

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

January 9, 2017

A meeting of the Louisville Board of Zoning Adjustment was held on January 9, 2017, at 8:30 a.m. at the Old Jail Building, 514 W Liberty Street, Louisville, KY 40202.

Members present:

Mike Allendorf, Chair
Rosalind Fishman, Secretary
Lester Turner, Jr.
Lula Howard
Paul Bergmann

Member absent:

Betty Jarboe, Vice Chair
Dean Tharp

Staff members present:

Brian Davis, Planning Manager
Joe Haberman, Planning Manager
Jon Crumbie, Planning Coordinator
Steve Hendrix, Planning Supervisor
Brian Mabry, Planning Supervisor
Ross Allen, Planner I
John Carroll, Legal Counsel
Kristen Loeser, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

Approval of the December 19, 2016 BOZA Meeting Minutes

00:02:49 On a motion by Board Member Fishman, seconded by Board Member Turner, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of its meeting conducted on December 19, 2016.

The vote was as follows:

Yes: Fishman, Howard, Turner, Bergmann, and Allendorf

Absent: Jarboe and Tharp

Abstain: None

No: None

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BUSINESS SESSION

CASE NUMBER 16VARIANCE1074

Request:	Reconsideration Request concerning case 16Variance1074, a deck addition encroachment into the required side yard setback, approved by the Board on November 22, 2016.
Project Name:	7206 Hollow Creek Road
Location:	7206 Hollow Creek Road
Owner:	Michael Secor
Applicant:	Michael Secor
Representative:	Michael Secor
Jurisdiction:	Hollow Creek
Council District:	23 - James Peden
Case Manager:	Ross Allen, Planner I

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

00:03:30 Steve Hendrix provided the Board with the email request for reconsideration for Case Number 16VARIANCE1074.

00:05:55 On a motion by Board Member Howard, seconded by Board Member Fishman, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1074, does hereby **APPROVE** the **RECONSIDERATION REQUEST** based on the email request submitted by the opposition.

The vote was as follows:

Yes: Fishman, Bergmann, and Turner

Absent: Tharp and Jarboe

Abstain: None

No: Howard and Allendorf

00:08:50 On a motion by Board Member Fishman, seconded by Board Member Turner, the following resolution was adopted:

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BUSINESS SESSION

CASE NUMBER 16VARIANCE1074

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1074, does hereby agree to **RECONSIDER** this case for the tree planting condition at the January 23, 2017 Board of Zoning Adjustment meeting.

The vote was as follows:

Yes: Fishman, Bergmann, and Turner

Absent: Tharp and Jarboe

Abstain: None

No: Howard and Allendorf

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PUBLIC HEARING

CASE NUMBER 15CUP1007

Project Name:	None
Location:	2733 West Market Street
Owner:	Willie Jordan
Applicant:	Willie Jordan
Representative(s):	Willie Jordan
Project Area/Size:	0.12 acres
Existing Zoning District:	R-6, Residential Multi-Family
Existing Form District:	TN, Traditional Neighborhood
Council District:	5 – Cheri Bryant Hamilton
Case Manager:	Jon E. Crumbie, Planning & Design Coordinator

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

00:09:45 Jon Crumbie presented the case and stated that this was continued from the November 21, 2016 meeting to allow the applicant time to conduct a neighborhood meeting and to provide neighbors with his contact information (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Willie Jordan, Ekron, KY 40117

Summary of testimony of those in favor:

00:13:35 Applicant, Willie Jordan, spoke regarding the case and stated that he conducted a neighborhood meeting on December 17, 2016. There were three neighbors who attended the meeting who were mainly concerned about security and traffic. He stated that the home will be monitored at night by a permanent resident, and he is willing to install security cameras on the property. He is aware that he can seek funding from the state, but is concerned about his current tenants who have nowhere to go in the meantime. He installed new windows and flooring and provided pictures to the Board. There are facilities similar to the one he is proposing in other areas in the city.

