marchal, Develop Louisville, said the Kentucky Building Code would be relied upon. Member Proffitt asked when a Category 3 review would be triggered. Mr. Reverman said the developer is only adding 2 additional units now, so there would not be a Category 3 review.

Mr. Crawford said he sold the property to an investor that turned it into a carriage house; and the realtors sold the property. He said he has an approved stamped plan with 12 units. Member Jarboe asked why he applied for 3 separate permits. Mr. Crawford said he was told to do this so he could obtain the Certificate of Occupancy.

Mr. Reverman informed the Board that they can only revoke the permits based on the Land Development Code regulations/violations.

Deliberation:

Chair Proffitt suggested continuing this case to July 6, 2015 since there is conflicting information. He said he would like the following information prior to the July 6, 2015 hearing:

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1. A survey of the buildings using the outside of the exterior walls by a licensed surveyor or use the Fauxpoint survey since it was prepared by a licensed surveyor.
2. The permits will be put on a temporary hold until this case is resolved.
3. Revised staff report.
4. Re-evaluate the Category 3 review procedure.
5. Proof of ownership and permits for carriage house.
6. Portion of the Master Deed affirming development rights.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and 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 June 1, 2015 public hearing proceedings.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 15APPEAL1005 to **JULY 6, 2015**, for the information stated above.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15APPEAL1003

Request: An Appeal of a Notice of Refusal from Planning & Design Services concerning the change from one non-conforming use (bar) to another non-conforming use (community service facility) in an R-6 zoning district.

Project Name: Change in Use

Location: 2505 & 2507 Bank Street

Appellant: The Haven Ministries
Esther Lyon
2415 Portland Avenue
Louisville, KY 40212

Owner: Same as Appellant

Representative: No one

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 5—Cheri Bryant Hamilton
Staff Case Manager: Steve Hendrix, Planning Supervisor

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 Planning and Design Services offices located at 444 S. 5th Street).

On June 1, 2015, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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Agency Testimony:

Staff case manager, Steve Hendrix, presented the case and discussed the case summary and history of the site and said it appears that the structure was built for a commercial use which included a bakery in the 30's. The use has mostly been a bar and the ABC licenses have been renewed, so abandonment has not taken place. Mr. Hendrix said only the Board has authority to change a non-conforming use to another.

The following spoke in favor of the request:

Esther Lyon, appellant.

Mary Ann Shilling, 369 N. 25th Street, Louisville, KY 40212.

Michael Edds, 2404 St. Xavier Street, Louisville, KY 40212.

Darlene Snow, 3029 Boones Trace, Crestwood, KY 40014.

Summary of testimony of those in favor:

Esther Lyon, the appellant, said the use will be an "at cost" coffee and pastry shop in addition to an outreach program for children. She said there are a number of bars in the area, and the new use will be positive for the area. Ms. Lyon said she has numerous volunteers, from painters to electricians to remodel the structure. Chair Proffitt asked what the hours of operation would be. Ms. Lyon said from 7:00 a.m. to 4:00 p.m. She said they will have approximately 5 volunteers to run the bakery. The Board asked if she would let the liquor license expire. Ms. Lyon said yes.

Mary Ann Shilling said she has seen people working on the property and is so glad they are planning something as nice as this. She said she has five grandchildren who live in the area; and will complement the neighborhood; and

Michael Edds said he and his family have lived in Portland for many years; and knows that this was a bakery with a bar next to it. He said the area doesn't need any more bars; and the residents are thrilled about the new use.

Darlene Snow said she is a victim of sexual assault and would like to offer counseling services for abused women. She said her son is a police officer and said that the area needs more positive uses.

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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 members all stated their satisfaction with the new use, including the counseling aspect. Chair Proffitt said they rarely get cases like this that benefits the community in such a positive way; and commended the owner.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and 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 June 1, 2015 public hearing proceedings.

