

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

JANUARY 11, 2016

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, January 11, 2016, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

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

Members absent:

No one

Staff members present:

Jim Mims, Director Louisville Forward
Emily Liu, Director, Planning & Design Services
Joe Reverman, Assistant Director, Planning & Design Services
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Joe Haberman, Planning & Design Manager
Jessica Wethington, Louisville Forward Information Specialist
Brian Mabry, Planning & Design Coordinator
Steve Hendrix, Planning Supervisor
Brian Davis, Planning Supervisor
Jon Crumby, Planning Coordinator
Sherie Long, Landscape Architect
Beth Stevenson, Management Assistant

*Member Bergman arrived at 1:40 p.m. and left at approximately 5:45 p.m.
Member Allendorf left at approximately 5:45

The following cases were heard:

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BUSINESS SESSION:

CASE NO. 15CUP1044

Request: Conditional Use Permit to allow off-street parking in an R-4 zoning district.

Project Name: Café Press

Location: 11901 & 11909 Shelbyville Road

Owner: Hameron Properties I, LLC
1500 S. Pope Lick Road
Louisville, KY 40299

Applicant: Café Press, Inc.
Garrett Jackson, CFO
6901 Riverport Drive
Louisville, KY 40258

Representative: Land Design & Development
Kevin Young/Ann Richard
503 Washburn Avenue, Suite 101
Louisville, KY 40222

Attorney: Bardenwerper Talbott & Roberts, PLLC
Nick Pregliasco, Esq.
10000 N. Hurstbourne Parkway, 2nd Floor
Louisville, KY 40223

Jurisdiction: City of Middletown

COUNCIL DISTRICT 19—Julie Denton

**Staff Case Manager: Jon Crumbie, Planning Coordinator
(DISCUSS CONDITIONS OF APPROVAL)**

DISCUSSION:

Jon Baker, the Board's legal counsel, said this case was approved by the Board with conditions of approval on December 21, 2015. It was later discovered that there was a designated Woodland Protection Area on the property, so two of the conditions of approval (numbers 4 & 5 in the Dec. 21, 2015 minutes) regarding landscaping cannot be achieved. Mr. Baker said this issue should be discussed

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when the applicant applies for a variance for the proposed 10-foot tall, two-sided wooden fence.

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 January 11, 2016 public hearing proceedings.

No vote required.

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APPROVAL OF MINUTES

APPROVAL OF THE MINUTES OF THE MEETING HELD ON DECEMBER 21, 2015.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on December 21, 2015 with the correction of removing the strikethrough from conditions of approval 4 and 5 in Case No. 15CUP1044 (page 16 of the December 21, 2015 minutes).

YES: Members Allendorf, Fishman, Jarboe, Tharp, Turner and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15APPEAL1008

Request: An Appeal of a written interpretation which states that operating hour restrictions in the Land Development Code, Section 4.1.6, only applies to portions of a subject property within 100 feet of a residential use or zoning district.

Location: 151 & 201 Cabel Street

Appellant: Butchertown Neighborhood Association
Andrew S. Cornelius
806 E. Washington Street
Louisville, KY 40206

Appellant's Attorney: Tachau Meek, PLC
Jonathan Salomon, Esq.
3600 National City Tower, 101 S. Fifth Street
Louisville, KY 40202

Owners: JBS USA, LLC & Swift Pork Company
c/o John Cliff
1200 Story Avenue
Louisville, KY 40206

Louisville Gas & Electric Co.
220 West Main Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Brian Mabry, AICP, Planning Coordinator

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.

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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:

The Director of Planning & Design Services, Emily Liu, relied on a previous staff interpretation dated March 4, 2015, Section 4.1.6 of the Land Development Code which states that operating hour restrictions are only for the area of the subject property within 100 feet of the property line that adjoins residential uses or zones. The appellant purports that the interpretation contradicts the text of the LDC, Section 4.1.6, in that the operating hour restrictions apply to the entire property.

On January 11, 2016, 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, Brian Mabry, presented the case in detail which included a PowerPoint presentation. He said the appellant submitted a Statement of Appeal detailing the grounds for the appeal and discussed staff's response (See text in full on pages 2 and 3 in the staff report). Mr. Mabry cited a previous case (14DEVPLAN1000 & 14DEVPLAN1004) FedEx, that went before the Planning Commission on March 6, 2014 that substantiated staff's interpretation. Representatives from Swift submitted a Conditional Use Permit application with which this appeal is associated, to Planning & Design Services on February 3, 2015.

He said staff maintains that the preamble of Section 4.1.6, of the Land Development Code (LDC) sets the parameters where the noise standards apply, and that only portions of property within 100 feet from residential uses or residentially zoned properties are protected from various noise nuisances such as collection of garbage; loading and unloading operations and exterior construction activity. Mr. Mabry said the Board must affirm or reverse, in part or in whole, the subject written interpretation.

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Emily Liu, Planning & Design's Director, said she discussed the interpretation with staff who has worked for Planning & Design many years, and that the original intent of this regulation was to protect residential properties from noise nuisances within 100 feet of the activity. Ms. Liu said if the appellant were correct in their assumption, then numerous industrial type businesses next to residential, even if just one home, would significantly reduce the amount property for businesses and warrant it legally inoperable.