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CASE NUMBER 15CUP1007

00:24:45 Board discussion

00:27:06 Mr. Jordan responded to questions from the Board and stated that he has not established a maximum stay for his residents; they can stay as long as they need to. He does have rules of conduct for the home and can provide those to staff. Prospective residents will be required to fill out an application and pass a background check, and records will be kept of this information. They will also be required to provide an emergency contact. He stated again that there will be one permanent resident who will monitor the home at night along with four other residents living in the home. There will be someone coming in during the day to clean the home.

00:32:44 Board Member Howard showed concern about the neighbors in opposition to another boarding home in the area and that the rules of conduct were not provided at today's meeting. She feels that item H on Staff Report was not met.

00:33:40 Board Member Fishman stated she would like to see pictures of the inside of the bedrooms. She is concerned that someone would not be there full time during the day.

00:35:39 Mr. Jordan spoke again in response to the Board and stated that four people are currently living in the home. He was not aware that he needed a permit to run a boarding home and received a citation. He has called the police to his property in the past due to suspected drug activity in front of his property.

00:40:00 The Board discussed items G, H, and I from the Staff Report.

00:44:27 Mr. Crumbie advised the Board that the violations would be resolved in order for the applicant to be granted a certificate of occupancy.

00:48:50 On a motion by Board Member Fishman, seconded by Board Member Turner, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 15CUP1007, does hereby **DENY** the Conditional Use Permit to allow a boarding and lodging home in an R-6 zoning district and the request to not add landscaping and buffering to the site based on the items of the Staff Report that were not met, the neighborhood meeting, and the request from Councilwoman Cheri Bryant Hamilton.

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The vote was as follows:

Yes: Fishman, Bergmann, Howard, and Turner

Absent: Tharp and Jarboe

Abstain: None

No: Allendorf

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CASE NUMBER 16VARIANCE1080

Request:	Reconsideration of the reduction in the private yard area.
Project Name:	602 Baxter Avenue
Location:	602 Baxter Avenue
Area:	.07200 acres
Owner:	Libor Zacek
Applicant:	Bruce Rogers – CBR Architects PLLC
Representative:	Nick Pregliasco – Bardenwerper, Talbott, and Roberts PLLC.
Jurisdiction:	Louisville Metro
Council District:	4 – David Tandy
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Note: This case was heard out of order after case number 16VARIANCE1090.

Agency Testimony:

01:07:31 Ross Allen presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Nick Pregliasco, 1000 N Hurstbourne Pkwy., Louisville, KY 40223

Summary of testimony of those in favor:

01:09:08 Nick Pregliasco spoke on behalf of the applicant and provided a summary of the case. He reiterated that the second variance request was withdrawn and that the remaining variance request was to allow an addition into a private rear yard. He showed a short presentation to the Board.

The following spoke in opposition to the request:

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Timothy Early, 604 Baxter Avenue, Louisville, KY 40204

Summary of testimony of those in opposition:

01:20:15 Neighbor, Timothy Early, stated that the back porch is already encroaching into the backyard and the side of the home encroaches into the side yard. He feels that the addition will not match the character of the neighborhood. After the second story addition is constructed, his windows will be facing a wall. He is fine with the home being multifamily home or a business, but he does not feel the additions are necessary. He would like the Board to deny the variance that would eliminate the greenspace in the backyard.

Rebuttal:

01:34:00 Mr. Pregliasco stated that most of what Mr. Early said in opposition was the same as what he stated during the November 7, 2016 meeting. He stated that something to keep in mind is that this entire block along Baxter Avenue is zoned C-1, and there are only two residences in this block. The applicant has not decided to utilize Airbnb at this property, but that would be allowed under the current regulations.

01:45:35 Deliberation

Board Member Howard stated she is happy that the plan has been reduced in square footage, even if only a small amount, so there will be more space on the side yard.

Board Member Fishman is concerned with the lack of greenspace in the back of the property and with the extension of the deck over a portion of the parking area.

Board Members Bergmann and Turner have no objections to the variance.

