

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

**August 6, 2018**

A meeting of the Louisville Metro Board of Zoning Adjustment was held on August 6, 2018 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Members Present:**

Mike Allendorf, Chair  
Rosalind Fishman, Vice Chair  
Richard Buttorff  
Lester Turner, Jr.

**Members Absent:**

Lula Howard, Secretary  
Dwight Young  
Kimberly Leanhart

**Staff Members Present:**

Emily Liu, Planning & Design Director  
Joe Haberman, Planning & Design Manager  
Steve Hendrix, Planning & Design Coordinator  
Jon Crumbie, Planning & Design Coordinator  
Beth Jones, Planner II  
Ross Allen, Planner I  
Dante St. Germain, Planner I  
Paul Whitty, Legal Counsel  
Sue Reid, Management Assistant

The following cases were heard:

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**APPROVAL OF MINUTES**

**JULY 30, 2018 BOARD OF ZONING ADJUSTMENT MEETING MINUTES**

**00:02:09** On a motion by Member Buttorff, seconded by Member Turner, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on July 30, 2018.

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Vice Chair Fishman, and Chair Allendorf**

**Absent: Members Howard, Young, and Leanhart**

**00:02:32** Chair Allendorf advised the Board Members that on September 17, 2018, the regular Board of Zoning Adjustment meeting will be held at 1:00 p.m., followed by a special meeting at 6:30 p.m.

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**PUBLIC HEARING**

**CASE NUMBER 18CUP1055**

Request: Conditional Use Permit to allow an accessory apartment in the R-4 Single Family Residential zoning district - WITHDRAWN

Project Name: Brownsboro Road Accessory Apartment

Location: 4631 Brownsboro Road

Owner: Larry & Mae Swisher

Applicant: Kathy Linares – Mindel Scott & Associates

Representative: John Talbott – Bardenwerper, Talbott & Roberts

Jurisdiction: Louisville Metro

Council District: 16 – Scott Reed

Case Manager: Dante St. Germain, Planner I

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

**Agency Testimony:**

**00:03:49** Dante St. Germain stated that at the request of the applicant, this case has been withdrawn (see recording for detailed presentation).

**The following spoke in favor of the request:**

No one spoke.

**The following spoke in opposition of the request:**

No one spoke.

**NOTE: At the request of the applicant, this case has been WITHDRAWN. Therefore, no vote or action was taken.**

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**CASE NUMBER 18VARIANCE1063**

|                   |                           |
|-------------------|---------------------------|
| Request:          | Fence height variance     |
| Project Name:     | Mount Holly Road Variance |
| Location:         | 504 Mount Holly Road      |
| Owner/Applicant:  | Cecil Comstock            |
| Jurisdiction:     | Louisville Metro          |
| Council District: | 13 – Vicki Aubrey Welch   |
| Case Manager:     | Ross Allen, Planner I     |

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report 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, 444 South 5<sup>th</sup> Street.)

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

**Agency Testimony:**

**00:04:55** Ross Allen presented the case and showed a Powerpoint presentation. Mr. Allen provided the Board Members with a letter in opposition, as well as some photographs from an adjoining neighbor that he had received this morning. Mr. Allen responded to questions from the Board Members (see staff report and recording for detailed presentation).

**The following spoke in favor of the request:**

Cecil Comstock, 504 Mt. Holly Road, Fairdale, KY 40118

**Summary of testimony of those in favor:**

**00:25:06** Cecil Comstock spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**00:36:24** Ross Allen provided the approved construction plan to the Board Members (see recording for detailed presentation).

