

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

JANUARY 13, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30 A.M. on Monday, January 13, 2014, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present were:

David Proffitt, Chair
Rosalind Fishman, Secretary
Frederick Liggin
Betty Jarboe

Members absent:

Mike Allendorf, Vice Chair
Carrie Bauer

Staff members present were:

Emily Liu, Director
Jonathan Baker, Legal Counsel
Jessica Wethington, Public Information Specialist
Tammy Markert, Transportation Dept.
Steve Hendrix, Planning Supervisor
Jon Crumby, Planner II
Latondra Yates, Planner II
Chris Brown, Planner II
Julia Williams, Planner II
Jessica Butler, Planner I
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES:

Minutes of the meeting held on December 16, 2013

8:36:00 On a motion by Member Fishman, seconded by Member Liggin, the minutes of the meeting conducted on December 16, 2013 were approved.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members

Allendorf and Bauer.

ABSTAINING: No one.

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BUSINESS SESSION:

2013 ANNUAL BOZA REPORT

8:36:27 Steve Hendrix, Planning Supervisor, went over the handout which illustrates the types of cases the Board heard, amount and results. He said the Board spent an average of 3.5 hours per hearing.

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BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 13VARIANCE1059

Applicant/Owner: Timothy Wetzel
1628 Rosewood Avenue
Louisville, Kentucky 40204

Subject: An application for a non-hearing variance from the Land Development Code to allow a residential structure to encroach into the south side yard resultant of a rear addition to the existing house.

Premises affected: On property known as 1628 Rosewood Avenue and being in Louisville Metro.

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Regina Thomas, Associate Planner

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On December 20, 2013, Timothy Wetzel filed an application for a variation from the requirements of the Land Development Code to allow a residential structure to encroach into the south side yard resultant of a rear addition to the existing home

On January 13, 2013, at a meeting of the Board, this case was presented to the Board in open business session pursuant to KRS 100.241 and KRS 100.243. A drawing showing the premises affected and the existing structure was presented to each Board member.

DISCUSSION:

8:37:29 Steve Hendrix, Planning Supervisor, said the variance is needed due to a first and second floor addition to the existing home. He said the adjacent property owners are not opposed.

8:38:11 On a motion by Board Member Fishman, seconded by Member Liggin, the following resolution was adopted:

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CASE NO. 13VARIANCE1059

WHEREAS, the Board finds based on the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan and discussion that the applicant is requesting a variance from the Land Development Code to allow a residential structure to encroach into the south side property line resultant of a rear addition to the existing home; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed addition occurs at the rear of the existing house, in line with the existing sides of the house; and because all new construction on the west side wall will be constructed as a one hour rated fire wall, which will increase safety on that side; and because the footprint is only extended by 6 feet to the south; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed addition has been designed to match the style and details of the existing house and enhance the character of the surrounding area; and because the design extends the existing structure in a seamless manner to the rear façade and is not visible from the street and only slightly visible from the alley; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the variance will only allow the proposed addition to be constructed along the line of the existing structure; and because the new wall will be one hour rated fire wall with no openings, much more protective than the existing construction; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because it will allow the addition to be constructed in line with the existing structure, extending an existing wall and not creating a new setback; and because the applicant is not requesting an encroachment into the setback and additional distances, only to be allowed to rebuild and extend an existing rear enclosed porch; 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

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because the applicant is not responsible for the configuration of the rear of the house; and because the previous porch had been enclosed in the early 20th century; and because single board wall thickness and piece meal construction of porch floor are not energy efficient; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the existing structure is located within 3 feet of the west property line; and because the current regulations would require offsetting the new wall and extensive foundation and structural systems; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the existing home was built prior to the current regulations (1903) so the current owner has no control over the locality of the structure nor the size of the lot;

NOW, THEREFORE, BE IT RESOLVED, that the variance is hereby **APPROVED** to allow a residential structure to be 8 inches from the south property line;

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

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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BUSINESS SESSION:

CASE NO. 13VARIANCE1051

Applicant/Owner: Diane L. Yates
6206 Ree Court
Louisville, Kentucky 40216

Subject: Amendment to the December 16, 2013 minutes.

Request: An application for a variance to allow an existing garage to encroach into the required rear yard.

Premises affected: On property known as 6206 Ree Court and being in Louisville Metro.

COUNCIL DISTRICT 12—Rick Blackwell
Staff Case Manager: Jessica Butler, Planner I

On January 13, 2014, at a meeting of the Board, this case was presented to the Board in open business session pursuant to KRS 100.241 and KRS 100.243. A drawing showing the premises affected and the existing structure was presented to each Board member.

This case was originally heard on December 16, 2013, where the vote was incomplete.

The recording of this hearing will be found on the DVD of the January 13, 2014 proceedings.

DISCUSSION:

8:42:34 Jon Baker, the Board's legal counsel, said the Board needs to make another motion to approve or deny this request. He said the Board moved to approve the variance at the hearing on December 16, 2013, but died for lack of a majority, whereby, another motion should have been made to deny. The Board discussed the request which was a large metal garage built up to the right-of-way along Lower Hunters Trace. Chair Proffitt said the plan was not drawn to scale, but a permit was still issued. The applicant then hired a contractor to build the garage based on the faulty plan. Chair Proffitt said at the last hearing when the motion was made to approve, the Board added conditions of approval that the applicant work with staff's landscape architect to include landscaping to

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conceal the garage; and also to move the building limit line by minor plat. Member Liggin said he voted to approve the request because the applicant received a permit; and testified that they didn't think they were doing anything wrong. Chair Proffitt said the Board also discussed how imposing the structure is being so close to Lower Hunters Trace. Member Jarboe said the structure is "egregious" and totally out of character for the neighborhood. She said they did discuss planting extensive landscaping. Member Fishman read some of the opposing findings from the staff report dated December 16, 2013 into the record. Mr. Baker said this is staff's opinion and the Board can either agree or not. He said the reconsideration request is premature at this stage.

9:00:49 After the discussion, in open business session, Member Liggin made a motion to approve the variance with conditions of approval that the applicant work with staff's landscape architect to include landscaping to conceal the structure making it more in keeping with the general vicinity; and because there are other similar structures in the area; and a condition that the applicant change the building limit line by minor plat; and was seconded by Member Fishman.

The vote was as follows:

YES: Member Liggin.

NO: Members Jarboe, Fishman and Proffitt.

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

ABSTAINING: No one.

The motion died for lack of a majority vote.

9:10:20 On a motion by Member Jarboe, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds that based on the file of this case, the staff report, discussion and testimony including the December 16, 2013 public hearing, and the site plan that the applicant is requesting a variance from Chapter 5.4.2.D.3.a. from the Land Development Code to allow an accessory structure to encroach into the rear yard setback along Lower Hunters Trace; and

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WHEREAS, the Board finds that the requested variance will alter the essential character of the general vicinity, as the existing garage is larger than others in the area and abuts the primary collector roadway, Lower Hunters Trace; and although the applicant received a building permit, the site plan was not drawn to scale so the structure was built into the required 5 ft. setback;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **DENY** the variance to allow the existing accessory structure to be 1 foot from the rear property line along Lower Hunters Trace;

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

The vote was as follows:

YES: Members Jarboe, Fishman and Proffitt.