Do non-conforming use rights exist for the bar? If so, is the change from one non-conforming use (bar), to another non-conforming use (community service facility) in the same or more restrictive classification? Is the change from one non-conforming use (bar), to another non-conforming use (community service facility) no more odious or offensive to surrounding properties than the first non-conforming use?:

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

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that this appeal concerns a Notice of Refusal from Planning & Design Services to change from one non-conforming use (bar) to another non-conforming use (community service facility); and

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WHEREAS, the Board finds that the non-conforming rights exist for the bar since a valid ABC License was renewed, which indicates that the use was not abandoned; and because the change from one non-conforming use (bar) to another non-conforming use (community service facility) is listed as a permitted use within an OR-Office Residential District, while a bar is listed as a permitted use with a C-2 Commercial District, therefore, the community service facility would be in a more restrictive classification than the bar; and because the change from the bar to the community service facility is no more odious or offensive than the first non-conforming use, because a bar could create nuisances in the neighborhood such as noise, traffic and litter; and because the new non-conforming use will serve pastries and coffee at cost, in addition to an outreach program for children; counseling and other positive community events; and

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **ACKNOWLEDGE** that non-conforming rights exist for a bar and will **HEREBY ALLOW** the change from one non-conforming use (bar) to another non-conforming use(community service facility); and

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

NO: No one.

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

ABSTAINING: No one.

WAS THE NOTICE OF REFUSAL PROPER?:

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

WHEREAS, the Board finds that the Notice of Refusal issued by Planning and Design Services is proper because only the Board of Zoning Adjustment can approve a request from one non-conforming use to another non-conforming use; and

BE IT FURTHER RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Appeal.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1027

Request: Variance from the Land Development Code to allow a building to be 245 feet from the west property line along Indian Lake Drive (Requirement 80 feet; a variance of 165 feet.

Project Name: Aloft Hotel

Location: 10700 Westport Road

Owner: Indian Springs, LLC
By: William B. Bardenwerper, Attorney & Agent
3408 Indian Lake Drive
Louisville, KY 40241

Applicant: Same as owner

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

Representative: Mindel Scott & Associates
Amy Cooksey
5151 Jefferson Blvd.
Louisville, KY 40219

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 17—Glen Stuckel
Staff Case Manager: David B. Wagner, Planner II

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

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

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

Agency Testimony:

Staff Case Manager, David Wagner discussed the case summary, standard of review and staff analysis from the staff report. He said if the variance is approved, the Revised Detailed District Development Plan (Case No. 15DEVPLAN1057) will be staff approvable. Chair Proffitt asked why the applicant is requesting another 10 feet now, after the previous variance approval.

The following spoke in favor of this request:

Nick Pregliasco, Attorney.

Summary of testimony of those in favor:

Nick Pregliasco, the applicant's attorney, said he doesn't know the exact reason for this variance, but said they removed the restaurant from the previous plan which will decrease the floor area ratio from 76,525 square feet to 70,490 square feet. Chair Proffitt asked if the outside dining area will be concrete. Mr. Pregliasco said he is not sure. Chair Proffitt asked him to call the engineer to find out; and said it should be at least 50% greenspace/landscaping. Joe Reverman, Planning Manager, said the applicant is also including a wall for buffering. Mr. Pregliasco said his client would agree to a continuance to include more landscaping in the patio area.

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.

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Deliberation:

The Board, in general, said they are concerned about the amount of impervious surface in the patio area. Chair Proffitt said if the Board wants to approve the variance they could include a condition of approval that 50% of the space in the patio area be landscaping.

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 June 1, 2015 public hearing proceedings.

Public Hearing:

There was further discussion regarding the revised plan and landscaping. Joe Reverman suggested that the final plan for the outdoor patio area be staff approvable and be brought back before the Board in business session if they find it insufficient.

On a motion by Member Jarboe where several amendments were made, seconded by Member Fishman, and the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review 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 Table 5.3.2 of the Land Development Code to allow a building to be 245 feet from the front yard along Indian Lake Drive; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the additional 10 ft. setback from the street is a minimal increase from what the Board previously approved; and because there will be no changes to traffic flow or access to the site, maintaining the safe access to the site; and because the applicant has agreed to install 50% landscaping in the outdoor patio area to reduce impervious surface; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the additional 10 ft. setback from the street is a

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minimal increase from what the Board previously approved; and because the location of the building will be minimally changed; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the additional 10 ft. setback from the street is a minimal increase from what the Board previously approved; and because there will be no changes to traffic flow or access to the site, maintaining safe access to the site; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the additional 10 ft. setback from the street is a minimal increase from what the Board previously approved; 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 as this development has been previously approved and only minor alterations are being made;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a building to be 245 feet from the front property line along Indian Lake Drive **ON CONDITION** that the applicant work with staff to redesign the outside patio area to include 50% of landscaping (grass, trees shrubs etc.) to reduce impervious surface; and that the final design be brought back before the Board in business session on June 15, 2015.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1013