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**00:37:13** Cecil Comstock responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

**00:43:43 Board Members' deliberation**

**00:44:10** On a motion by Vice Chair Fishman, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, the presentation, the testimony heard today, and the applicant's variance justification, was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the applicant states that "The 6' fence will not affect public health, safety or welfare because it simply offers security for our property. We have an above ground pool, so this offers added safety to the public. We have two indoor dogs that are outside from time to time. In addition, the fence will be about 100 ft. from the intersection." The fence is located in the rear, side, and street side yard areas outside of the site triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. and the closest neighbor's driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the applicant states, "Our lot is a corner lot and is on the backside of our home. There will be no fence on the front side (Mt. Holly Rd.). It is similar, in fact, to the 'fence row' formed by trees/bushes across the street from our home. The fence will be well-kept and maintained." Fences in the general vicinity are chain link whereas, the applicant will have a vertical slat wooden fence six feet in height, and

**WHEREAS**, the Board further finds that the applicant/owner states in their justification, "The variance will not cause a hazard or nuisance to the public because it is several feet from the side road, and will not impede or hinder the

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neighbors and community from any of their normal activities. Again, the fence will be about 100' from the main entrance/intersection." The fence is located in the rear, side, and street side yard areas outside of the sight triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. and the closest neighbor's driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the applicant/owner states, "The height of the fence on the side roads is set at four feet. However, in this case the home was built on the combination of a corner lot and an adjoining lot. The back lot away from the front road we are simply asking for the height to be increased to six feet to make the back yard more secure." Upon review of the site plan and aerial imagery staff estimates that the encroachment of the applicant's/owner's fence is within the 15 ft. street side yard setback, the fence is approximately seven feet interior from the property line along Morgan Ave. meaning an encroachment of eight feet into the street side yard with a height that is 2.5 ft. taller than the allowable 3.5 ft. (Village Center – Traditional Form District) The fence is located in the rear, side, and street side yard areas outside of the site triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. and the closest neighbor's driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave, and

**WHEREAS**, the Board further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the owner states "We purchased two adjoining lots, which form a 'corner' lot. The side road of our backyard is separated by an easement with a drainage ditch that we maintain." The owner/applicant had constructed the fence with encroachment into the street side yard and is requesting relief. The fence is located in the rear, side, and street side yard areas outside of the site triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. and the closest neighbor's driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave, and

**WHEREAS**, the Board further finds that the applicant/owner states, "The strict application of the provisions of the regulation 'could' deprive us the safety and

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security of our animals and our personal property, including the pool and its supplies, outside tools, etc.” The applicant has stated previously in the justification that a pool is present in the rear yard which would result in the need for a fence to prevent the hazardous nuisance. The result of denial would require the applicant to reduce the existing fence height as found in the street side yard for approximately eight feet depth (perpendicular to Morgan Ave.) and for a length of approximately 78 ft. (parallel to Morgan Ave.) from the existing six feet height as currently in place, and

**WHEREAS**, the Board further finds that the applicant/owner states, “No”, the circumstances are not the result of actions of the applicant/owner taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant/owner erred when constructing or having the fence constructed when placing the fence in the street side yard. However, the fence is located in the rear, side, and street side yard areas outside of the sight triangle as found at the intersection of Mt. Holly Rd. and Morgan Ave. Additionally, the closest neighbor’s driveway is approximately 52 ft. south of the fence with visibility unobstructed. The fence as encroaching into the 15 ft. street side yard setback is approximately 22 feet from the edge of pavement along Morgan Ave, and

**WHEREAS**, the Board further finds that the applicant’s justification statements adequately justify this request; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1063 does hereby **APPROVE** Variance from Land Development Code Section 4.4.3.A.1.a.i for an existing and proposed six feet tall solid wooden fence to exceed the maximum allowable height within the street side yard setback along Morgan Ave. on an R-4 zoned parcel within the Village Center Form District (**Requirement 3.5 ft., Request 6 ft., Variance 2.5 ft.**), **SUBJECT** to the following Condition of Approval:

Condition of Approval:

1. Two fence panels from the edge of Morgan side street closest to the culvert area will be removed to help offset the height difference.

**The vote was as follows:**

**Yes: Members Turner, Vice Chair Fishman, and Chair Allendorf**

**No: Member Buttorff**

**Absent: Members Howard, Young, and Leanhart**

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**CASE NUMBER 18VARIANCE1026**

Request: Fence Height Variance, a Sidewalk Waiver, and  
Scenic Corridor Waiver  
Project Name: Old Henry Road Variance/Waiver  
Location: 12400 Old Henry Road  
Owner/Applicant: Mr. Douglas and Mrs. Rosalinda Michael  
Representative: Glenn Price – Frost, Brown, and Todd LLC.  
Jurisdiction: Middletown, KY  
Council District: 19 – Julie Denton  
Case Manager: Ross Allen, Planner I

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report 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, 444 South 5<sup>th</sup> Street.)

