

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

NOVEMBER 17, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:40 A.M. on Monday, November 17, 2014, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

David Proffitt, Chairperson
Mike Allendorf, Vice Chairperson
Frederick Liggin
Dean Tharp

Members absent:

Rosalind Fishman, Secretary
Betty Jarboe
Paul Bergmann

Staff members present:

Jim Mims, Director, Develop Louisville
Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
Sherie Long, Landscape Architect
Jon Crumby, Planner II
Latondra Yates, Planner II
Beth Stevenson, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

NOVEMBER 3, 2014 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on November 3, 2014.

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Bergmann, Jarboe and Fishman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14DEVPLAN1134

Request: Variances and waivers from the Land Development Code and a Category 3 Plan for the construction of a parking garage.

Project Name: J.D. Nichols Parking Garage

Location: 220 S. Preston Street

Owner: Nucleus: Kentucky's Life Sciences and Innovation Center, LLC
Kathleen M. Smith
103 Grawemeyers Hall—U of L
Louisville, KY 40292

Applicant: NTS Development Company
Matthew A. Ricketts
600 North Hurstbourne Pkwy., Ste. 300
Louisville, KY 40222

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

Representative: Dunaway Engineering, Inc.
Kim Dunaway
3404 Stony Spring Circle
Louisville, KY 40220

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy
Staff Case Manager: Latondra Yates, Planner II

(CONTINUED FROM NOVEMBER 3, 2014)

Due to a conflict of interest, Member Proffitt recused himself.

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CASE NO. 14DEVPLAN1134

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).

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 November 17, 2014 public hearing proceedings.

DISCUSSION:

Member Proffitt recused himself due to a conflict of interest. There was not a quorum, so the applicant agreed to continue this case to December 1, 2014.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 14DEVPLAN1134 to **DECEMBER 1, 2014** and will be placed first on the agenda under new business.

YES: Members Allendorf, Liggin and Tharp.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bergmann, Jarboe and Fishman.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1100

Request: Variance and a Waiver from the Land Development Code to allow proposed attached signs to exceed the maximum area and amount.

Project Name: Darrell Griffith Athletic Center

Location: 3628 Virginia Avenue

Owner: West End School, Inc.
Robert Blair
3628 Virginia Avenue
Louisville, KY 40211

Applicant: Same as owner

Representative: Commonwealth Sign Co.
Clara Bowman
1824 Berry Blvd.
Louisville, KY 40215

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 1—Attica Scott

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 variance and waiver

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will allow 3 attached signs to exceed the maximum area on the west façade of the athletic center under construction. He said the applicant wants the public to know that the West End School is part of the Darrell Griffith Athletic Center.

The following spoke in favor of this request:

Clara Bowman.

Summary of testimony of those in favor:

Clara Bowman, the applicant's sign representative, said they want 3 signs along the west façade of the athletic structure since it is facing the I-264 right-of-way. She said they will not be removing any trees.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

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 November 17, 2014 public hearing proceedings.

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Variance to allow proposed attached signs to exceed the maximum area on the west façade of the athletic structure under construction:

After the public hearing in open business session, on a motion by Member Allendorf, 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 and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the applicant's justification, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance to allow 3 attached signs (maximum amount 2) to exceed the maximum area of 230 ft. to 350 ft. on the west façade of the athletic center under construction; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed attached signs will allow better identification of the school and athletic center from I-264; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed attached signs will be designed in a way to compliment the structure and existing signage; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed attached signage will allow motorists to locate the school and athletic structure along the adjacent stretch of I-264; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the proposed attached signs will allow clear, concise identification; 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 site has limited visibility from I-264 due to the existing tree canopy; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the school could not be identified from I-264; and

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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 site has limited visibility from I-264 due to the existing tree canopy;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow 3 signs along the west façade to be 350 feet.

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bergmann, Jarboe and Fishman.

ABSTAINING: No one.