NO: Member Liggin.

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

ABSTAINING: No one.

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BUSINESS SESSION:

CASE NO. 13CUP1020

Applicant: Norton Healthcare
Michael Hendricks, Vice President
P.O. Box 35070
Louisville, Kentucky 40232

Owner: Norton Hospitals, Inc.
Michael A. Hendricks, Vice President
233 East Gray Street, Ste. 213
Louisville, Kentucky 40202-4291

Attorney: Frost Brown Todd, LLC
Glenn Price, Esq.
400 W. Market Street, 32nd Floor
Louisville, Kentucky 40202

Representative: Land Design & Development, Inc.
Ann E. Richard
503 Washburn Avenue, Ste. 101
Louisville, Kentucky 40222

Subject: An application for the modification of an existing Conditional Use Permit to allow an enclosed pedestrian bridge from Norton Brownsboro Hospital to connect to Norton Medical Plaza I; and to provide additional parking spaces.

Premises Affected: On property known as 4960 Norton Healthcare Boulevard and being in Louisville Metro.

COUNCIL DISTRICT 16—Kelly Downard
Staff Case Manager: Christopher Brown, Planner II

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

The recording of this hearing will be found on the DVD of the January 13, 2014 proceedings.

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CASE NO. 13CUP1020

On November 4, 2013, the applicant requested a modification of the approved Conditional Use Permit for minor site plan revisions to allow an enclosed pedestrian bridge to connect the hospital to Norton Medical Plaza I, located at 4960 Norton Healthcare Boulevard; and allow additional parking.

Other cases related to this site are filed under Case Numbers: B-14374-10, B-55-01, 8764, 8693 and 11684.

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

DISCUSSION:

8:39:32 Steve Hendrix, Planning Supervisor, said this is just a minor modification of the Conditional Use Permit to allow an enclosed pedestrian bridge which will connect the hospital to Norton Medical Plaza 1.

8:39:46 A motion was made by Member Liggin, seconded by Member Fishman and the following resolution was adopted:

WHEREAS, the Board finds that the applicant has requested a modification of an approved Conditional Use Permit to allow an enclosed pedestrian bridge to connect the hospital to Norton Medical Plaza I, located at 4960 Norton Healthcare Boulevard; and to provide additional parking spaces;

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives; and it has received preliminary approval from Transportation Review and the Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the modification of the existing Conditional Use Permit is hereby **APPROVED**, to allow revisions to the site plan to allow a proposed enclosed pedway to connect Norton Brownsboro Hospital to Norton Medical Plaza I; and to provide additional parking spaces; and is also based on the previously approved conditions of approval if applicable.

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CASE NO. 13CUP1020

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE1046

Applicant/Owner: JNC Holdings, LLC
Beverly "Lindsey" Miller, Owner
200 Loganberry Court
Louisville, Kentucky 40207

Project Name: 420 Macon Avenue

Subject: An application for a variance from the Development Code to allow a proposed fence to exceed the maximum height along the street side yard on Willis Avenue.

Premises affected: On property known as 420 Macon Avenue and being in the City of St. Matthews.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Jessica Butler, Planner I

(CONTINUED FROM DECEMBER 2, 2013)

Appearances for Applicant:
Jamie Campisano, 200 Loganberry Court, Louisville, Kentucky 40207.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 7, 2013, JNC Holdings, LLC filed an application for a variation from the requirements of the Development Code to allow a proposed fence to exceed the maximum height along the street side yard.

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NEW BUSINESS:

CASE NO. 13VARIANCE1046

This case was continued from the December 2, 2013 public hearing due to the applicant or representative not being present. The Board wanted to know more information about the style of the fence.

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the January 13, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

9:14:53 Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said this case was continued from December 3, 2013, because the applicant was not present, and the Board wanted more information about the fence style. Ms. Butler submitted a photograph to the Board of a similar design. Chair Proffitt asked Ms. Butler if the fence would be a maximum of 6 ft. in height at the tallest point. Ms. Butler said yes; and added that the request meets the standard of review.

SUMMARY OF TESTIMONY OF PROPONENTS:

9:17:12 Jamie Campisano said she and her Mom bought the property together; and wanted to improve the property. She said the fence will look nice with a scalloped top; and said there are other similar fences in the area. Member Fishman said someone called and said they didn't want anymore 6 ft. tall fences in the neighborhood. Ms. Campisano said there's a lot of traffic in the area; and the fence will protect kids playing in the backyard.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

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NEW BUSINESS:

CASE NO. 13VARIANCE1046

BUSINESS SESSION:

9:20:46 Member Liggin said he is not opposed to it. Member Jarboe said the scalloped top will look better than a traditional style fence. Chair Proffitt said he thinks a staggered style fence would look better; and has an issue with too many 6 ft. tall fences in one area.

9:23:11 After the public hearing in open business session, Member Liggin made a motion to approve the variance and was seconded by Member Fishman for discussion.

DISCUSSION:

9:24:36 Member Fishman said the motion should include that the fence look like the photograph submitted today with the scalloped top.

9:24:42 Member Liggin amended his motion to include this and was 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 Chapter 9.1.B.1.a of the Development Code to allow a proposed fence to exceed the maximum height along Willis Avenue (street side yard); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the fence will not be encroaching into any sight triangle area; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are other similar fence heights along Willis Avenue—a primary collector road; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the property owner, residents and guests will be better guarded and less visible from travelers along Willis Avenue; and

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CASE NO. 13VARIANCE1046

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are other numerous fences of this height throughout the neighborhood; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because there are numerous fences of similar heights along this street; and because a 4 ft. tall fence would not serve their purposes of gaining privacy;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed fence to be 6 ft. tall along the street side yard on Willis Avenue.

The vote was as follows:

YES: Members Jarboe, Liggin and Fishman.

NO: Member Proffitt.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE 1058

Applicant: CRM Companies
Tom Johnston
270 South Limestone
Lexington, Kentucky 40508

Owner: Bardstown 4801, LLC
Kenneth J. Sims, Member
4813 Bardstown Road
Louisville, Kentucky 40291

Representative: The Roberts Group, PSC
Harvey Johnson
239C Southland Drive
Lexington, Kentucky 40503

Project Name: Raising Cane's Restaurant

Subject: An application for a variance from the Land Development Code to allow a reduction in the north side yard.

Premises affected: On property known as 9409 Cedarlook Drive and being in Louisville Metro.

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

Appearances for Applicant:
Harvey Johnson, 239C Southland Drive, Lexington, Kentucky 40503.