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

**Agency Testimony:**

**01:03:42** Ross Allen presented the case and showed a Powerpoint presentation. Mr. Allen responded to questions from the Board Members (see staff report and recording for detailed presentation).

**The following spoke in favor of the request:**

Glenn Price, 400 W. Market, Suite 3200, Louisville, KY 40202  
Herb Fink, 1347 S. 3<sup>rd</sup> St., Louisville, KY 40208  
Doug Michael, 12400 Old Henry Road, Louisville, KY 40223

**Summary of testimony of those in favor:**

**01:15:08** Glenn Price spoke in favor of the request and showed a Powerpoint presentation. Mr. Price responded to questions from the Board Members (see recording for detailed presentation).



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**01:23:03** Herb Fink spoke in favor of the request and referred to the Powerpoint presentation. Mr. Fink described the site and stated this is the only area where the tennis court could be placed. Mr. Fink provided photographs to the Board Members, as well as examples of the fencing material. Mr. Fink responded to questions from the Board Members. Mr. Fink provided additional photographs to the Board Members in regard to the landscaping which specifically noted one tree that would need to be removed (see recording for detailed presentation).

**01:34:40** Mr. Price spoke in favor of the request (see recording for detailed presentation).

**01:35:52** Mr. Allen responded to questions from the Board Members regarding landscaping on the plan. Mr. Allen stated there are three sheets, and sheet 3 of 3 is the one that has received preliminary stamps (see recording for detailed presentation).

**01:38:18** Mr. Price responded to questions from the Board Members (see recording for detailed presentation).

**01:39:53** Doug Michael spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

**01:43:29 Board Members' deliberation**

**01:44:17** On a motion by Vice Chair Fishman, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, the presentation, the discussion, the applicant's site plans, and the applicant's justification, was adopted:

**Variance from Middletown LDC 4.4.3.A.1.a.i for a proposed tennis court (accessory use) fence to exceed the maximum height of four feet on an R-4 zoned parcel within the Neighborhood Form District within the 30 ft. front yard setback, the fence will exceed the allowable height by six feet for a total of 10 feet in height:**

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**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the proposed tennis court fence is a 10 – foot black-vinyl covered chain link fence, which the applicant refers to as a “tennis enclosure”. It is suitable to screen any tennis court typically found on private residential properties or in or near a residential area. The chain link will be coated with black-vinyl in order to filter the view of the tennis court from the street and will blend in with the trees, vegetation and grassy nature of the property. The enclosure also serves to keep players and tennis balls on the court, rather than allowing the tennis balls to escape elsewhere. Granting the variance would help to protect, rather than adversely affect the public health, safety, or welfare. The subject parcel had dedicated 40 feet (from centerline of Old Henry Road) of right of way as shown on related case 244-05, as of Nov.17, 2005. The result of the dedication of right of way along the subject property frontage places a majority of the existing landscaping and fencing in what is now public right of way. The tennis court and accompanying fence reside approximately 32 feet from the curb along the southeastern side of Old Henry Road, and

**WHEREAS**, the Board further finds that the variance will not alter the essential character of the general vicinity since the black-vinyl covered tennis court fence is designed to blend in with the trees, vegetation and grassy nature of the property. The proposed tennis court and associated fence will filter the tennis court from off-site views. The fence although proposed at a height greater than the four feet as allowed by Middletown LDC will be screened as a result of both existing and proposed landscaping as associated with 18WAIVER1008. Additionally, the subject property is the only property that has an existing horizontal four slate horse fence along their frontage which resides currently within the public right of way after the dedication of right of way was recorded in Deed book 8735 Page 180, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the tennis court fence will tend to keep errant tennis ball on the court rather than flying elsewhere, and will prevent hazards or nuisances. As such, the variance – which will permit the fence – will not cause a hazard or nuisance to the public, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the fence is proposed at the recognized standard height for a tennis court fence, and