Waiver to allow 3 attached signs on the west façade of the athletic structure facing I-264 right-of-way:

After the public hearing in open business session, on a motion by Member Allendorf, 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 applicant's justification, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver to allow 3 attached signs (requirement is 2 signs) on the west façade of the athletic structure facing the I-264 right-of-way; and

WHEREAS, the Board finds that the requested waiver will not violate specific guidelines of Cornerstone 2020, because Guideline 3, Policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate; and because the waiver will not violate guidelines of Cornerstone 2020 due to the difference in elevation and no residential uses to the west of the site; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant to allow for the proper identification of the school and athletic structure; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring a reduction in the number of signs which would eliminate identification of the school and athletic structure;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow 3 attached signs on the west façade of the athletic structure facing the I-264 right-of-way.

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Bergmann, Jarboe and Fishman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1092

Request: Variance from the Land Development Code to allow a proposed garage addition to encroach into the required side yard.

Project Name: Garage Addition

Location: 1517 South 4th Street

Owners: Blair Butler & Regina Edwards
1517 South 4th Street
Louisville, KY 40208

Applicant: Same as Owners

Representative: William M. Welch Architects
Barb Quinn
961 Baxter Avenue
Louisville, KY 40204

Jurisdiction: Louisville Metro

**COUNCIL DISTRICT 6—David James
Staff Case Manager: Sherie' Long**

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

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant is proposing to construct an addition on an existing one story garage to

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accommodate three vehicles. The applicant received a Certificate of Appropriateness on October 16, 2014. Chair Proffitt asked if the roof/gutter overhang will encroach into the adjacent property.

The following spoke in favor of this request:

Barb Quinn.

Summary of testimony of those in favor:

Barb Quinn, the applicant's representative, agreed to a condition of approval that the roof/gutter overhang will be no closer than the subject property line.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Chair Proffitt reiterated the condition of approval.

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After the public hearing in open business session, on a motion by Member Allendorf, 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

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review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, Section 5.4.E.6, of the Land Development Code to allow a proposed garage addition to encroach into the required side yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the addition is not obstructing views of vehicular or pedestrian traffic; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the new garage addition will be constructed with block that matches the existing garage material; and because it will be in keeping with the scale of existing garages located in the area; and because the applicant has received a Certificate of Appropriateness from the Landmarks Commission; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the new addition is being constructed with materials which are already being used in the neighborhood; and because the addition is being added to an existing structure to replace a parking pad; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the roof overhang and foundation of the addition will be located within the subject property; and because the addition will not extend any further into the back yard than the current façade of the existing garage; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because this is an addition onto an existing garage and in order for the garage to accommodate a third vehicle, the addition will be encroaching into the 2 ft. setback; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed addition could not be constructed to accommodate three vehicles; and

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WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant subsequent to the adoption of the zoning regulation because the applicant is requesting a variance prior to the construction;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed garage addition to be 6.5 inches from the side property line **ON CONDITION** that the roof/gutter overhang will be no closer than the subject property line.

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Bergmann, Jarboe and Fishman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1099

Request: Variance from the Land Development Code to allow proposed signage to exceed the maximum area.

Project Name: hhgregg Signage

Location: 4901 Outer Loop

Owner: GBT Realty Corp.
Mary Ann Howell
9010 Overlook Blvd.
Brentwood, TN 37027

Applicant: Imageone Industries
Tom Gianni & Lisa Sawchyn
677 Dunksferry Road
Bensalem, PA 19020

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 24—Madonna Flood

Staff Case Manager: Sherie' Long

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

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said hhgregg is proposing a new retail outlet in the Jefferson Commons shopping center. The building is setback over 500 feet from the street; and would allow the sign to be 634.74 sf or 134.74 sf over the maximum area allowed (500sf).

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The following spoke in favor of this request:

Tom Gianni, Imageone Industries.

Summary of testimony of those in favor:

Tom Gianni said the signage style and size is a standard prototype for their stores.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

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 November 17, 2014 public hearing proceedings.