Tom Johnston, 270 South Limestone, Lexington, Kentucky 40508.

Appearances Interested Party:
No one.

Appearances Against Applicant:
Tom Coakley, 6912 Cedar Lake Court, Louisville, Kentucky 40291.

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NEW BUSINESS:

CASE NO. 13VARIANCE 1058

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On December 16, 2013, CRM Companies filed an application for a variation from the requirements of the Land Development Code to allow a reduction in the north side yard.

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the January 13, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

9:26:27 Staff case manager, Julia Williams gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the variance will reduce the north side yard from 15 feet to 5 feet for a proposed restaurant and parking. She said there are other commercial uses in the area; and that one of the adjacent lots is zoned residential but not used that way. Ms. Williams said the revised detailed district development plan and waivers will be heard at the Development Review Committee on January 15, 2014. Member Fishman asked if anyone has complained about the dead trees and lack of greenery. Ms. Williams said the applicant will still be landscaping, but the width of the LBA will be decreased.

SUMMARY OF TESTIMONY OF PROPONENTS:

9:32:04 Harvey Johnson, the applicant's representative, said they will have more landscaping than what's required. Member Fishman asked Mr. Johnson to point out where they will be putting landscaping. Mr. Johnson said they will have perimeter trees, a 6 ft. shrub near the residential portion and interior landscaping with trees which will improve the property aesthetically.

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NEW BUSINESS:

CASE NO. 13VARIANCE 1058

9:34:11 Member Fishman asked what kind of restaurant it is.

9:34:25 Tom Johnson, the company's developer, said its chicken fingers, fries and coleslaw mostly. Chair Proffitt asked if there's interior seating. Mr. Johnson said yes, but they will still have a drive-thru. He said they will be doubling the canopy requirements, but just need a smaller area for plantings along the north side.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

9:26:38 Tom Coakley said he is about 200 yards from this site and said it has been a residential area for over 40 years. He asked if the existing building is being remodeled or demolished. Mr. Johnson said demolished. Mr. Coakley said the traffic is terrible in the area and that this development will make it harder for people to get out of their subdivision. He said that area residents weren't notified; and that he didn't see any sign for the public hearing until last Saturday, even though the staff report said it was posted in December. He said there were also design issues when they changed the zoning previously. Chair Proffitt said they would discuss this at DRC and that he should attend. Mr. Coakley said the Board should deny the request, since they are demolishing the existing building and could build it without the variance.

REBUTTAL:

9:42:49 Mr. Johnson said with regard to the previous plan from 2009, were going to put a building in the back. He said they don't have a lot of design prototypes; and are trying to minimize the impacts. He said the existing building is an older style office building; and that they will be heavily landscaping the property in and around it. Chair Proffitt asked why they can't adjust the doors and add a 10 ft. buffer area. Mr. Johnson said there is seating in front of the door. Chair Proffitt said they have options since they're demolishing the building; and that this should be discussed at DRC to possibly lessen the amount of the variance. Mr. Johnson said there are doors on each side with a drive-thru

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BUSINESS SESSION:

9:47:48 Member Liggin said he is concerned if everyone was not notified. Ms. Williams said first and second tier property owners were sent out notices and a sign was posted on the property within the legal timeframe. The Board discussed other issues regarding traffic and the design, which will be heard at DRC.

9:50:58 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Liggin, 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 applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance to reduce the required 15 ft. side yard to 5 ft. along the north property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because a reduction in the side yard will not affect the public because the adjacent site is also a non-residential use to which the public has limited access; and because the adjacent property is zoned R-4 but hasn't been used residentially but by a utility company (South Central Bell); and; and because the remaining residential properties will not be affected; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because non-residential uses typically do not have setbacks when adjacent to other non-residential uses; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the reduction in the side yard will not affect the public because side yards are not common between two non-residential uses; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are typically no side yard requirements between two non-residential uses; and

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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 request arises from the zoning of the adjacent site, not the use; and because typically, the use and zone are coordinated but because the adjacent use is a utility it is allowed in any zone; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because they would not be allowed the full use of the site for their restaurant; and because other similar uses when adjacent to non-residential to other non-residential uses would not have to provide a side yard setback;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a reduction in the north side yard to be 5 feet.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE 1061

Applicant/Owner: Eric Michaelson
2650 Kings Hwy.
Louisville, Kentucky 40205

Representative: Gary Dukes, Land Surveyor
3602 Briarglen Lane
Louisville, Kentucky 40220

Subject: An application for a variance from the Land Development Code to allow a proposed addition to encroach into the required street side yard setback along Tyler Lane.

Premises affected: On property known as 2650 Kings Highway and being in the City of Kingsley.

COUNCIL DISTRICT 8—Tom Owen
Staff Case Manager: Jessica Butler, Planner I

Appearances for Applicant:
Gary Dukes, 3602 Briarglen Lane, Louisville, Kentucky 40220.

Nick Kayrouz, 3812 Warner Avenue, Louisville, Kentucky 40207.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On December 23, 2013, Eric Michaleson filed an application for a variation from the requirements of the Land Development Code to allow a proposed addition to encroach into the required street side yard setback along Tyler Lane.

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JANUARY 13, 2014

NEW BUSINESS:

CASE NO. 13VARIANCE 1061

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the January 13, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

10:06:36 Staff case manager, Jessica Butler gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant is requesting a variance so they can build an addition to the existing residence. She said the lot is unique, stating that it's a pie-shaped corner lot. Ms. Butler said it meets the standard of review; and will look nice where located.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:09:10 Gary Dukes, the applicant's land surveyor, said he will adjust the building limit line. He said there really is no other area to build an addition since the front of the house faces Kings Highway. He said they want to build a two bedroom, one bath addition.

10:10:25 Nick Kayrouz said the addition will be compatible with the existing home, including the rooflines.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

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10:12:30 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Liggin, 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 applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.3.1 of the Land Development Code to allow a proposed addition to encroach into the required street side yard setback from the required 25 ft. to 18 ft. along the west side of the intersection of Tyler Lane and Kings Highway; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the addition will not be encroaching into any sight triangles or right-of-way; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the addition has elevations that are consistent with the design of the existing residence; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because even though it is encroaching into a street side yard, it is the least conspicuous location for the addition; and because sight distance for pedestrian and automobile travel will not be affected; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations from which relief is sought because the location of the addition is the best area available to look compatible with the house and the neighborhood; 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 subject property is a corner lot and has primarily front yards; and the lot is pie shaped which doesn't allow for many options for the addition; 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 or create an unnecessary hardship on the applicant because the subject property doesn't allow room for an addition without the variance;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed addition to the existing house to be 18 feet from the west side of the intersection of Tyler Lane and Kings Highway.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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JANUARY 13, 2014

NEW BUSINESS:

CASE NO. B-18027-12

Applicant/Owner: Sami Kameri
7606 Fort Sumter Court
Louisville, Kentucky 40214

Representative: Milestone Design Group
Mark Madison
108 Daventry Lane
Louisville, Kentucky 40223

Project Name: Kameri Auto Service Center

Subject: An application for a variance from the Land Development Code to allow encroachments into the required 50' middle and 25' outer zones of the Type B stream buffer.