**WHEREAS**, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity

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or the same zone since the subject property (12400 Old Henry Road) is the largest residential property in the vicinity. The size of the property would allow for a residential tennis court, even though most or all other lots in the vicinity are not of a size that would permit a tennis court and the associated fence, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant sine the applicant would be unable to construct the tennis court, and

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

**WHEREAS**, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1026 does hereby APPROVE Variance from Middletown LDC 4.4.3.A.1.a.i for a proposed tennis court (accessory use) fence to exceed the maximum height of four feet on an R-4 zoned parcel within the Neighborhood Form District within the 30 ft. front yard setback, the fence will exceed the allowable height by six feet for a total of 10 feet in height (**Requirement 4 ft., Request 10 ft., Variance 6 ft.**).

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Vice Chair Fishman, and Chair Allendorf**  
**Absent: Members Howard, Young, and Leanhart**

**01:47:03** On a motion by Vice Chair Fishman, seconded by Member Turner, the following resolution, based upon the Standard of Review and Staff Analysis, and the presentation, was adopted:

**Waiver from Middletown LDC (March 2006) 5.8.1.B to not provide a sidewalk in the public right-of-way along Old Henry Road for an approximate length of 620 ft.:**

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**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that Guideline 9 of Cornerstone 2020 discusses bicycle, pedestrian and transit with providing support to transit and non-motorized methods of travel, to provide the necessary infrastructure improvements and to accommodate alternative modes of travel. Guideline 9, Policy A.1 states “New development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate. The construction of the private tennis court will not cause any pedestrian traffic along Old Henry Road. In addition, there are no other sidewalks in the area, thus no connection to other pedestrian transit. Although the sidewalk was to be installed pursuant to the minor subdivision, case no. 244-05 as recorded in Deed book 08735 Page 0178, installing sidewalks at the property would require the removal of existing trees and impact the existing tree canopy of the scenic corridor. The intent of the Land Development Code Section 5.8.1 is to provide sidewalks along abutting right of ways of the development however, installation of the sidewalk would require the removal of an existing fence and plantings along the Old Henry Road Scenic Corridor, and

**WHEREAS**, the Board further finds that Guideline 7, Policy 1 states that developments should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development. Compliance with the regulations would result in the existing trees and fence being removed or relocated. The granting of the waiver will be within the intent of the Comprehensive Plan and intent of the Land Development Code. Removal of the existing trees/plantings resulting from the installation of a sidewalk would impact the scenic corridor and is not within the intent of the Comprehensive Plan, and

**WHEREAS**, the Board further finds that granting of the waiver will not have an impact on adjacent property owners because the proposed tennis court is private and will not generate pedestrian traffic to or through the subject site or along the frontage of Old Henry Road. The applicant/representative has stated that pedestrian trips to and from the tennis court are not anticipated or will be non-existent, and

**WHEREAS**, the Board further finds that the denial of the sidewalk waiver will require the applicant to construct a sidewalk that is not connected to any other pedestrian paths; moreover, it is unlikely that a sidewalk will ever be constructed in this vicinity. The strict application of the regulations would also require the applicant to remove trees and other natural vegetation. The waiver will not result

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in the unreasonable circumvention of the requirements of the regulations and is suitable for this location; and

**Waiver from Middletown LDC (March 2006) 10.3.6, Table 10.3.2 to allow a proposed tennis court (accessory structure) to encroach approximately 42 ft. into the 50 ft. required Scenic Corridor required setback along Old Henry Road:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since large existing trees surround the proposed residential tennis court and substantially buffer the tennis court from Old Henry Road. The tennis court will be hidden or substantially screened from homes on the opposite side of Old Henry Road. For this reason, neither the tennis court nor its location on the property will adversely impact adjacent property owners, and