01:47:41 On a motion by Board Member Howard, seconded by Board Member Bergmann, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the lot has no accessory structure and has a parking pad to the rear which is excluded from the private yard area calculation which requires 20% for residential lots (per the size of the

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total lot area less than 6,000 sf.) in the Traditional Neighborhood Form District. The addition poses no threat to the public health, safety, or welfare as a result of the applicant constructing with a one hour fire rated exterior wall, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the property is zoned C-1 and the use is a multi-family residential with three other parcels in the same block utilizing the entirety of their parcels, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since The addition will have a one hour fire rated exterior wall, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the applicant has proposed an addition, that by the LDC is permitted, on a C-1 zoned parcel but used as a residential use requires that a private yard area be present since the parcel resides in a Traditional Neighborhood Form District and will be used as a multi-family residential unit, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which generally apply to land in the general vicinity or the same zone because three other parcels residing in the same block are using the entirety of their lots, the applicant if allowed to reduce the private yard area to zero sf. would be similar to all but one parcel which has a private yard area to the rear of the principal structure, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the requirement of a private yard area is intended for residential uses within a Traditional Neighborhood Form District however, many parcels in the same block have none if any private yard area since the zoning types are C-1 and many are commercial/retail establishments, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the applicant has proposed an addition, that by the LDC is permitted, on a C-1 zoned parcel but used as a residential use requires that a private yard area be present since the parcel resides in a Traditional Neighborhood Form District and will be used as a multi-family residential unit; now, therefore be it

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CASE NUMBER 16VARIANCE1080

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1080, does hereby **REAFFIRM** their November 21, 2016 decision to **APPROVE** the Variance from the Land Development Code section 5.4.1.D.3 to allow the proposed addition to the rear of the camelback shotgun house and cantilever deck (second floor) to reduce the private yard area by approximately 629.19 sf.
(Requirement: 629.19 sq. ft., Request: 0 sq. ft., Variance: 629.19 sq. ft.).

The vote was as follows:

Yes: Allendorf, Bergmann, and Howard

Absent: Tharp and Jarboe

Abstain: None

No: Fishman and Turner

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CASE NUMBER 16VARIANCE1094

Request:	Variance to allow a freestanding sign to exceed the allowed square footage in a Regional Center Form District.
Project Name:	Sign Variance
Location:	8001/8003 Shelbyville Rd.
Area:	15.52580 acres
Owner:	Jay Middleton OR Steve Kelly – Toyota S/S
Applicant:	Rob DeLeeuw - Derby City Sign and Electric
Representative:	Rob DeLeeuw - Derby City Sign and Electric
Jurisdiction:	City of Lyndon
Council District:	18 – Marilyn Parker
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

00:54:52 Ross Allen presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Ken Ackermann, 1427 Hugh Avenue, Louisville, KY 40213

Summary of testimony of those in favor:

01:00:22 Ken Ackermann spoke regarding the case. The sign is being replaced due to the removal of the Scion logo, which will leave large holes in the panels. The applicant prefers to replace the sign rather than patch the holes. The sign will look the same as before, but will not have the Scion logo.

01:02:26 Deliberation

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01:03:54 On a motion by Board Member Bergmann, seconded by Board Member Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect public health safety or welfare since the existing sign is to be upgraded with a new look (i.e. the SCION logo will be removed). The proposed sign will be the same size as the old and have the same footings, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the upgraded sign will be the same height and area as is the current sign that is being replaced, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the proposed replacement sign is not in the public right of way and all work to be performed will happen on private property, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations since the proposed replacement sign is the same in height and area as the existing sign, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which that generally apply to land in the general vicinity or the same zone since there are other car dealerships in the vicinity, Mazda at Oxmoor being the closest in proximity, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the proposed replacement sign is used to advertise to the public. If the variance were to be denied it would limit the dealerships ability to advertise along Shelbyville Rd., and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the existing sign has been in place since 2008 as shown in case file B-11483-08. The applicant is seeking to request the variances in order to comply with the current LDC regulations, and