Premises affected: On property known as 800 Outer Loop and being in Louisville Metro.

COUNCIL DISTRICT 13—Vicki Aubrey Welch
Staff Case Manager: Christopher Brown, Planner II

Appearances for Applicant:
Mark Madison, 108 Daventry Lane, Louisville, Kentucky 40223; who submitted a colored plan into the record.

Sami Kameri, 7606 Fort Sumter Court, Louisville, Kentucky 40214.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

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NEW BUSINESS:

CASE NO. B-18027-12

On August 27, 2013, Sami Kameri filed an application for a variation from the requirements of the Land Development Code to allow encroachments into the required 50' middle and 25' outer zones of the Type B stream buffer.

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the January 13, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

10:14:06 Staff case manager, Chris Brown gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing a 2,750 sq. ft. building for an automotive repair shop outside of the 25' streamside buffer along the Southern Ditch. The building and a large portion of the parking area will encroach into the required 50' middle and 25' outer zones of the 100' Type B stream buffer. He said the request will allow for proper maneuvering on the site; and has received preliminarily approval from MSD. Mr. Brown pointed out the stream on the PowerPoint slide, stating that there's an established pattern of encroachments into the stream buffer. Member Jarboe asked why MSD is allowing these encroachments. Mr. Brown said MSD is mostly concerned with encroachments into the 25 ft. stream buffer area, and if they do encroach, need a variance from MSD.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:19:42 Mark Madison, the applicant's representative, said the area they want to build in is the only space on the property due to the outer zone being near Outer Loop; MSD and LG&E easements. Mr. Madison said their request meets 4 out of 5 of the guidelines; and said even if the building was 300 feet away from the stream buffer would still be in compliance with the Land Development Code.

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CASE NO. B-18027-12

10:22:46 Sami Kameri said he owns the property. Member Jarboe asked if he would be leasing the property. Mr. Kameri said no, that it will be for his business. Member Jarboe asked if he realized the limitations when he bought the property. Mr. Madison interjected and said he didn't realize the magnitude of the restrictions when he purchased the property.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

10:24:48 Member Jarboe said she thinks people should quit encroaching into the streams.

10:25:19 After the public hearing in open business session, on a motion by Member Liggin, 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, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 4.8, Table 4.8.1 of the Land Development Code to allow encroachments into the required 50' middle and 25' outer zones of the Type B stream buffer; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since it maintains the 25' streamside buffer and does not encroach further than the pattern of encroachment on the property to the east; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since many lots existing in the general vicinity have similar encroachments at the same distance from the Southern Ditch with similar uses ranging from automotive repair to manufacturing; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the proposed use maintains the 25' streamside buffer on the subject property and minimizes the encroachment to areas needed for the building and parking; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the direct 25' streamside buffer is maintained on the site and the established pattern of encroachments in the vicinity is followed by the proposal; 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 almost the entire site is located within the 100' Type B stream buffer; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the stream buffer along the Southern Ditch creates a situation where almost the entirety of the site falls within the 100' Type B stream buffer and any development would require an encroachment into the designated stream buffer; 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 Southern Ditch was more recently categorized as a Type B stream buffer;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed building and parking to be 25 feet from the Southern Ditch.

The vote was as follows:

YES: Members Liggin, Fishman and Proffitt.

NO: Member Jarboe.

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

ABSTAINING: No one.

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JANUARY 13, 2014

NEW BUSINESS:

CASE NO. 13VARIANCE1054

Applicant/Owner: Michters Distillery, LLC
Flora Durante
245 Fifth Avenue, Suite 1402
New York, NY 10016

Representative: Qk4
Ashley Bartley
1046 East Chestnut Street
Louisville, Kentucky 40204

Attorney: Bingham Greenbaum Doll, LLP
Jeff McKenzie
3500 National City Tower/101 S. 5th Street
Louisville, Kentucky 40202

Project Name: M-2 Distillery

Subject: An application for variances from the Land Development Code to allow the proposed still house and grain elevator to exceed the maximum 45-ft. height; and abandon a Conditional Use Permit for hazardous and objectionable uses (plastic manufacturing) under Docket No. B-87-99.

Premises affected: On property known as 2351 New Millenium Drive and being in the City of Shively.

COUNCIL DISTRICT 3—Mary Woolridge
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Ashley Bartley, Qk4, 1046 East Chestnut Street, Louisville, Kentucky 40204.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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JANUARY 13, 2014

NEW BUSINESS:

CASE NO. 13VARIANCE1054

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On November 25, 2013, Michters Distillery, LLC filed an application for a variation from the requirements of the Land Development Code to allow a proposed still house and grain elevator to exceed the maximum 45-ft. height; and abandon a Conditional Use Permit for Hazardous and Objectionable Uses (plastic manufacturing) under Docket No. B-87-99.

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the January 13, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

10:27:43 Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant is remodeling an existing warehouse to become a liquor distillery, including the addition of a 1,900 sf. for a mill house, still house, future stairwell and barrel lift. She said other outbuildings, such as grain silos and the grain elevator will be part of the outdoor renovations; with existing parking and loading areas being used. Ms. Yates said two variances are needed and the abandonment of an existing Conditional Use Permit (Docket No. B-87-99). She said there is some residential but the proposal will not be encroaching into this area; and that she supports the granting based on the regulations.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:31:41 Ashley Bartley, the applicant's representative, presented a PowerPoint presentation to the Board. She said the height variances are needed due to the silos; and that there are other tall structures in the industrial area. She

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said her client wants to expand their successful bourbon operation. Member Jarboe asked what was at the site previously. Ms. Bartley said she believes a plastic manufacturing plant.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition to the request.

BUSINESS SESSION:

10:36:22 Member Liggin said the bourbon distillery use is better than a plastic manufacturing plant.

10:36:38 After the public hearing in open business session, on a motion by Member Liggin, 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 applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting variances of Section 5.2.5.C.4.b of the Land Development Code (LDC) to allow the proposed still house and grain elevator to exceed the maximum height to 65 feet; and to Abandon an existing Conditional Use Permit filed under Docket No. B-87-99 for Hazardous and Objectionable Uses (plastic manufacturing plant); and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the structures are proposed internal to the lot, will not impede sight on adjacent right-of-way, and is proposed within an existing industrial area; and because the structures will be architecturally sound; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the proposed structures are part of the reuse of an existing industrial lot; and because many other buildings in the area

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are taller than the 45 ft. maximum height; and because the addition will not be visible from the public right-of-way along New Millennium Drive; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because there are similar industrial uses adjacent to the property; and because the structures that require variances are adjacent to the railroad and more industrial uses on the other side; and because the closest residential is a trailer park about 500 feet away; and because the immediate neighbors have similar building functions: Brown Foreman to the south and Parallel Products to the north; and because the structures will be architecturally sound; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the requirements of the zoning regulation given the nature of the proposed development; and because the proposed height does not pose any sight issues for vehicles or planes; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity because custom equipment would have to be specially designed for the process of the required alcohol content; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because observing the required height would require custom equipment that may not meet the needs of the facility;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variances; and does hereby **APPROVE** the abandonment of the Conditional Use Permit filed under Docket No. B-87-99.