Request: Variances

Project Name: CVS

Location: 9420 Seatonville Road

Owner: Your Community Bank, Inc.
Matthew Neel
2323 Ring Road
Elizabethtown, KY 42702

Applicant: Five Star Development
Nate Welch
200 Office Park Drive, Suite 340
Birmingham, AL 35213

Attorney: Nick Pregliasco
1000 N. Hurstbourne Parkway, #200
Louisville, KY 40223

Representative: Miller Wihry
John Miller
1387 S. Fourth Street
Louisville, KY 40208

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 22—Robin Engel
Staff Case Manager: Julia Williams, AICP, Planner II

(CONTINUED FROM MAY 4, 2015)

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. 5th Street).

Agency Testimony:

Brian Davis, Planning Supervisor, presented the case for staff case manager, Julia Williams and discussed the case summary, standard of review and staff analysis from the staff report. The applicant is requesting 3 variances for setbacks; and that the applicant received approval for a Revised Detailed District Development Plan with waivers at the May 21, 2015 Planning Commission meeting. Mr. Davis said access will be from Seatonville Road and a future access from a shared driveway from the Fern Creek Methodist Church. The applicant is eliminating 3 parking spaces which will eliminate the need for an Interior Landscaped Area (ILA). Member Jarboe asked if they are building in the floodplain. Mr. Davis said they are putting up a retaining wall.

The following spoke in favor of this request:

Nick Pregliasco, Attorney.

John Miller, Representative.

Mike Culbreath, 200 Office Park Drive, Ste. 340, Birmingham, AL 35213.

Jim Birch, 1402 Hickory Hills Trail, Louisville, KY 40299.

Summary of testimony of those in favor:

Nick Pregliasco, the applicant's attorney, said the stream will not be disturbed; and 50% of the site will remain greenspace. He said the plan from MSD indicates this property is out of the floodplain. They will be adding a right turn lane along Seatonville Road; and that the neighbors' were not opposed to the proposed buffering (wall and 12-15 ft. tall trees).

John Miller, the applicant's representative, said this site is large enough for a pharmacy, but compact enough to protect the stream. He said they will be providing riparian plantings and turn the existing basin into a rain garden. He said MSD, Public Works and APCD have all preliminarily approved the plan.

Member Fishman asked if CVS approved the plan with three less parking spaces. Mike Culbreath, with CVS, said they are in the process of getting it

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approved; and said that they will have to redesign the store if CVS doesn't want to eliminate the 3 parking spaces. Mr. Culbreath added that they have a legal agreement with the owners of the property with the house, which will be used for another access point.

Member Allendorf said if they have a mini-clinic will increase the number of customers and cars.

Jim Birch said they want to acquire more property around the site; and create a master 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:

Teena Halbig, 6505 Echo Trail, Louisville, KY 40299.

Peter Bodnar, 8801 Dawson Hill Road, Louisville, KY 40299.

J. Marcus Greer III, 3809 Chevy Chase Road, Louisville, KY 40218.

Summary of testimony of those in opposition:

Teena Halbig said she is the past president of the Floyds Fork Environmental Association, and said they are building in the floodway. Ms. Halbig submitted information into the record supporting this; and pictures of flooding in the area. She said CVS should reduce the square footage of the building and parking; and said there are 8 pharmacies in the area. She said they requested a Stormceptor at the Planning Commission meeting too which hasn't been addressed today. Ms. Halbig concluded that the Board should deny the second variance due to the blue line streams, in addition to the third variance encroachment.

Peter Bodnar with the Floyds Fork Neighborhood Association said he opposes the third variance due to flooding in the area. He said the building is too big for the site and will cause more environmental problems. He said CVS wants to compete with Walgreens at any expense.

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J. Marcus Greer III, said his mother lives across Seatonville Road and said debris gets all over her driveway. He said when it rains, the water backs up onto the streets; and if toxic water gets into the stream will kill the fish.

Rebuttal:

Mr. Pregliasco said CVS is the best use for the property; and that a fast food restaurant would double the amount of cars.

Discussion:

Chair Proffitt asked Mr. Miller to explain building in the floodplain. Mr. Miller said this is an intermittent stream and explained the difference between the FEMA guidelines and the 100 Year Floodplain. He said 90% of the stream buffer will be preserved.