Variance to allow proposed signage to exceed the maximum area:

After the public hearing in open business session, on a motion by Member Liggin, seconded by Member Allendorf, 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

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hearing that the applicant is requesting a variance from Chapter 8, Section 3.3.3.A.2, Table 8.3.2 of the Land Development Code to allow proposed signage to exceed the maximum area to 634.74 square feet (maximum requirement 500 sq. ft. or a variance of 134.74 sq. ft.); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the attached signage is located on the façade of the building which is setback over 500 feet from the street; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the store is located in a shopping center where all the retail outlets will be providing attached signage for their businesses; and because this area has other established businesses located in other shopping centers which also provide similar attached signage; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the signage is being constructed with materials which are already being used in the area and is similar to signage already established; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the attached signage is similar to signage already used for other existing businesses in the area; and

WHEREAS, the Board finds that the variance arises from special circumstances because the attached signage is calculated by using a total area instead of individual area of each letter; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed signage would not be allowed; and because the façade of the building is setback over 500 feet from the street, so smaller signage would make the business less visible and more difficult for people to see where the entrance is; 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 applicant is requesting a variance prior to installing the signage;

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CASE NO. 14VARIANCE1099

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow attached façade signage to be 634.74 square feet.

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Bergmann, Jarboe and Fishman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1097

Request: Variance from the Land Development Code to allow a fence to exceed the maximum 48-inch height in the street side yard along Paramid Road.

Project Name: Fence height

Location: 5411 Gaskin Court

Owner: Michael Beinlein
5411 Gaskin Court
Louisville, KY 40229

Applicant: Same as owner

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 13—Vicki Aubrey Welch
Staff Case Manager: Latondra Yates, 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, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant already built the fence and received a citation. She said he has problems with intruders on his property since he has a pool; and that his neighbor's fence was the same height.

The following spoke in favor of this request:

Michael Beinlein, the owner, who submitted letters of support into the record.

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Summary of testimony of those in favor:

Michael Beinlein, the owner, said he didn't know he needed a permit since his neighbor had the same fence height. He said he wanted it to look uniform; and submitted letters of support into the record.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Allendorf said he frequents this area and that people probably build taller fences due to criminal activity.

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 November 17, 2014 public hearing proceedings.

After the public hearing in open business session, on a motion by Member Liggin, seconded by Member Allendorf, 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 Section 4.4.3.A.1.a.i. of the Land Development Code to allow an existing fence to exceed the maximum height of 48 inches to 96 inches; and

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WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because it was erected to keep intruders out of the yard, some of whom were using the swimming pool; 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 in the neighborhood; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the fence appears to be situated in a manner that will not impede sight distance or negatively affect the view of neighboring properties; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are other fences in the neighborhood that have similar heights; 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 owner has had problems with intruders using his pool; and

WHEREAS, the Board finds that the strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because it would require removal of the fence or costly modifications;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the fence to be 96 inches along the Paramid Road property line

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bergmann, Jarboe and Fishman.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1012

Request: A Conditional Use Permit from the Development Code to allow off-street parking; and a variance from the Development Code to allow the proposed parking to encroach into the required 25 ft. rear yard.

Project Name: Marshall Parking Lot

Location: 4603 Shelbyville Road

Owner: Marshall Realty Company
Phillip H. Marshall Jr., President
P.O. Box 7066
Louisville, KY 40257

Applicant: Same as owner

Attorney: Deborah Bilitski
Wyatt Tarrant & Combs
500 W. Jefferson Street
Louisville, KY 40202

Representative: Amin Omidy
Gresham Smith & Partners
101 S. 5th Street, #1400
Louisville, KY 40202

Jurisdiction: St. Matthews

COUNCIL DISTRICT 7—Ken Fleming

Staff Case Manager: Latondra Yates, Planner II

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

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

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

Agency Testimony:

Staff case manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the CUP is for the construction of a 46 space parking area to serve the adjacent commercial building. She said she received a petition and letters of opposition. She said the applicant needs to submit a crossover and shared parking agreement. Chair Proffitt asked if the applicant received preliminary approval by MSD. Ms. Yates said yes.