WHEREAS, the Board further finds that the current sign is being upgraded with a new look. It will be the same as the old sign with the same footings, and

WHEREAS, the Board further finds that the upgraded sign will be the same height and width, and

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WHEREAS, the Board further finds that this is just an upgraded sign that already exists. We are just following the current procedures; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1094, does hereby **APPROVE** the **(1)** Variance from the Land Development Code (City of Lyndon Feb. 2016) section 8.3.3, table 8.3.2 Regional Center to allow a proposed replacement sign to exceed the *area* of a freestanding sign on an arterial road with 4 lanes or less with a single tenant (**Requirement: 100 sq. ft., Request: 298 sq. ft., Variance: 198 sq. ft.**) and the **(2)** Variance from the Land Development Code (City of Lyndon Dec. 2015) section 8.8.3, table 8.3.2 Regional Center to allow a proposed replacement sign to exceed the *height* of a freestanding sign on an arterial road with 4 lanes or less with one tenant (**Requirement: 24 ft., Request: 28.67 ft., Variance: 4.67 ft.**) based on the Staff Report, the presentation, and the applicant's justification statement, and **SUBJECT** to the following condition of approval:

Condition of Approval

1. Nothing shall be added to the sign without Board approval.

The vote was as follows:

Yes: Fishman, Bergmann, Howard, Allendorf, and Turner

Absent: Tharp and Jarboe

Abstain: None

No: None

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PUBLIC HEARING

CASE NUMBER 16VARIANCE1095

Request:	Variance to allow a proposed fence to exceed the maximum height in a side and rear yard in the City of St. Matthews.
Project Name:	3935 Kennison Court
Location:	3935 Kennison Court
Owner:	Mary Burkhart – Mildred's Nest LLC.
Applicant:	Mary Burkhart – Mildred's Nest LLC.
Representative:	Mary Burkhart – Mildred's Nest LLC.
Jurisdiction:	City of St. Matthews
Council District:	9 – Bill Hollander
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

01:53:28 Ross Allen presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Mary Burkhart, 3935 Kennison Court, Louisville, KY 40207
William Lammlein, 205 Maple Court, LaGrange, KY 40031

Summary of testimony of those in favor:

02:01:52 Mary Burkhart spoke regarding the request and stated that she was unaware of the height requirement when she built the fence in the back. The addition to the side yard fence will be constructed to screen her property from her neighbor's new addition to his home.

02:12:39 William Lammlein is the fence designer. He provided pictures to the Board and stated the addition to the fence will be used for screening.

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02:15:55 Deliberation

02:20:18 Ms. Burkhart stated that the four foot addition will still be lower than the neighbor's fence on the side yard. The addition will screen the applicant's entrance from the neighbor's vinyl siding and piping. The neighbor is fine with the applicant's addition to her fence.

02:26:40 On a motion by Board Member Fishman, seconded by Board Member Howard, the following resolution was adopted:

Variance #2 – Existing Fence

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect public health safety or welfare since the fence has existed since 2009 (stated by the applicant in their justification). The fence does exceed the height requirement per the Development Code (St. Matthews) but has not had any impact upon the public health, safety or welfare in that time period, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since fences are currently constructed on both adjacent neighbors as found on the northeastern and southwestern properties, heights of these fences may exceed what is required by St. Matthews Development code, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the applicant's existing fences have been in place since 2009 (as stated on the Variance justification) and no enforcement actions are known to exist for the subject site, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations since the fence has been in place since 2009 and the applicant states they were unaware of the height restrictions when the fence was constructed, and

WHEREAS, the Board further finds that the requested variance does not arises from special circumstances which that generally apply to land in the general vicinity or the same zone since the fence as found along the side yard and rear of the property exceeds the height requirements by three feet and the applicant states they were not aware of the restrictions at the time of construction in 2009, and