The variances allow:

1. The proposed still house to be 65 feet tall.
2. The proposed grain elevator to be 65 feet tall.

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The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13VARIANCE1055

Applicant: Kroger Mid-South Division
Danny Lethco
1600 Ormsby Station Court
Louisville, Kentucky 40223

Owner: Swifty Oil Company, Inc.
1515 Tipton Street
Seymour, Indiana 47274

Representative: Heritage Engineering
Scott Hannah/John Campbell
642 S. 4th Street
Louisville, Kentucky 40202

Project Name: Kroger Fuel Station

Subject: An application for a variance from the Land Development Code to allow the proposed fuel station to exceed the maximum 15-ft. setback; a waiver to allow the proposed canopy and drive lanes to be located in front of the principle structure; a waiver to reduce the required 30-ft Parkway Buffer along US Hwy. 42 to 5 ft. and to not provide the required 3-ft. berm; and a waiver to reduce the required 15-ft. Parkway Buffer along Holiday Manor Center from 15 ft. to 5 ft. and to not provide the required 3-ft. berm.

Premises affected: On property known as 4946 US Highway 42 and being in the City of Northfield.

COUNCIL DISTRICT 7—Ken Fleming
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
John Campbell, Heritage Engineering, 642 S. 4th Street, Louisville, Kentucky 4020; who presented a PowerPoint presentation to the Board.

Danny Lethco, Kroger Mid-South Division, 1600 Ormsby Station Court, Louisville, Kentucky 40223.

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Appearances Interested Party:

No one.

Appearances Against Applicant:

No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On November 25, 2013, Danny Lethco with Kroger Mid-South Division filed an application for a variation from the requirements of the Land Development Code for a variance and three waivers.

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the January 13, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

10:39:13 Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant is requesting one variance and three waivers for the demolition of an existing fuel station to rebuild a modern fuel station with a kiosk. The Board questioned compatibility and parkway guidelines.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:45:13 John Campbell, the applicant's representative, said their requests will allow them to build a new Kroger fuel station with kiosk. He said the existing gas station is outdated, so this will be an improvement. He said they comply with the amount of landscaping required; and will have landscaping along Brownsboro

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Road. He said the kiosk façade will be stone with columns. Member Liggin questioned the signage. Mr. Campbell said the signage will comply with the regulations. Chair Proffitt said they could change the design to lessen the amount of the waiver. Mr. Campbell said it's similar to what exists in the area.

10:53:41 Danny Lethco with Kroger's, said they have been working with Swifty for over a year now and just recently executed the contract. He said a new gas station will be good for the customers in front of the Holiday Manor Shopping Center. Member Jarboe asked if they will be utilizing the underground gas tanks. Mr. Lethco said no.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

10:55:43 Member Jarboe said it looks good to her. Jon Baker, the Board's legal counsel, said that not all of the findings for one of the waivers were in support, and suggested using the applicant's justification if approving.

VARIANCE:

10:58:00 After the public hearing in open business session, on a motion by Member Liggin, 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 applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.4.C.3.a. of the Land Development Code to allow the proposed fuel station to exceed the maximum 15-ft. setback to 34.3 feet; and

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WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare because the variance will allow for reconstruction of an outdated fuel center to a clean and modern fuel center to be operated and maintained by Kroger, a recognized grocery chain; and because the development is proposed in a manner that does not appear to impede sight distance; and because circulation and access are also subject to Public Works approval; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity as the proposed building setback will be compatible with nearby businesses while implementing high standards of design associated with the Kroger grocery chain; and because the site is currently being used as a gas station; and because the property will be enhanced with landscaping as required for the subject property; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public as the proposed fuel center will update a currently outdated fuel center while enhancing both the corridor of Hwy 42 with a modern, clean and well maintained facility and provide a service to Kroger customers; and because the development will not impede sight distance; and because the circulation and access are also subject to Public Works approval; and the development will also be buffered from adjacent residential by providing required plantings; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations given the limited lot area and that it is already being used as a gas station; 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 of the limited lot area and the use of the lot as a fuel station; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the lot is currently used as a gas station; and because the applicant will update the lot with a more modern fuel center with landscaping;

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NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed fuel station to exceed the maximum 15-ft. setback to 34.3 feet.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

WAIVER—Canopy and Drive Lanes to be located in front of the principle structure:

10:59:54 After the public hearing, in open business session, on a motion by Member Liggin, 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 applicant's justification, the PowerPoint presentation(s); the evidence submitted, testimony and discussion at the public hearing, the applicant is requesting a waiver of Section 5.5.1.A.3.a. of the Land Development Code to allow the proposed canopy and drive lanes to be located in front of the principle structure; and

WHEREAS, the Board finds that the waiver will not adversely affect adjacent property owners because of the similar commercial nature of adjacent properties to the north, south and east; and because residential development to the west will be buffered through providing the required plantings; and because landscaping will be installed along Brownsboro Road, where no landscaping currently exists today; and

WHEREAS, the Board finds that the waiver will not violate the Comprehensive Plan, as the proposed building setback will be compatible with nearby businesses while implementing the high standard of design associated with the Kroger grocery chain; in addition to being an anchor use for the nearby

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community who use the existing Kroger grocery store; and because the property will be enhanced with landscaping as required; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because of the relatively small size of the lot for use as a fuel station and the fact that the lot is currently used as one; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because of the relatively small size of the lot for use as a fuel station and the fact that the lot is currently used as one; and because the requested waivers will allow the property to be rebuilt with a modern new facility that would otherwise not occur due to the general location of the property and limited uses; in addition, the strict application of the provisions would limit the reuse of the property;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to allow the proposed canopy and drive lanes to be located in front of the principle structure.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

WAIVERS—Reduce Parkway Buffers and not provide 3-ft berms:

11:01:11 After the public hearing, in open business session, on a motion by Member Liggin, 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 applicant's justification, the PowerPoint

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presentation(s); the evidence submitted, testimony and discussion at the public hearing, the applicant is requesting a waiver of Section 10.3.5.A.1., Table 10.3.1 of the Land Development Code to reduce the required 30-ft Parkway Buffer along US Hwy. 42 to 5 feet and not provide the required 3-ft. berm; and to reduce the required 15-ft Parkway Buffer along Holiday Manor Center from 15-ft. to 5 ft. and to not provide the required 3-ft. berm; and