The following spoke in favor of this request:

Deborah Bilitski, Attorney.

Amin Omidy.

Summary of testimony of those in favor:

Deborah Bilitski, the applicant's attorney, said the parking is needed for the existing two businesses and that one is vacant. She said the owner is having trouble leasing the vacant business due to lack of parking. Ms. Bilitski agreed to various conditions of approval.

Amin Omidy, the applicant's other representative explained the details of the parking area including the addition of a culvert to mitigate flooding issues, additional landscaping and lighting. He said they are including a sidewalk along the front and agreed to this as a condition of approval.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

Robert Downs, 100 Stonehenge Drive, Louisville, KY 40207; who submitted information into the record.

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CASE NO. 14CUP1012

Theresa Prestigiacomo, 202 Biltmore Road, Louisville, KY 40207.

Nancy Church, 4717 Chiswick Court, Louisville, KY 40207; who submitted information into the record.

Summary of testimony of those in opposition:

Robert Downs said he, and 72 other area residents are opposed to paving over the last remaining greenspace in the area. He said there is already ample parking for the businesses; and said if approved will create more cut thru traffic into their neighborhood. He asked the Board to either deny the request or reduce the amount of space between their homes and this lot; and to not remove any of the existing mature trees.

Theresa Prestigiacomo said additional access will create more cut thru traffic into their subdivision. She said although the applicant is installing another culvert, feels skeptical that it will help the flooding problem.

Nancy Church, Executive Director, U.S. Green Building Council, said she doesn't see the need for more parking especially since the area floods and will increase pollutants that will go into the watershed. She said the applicant should eliminate 20 spaces and the new access onto Stonehenge Drive.

Rebuttal:

Ms. Bilitski said the additional access will make it safer due to bottlenecking; that they are providing five times more buffering than required and that more than 50% of the site will remain greenspace.

Deliberation:

Member Tharp said the applicant should reduce the number of spaces along the north property line. Member Liggin agreed, stating that the applicant should do more to accommodate the adjacent property owners. Chair Proffitt discussed conditions of approval the Board should include.

Member Allendorf made a motion to approve the Conditional Use Permit with several conditions of approval, but the motion died for lack of a second.

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DISCUSSION:

Member Liggin said he would move forward if the applicant scaled it back more as the opposition suggested.

Back Into Public Hearing:

Mr. Downs and Ms. Church said they should remove 10 of the parking spaces. Ms. Prestigiacomo said she would like the access onto Stonehenge removed.

Ms. Billitski said her client agreed to remove 6 of the parking spaces in the CUP area.

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 November 17, 2014 public hearing proceedings.

Conditional Use Permit (CUP) to allow an off-street parking area:

On a motion by Member Allendorf, 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, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit under Section 4.2.40 of the Development Code to allow an off-street parking area; and

WHEREAS, the Board finds that the proposed CUP complies with the Cornerstone 2020 Comprehensive Plan because the proposed parking lot will be compatible with surrounding properties, which are substantially commercial in use and character; and because the existing green space along the north side of the existing commercial building will be maintained and additional landscaping will be installed in this area to provide more buffering between the existing development and the residential property; and because the applicant has agreed to remove 6 parking spaces from the CUP area totaling 40 parking spaces; and because the applicant agreed to redesign the landscaping and trees to be more evenly dispersed along the north property line; and because landscaping will also be provided in and around the new parking area to screen it from view and

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enhance the aesthetic quality of the site; and because the existing paved ditch on the property will be piped and adequately sized to handle the stormwater runoff from the proposed development to ensure there are no negative impacts to surrounding properties; in addition to providing parking for an adjoining retail building for which insufficient parking exists, the proposal will also result in improved traffic circulation and safety because it will enable vehicles to utilize the signalized intersection at Stonehenge Drive and Shelbyville Road; and