**WHEREAS**, the Board further finds that Guideline 3, Policy 1 of Cornerstone 2020 asks to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district. Guideline 3, Policy 2 of Cornerstone 2020 asks for the consideration of Building Materials. When assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code. Guideline 3, Policy 3 of Cornerstone 2020 asks to encourage residential character that is compatible with adjacent residential areas. Allow a mixture of densities as long as their designs are compatible. Adjacent residential areas in different density categories may require actions to mitigate nuisances and provide an appropriate transition between the areas. Examples of mitigation as appropriate include vegetative buffers, open spaces, landscaping and/or a transition of densities, site design, building heights, building design, materials and orientation that is compatible with those of nearby residences. Guideline 3, Policy 7 of Cornerstone 2020 asks for the mitigation of adverse impacts of noise from proposed development on existing communities. Guideline 3, Policy 8 of Cornerstone 2020 asks for the mitigation of adverse impacts of lighting from proposed development on nearby properties, and on the night sky. 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. Guideline 3, Policy 22 of Cornerstone 2020 calls for the mitigation of impacts caused when incompatible developments unavoidably occur adjacent to one another. Buffers should be used between

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uses that are substantially Plan Elements 83 different in intensity or density. Buffers should be variable in design and may include landscaping, vegetative berms and/or walls and should 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. Residential uses that develop adjacent to agricultural land uses may be required to provide screening and buffering to protect both the farmer and homeowners. The waiver will not violate the comprehensive plan. The site is located in the Neighborhood Form District. The subject site has approximately 3.89 acres and is one of the larger lots along Old Henry Road. The proposal conforms to Compatibility Guideline 3 and all applicable policies adopted thereunder, including policies 1, 3, 9, and 22. Due to substantial existing and proposed screening and landscaping, the existing residential lot and proposed residential tennis court will be compatible with the scale and site design of nearby residential lots. The tennis court will not be a source of adverse visual impact because of substantial buffering, both existing and proposed. Nuisances such as undue lighting, noise, and odors will not be associated with the tennis court. The proposal conforms to Guideline 4, Policy 4 of Cornerstone 2020 although not permanently preserved, the residential tennis court will provide for outdoor recreation for the homeowner and their guests in a manner that will ensure compatibility between differing land uses in the neighborhood. Staff finds that as stated in the intent of the Open space Guideline that "Open Space" is to be accessible and functional public open space that meets the community needs. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 7 calls for protection of the character of parkways and scenic byways and corridors through standards for buffers, landscape treatment, lighting and signs. The intent of 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. The proposal conforms to landscape character guidelines because plant communities provided on-site are natural plant species which will filter views of the tennis court from off-site, and

**WHEREAS**, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant although the site is 3.958 acres, the proposed residential tennis court can only be located where shown on the site plan. A large lake is located on the southwestern portion of the lot; lateral fields and septic tank consume the western edge of the proposed site location of the proposed tennis court. The entrance drive and existing deciduous and evergreen trees are situated on the north side of the proposed tennis court

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area. The proposed tennis court site situation is the only suitable location and constitutes the minimum necessary to afford relief to the applicant, and

**WHEREAS**, the Board further 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 existing and proposed buffering will exceed the minimum otherwise required and will provide a substantial screening of the tennis court to benefit residents on the opposite side of Old Henry Road. In addition, the strict application of the provisions of the regulation would deny the applicant of the ability to erect a tennis court any place on the subject property which would deprive the applicant of the reasonable use of their land resulting in an unnecessary hardship; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1026/18WAIVER1008 does hereby **RECOMMEND APPROVAL** to the City of Middletown Waiver #1 from Middletown LDC (March 2006) 5.8.1.B to not provide a sidewalk in the public right-of-way along Old Henry Road for an approximate length of 620 ft., and Waiver #2 from Middletown LDC (March 2006) 10.3.6, Table 10.3.2 to allow a proposed tennis court (accessory structure) to encroach approximately 42 ft. into the 50 ft. required Scenic Corridor required setback along Old Henry Road, **SUBJECT** to the following Condition of Approval:

Condition of Approval:

1. The site plan 3 of 3 shall be tied to Waiver #2.

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Vice Chair Fishman and Chair Allendorf**

