

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

MAY 4, 2015

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, May 4, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

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

Members absent:

No one

Staff members present:

Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Joe Reverman, Planning Supervisor
Sherie Long, Landscape Architect
Jon Crumie, Planner II
Beth Stevenson, Management Assistant
Sue Reid, Management Assistant

*Member Jarboe left the meeting at 11:09 a.m.

The following cases were heard:

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APPROVAL OF MINUTES

APRIL 20, 2015 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting held on April 20, 2015.

YES: Members Allendorf, Fishman, Jarboe, Liggin, Proffitt, Tharp and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

**MINUTES OF THE MEETING
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MAY 4, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1013

Request: Variances
Project Name: CVS
Location: 9420 Seatonville Road
Owner: First Federal Savings Bank
Applicant: Five Star Development
Representatives: Miller Wihry MWG LLC & Bardenwerper Talbott and Roberts
Jurisdiction: Louisville Metro

COUNCIL DISTRICT 19—Julie Denton
Staff Case Manager: Julia Williams, AICP, Planner II

**(THE APPLICANT IS REQUESTING THAT THIS CASE BE CONTINUED TO
THE JUNE 1, 2015 AGENDA)**

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the May 4, 2015 public hearing proceedings.

Agency Testimony:

Staff Case Manager, Julia Williams said the applicant would like to continue this case until it has gone before the Planning Commission.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **JUNE 1, 2015**.

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NEW BUSINESS:

CASE NO. 15VARIANCE1013

YES: Members Allendorf, Fishman, Jarboe, Liggin, Proffitt, Tharp and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1014

Request: Variance to allow a proposed building to exceed the maximum setback; and four waivers.

Project Name: Springdale Automotive--Eastwood

Location: 16119 Eastwood Cut Off Road

Owners: Springdale Properties, LLC
Kurt & Karen Shelton
18919 Long Grove Way
Louisville, KY 40245

Applicant: Lichtefeld, Inc.
Paul Lichtefeld, Jr.
908 S. 8th Street
Louisville, KY 40203

Representative: Wyatt, Tarrant & Combs
Cliff Ashburner, Esq.
500 W. Jefferson Street, Ste. 2700
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 19—Julie Denton

Staff Case Manager: Sherie' Long, Landscape Architect

(CONTINUED FROM APRIL 6, 2015)

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

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NEW BUSINESS:

CASE NO. 15VARIANCE1014

Agency Testimony:

Staff Case Manager, Sherie' Long, said Eastwood Village Council has asked that this case be continued to a later date to allow the Kentucky Transportation Cabinet (KYTC) to review the location of the requested entrance. District 19, Councilmember Julie Denton requested more information about the proposal; and Jerry Miller, State Representative, asked that this case be continued to May 18, 2015, so he could speak to the committee.

DISCUSSION:

Chair Proffitt said he would like to hear the presentation and take testimony before the Board decides if they want to continue this case.

Agency Testimony:

Sherie' Long presented the case to the Board and discussed the case summary, standard of review and staff analysis from the staff report. She said the requests do not comply with Cornerstone 2020, the Land Development Code or the Eastwood Village Neighborhood Plan, except for one of the waivers. She said her original staff report didn't include the review for the Eastwood Village Neighborhood Plan. Ms. Long also discussed the traffic analysis/accident report submitted by the applicant, and that there have been several accidents in front of this business.

The following spoke in favor of this request:

Cliff Ashburner, Attorney.

Summary of testimony of those in favor:

Cliff Ashburner, attorney for the applicant, said that KYTC approved the entrance; and doesn't agree with continuing this case. He said the current staff report is completely different than what was originally written.

Chair Proffitt asked Ms. Long if the Eastwood Village Plan includes Shelbyville Road. Ms. Long said yes.

The following spoke neither for nor against the request:

No one.

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

No one.

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The following spoke in opposition to this request:

Deb Deloir, Chair of the Eastwood Village Council, 902 Flat Rock Road, Louisville, KY 40245.

Summary of testimony of those in opposition:

Deb Deloir, Chair of the Eastwood Village Council, said they would like to have time to review the traffic report, and see if the Kentucky Transportation Cabinet might reconsider approving the entrance off Shelbyville Road.

Deliberation:

The Board determined this case should be continued, since the staff report changed; to allow staff time to review the traffic analysis; and because other interested parties requested a continuance.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **MAY 18, 2015** and to be **first on the agenda**. A traffic analysis will be submitted to staff for review and to include in a revised staff report.

YES: Members Fishman, Jarboe, Liggin, Proffitt and Bergmann.

NO: Members Allendorf and Tharp.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1047

Request: Conditional Use Permit to allow an indoor recycling center in an EZ-1 Zoning district.