WHEREAS, the Board finds that the proposal is compatible with surrounding uses because the parking lot will be located within a commercial area off Shelbyville Road; and because the applicant has agreed to remove 6 parking spaces from the CUP area totaling 40 parking spaces; and because the applicant agreed to redesign the landscaping and trees to be more evenly dispersed along the north property line; and because landscaping will also be provided in and around the new parking area to screen it from view and enhance the aesthetic quality of the site; and because lighting will be provided according to the applicant's PowerPoint presentation; and the plan has received preliminary approval from Transportation Planning and MSD; and

WHEREAS, the Board finds that necessary facilities both on and off-site, such as transportation, sanitation, water, sewer, drainage, emergency services etc. because the plan has been preliminarily approved by Transportation Planning and MSD; and because the existing paved ditch on the property will be piped and adequately sized to handle the stormwater runoff from the proposed development to ensure there are no negative impacts to surrounding properties; in addition to providing parking for an adjoining retail building for which insufficient parking exists, and because the proposal will also result in improved traffic circulation and safety because it will enable vehicles to utilize the signalized intersection at Stonehenge Drive and Shelbyville Road; and

WHEREAS, the Board finds that the proposed CUP complies with the listed requirements for off-street parking set forth in Article 15 of the Development Code because the proposed parking area is located within 200 feet of the property on which the building to be served is located; and because the existing green space on the north side of the existing retail building will be preserved, and perimeter and interior landscaping will be provided in accordance with the Development Code to adequately buffer the proposed parking lot from the residential property to the north; and because the applicant agreed to remove 6

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of the parking spaces on the CUP portion of the site to 40 parking spaces; and because the minimum front, street side and side yards required in the district are maintained free of parking; and because all driveways and the area used for the parking of vehicles will be surfaced with a hard and durable material and be properly drained; and because the proposed drainage plan will be reviewed and approved by MSD and the City of St. Matthews to ensure that there will be no negative impacts to surrounding properties; in addition, the proposal will require the approval of the U.S. Army Corps of Engineers and the Kentucky Division of Water; and because the proposed CUP parking area is only intended to serve "Building A" as labeled on the plan; and because the approval of all plans and specifications for the improvement, surfacing and drainage for said parking area will be obtained from the Louisville Metro Department of Public Works, MSD and

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow an off-street parking area 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 an off-street parking area without further review and approval by the Board.
3. Any lighting on the property shall be done as shown in the applicant's PowerPoint presentation.
4. The applicant shall revise the plan to show a sidewalk from the new parking area where it connects with the existing sidewalk as shown on the landscape plan.
5. The landscape plan under Tab 4 of the applicant's exhibit book shall be redesigned so that proposed landscaping and trees are more evenly dispersed for shade and to mitigate parking lot heat reflection and approved at staff level.

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6. The application shall submit a crossover and shared parking agreement to staff.
7. The applicant shall revise the site plan submitted on October 28, 2014, as well as the parking exhibit, removing 6 parking spaces along the north property line for a total of 40 parking spaces in the CUP portion of the site.

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Bergmann, Jarboe and Fishman.**

ABSTAINING: No one.

Variance to allow the proposed parking to encroach into the required 25-ft. rear yard to 0 feet:

On a motion by Member Allendorf, 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 evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.4.2.D. of the Land Development Code to allow proposed parking to encroach into the required 25-ft. rear yard to 0 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the parking lot encroachment would be adjacent to the building it serves; and because access and circulation have been reviewed by and received preliminary approval from the Transportation Planning Review team; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the parking lot would be located within a largely commercial area off Shelbyville Road, adjacent to the commercial building it serves; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the plan has been reviewed for drainage and traffic and received preliminary approval; and because the parking lot will provide the required landscape buffers; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because it would allow the parking lot to function closer to the building it serves; 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 of the lot configuration and size and need to provide the required parking;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed parking to be 0 feet from the rear east property line.