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WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the existing fence has been present since 2009, the applicant states that privacy concerns and protecting property value are contributing factors to why a fence exceeding 7 feet in height is required. The removal or reconstruction of the existing fence would pose a hardship if required to comply with the Development Code for St. Matthews, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant taken **subsequent** to the adoption of the zoning regulation from which relief is sought since the fence was constructed in 2009 and was not in compliance at the time of construction; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1095, does hereby **APPROVE** the Variance from the St. Matthews Development Code Article 9, section 9.1.B.1.b to allow an existing stair step fence to exceed the maximum height in the required side and rear yards to a maximum of 10 feet for a parcel zoned R-4 (**Requirement: 7 ft., Request: 10 ft., Variance: 3 ft.**) based on the Standard of Review and Staff Analysis and the presentation.

The vote was as follows:

Yes: Fishman, Bergmann, Howard, Allendorf, and Turner

Absent: Tharp and Jarboe

Abstain: None

No: None

02:35:45 On a motion by Board Member Fishman, seconded by Board Member Howard, the following resolution was adopted:

Variance #1 – Proposed (Side)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect public health safety or welfare since the proposed screen is not visible to other adjoining property owners as found along the driveway on the north. The adjacent neighbor to the northeast of the subject site has a blank wall facing the property, neighbors to the southwest would be unable to view the 10 foot stone/bamboo fence/screen since the applicants garage blocks visibility, and

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WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the proposed fence which was already a 6 foot tall stone wall is being added upon with Bamboo for approximately 4 feet, for a total height of 10 feet, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the screen is visible to only neighbors found south across Kennison Court, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations since the proposed screen as is currently constructed has a height of 6 feet for the stone wall, the addition of a four foot bamboo screen portion on the top would require the variance to allow relief for the applicant, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the screening/fencing requested exceeds the height requirement is not visible to adjacent neighbors and the neighbor along the northwestern property line has a blank wall facing the applicant's property, and

WHEREAS, the Board further finds that No, the circumstances are the result of actions of the applicant taken **subsequent** to the adoption of the zoning regulation from which relief is sought since the applicant had constructed a 6 foot portion of the screen/fence prior to the variance request but it did not exceed the height requirements, the addition to the top of the stone wall portion would require a variance and the applicant is requesting relief; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1095, does hereby **APPROVE** the Variance from the St. Matthews Development Code Article 9, section 9.1.B.1.b to allow a proposed fence to exceed the maximum height in the required side yard for a parcel zoned R-4 (**Requirement: 7 ft., Request: 10 ft., Variance: 3 ft.**) based the discussion, the presentation, and the Standard of Review and Staff Analysis.

The vote was as follows:

Yes: Fishman, Bergmann, Howard, Allendorf, and Turner

Absent: Tharp and Jarboe

Abstain: None

No: None

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CASE NUMBER 16VARIANCE1096

Request:	Variance to allow an attached rear addition in an R-5B zoned parcel within a Traditional Neighborhood Form District to encroach into the side yard setback by 1.2 ft.
Project Name:	1839 Roanoke Ave. Variance
Location:	1839 Roanoke Ave.
Area:	.14720 acres
Owner:	Mary and Carl Ryant
Applicant:	Lindsey Stoughton – LMS Design
Representative:	Lindsey Stoughton – LMS Design
Jurisdiction:	Louisville Metro
Council District:	8 – Tom Owen
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Note: Board Member Bergmann left at 11:15 a.m.

Agency Testimony:

02:39:29 Ross Allen presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Lindsey Stoughton, 816 Franklin Street, Louisville, KY 40206

Summary of testimony of those in favor:

02:43:41 Designer, Lindsey Stoughton, spoke about the request. She stated the tree on the property would not be removed when the addition is constructed. The addition will contain a bathroom, a storage closet, and a sunroom.