WHEREAS, the Board finds that the requested waivers will not adversely affect adjacent property owners because the waiver will allow for reconstruction of an outdated fuel center to a clean and modern fuel center to be operated by Kroger; and as part of the reconstruction, landscaping will be installed along Brownsboro Road where no landscaping exists today; and

WHEREAS the Board finds that the waivers will not violate the Comprehensive Plan, as it will not alter the essential character of the general vicinity because the proposed setback will be compatible with nearby businesses while implementing the high standards of design associate with the Kroger grocery chain; in addition to be an anchor use for the nearby community who use the existing Kroger, the property will be enhanced with landscaping as required by the Land Development Code; and

WHEREAS, the Board finds that the extent of the waivers from the regulation is the minimum necessary to afford relief to the applicant as the proposed fuel center will still allow the property to be enhanced with landscaping as required while improving a currently outdated and closed fuel center with enhancements along the US Hwy. 42 corridor with a modern, clean and well maintained facility while providing a service to Kroger customers and area residents; and because the lot area space is limited;

NOW, THEREFORE, BE IT RESOLVED, that the Board does here **GRANT** the waivers.

The waivers allow:

1. Reduce the Parkway Buffer to 5 feet along US Highway 42 and to not provide the required 3 ft. berm.

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2. Reduce the Parkway Buffer to 5 feet along Holiday Manor Center and not provide the required 3 ft. berm.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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JANUARY 13, 2014

NEW BUSINESS:

CASE NO. 13CUP1021

Applicant(s): Norton Healthcare
Michael Hendricks, Vice President
P.O. Box 35070
Louisville, Kentucky 40232

Owner(s): MSR Medical, LLC
Kenneth L. Payne, President
471 West Main Street, Suite 203
Louisville, Kentucky 40202

Attorney: Frost Brown Todd, LLC
Glenn Price, Esq.
400 W. Market Street, Suite 3200
Louisville, Kentucky 40202

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

Subject: An application for a Conditional Use Permit to allow a proposed outpatient surgery center.

Premises affected: On property known as 4950 Norton Healthcare Boulevard and being in Louisville Metro.

COUNCIL DISTRICT 16—Kelly Downard
Staff Case Manager: Christopher Brown, Planner II

Appearances for Applicant:
Glenn Price, Attorney, 400 W. Market Street, Ste. 3200, Louisville, Kentucky 40202; who presented a PowerPoint presentation to the Board.

Ann Richard, Land Design & Development, 503 Washburn Avenue, Ste. 101, Louisville, Kentucky 40222.

Appearances- Interested Parties:
No one.

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Appearances Against Applicant:

No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On December 9, 2013, Norton Healthcare filed an application for a Conditional Use Permit to allow an outpatient surgery center.

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the January 13, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

11:03:00 Staff case manager, Chris Brown, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing to convert the first floor of the existing 86,500 SF medical office building to an outpatient surgery center. The second and third floors will remain as medical office use. He said the proposed pedestrian bridge will encroach into the required 30' setback, so if approved, the Board will have to modify this requirement under Chapter 4.2.29. Mr. Brown concluded that the proposal will meet the parking requirements; and meets the standard of review.

SUMMARY OF TESTIMONY OF PROPONENTS:

11:07:19 Glenn Price, the applicant's attorney, presented a PowerPoint presentation for the Board. He discussed the pedestrian bridge which will connect the hospital to Medical Plaza I; and said they've moved the parking closer to the building so people don't have to walk as far. Member Liggin asked

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about the parking. Mr. Price said it's only a 6% increase. Mr. Price said they met with the Wolfpen Branch Neighborhood Association twice and that they don't have any issues.

11:13:14 Ann Richard with Land Design and Development designed the plan, said the existing detention basin will accommodate the runoff from the addition. She said the parking will only increase the impervious surface by 6%; and that they will be providing more tree canopy than what's required. Ms. Richard said there's a large concrete walkway which will be removed and replaced with greenspace.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

11:18:23 Chair Proffitt said he doesn't have any issues with the proposal; and that the healthcare building designs are the best in Louisville. He said this applicant has gone far and above what's required.

11:20:11 After the public hearing in open business session, on a motion by Member Liggin, 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 applicant's justification, the evidence and testimony at the public hearing, that the applicant is requesting a Conditional Use Permit from Chapter 4.2.29 of the Land Development Code to allow a proposed outpatient surgery center; and

WHEREAS, the Board finds that the property is within a Regional Center Form District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because the applicant has addressed all concerns regarding compatibility, community form, and circulation with the

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proposed landscaping, screening, buffering, building design and multi-modal connectivity; and because each issue has specific incorporated within the development plan with the inclusion of landscape buffers, internal and property perimeter sidewalk network, and proper circulation on the property for pedestrian and automobile access; and specifically complies with Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy 1.B.6 (Regional Center), which advocates a mixture of high intensity uses, including service uses, such as medical facilities, within the Regional Center; and because the proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.1, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.12, 3.22, 3.24 and 3.28; whereby the existing Norton Medical Plaza I was approved by the Planning Commission, Docket No. 9-55-01 and 10-9-02, and no changes to the exterior building are proposed; and because the outpatient surgery facilities will be appropriately located in immediate proximity with the facilities of Norton Brownsboro Hospital, which will be connected to the medical plaza building by an enclosed pedestrian bridge; and because no expansion will occur into residential areas; and because the proposed use will cause no nuisance such as nuisances from odor, air quality, excessive traffic (surgeries will be scheduled by appointment), noise, lighting, or adverse visual impacts; and because the development plan shows changes in parking and access layout to improve patient parking and access; and because the proposal conforms to Circulation Guideline 7 and all applicable Policies thereunder, including Policies 7.1, 7.3, 7.10 and 7.16; and because the Department of Public Works and Assets approved the proposal on November 20, 2013; and because the site enjoys immediate transit service availability via Transit Authority of Louisville ("TARC") Route 25 ("Oak Street – Westport Road"); and because the proposed access to and through the site will be safe and efficient for vehicles and pedestrians consistent with Norton's intention to provide safe access for its patients; and because the site provides adequate parking and utilizes join and cross access; and because the proposal conforms to Bicycle, Pedestrian and Transit Guideline 9 and all applicable policies adopted thereunder, including Policies 9.1 and 9.2; and because sidewalks are available for patients and medical personnel; and because a bicycle storage rack is located on the exterior of the building; and because transit service via TARC, Route 25 serves the building; and because the proposal conforms to Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 10.1, 10.4, 10.10 and 10.11; and because the Metropolitan Sewer District ("MSD") approved the proposal on November 20, 2013; and because MSD's approval is based on the full