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Bergmann, Jarboe and Fishman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14APPEAL1005

Request: An Appeal of a Refusal issued by the Department of Codes and Regulations concerning the change from one non-conforming use (automobile repair garage) to another non-conforming use (storage).

Location: 944 South Sixth Street

Appellant: Matcok Properties, LLC
Henry Sanders, Member
211 Mockingbird Gardens Drive
Louisville, KY 40207

River Road Asset Management, LLC
Henry Sanders
462 S. 4th Street, Ste. 1600
Louisville, KY 40202

Owner: Same as appellant

Representative: Bill Bardenwerper, Attorney
Bardenwerper Talbott & Roberts
1000 N. Hurstbourne Pkwy., 2nd floor
Louisville, KY 40223

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 6—David James

Staff Case Manager: Steve Hendrix, Planning Supervisor

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

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

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Background:

On October 21, 2014, a request was made to change from an automobile repair garage to a storage facility, but was verbally denied, since only the Board has the authority to allow a change from one non-conforming use to another.

On November 17, 2014, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

Agency Testimony:

Staff case manager, Steve Hendrix discussed the case summary, standard of review and staff analysis from the staff report. He said an automobile repair garage is allowed in a C-2, Commercial District; and a warehouse, storage, including mini-warehouses are allowed within a C-M, Commercial Manufacturing District. He said the appellant is storing personal items and items for a charity. He said the proposed use is no more odious or offensive to surrounding properties than the automobile repair shop, since the storage will be enclosed and create less noise, odor and traffic.

The following spoke in opposition to this request:

Leah Stewart, 1386 S. 6th Street, Louisville, KY 40208.

Jack Trawick, 1129 Hilliard Avenue, Louisville, KY 40204.

Summary of testimony of those in opposition

Leah Stewart, an area resident and member of the Old Louisville Neighborhood Zoning and Land Use Committee, said this appeal was not filed within 30 days of the Notice of Violation. She said she believes the previous owner abandoned the previous use; and that storage should have restricted access by fencing; and could contain chemicals or other hazardous materials.

Jack Trawick said he also works with various neighborhood groups and city plans, stating that no one wants to live near this property and that it should be changed back to residential.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in favor of the request:

Bill Bardenwerper, Attorney.

Summary of testimony of those in favor:

Bill Bardenwerper, the applicant's attorney, said his client bought the property just to store personal items and items for a charity group. Mr. Bardenwerper said they didn't file the appeal until they were ready to, after discussing the issue with Codes and Regulations.

Rebuttal:

Leah Stewart said the property should be reverted back to single or multi-family homes. She said this property could support 4 condos.

Jack Trawick asked how you "limit" non-conforming use rights.

Rebuttal:

Bill Bardenwerper said the Board could place conditions of approval.

Discussion:

Chair Proffitt asked if the owner has any plans to improve the property.

Henry Sanders, the appellant, said he will work with the neighborhood groups to determine what color paint they want; include landscaping and take the existing signage off the building. He said some of the neighbors use his property for parking.

Deliberation:

Member Allendorf said there have been businesses operating on this property (automobile repair, screen printing); and that the previous owners were trying to sell it in between. The Board overall felt the storage use would be less offensive than an automobile repair shop; and discussed adding conditions of approval.

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An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and Design Services offices. Please contact Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 17, 2014 public hearing proceedings.