**Absent: Members Howard, Young, and Leanhart**

**01:49:33 Meeting was recessed.**

**01:49:53 Meeting was reconvened.**

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**CASE NUMBER 18VARIANCE1062**

|                   |   |
|-------------------|---|
| Request:          | Variance to allow a structure to encroach into the required side yard setback and variance to allow a private yard area to be less than the required 20% of the area of a lot |
| Project Name:     | Arlington Avenue Addition   |
| Location:         | 1616 Arlington Avenue   |
| Owner:            | Revamp Limited Liability Co.  |
| Applicant:        | Tami Phillips   |
| Jurisdiction:     | Louisville Metro  |
| Council District: | 9 – Bill Hollander  |
| Case Manager:     | Dante St. Germain, Planner I  |

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report 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, 444 South 5<sup>th</sup> Street.)

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

**Agency Testimony:**

**01:50:31** Dante St. Germain presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

**The following spoke in favor of the request:**

Julian West, 3021 Windsor Lakes Pkwy., Louisville, KY 40214

**Summary of testimony of those in favor:**

**01:54:41** Julian West spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).



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**The following spoke in opposition of the request:**

No one spoke.

**01:58:04 Board Members' deliberation**

**01:58:56** On a motion by Member Turner, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, the Certificate of Appropriateness, and the applicant's justification statement, was adopted:

**Variance from Land Development Code Table 5.2.2 to allow a structure to encroach into the required side yard setback:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the proposed addition will follow the existing wall of the structure, and the line of the previous addition, which caused no known adverse effects, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity as reduced side yard setbacks are common in the general vicinity, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the addition will be constructed according to building codes, including fire codes, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as there was previously an addition with the same footprint as the currently proposed addition, and the applicant proposes to construct the new addition using the same side yard setback as the previous one, and

**WHEREAS**, the Board further finds that the requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because reduced side yard setbacks are common in this neighborhood, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land or

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create an unnecessary hardship on the applicant by requiring the applicant set back the new addition, reducing its utility, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

**WHEREAS**, the Board further finds that the applicant's justification statements adequately justify this request; and

**Variance from Land Development Code Section 5.4.1.D.3 to allow a private yard area to be less than the required 20% of the area of a lot:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the reduction in private yard area is small and unlikely to cause an adverse effect, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the reduction in private yard area is unlikely to be noticeable, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the reduction in private yard area is small and unlikely to cause a hazard or nuisance, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as there was previously an addition with the same footprint as the currently proposed addition, and the applicant proposes to provide the same private yard area as was previously provided, and

**WHEREAS**, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is irregular in shape in the rear and the private yard area is also irregular in shape, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring the applicant to

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build a smaller addition in order to provide a slightly increased private yard area, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

**WHEREAS**, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1062 does hereby **APPROVE** Variance from Land Development Code Table 5.2.2 to allow a structure to encroach into the required side yard setback (**Requirement 3 ft., Request 1.3 ft., Variance 1.7 ft.**), and Variance from Land Development Code Section 5.4.1.D.3 to allow a private yard area to be less than the required 20% of the area of a lot (**Requirement 603.6 sf., Request 600 sf., Variance 3.6 sf.**).

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Vice Chair Fishman and Chair Allendorf**  
**Absent: Members Howard, Young, and Leanhart**

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**CASE NUMBER 18VARIANCE1064**

Request: Variance to allow attached signage to exceed the maximum allowed area  
Project Name: Churchill Downs Signage  
Location: 700 Central Avenue  
Owner: Louisville/Jefferson County Metro Government  
Applicant: Ashley Bartley – Qk4  
Jurisdiction: Louisville Metro  
Council District: 15 – Marianne Butler  
Case Manager: Dante St. Germain, Planner I

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report 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, 444 South 5<sup>th</sup> Street.)