Project Name: TWB, LLC, d/b/a Rusty Rooster

Location: 7400 Grade Lane

Owner: Leann, LLC
Tom Brooks, Jr.
7400 Grade Lane
Louisville, KY 40219

Applicant: Same as owner

Representative: Joseph E. Blandford, Jr., Attorney
1387 S. Fourth Street
Louisville, KY 40208

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 13—Vicki Welch

Staff Case Manager: Jon Crumbie, Planner II

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

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

Agency Testimony:

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing an indoor recycling center for vinyl and metal products. The applicant will be remodeling the existing structure to facilitate the use. Mr. Crumbie said the

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NEW BUSINESS:

CASE NO. 14CUP1047

applicant provided the license to operate from the Jefferson County Waste Management District.

The following spoke in favor of this request:

Joseph Blandford, Attorney.

Tom Brooks, Jr., Applicant.

Summary of testimony of those in favor:

Joseph Blandford, the applicant's attorney, said they are not planning on being open on Sunday, but might eventually. He said the recycling business will not include cars or anything with fluids. He said their request complies with the Land Development Code and Cornerstone 2020.

Tom Brooks, the applicant, said the vinyl siding and metal will be collected at the subject property, and taken elsewhere to process. He said the area has mostly industrial commercial businesses.

The following spoke neither for nor against the request:

Todd Phillips, 7100 Grade Lane, Louisville, KY 40213.

William Gatti, 7301 Grade Lane, Louisville, KY 40213.

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

Todd Phillips said he has a recycling business on Grade Lane and had to widen it to 3 lanes to accommodate all the truck traffic. He said the applicant should do the same thing, especially if the scale is close to Grade Lane which will back up traffic and be dangerous. He said he is not opposed to the business.

William Gatti said he also has a business on Grade Lane and said it's a very congested industrial park with multiple accidents. He also had to make road improvements and added another scale, moved the parking to the rear and added landscaping. He said people drive on Dixie Highway like it's an expressway; and that there have been fatal accidents here.

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DISCUSSION:

Member Fishman asked how many trucks travel this stretch. Mr. Gatti said several hundred trucks per day (400 to 500). Mr. Gatti said that recycling is one of the largest businesses going on today.

Mr. Crumbie said the applicant would have to dedicate right-of-way for the potential widening of Grade Lane. He said the Transportation Department approved the plan.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Rebuttal:

Mr. Blandford said his client has 20 or more acres and have ample space for what they want to do. He said the business will not impede traffic on Grade Lane.

Mr. Brooks pointed out the entrance and showed the Board where the trucks will go. He agreed to a condition of approval to add signage for the entrance and exit, in addition to submitting a plan showing the traffic patterns (staff will review); and to submit a landscape plan to staff for approval.

Board of Zoning Adjustment Deliberation:

Member Allendorf said he would have to recuse himself do to a conflict of interest regarding this property. Chair Proffitt said it would be safer if they widen Grade Lane like the other two businesses. Member Jarboe asked why this applicant was not asked to do this. Mr. Crumbie said that they applied for a change in zoning, which is more restrictive. The Board discussed the three additional conditions of approval.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the May 4, 2015 public hearing proceedings.

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CASE NO. 14CUP1047

Conditional Use Permit to allow an indoor recycling center in an EZ-1 zoning district:

On a motion by Member Liggin, seconded by Member Tharp, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow an indoor recycling center in an EZ-1 zoning district; and

WHEREAS, the Board finds that the proposal meets all applicable policies of the Comprehensive Plan because lighting will not be added; and the existing surface will be replaced with asphalt; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area because the subject site is located in an industrial area that has a mix of uses; and because all industrial uses in the area have similar scale, intensity, traffic, noise and lighting; and

WHEREAS, the Board finds that the proposal has the necessary facilities (both on and off-site) such as transportation, sanitation, water, sewer, drainage etc. to serve the proposed use because Public Works and MSD have both reviewed and preliminarily approve the plans; and

WHEREAS, the Board finds that the proposal complies with the specific standards required to obtain the conditional use permit; and because the hours of operation will be from 8:00 a.m. to 4:30 p.m., Monday through Friday; and 8:00 a.m. to 2:00 p.m. Saturday and Sunday; and because the applicant received the required license to operate from the Jefferson County Waste Management District (SWR 20.0);

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow an indoor recycling center in an EZ-1 zoning district on the site **SUBJECT** to the following Conditions of Approval:

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CASE NO. 14CUP1047

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 indoor recycling center without further review and approval by the Board.
3. A landscape plan shall be submitted to staff for review and approval.
4. The applicant shall provide a traffic plan illustrating the patterns of the traffic flow in the area.
5. Signage will be installed indicating where the entrance and exit are.
6. The hours of operation shall be from 8:00 a.m. to 4:30 p.m. Monday through Friday; and 8:00 a.m. to 2:00 p.m. on Saturday and Sunday.

YES: Members Fishman, Jarboe, Liggin, Proffitt, Tharp and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: Member Allendorf.

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NEW BUSINESS:

CASE NO. 15CUP1012

Request: Conditional Use Permit to allow a home for the infirm and aged in an R-4 zoning district.