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

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that this appeal concerns a Refusal by the Department of Codes and Regulations concerning a change in one non-conforming use (automobile repair shop) to another non-conforming use (personal storage); and

WHEREAS, the Board finds that the previous owners did not abandon the non-conforming use and in between different uses, the owners of the subject property were trying to sell or lease the property; and because an affidavit submitted by the appellant shows that abandonment did not take place; and because previous businesses also stored items on the subject property such as automotive parts and other items; and

WHEREAS, the Board finds that the change from one non-conforming use (automobile repair) to another non-conforming use (personal storage) is no more odious or offensive because there will be less noise, odor and traffic; and because all storage items will be personal items and those of a charity contained within the building; and because the applicant has agreed to work with the neighborhood association to paint the building; add landscaping and other such improvements to the property;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **ACKNOWLEDGE** that **ABANDONMENT** of the previous non-conforming use right has not taken place; and does hereby **ALLOW** personal storage on the subject property; and be it also

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does **FIND** that the Notice of Violation was **PROPER** considering the information Codes and Regulations had at the time; and

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

1. The owner will only use the building for personal storage and that of a charitable organization.
2. The owner will not allow anyone else to store items on this property or charge anyone for storage.
3. The owner will work with the Old Louisville Neighborhood Association to make the property more aesthetically pleasing (paint, landscaping etc.).

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members
Bergmann, Jarboe and Fishman.**

ABSTAINING: No one.

**MINUTES OF THE MEETING
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NOVEMBER 17, 2014

NEW BUSINESS:

CASE NO. 14APPEAL1008

Request: An Appeal of a Refusal issued by the Department of Codes and Regulations concerning the change of one non-conforming use (grocery store) to another non-conforming use (office).

Location: 231 N. 19th Street

Appellant: Work Development, LLC
Mitchell E. Kersting
231 N. 19th Street
Louisville, KY 40203

Owner: Same as appellant

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 5—Cheri Bryant Hamilton

Staff Case Manager: Steve Hendrix, Planning Supervisor

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

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

Background:

On October 21 2014, a Notice of Refusal was verbally issued concerning the change from a retail store to an architect's office. On October 22, 2014, an Appeal application was submitted concerning the change to an office for a small architectural firm. A professional office is allowed within a CN, Neighborhood Commercial District.

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On November 17, 2014, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

Agency Testimony:

Steve Hendrix, Planning Supervisor, said that the office use would be no more odious or offensive than a convenience store. He said the owner will be renovating the interior and exterior of the building.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition

No one.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in favor of the request:

Mitchell E. Kersting, 231 N. 19th Street, Louisville, KY 40203.

Summary of testimony of those in favor:

Mitchell Kersting said he purchased the property in July or August as a quick sale; and will be renovating it per historic preservation standards. He said his architectural firm has two employees and that rentals will be on the second floor.

Deliberation:

Member Allendorf said the owner submitted two letters of support.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and Design Services offices. Please contact Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the November 17, 2014 public hearing proceedings.

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NOVEMBER 17, 2014

NEW BUSINESS:

CASE NO. 14APPEAL1008

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

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that this appeal concerns a Refusal issued by the Department of Codes and Regulations concerning the change from one non-conforming use (convenience store) to another non-conforming use (office); and

WHEREAS, the Board finds that a grocery store and a professional office are within the same zoning classification, CN Neighborhood Commercial District; and because the office use will be no more odious or offensive to surrounding properties since pedestrian traffic and noise will be reduced; also the owner will be renovating both the interior and exterior of the building to make it more aesthetically pleasing;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **ACKNOWLEDGE** that **ABANDONMENT** of the previous non-conforming use right has not taken place; and does hereby **ALLOW** a professional office on the subject property; and be it also

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does **FIND** that the Notice of Violation was **PROPER**; and

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

YES: Members Allendorf, Proffitt, Liggin and Tharp.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bergmann, Jarboe and Fishman.

ABSTAINING: No one.

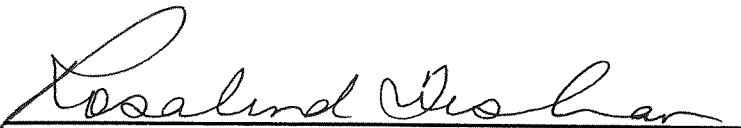
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The meeting adjourned at 1:12 p.m.



CHAIRPERSON



SECRETARY

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