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

**Agency Testimony:**

**02:01:04** Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

**The following spoke in favor of the request:**

Ashley Bartley, 1046 E. Chestnut St., Louisville, KY 40204

**Summary of testimony of those in favor:**

**02:06:32** Ashley Bartley spoke in favor of the request and showed a Powerpoint presentation. Ms. Bartley responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

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**CASE NUMBER 18VARIANCE1064**

**02:09:57 Board Members' deliberation**

**02:10:22** On a motion by Vice Chair Fishman, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, and the variance justification statement, was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the signage is not proposed to animate in any fashion and is not proposed to be internally illuminated, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity as Churchill Downs is a unique property with an existing video board, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed signage is unlikely to cause a distraction to drivers, and may help to guide drivers to Churchill Downs, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the property is unique in nature and unlike any other property in the jurisdiction of the zoning regulations, and

**WHEREAS**, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the subject property is the location of Churchill Downs, and is a unique property in Louisville Metro, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring the applicant to reduce the area of the signage to an illegible size, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

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**WHEREAS**, the Board further finds that the video board is existing and will only have imagery attached to the back (south facing side). Visually, the board will not change size or scale, only graphically on the back side, and

**WHEREAS**, the Board further finds that the minor change of graphics added to back (south) will not change the character of the vicinity as size and scale are not increasing, and Churchill Downs is an existing facility, and

**WHEREAS**, the Board further finds that the board is within Churchill Downs property and is 900' from the closest residential land use, and

**WHEREAS**, the Board further finds that a variance for the original video board has already been granted so this variance is only modifying the board to provide the graphic on the back, and

**WHEREAS**, the Board further finds that Churchill Downs is a permitted non-conforming use that is considered to be of "international prestige", and

**WHEREAS**, the Board further finds that the strict application would not permit Churchill Downs to add graphics to their existing video board, and

**WHEREAS**, the Board further finds that area does not conform to the regulation, but original video board was granted a variance in 2013; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1064 does hereby **APPROVE** Variance from Land Development Code Table 8.3.1 (Campus) to allow attached signage to exceed the maximum allowable area (**Requirement 500 sf., Request 7,200 sf., Variance 6,700 sf.**).

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Vice Chair Fishman and Chair Allendorf**

**Absent: Members Howard, Young, and Leanhart**

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**PUBLIC HEARING**

**CASE NUMBER 18WAIVER1026**

Request: Exceptional Signage Review  
Project Name: Riverport Landings Exceptional Signage  
Location: 3317 & 3318 Cathe Dykstra Way, 3320 Mary  
O'Connor Drive  
Owner/Applicant: Riverport Development LLC  
Representative: Kimberly Stephenson – The Marion Group  
Jurisdiction: Louisville Metro  
Council District: 1 – Jessica Green  
Case Manager: Dante St. Germain, Planner I

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report 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, 444 South 5<sup>th</sup> Street.)

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

**Agency Testimony:**

**02:12:28** Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

**The following spoke in favor of the request:**

Kimberly Stephenson, 1122 Rogers Street, Louisville, KY 40204

**Summary of testimony of those in favor:**

**02:21:10** Kimberly Stephenson spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

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**PUBLIC HEARING**

**CASE NUMBER 18WAIVER1026**

**02:26:42 Board Members' deliberation**

**02:27:06** On a motion by Member Turner, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, the site plan, and the general waiver justification statement, was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the signage will not adversely affect adjacent property owners as the site is large and the adjacent property owners are unlikely to be able to see the signs from outside the property, and

**WHEREAS**, the Board further finds that the authorization will not violate specific guidelines of Cornerstone 2020 as Cornerstone 2020 encourages signs that are compatible with the form district pattern and contribute to the visual quality of their surroundings. Promote signs of a size and height adequate for effective communication and conducive to motor vehicle safety. Encourage signs that are integrated with or attached to structures wherever feasible; limit freestanding signs to monument style signs unless such design would unreasonably compromise sign effectiveness. For freestanding signs in multi-lot developments, minimize the number of signs by including signage for each establishment on the same support structure and encourage consistent design (size, style, and materials). These guidelines are not violated because the overall design of the sign package is consistent in design, with the minimum amount of signage required to direct visitors to the various areas of the site, and

**WHEREAS**, the Board further finds that the extent of the authorization is the minimum necessary to afford relief to the applicant as the signs are consistent in design and there is one sign per type of development, which is the minimum number required to adequately guide visitors around the site, and

**WHEREAS**, the Board further 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 as the Land Development Code would otherwise not permit any signage interior to the site to guide visitors to their intended destinations, and

**WHEREAS**, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it



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**CASE NUMBER 18WAIVER1026**

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18WAIVER1026 does hereby **APPROVE** Exceptional Signage Review to allow interior directional signage on lots that have no public street frontage.