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02:45:22 Deliberation

02:47:35 On a motion by Board Member Fishman, seconded by Board Member Howard, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the existing principal structure is currently 1 ft. 8 in. from the eastern property line allowing an existing sidewalk to remain leading to the rear yard area, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the applicant's home is on a lot that has an eastern property line that is longer, having an acute angle (as determined from the front property line along Roanoke Ave.) resulting in a more narrow side yard for the existing home as situated on the parcel, and the proposed addition, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the additional 6 inches at the closest point, protruding into the side yard will not make the space between the house and the neighboring house impassable, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because many homes in the general vicinity have narrow spacing between structures less than the required 3 feet, meaning the addition will not be out of character, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone since many homes in the general vicinity have less than the three feet as required by the land development code, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the design of the proposed addition is in scale and approximately in line with the existing residential structure. The proposed addition will not impact the private yard area for open space, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which

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relief is sought since the existing structure had already encroached into the side yard setback prior to the request of the variance; now, therefore it be

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1096, does hereby **APPROVE** the Variance from the Land Development Code (Oct. 2016) from section 5.2.2.C, table 5.2.2 to allow an attached rear addition in an R-5B zoned parcel within a Traditional Neighborhood Form District to encroach into the side yard setback by 1 ft. 2 in. **(Requirement: 3 ft., Request: 1 ft. 8 in., Variance: 1 ft. 2 in.)** based on the Standard of Review and Staff Analysis, the discussion, and the presentation.

The vote was as follows:

Yes: Fishman, Howard, Allendorf, and Turner

Absent: Tharp, Bergmann, and Jarboe

Abstain: None

No: None

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PUBLIC HEARING

CASE NUMBER 16VARIANCE1098

Request:	Variance to allow a fence to exceed the 4 ft. height in the street side yard.
Project Name:	6928 Village Gate Trace Fence
Location:	6928 Village Gate Trace
Area:	.16980 acres
Owner:	Shelia Johnson
Applicant:	Shelia Johnson
Representative:	Shelia Johnson
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
Case Manager:	Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

An audio/visual recording of the Board of Zoning Adjustment meeting related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

02:49:30 Ross Allen presented the case (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

Sheila Johnson, 6928 Village Gate Trace, Louisville, KY 40291

Summary of testimony of those in favor:

02:55:18 Shelia Johnson spoke regarding the case and stated she was not aware of the height requirement when the fence was built. The fence was built to replace an existing fence, which was also six feet tall. The back of the fence was constructed further away from the drainage ditch than the previous fence.

02:59:55 Deliberation

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03:00:46 On a motion by Board Member Howard, seconded by Board Member Fishman, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the applicant maximized the “usability” area of the fenced in yard for family pets, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since other homes, most notably 6929 Village Gate Trace, which is also a corner lot has a fence in the street side yard of similar material and color as the subject site. The fence is not affecting or restricting the public use of the right of way nor the electric/telecommunications easement as found on the subdivision plat, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the fence is not restricting the public right of way (sidewalk) along Fernview Rd., and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the applicant was not aware of height restrictions on the street side yard. The intent of the applicant, as found in their justification was to maximize and create a beautiful, secure, and safe outdoor space for our family and pets, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone since the applicant is on a corner lot with a drainage easement found along the north/rear property. The applicant hired a professional fencing company and relied on their expertise to maximize their outdoor space, unfortunately neither applicant nor the fencing company were aware of applicable land development codes until after the completion, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since the fence serves two purposes: 1.) to maximize outdoor space and 2.) to ensure privacy and safety. The fence serves to ensure the safety of family and pets on a highly traveled corner of Village Gate Trace and Fernview Rd. A hardship would be inflicted if the applicant were required to remove or reconstruct the fence to code requirements, approximately \$7,003.00 (Please see applicant’s justification for a more detailed explanation of the cost), and

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WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the fence was constructed prior to asking for a variance for the fence height. The applicant states “the professional fencing company that installed the fence was to ensure that all permits and regulations were to be provided and adhered to in the total cost of installation” (paraphrased, please see the variance justification for a more detailed explanation), and

WHEREAS, the Board further finds that there is no public health, safety, or welfare issue or concern affecting our neighbors. The intention was to maximize the usability of our yard and create a safe, secure, and private yard for our family and our pets, and