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development potential to the entire watershed and the impact of the proposal on the watershed; and because MSD's approval indicates that drainage systems will accommodate the "through" drainage capacity in a manner acceptable to MSD, and that peak stormwater run-off rates or volumes post development will be consistent with regional and watershed plans; and because the proposal conforms to Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 12.1, 12.3 and 12.8 because the proposal will cause no additional traffic to or from the site because outpatient surgeries will be scheduled by appointment; and because TARC Route 25 serves Norton Healthcare Boulevard at the front of the site; and because the Louisville Air Pollution Control District approved the proposal on November 15, 2013; and because the proposal conforms to Infrastructure Guideline 14 and all applicable Policies adopted thereunder, including Policies 14.2, 14.3, 14.4, 14.6 and 14.7 because the site is adequately served by existing utility providers; and because an adequate supply of potable water and water for fire-fighting purposes serves the site; and because the site is served by the sanitary sewer service facilities of MSD; and because utility easements have been provided to allow maintenance and repair consistent with the needs of each utility; and because the proposal conforms to Community Facilities Guideline 15 and all applicable Policies thereunder, including Policy 15.9 because the site is adequately served by the services of the Worthington Fire Protection District; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area which consist of a mix of office and commercial uses with several medical and hospital facilities in the vicinity; and because the scale and use of the proposed outpatient surgery facility will be within the existing medical office buildings that follow the guidelines of the Regional Center and comply with all regulations regarding height, intensity and building design; and because the proposed outpatient surgery expansion is consistent with existing Norton Healthcare facilities in Old Brownsboro Crossings; moreover, the proposal is compatible with the general character of the area and will be no additional traffic, noise, odor, drainage, dust, lighting or appearance impacts from this proposal; and

WHEREAS, the Board finds that all necessary public facilities are adequate to serve the proposed use; and because the plan has received preliminary approval from MSD and Public Works; and because the existing public facilities such as

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transportation, sanitation, water, sewer, drainage, and emergency services are adequate to serve the proposed outpatient surgery expansion; and

WHEREAS, the Board finds that the proposal complies with one of the two specific standards of Chapter 4.2.29 of the Land Development Code, where the Board does hereby modify listed requirement B since the enclosed pedestrian bridge connecting the adjacent hospital and outpatient surgical center will be located less than 30' from the northern property line; and because all signage will be in compliance with the Land Development Code; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION**.

The conditions are as follows:

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 an outpatient surgery center facility without further review and approval by the Board.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1017

Applicant/Owner: Pinnacle Beaumont, LLC
John Miranda
P.O. Box 43957
Louisville, Kentucky 40253

Attorney: Bardenwerper, Talbott & Roberts
Nick Pregliasco, Esq.
1000 N. Hurstbourne Pkwy., 2nd Floor
Louisville, Kentucky 40223

Representative: Rich Design Studios
Kevin Rich
3923 Shelbyville Road, Ste. 206
Louisville, Kentucky 40207

Subject: An application for a Conditional Use Permit to allow a home for the infirm and aged in a PRD zoning district; and various waivers.

Premises affected: On property known as 8604 Old Bardstown Road and being in Louisville Metro.

COUNCIL DISTRICT 22—Robin Engel
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Nick Pregliasco, Attorney, 1000 N. Hurstbourne Parkway, 2nd Floor, Louisville, Kentucky 40223; who presented a PowerPoint presentation to the Board.

Mike Wagner, Leo Brown Group, LLC, 301 E. Carmel Drive, Carmel, Indiana 46032.

Kevin Rich, Rich Design Studios, 3923 Shelbyville Road, Louisville, Kentucky 40207.

Appearances- Interested Parties:
No one.

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Appearances Against Applicant:

No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On November 26, 2013, John Miranda with Pinnacle Beaumont, LLC filed an application for a Conditional Use Permit to allow a home for the infirm and aged in a PRD zoning district; and various waivers.

On January 13, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the January 13, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

11:24:28 Staff case manager, Jon Crumby, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing a senior living community which will have 110 residents, 32 garden homes and 5.9 acres of open space. Mr. Crumby said the applicant is requesting Item A be modified from the specific standards because Buildings B and C will be approximately 15 feet from the north property line and Building D will be approximately 28 feet from the north property line. Buildings G, H and I will be approximately 15 feet from the south property line. The applicant's justification for this is on page 22 in the staff report. He said the applicant has also changed the landscape plan and will need to explain what will be done. Mr. Crumby said the applicant held a neighborhood meeting; and that the request complies with the Land Development Code and Cornerstone 2020.

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SUMMARY OF TESTIMONY OF PROPONENTS:

11:31:53 Nick Pregliasco, the applicant's attorney, presented a PowerPoint presentation to the Board. He said the previous development never transpired due to the downturn in the economy. He said there is a large demand for senior living communities in Louisville. Mr. Pregliasco discussed the design, photometric lighting and the footprint of the development.

11:40:55 Mike Wagner, the developer, said the independent living homes will be in the front and that the main building will be for assisted living. He said there will be activities for all residents to enjoy utilizing the main building. He said they are very excited about the project. Member Jarboe asked Mr. Pregliasco if there are single family homes to the rear. Mr. Pregliasco said yes—on smaller lots.

11:45:47 Kevin Rich, with Rich Design Studios, discussed the overall plan and the landscape waivers. He said the main facility is oriented toward the west front portion of the property and adjacent to the Louisville Water Company. He said they tried to create a more open greenspace area in the center of the development. Mr. Rich said they worked with the topography the best they could and will still be meeting the landscape requirements with regard to the tree canopy, VUA and ILA.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

CONDITIONAL USE PERMIT:

11:50:40 After the public hearing in open business session, on a motion by Member Jarboe, seconded by Member Fishman, the following resolution was adopted:

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WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentations, the applicant's justification, the evidence, testimony and discussion at the public hearing, that the applicant is requesting a Conditional Use Permit to allow a home for the infirm and aged in a PRD zoning district; and

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

WHEREAS, the Board finds that the proposed development of the site will be consistent and compatible with the character of the area; and because the site is located in a Neighborhood Form District with residential uses in the immediate vicinity that will not be impacted by the use; and because adequate transportation infrastructure exists to accommodate the use; and because open space will be created and maintained on the site; and because the subject site is not located in the 100-year floodplain and there are no streams, wetlands or waterways on the site; and because all necessary utilities, including water, electricity, telephone and cable are available, the development has adequate supply of potable water and water for firefighting purposes and is served by the Fern Creek Fire Protection District; and because landscaping requirements will be met with the exception of requested waivers and an alternative landscape plan; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area including terms of scale, intensity, lighting, drainage and appearance; and

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the conditional use permit except Item A, under Section 4.2.39.A of the Land Development Code, where Buildings B and C will be approximately 15 feet from the north property line and Building D will be approximately 28 feet from the north property line; and Buildings G, H and I will be approximately 15 feet from the south property line instead of the required 30 ft. setback; and also because of this, the applicant will be amply landscaping the property; and the Board will hereby modify this specific standard;

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines,

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principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION** and the Board further will modify Item A of the specific requirements regarding the required 30 ft. setback.