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Vice Chair Fishman and Chair Allendorf**

**Absent: Members Howard, Young, and Leanhart**

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**CASE NUMBER 18CUP1041**

Request: Conditional Use Permit (CUP) to allow short term rental of dwelling units not the primary residence of the host  
Project Name: Highland Avenue Short Term Rental  
Location: 1301 Highland Avenue  
Owner/Applicant: Edwin Hopson  
Jurisdiction: Louisville Metro  
Council District: 8 – Brandon Coan  
Case Manager: Beth Jones, AICP, Planner II

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report 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, 444 South 5<sup>th</sup> Street.)

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

**Agency Testimony:**

**02:29:55** Beth Jones presented the case and showed a Powerpoint presentation. Ms. Jones responded to questions from the Board Members (see staff report and recording for detailed presentation).

**The following spoke in favor of the request:**

Edwin Hopson, 2201 Cherokee Parkway, #C9, Louisville, KY 40204

**Summary of testimony of those in favor:**

**02:34:32** Edwin Hopson spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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**The following spoke in opposition of the request:**

No one spoke.

**02:42:52 Board Members' deliberation**

**02:44:16** On a motion by Vice Chair Fishman, seconded by Member Turner, the following resolution, based upon the presentation, the Standard of Review and Staff Analysis, and the response to the CUP neighborhood meeting, was adopted:

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

**WHEREAS**, the Board further finds that when appropriately managed, the proposed use is compatible with surrounding development and land uses. No exterior construction or alterations to the building are proposed, and

**WHEREAS**, the Board further finds that the subject property is served by existing public utilities and facilities. The proposal does not appear to create substantial additional requirements for the site, and

**WHEREAS**, the Board further finds that:

A short term rental of dwelling unit that is not the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and a short term rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.
- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. **Each of the two**

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*dwelling units has one bedroom, permitting up to six guests per unit, for a total of twelve guests on the site.*

- D. The dwelling unit shall be a single-family residence, duplex or condominium. This provision shall not be waived or adjusted. **PVA lists the existing structure as a residential duplex, a permitted use in an R-5B zone.**
- E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.
- F. Outdoor signage which identifies the short term rental is prohibited.
- G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. **Based on LDC standards, the 20 ft. property frontage is credited with one on-street parking space. LDC regulations further credit the 135 ft. frontage on Barrett Avenue with six additional on-street spaces. This parking, however, is prohibited between 7:00am and 9:00am and, based on LDC regulations, cannot be counted toward parking requirements. A rear on-site parking area, accessed from the alley, can accommodate two vehicles. The surface is finished with wood mulch, which does not meet LDC standards requiring a "hard and durable surface" (LDC 9.1.12.A.1.) and would require correction in order to count toward parking requirements. Transportation Planning has stated that gravel paving is acceptable for this site.**
- H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.
- I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1041 does hereby **APPROVE** Conditional Use Permit to allow short term

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rental of two dwelling units not the primary residence of the host (LDC 4.2.63),  
**SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental with Develop Louisville and with the Louisville Metro Revenue Commission. If the short term rental is not registered with Develop Louisville and with the Revenue Commission within 60 days of the approval of the minutes of this case, then the Conditional Use Permit shall be deemed null and void.
2. The short term rental and host shall meet all additional provisions set forth in the Louisville Metro Code of Ordinances.
3. The applicant shall surface the existing rear on-site parking area with a hard and durable surface as required by LDC 9.1.12.A.1. Gravel is acceptable. Applicant shall notify PDS staff upon completion so that on-site inspection can be completed before short-term rentals may proceed on the site.

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Vice Chair Fishman and Chair Allendorf**

**Absent: Members Howard, Young, and Leanhart**

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**ADJOURNMENT**

The meeting adjourned at approximately 4:00 p.m.

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**Chair**

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**Secretary**