WHEREAS, the Board further finds that the fence has the same height and characteristics of other street facing fences in the neighborhood; please see attached pictures of evidence. The fence is not affecting or restricting the public use of right of ways. See attached pictures of our property,

WHEREAS, the Board further finds that there is no public hazard or any nuisance to the public; the fence is not affecting the public right of way, sidewalk, or restricting access to public grounds in any way. See attached pictures of our property, and

WHEREAS, the Board further finds that we are a corner lot, so the rear yard is very small. We didn’t know that there were height restrictions on a back and side yard. Our intent was to maximize and create a beautiful, secure, and safe outdoor space for our family and our pets, so we mimicked the fencing structures of our neighbors. See all attached pictures; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1098, does hereby **APPROVE** the Variance from the Land Development Code (Oct. 2016) from section 4.4.3.A.1.a.i, to allow fence to exceed the 4 ft. height on a R-5 zoned parcel within a Neighborhood Form District by approximately 2 ft.

(Requirement: 4 ft., Request: 6 ft., Variance: 2 ft.) based on the Standard of Review and Staff Analysis, the applicant’s justification statement, and testimony heard today.

The vote was as follows:

Yes: Fishman, Howard, Allendorf, and Turner

Absent: Tharp, Bergmann, and Jarboe

Abstain: None

No: None

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CASE NUMBER 16CUP1036

Project Name:	None (Short Term Rental)
Location:	118 E. Ormsby Ave.
Owner:	James Deeb
Applicant:	James Deeb
Representative(s):	James Deeb
Project Area/Size:	.17 acres / 7,405 square feet
Existing Zoning District:	Old Louisville TNZD, Traditional Neighborhood
Existing Form District:	TN, Traditional Neighborhood
Jurisdiction:	Louisville Metro
Council District:	6 – David James
Case Manager:	Brian Mabry, AICP, Planning & Design Supervisor

The staff report prepared for this case was incorporated into the record. This report was available to any interested party prior to the BOZA meeting (The staff report is part of the case file maintained in Planning and Design Services offices, 444 S 5th Street).

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Agency Testimony:

03:02:25 Brian Mabry presented the case and reiterated the short term rental guideline that states the number of people per contract shall not exceed two times the number of bedrooms plus four individuals (see Staff Report and recording for detailed presentation).

The following spoke in favor of the request:

James Deeb, 118 E Ormsby Avenue, Louisville, KY 40203
Hugh Elkin, 117 E Ormsby Avenue, Louisville, KY 40203

Summary of testimony of those in favor:

03:12:25 Applicant, James Deeb, spoke regarding the case. He and his wife have lived in neighborhood for ten years and feel they have consistently made improvements to their home and the neighborhood during this time. They were able to make these improvements to their home because of the short term rental income they have received. He stated that security cameras have been installed on the exterior of the home and parking is not a problem on this street. A two car garage has been added as

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well. He believes only one neighbor is in opposition to his request. He has several family members nearby who can be available to renters if he is gone.

03:23:21 Neighbor, Hugh Elkin, stated that he has known the applicant since he moved to the neighborhood in 2007. He feels that the applicant has done a wonderful job improving the property and stated there have been no issues since the property has been used a short term rental.

The following spoke in opposition to the request:

Helga Ulrich, 112 E Ormsby Ave., Louisville, K Y 40203

Summary of testimony of those in opposition:

03:27:29 Neighbor, Helga Ulrich, stated that she has no objection to the occasional short term rental of any neighbor's house if her quality of life is not impacted. She is concerned about parking and noise and would like restrictions to be placed upon the applicant. She feels Mr. Deeb should be allowed to have a maximum of two vehicles parked in front of his property, and she does not want the vehicles parked in front of her property. She has monitored the property since March 2015 and feels that too many renters are allowed to be in the home at once. Mr. Deeb advertises online that up to 20 people can rent the home at one time, and on one occasion, she saw over 15 people in the home. She has called the police six times over noise disturbances. She does not feel that the third floor should qualify as a bedroom.