Project Name: Chamberlain Senior Care

Location: 5217 Chamberlain Lane

Owner: Chamberlain, LLC
Tim Martin, Attorney & Agent for owner
4800 Springdale Road
Louisville, KY 40241

Applicant: Chamberlain Senior Care, LLC
4901 Hunt Road, Suite 300
Cincinnati, OH 45242

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

Representative: Mindel Scott & Associates
Kent Gootee
5151 Jefferson Blvd.
Louisville, KY 40219

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 16—Kelly Downard

Staff Case Manager: Jon Crumbie, Planner II

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

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

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CASE NO. 15CUP1012

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

Agency Testimony:

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing a home for the infirm and aged that will consist of two, 2-story buildings and one, 3-story building. The total units will be 162. Mr. Crumbie said this facility will be located near another recently approved healthcare facility; and is close to the new Norton Hospital, medical clinics, restaurants and shopping.

The following spoke in favor of this request:

Bill Bardenwerper, Attorney.

Brad Pauling, 5239 Whitegate Court, Dublin, OH 43016.

Kent Gootee, Representative.

Oscar Jarnicki, 10025 Trail Lane, Cincinnati, OH 45249.

Diane Zimmerman, Jacobs Engineering Group, Inc., 11940 W. Highway 42, #1, Goshen, KY 40026.

Summary of testimony of those in favor:

Bill Bardenwerper, the applicant's attorney, said this site has been in several lawsuits due to the previous apartment complex development. He said the detention basin was also subject to litigation but is part of this property. Mr. Bardenwerper said his client withdrew the change in zoning request for the apartments and now would like approval of a Conditional Use Permit to develop a senior retirement community.

Brad Pauling said there will be different living units considering the tenant's capabilities or needs. He said it will have an internalized courtyard for socializing, restaurants, salon, health center etc.

Kent Gootee, the applicant's representative, said the proposed landscaping will be cohesive to what exists; and will include more street trees and plantings. He said water runoff will go into their detention basin, so there will be no issues with

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Norton Commons. Mr. Gootee also discussed the proposed pedestrian connections, sidewalks and road improvements.

Oscar Jarnicki said the proposed development will benefit people who live in Norton Commons, so they can continue to live in the same area. He said it will be a “state of the art facility” including aquatic therapy and other hospitable services.

Diane Zimmerman, the applicant’s engineer, discussed the traffic generation report for number of trips generated from Chamberlain Lane.

The Board was concerned about people cutting through one of the access points.

Mr. Bardenwerper agreed to a condition of approval, that they will install a sign along Chamberlain Lane (Access #1) that will state the entrance is for employee and delivery access only. Mr. Bardenwerper also said, if this doesn’t work, they will install a gate since it would be unsafe for the residents.

The following spoke neither for nor against the request:

Alice Gunnison, President of the Wolf Pen Branch Neighborhood Group, 7849 Wolf Pen Branch Road, Prospect, KY 40059.

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

Alice Gunnison said the Wolf Pen Branch Neighborhood group was a party to the lawsuit with regard to the detention basin, but is still concerned about drainage onto their property.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one spoke in opposition.

MSD Agency Representative:

Pat Barry, MSD, 600 W. Liberty Street, Louisville, KY 40202.

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Summary of testimony MSD:

Pat Barry, with MSD, said the applicant is meeting the requirements for detention and water quality.

Board of Zoning Adjustment Deliberation:

Member Allendorf said the applicant will need to contact the local fire department if they decide to install a gate. The Board overall liked the proposal.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the May 4, 2015 public hearing proceedings.

Conditional Use Permit to allow a home for the infirm and aged in an R-4 zoning district:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and the applicant's justification statement, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow a home for the infirm and aged in an R-4 zoning district; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because it will be compatible with the character of the area; and because the Neighborhood Form District is characterized by predominantly residential uses that vary from low to high density and blend compatibly into the existing landscape and neighborhood areas; and because the Neighborhood Form District contains diverse housing types in order to provide housing choices for differing ages and incomes, as well as provide for accessibility and connectivity between adjacent uses and neighborhoods; and because the site will incorporate low level lighting and adequate landscaping and buffering from adjoining properties; and

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NEW BUSINESS:

CASE NO. 15CUP1012

WHEREAS, the Board finds that the proposal is compatible with the general character of the area of the surrounding neighborhoods in terms of height, scale, intensity, lighting and appearance; and

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

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the conditional use permit requested with regard to setbacks and signage;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a home for the infirm and aged in an R-4 zoning district on the site **SUBJECT** to the following Conditions of Approval:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
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 and aged without further review and approval by the Board.
3. A sign shall be posted along Access #1 that states “Employee and Delivery Access only.”

YES: Members Allendorf, Fishman, Liggin, Proffitt, Tharp and Bergmann.

NO: No one.

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

ABSTAINING: No one.

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The meeting adjourned at 11:25 a.m.

CHAIRPERSON

SECRETARY