The conditions are as follows:

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 home for the infirm or aged without further review and approval by the Board.
3. The Board approved the landscape plan as described at the hearing on January 13, 2014, and as shown under Tab 7 of the applicant's handout.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

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WAIVERS—Reduce the required 25-ft Landscape Buffer Areas along the north, south and west property lines:

11:53:16 After the public hearing, in open business session, on a motion by Member Jarboe, 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 applicant's justification, the evidence, testimony and discussion at the public hearing, that the applicant is requesting a waiver of Section 10.2.2 and 10.2.3 to reduce the required 25 ft. wide LBA to 15 feet along the north, south and west property lines; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since landscape planting requirements will be met; and because the new Conditional Use Permit (CUP) site plan, in order to accommodate the access, circulation plan with round-about, retention pond and substantial open space, necessitates that several of the patio home style independent living buildings be located closer than otherwise required to some adjoining residential properties; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 9 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate; and because Guideline 3, Policies 21 and 22 is for appropriate transitions between uses that are substantially different in scale, intensity and density and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk outdoor storage and visual nuisances; and because Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered; and because Guideline 13, Policy 4, is to ensure appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas; and because Guideline 13, Policy 6 is to ensure

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appropriate screening and buffering to mitigate adjacent incompatible uses; and because the intent of landscape buffer areas are to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the site plan would otherwise have to be materially altered to substitute some of the referenced design features, and possibly even buildings, to add perimeter buffer space; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the plans would have to be materially altered, and what has been filed is the end product of multiple iterations of this plan—the one filed being the best design and, by all accounts, not offensive to and supported by the neighbors; and because the applicant has incorporated other design measures that exceed the minimums by including a large open space area and all landscape planting requirements will be met;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waivers.

The waivers allow:

1. The Landscape Buffer Area along the north property line will be 15 feet.
2. The Landscape Buffer Area along the south property line will be 15 feet.
3. The Landscape Buffer Area along the west property line will be 15 feet.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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WAIVERS—Easement overlap of more than 50% along the north, south and west property lines:

11:55:39 After the public hearing, in open business session, on a motion by Member Jarboe, 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 applicant's justification, the evidence, testimony and discussion at the public hearing, that the applicant is requesting waivers of Chapter 10.2.4.B, to allow the required 15 ft. sewer and drainage easement to encroach beyond the maximum distance of 50% of the 15 ft. Landscape Buffer Area (LBA) and allow a 100% overlap; and

WHEREAS, the Board finds that the requested waivers will not adversely affect adjacent property owners because the new CUP site plan, in order to accommodate the access, circulation plan with round-about, retention pond and substantial open space, necessitates that several of the patio home style independent living buildings be located closer than otherwise required to some adjoining properties and that, as a consequence, the LBA/utility overlap exceeds 50%; and

WHEREAS, the Board finds that the waivers will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 9 is for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate; and because Guideline 3, Policies 21 and 22 is for appropriate transitions between uses that are substantially different in scale, intensity and density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage and visual nuisances; and because Guideline 3, Policy 24 states that parking, loading, and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered; and because Guideline 13, Policy 4 is for ensuring appropriate landscape design standards for different land uses within

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urbanized, suburban, and rural areas; and because the intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associate with impervious surfaces, and to filter air borne and water borne pollutants; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the site plan would need to be altered to substitute some of the design features and possibly structures to add space for the easements and buffers; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) because of inclusion of a large open space area and all landscaping requirements will be met; and because the proposed site plan is the best design and, by all accounts, not offensive to and supported by neighbors;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waivers to allow an easement overlap of 100% along the north, south and west property lines.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

WAIVER: Reduction in the Scenic Corridor setback along Old Bardstown Road:

11:57:19 After the public hearing, in open business session, on a motion by Member Jarboe, seconded by Member Fishman, the following resolution was adopted:

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WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentations, the applicant's justification, the evidence, testimony and discussion at the public hearing, that the applicant is requesting a waiver from Table 10.3.2, to reduce the required 50 feet scenic corridor along Old Bardstown Road to 30 feet; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the overall site plan includes significant open space and more significant setbacks along Old Bardstown Road frontage, and it is just the tip of this building that encroaches; and because the required landscaping will be provided along Old Bardstown Road; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 9 is for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate; and because Guideline 3, Policies 21 and 22 is for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage and visual nuisances; and because Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered; and because Guideline 13, Policy 4 is to ensure appropriate landscape design standards for different land uses within urbanized, suburban and rural areas; and because Guideline 13, Policy 7 is for the protection of the character of parkways and scenic byways and corridors through standards for buffers, landscape treatment, lighting and signs; and because the intent of the parkway development standards is to protect existing scenic and aesthetic qualities, to ensure a quality visual experience on developing corridors and to protect and improve the visual experience on established corridors; and

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WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because ample buffering and landscaping will be provided along Old Bardstown Road; and because it is a modest encroachment of just a portion of "Building F" garden home-style independent living building, and no additional encroachment into the Scenic Corridor is needed; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land because the front area would need to be redesigned which could cause a reduction in open space and number of units; and because if the applicant moved "Building F" back into the site, would reduce the central open space and probably cause the curvatures of the two roads leading off of the central round-about to not functionally work;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to reduce the required scenic corridor setback to 30 feet along Old Bardstown Road.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: No one.

WAIVER—Omit the Landwood Way extension into the subject site:

11:58:46 After the public hearing, in open business session, on a motion by Member Jarboe, 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 applicant's justification, the evidence, testimony and discussion at the public hearing, that the applicant is requesting a waiver of

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Section 7.3.10.B and 5.9.2.A.1.a.i to omit the Landwood Way extension into the subject site; and

WHEREAS, the Board finds that the waiver will not adversely affect adjacent property owners because the subdivision to the south has independent access to Old Bardstown Road; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 9 is for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate; and because Guideline 3, Policies 21 and 22 is for appropriate transition between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust, dirt, litter, junk, outdoor storage and visual nuisances; and because Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered; and because Guideline 13, Policy 4 is for ensuring appropriate landscape design standards for different land uses within urbanized, suburban and rural areas; and because the intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because access to the north, to the extent possible, is being provided to the Reserve at Glenmary; and because it is only this access to a different form of development to the south that is proposed for elimination because it is not needed and really would require significant modification of this proposed continued care facility for the infirm and aged; and because the site plan would need to be altered to substitute some of the design features and possibly structures to extend Landwood Way; 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 because a significant modification of the proposal would be needed; and because the proposed continued care facility might not work at all if this Landwood Way connection is required;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to omit the Landwood Way extension into the subject site.

The vote was as follows:

YES: Members Jarboe, Liggin, Fishman and Proffitt.

NO: No one.


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

ABSTAINING: No one.


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The meeting adjourned at 12:00 p.m.



CHAIRPERSON



SECRETARY