Rebuttal:

03:42:14 Mr. Deeb stated that he and his wife have done everything they can to make peace with Ms. Ulrich for the last ten years, but she is never happy with anything they do, including the improvements they have made to their home. He stated that he always attempts to approach her respectfully to discuss any issues she might have, but she often refuses to speak to him in person, and instead contacts the police when she feels it necessary. One of Ms. Ulrich's calls to the police was placed while his renters were playing cards in the screened in porch at 5:30 p.m. He was able to see the activity through his security camera and felt that they were doing nothing wrong. He does not rent his home as often as she stated, and renters are always adequately screened. He said that he will update the website to advertise the home for the correct number of people.

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03:55:15 Board Member Fishman inquired about adding a condition of approval that would limit the number of cars that could park in front of both Mr. Deeb's and Ms. Ulrich's property. Brian Davis advised that the Board does not have the authority to regulate how many people can park on a public street or where on the street they can park. Mr. Deeb stated that he already asks his renters not to park in front of Ms. Ulrich's property to avoid conflict with her, but this is not something he can enforce.

03:57:28 Deliberation

Board Member Howard does not have any concerns, but hopes that Mr. Deeb will update the website ad to show the correct number of occupants allowed.

Board Member Fishman thinks that Mr. Deeb is trying to do a good job, but feels that this is a problem between neighbors. She would also like to see the website updated with the correct number of occupants. She feels Mr. Deeb needs to try to prevent people from being noisy and to work something out with parking.

Board Members Turner and Bergmann have no objections to the request.

03:59:48 On a motion by Board Member Howard, seconded by Board Member Turner, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with the applicable policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the underlying use of the property shall remain the same (single-family dwelling and carriage house). The proposal involves allowing short term rentals within the existing single-family dwelling and carriage house, which received ARC approval in June 2016. No additional development is proposed. As such, the proposal is compatible with the surrounding land uses with respect to height, bulk, scale, intensity, traffic, noise, odor, drainage, lighting and appearance, and

WHEREAS, the Board further finds that the subject property is in a developed area where public facilities are readily available. There were not any agency comments indicating that the property's existing public facilities are inadequate to serve a short term rental, and

WHEREAS, the Board further finds that A short term rental of dwelling unit that is not the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-

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5B, R-6, R-7 or R-8A district and a short term rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.

The applicant has been informed of this requirement. If a contract exceeds 29 consecutive days, it is not subject to the short term rental regulations. Long term rental contracts are permitted on the property so long as the use remains single-family residential.

B. The dwelling unit shall be limited to a single short term rental contract at a time.

The applicant has been informed of this requirement.

C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals.

The applicant has been informed of this requirement. If the main dwelling has four bedrooms, then the maximum number of individuals permitted in the short term rental is twelve. The maximum number of individuals permitted in the carriage house short term rental is six.

D. The dwelling unit shall be a single-family residence or duplex or a condominium unit...This provision shall not be waived or adjusted.

The main building is a single-family dwelling. The second building is a carriage house that is associated with the main building.

E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.

The applicant has been informed of this requirement.

F. Outdoor signage which identifies the short term rental is prohibited.

The applicant has been informed of this requirement.

G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated.

The subject property is 33 feet in width; thus, it has credit for one on-street parking space. In addition, the newly built carriage house accommodates two off-street parking spaces.

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H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.

The applicant has been informed of this requirement.

I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6.

The applicant has been informed of this provision; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1036, does hereby **APPROVE** the Conditional Use Permit to allow short term owner-occupied rentals in the Old Louisville Traditional Neighborhood Zoning District based on the Standard of Review and Staff Analysis and the testimony and evidence provided today, and **SUBJECT** to the following condition of approval:

Condition of Approval

1. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.

The vote was as follows:

Yes: Fishman, Howard, Allendorf, and Turner

Absent: Tharp, Bergmann, and Jarboe

Abstain: None

No: None

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ADJOURNMENT

The meeting adjourned at approximately 1:30 p.m.

Chair

Secretary