Deliberation:

Member Bergmann said they are pushing the boundaries of the floodplain; and that the building is too large for the site. He and other Board members were concerned about the flooding in the area. Member Jarboe said people need to quit building in the floodplain. Member Allendorf said that 70% of Louisville was probably swamp land and that the applicant is adding fill dirt to take it above the floodplain. Chair Proffitt said the project would not be possible without the basins and is in favor of keeping the natural vegetation where they can; and add more landscaping. Member Fishman asked if the applicant would agree to install the Stormceptor.

Public Hearing:

Mr. Miller agreed to install a Stormceptor; and that they will maintain it (clean it etc.).

Deliberation:

Chair Proffitt discussed the motion if the Board should approve the variances.

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 June 1, 2015 public hearing proceedings.

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NEW BUSINESS:

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Variance: To allow a proposed building to exceed the 0 ft. setback along Bardstown Road and Seatonville Road:

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, the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.5.1.A.2 of the Land Development Code to allow a proposed building to be 265 feet from Seatonville Road and 81 feet from Bardstown Road; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the location preserves the existing location of Cedar Creek; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since preserving the creek along the frontage of the lot is characteristic of both the residential lot to the south and the church lot across Seatonville Road to the north; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since buffers between the residential zones to the east and south will be provided and a buffer between the parking lot and Seatonville Road will be provided; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since Cedar Creek is an existing blue line stream being preserved on the site; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since Cedar Creek runs along the property frontage where the Town Center form indicates the building location; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the applicant would have to move Cedar Creek in order to get the building at the corner as required;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed building to be 265 feet from Seatonville Road; and 81 feet from Bardstown Road.

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

NO: No one.

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

ABSTAINING: No one.

Variance: To allow the encroachment of a drive lane into the required 25 ft. setback along the southeast property line:

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, the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.31.C of the Land Development Code to allow a drive lane to encroach into the 25 foot setback (varies) along the southeast property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since an 8 ft. tall brick wall and landscaping will buffer the site from the adjacent residential properties; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the buffering and landscape requirements will be met; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the buffer will still be met on the site; and

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WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the buffering and screening requirements will still be met on the site; and

WHEREAS, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the building is located away from Cedar Creek, which is along the sites frontage;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance (for the required 25 ft. setback) to allow a drive lane to vary from the southeast property line.

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

NO: No one.

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

ABSTAINING: No one.

Variance—To allow a building and parking to encroach into the 50 ft. middle buffer zone; and 25 ft. outer zone stream buffers along the east side of Cedar Creek (requirement 100 ft.) which will vary:

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, the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 4.8.3.C of the Land Development Code to allow a building and parking to encroach into the 50 ft. middle buffer zone; and 25 ft. outer zone stream buffers along the east side of Cedar Creek (requirement 100 ft.) which will vary; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because a reduction in the stream buffer will not have any impact on the public because more than half of the site will be preserved for the stream buffer; and

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WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because it would be similar to the land use pattern along this area of Cedar Creek and would in fact maintain the greatest amount of stream buffer of any commercial uses in the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because more than half of the site will be preserved for stream buffer remaining to protect water quality; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because it would allow use of this property in a manner consistent with its surroundings, provide a needed community service in a central location and provide a reasonable use of private property while preserving more than half of the site to preservation of the stream environment; and

WHEREAS, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the location of Cedar Creek is consuming as it virtually bisects the site; also because the site is limited by other creek related issues such as the floodplain and floodway; and

WHEREAS, the Board finds that the strict application of the regulation would deprive the applicant of the reasonable use of the land because it would not allow adequate usable area for the proposed use or perhaps any commercial use; and

WHEREAS, the Board find 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 site has been zoned commercially for many years, but has remained undeveloped due to the restrictions associated with the creek;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow an encroachment of a building and parking into the required 50 ft. middle buffer zone; and 25 ft. outer zone stream buffers to be varied along the east side of Cedar Creek **ON CONDITION:**

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The conditions are as follows:

1. The applicant will install and maintain a Stormceptor.
2. The landscaping will look substantially the same as what was presented at the hearing today.

YES: Members Allendorf, Fishman, Turner and Proffitt.

NO: Members Jarboe and Bergmann.

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

ABSTAINING: No one.

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The meeting adjourned at 7:26 p.m.

CHAIRPERSON

SECRETARY