The following spoke in opposition to the appeal:

Glenn Price, Attorney; who submitted a plan and other information into the record.

Ashley Bartley, QK4, 1046 E. Chestnut Street, Louisville, KY 40204.

Summary of testimony of those in opposed to the appeal:

Glenn Price said he is opposed to this appeal and supports staff's interpretation since it has been implemented consistently for years. He presented a PowerPoint presentation to the Board illustrating other numerous businesses that are complying with the regulation (Riverport, Dynacraft, Global Port, FedEx and Wal-Mart); and said it is for the protection of neighbors who live next to or near large industrial/commercial businesses to protect against noise pollution. Mr. Price said it does not pertain to the entire property as the Butchertown Neighborhood Association contends, but only nuisance activities that are within 100 feet of the residential property line.

The following spoke neither for nor against the appeal:

No one.

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

No one.

Cross-Examination:

Jon Salomon, asked Ms. Liu what part of the LDC, Section 4.1.6 is ambiguous. Ms. Liu said she and staff discussed the regulation and came to the same conclusion, so she doesn't find it ambiguous. She said ambiguity occurred with the FedEx case in which the regulation was clarified in 2014. Mr. Salomon asked

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Ms. Liu if FedEx applied for a CUP in 2014 for a potentially hazardous and nuisance use. Ms. Liu said no.

The following spoke in favor of the request:

Jon Salomon, Attorney.

Steve Porter, Attorney, 2406 Tucker Station Road, Louisville, KY 40299.

Natasha Maze, 1401 Quincy Street, Louisville, KY 40206 (didn't sign in).

Kate Bingardner, 1562 Story Avenue, Louisville, KY 40206 (didn't sign in).

Lauren Anderson, 1411 E. Breckinridge Street, Louisville, KY 40204 (didn't sign in.)

Andy Cornelius, 806 E. Washington Street, Louisville, KY 40206 (didn't sign in).

Summary of testimony of those in favor:

Jon Salomon, Attorney for the Butchertown Neighborhood Association, said the Board should grant the appeal following the "plain language" of § 4.1.6 of the Land Development Code. He said that no "official" interpretation has been offered; that the plain language of § 4.1.6 is unambiguous; that the purported interpretation contradicts the specific language of the LDC; and finally that the purported interpretation would defeat the intent of the LDC's drafters and endanger the health of residents. He said 100 ft. distance from nuisance operations is not very far to protect residential properties; and that the CUP area for the Cabel Street lots is the entire site (Case No. 14CUP1003). Mr. Price objected to Mr. Salomon discussing this case.

Steve Porter, Attorney, said he represented the adjacent residential property owners' for the FedEx case, which was approved by the Planning Commission for a Detailed District Development Plan. Mr. Porter said they appealed the decision, but was settled before they went to court. He said § 4.1.6, A. B. and C. are activities not uses; and that "buffer" is not part of the language.

Natasha Maze discussed Case No. 14CUP1003, stating that her house backs up to the Cabel Street lot. She said she had no idea when she bought her house in 2007 that idling trucks would be running 24/7. Chair Proffitt said she needs to

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discuss the appeal. Ms. Maze said she agrees with Mr. Salomon's opinion on this matter.

Kate Bingardner said she lives on Story Avenue and asked if they moved the Transportation Refrigerated Units (TRU's) on the site, would JBS USA/Swift have to come back before the Board for approval. Ms. Bingardner said she agrees with Mr. Salomon's opinion regarding the appeal.

Lauren Anderson said she also agrees with Mr. Salomon and Mr. Porter regarding the interpretation and that the Board should approve the appeal. Ms. Anderson discussed the CUP request for Case No. 14CUP1003, stating that Swift could move the TRU's anywhere on the site as long as it's 100 feet away from a residential property line.

Andy Cornelius said he agrees with Mr. Salomon's opinion with regard to the interpretation. He said "buffer" is not part of the language in § 4.1.6 of the LDC because this would then be an enforcement issue.

Discussion:

Jon Baker, the Board's legal counsel, said this appeal is linked to Case No. 14CUP1003, but that the Board's decision will include all of Metro Louisville.

Rebuttal—Mr. Price:

Mr. Price reiterated that if a business is 100 feet away from residential properties, § 4.1.6 A, B & C. of the LDC would apply to protect residential neighborhoods. Mr. Price submitted some information into the record and Mr. Salomon objected since the submittal deadline had passed. Ashley Bartley with QK4 discussed the areas between the Cabel Street lot and residential where 100 feet exists.

Cross Examination:

Mr. Porter asked Ms. Bartley how many feet is the Cabel Street lot from one of the residential properties. Ms. Bartley said 45 feet.

Rebuttal—Mr. Salomon:

Mr. Salomon said the other businesses Mr. Price used as examples are not similar to the Cabel Street lot's CUP request. He asked that the Board approve the Appeal and disregard staff's interpretation to apply the "plain language" of the regulation.

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Rebuttal—Ms. Liu:

Ms. Liu said the interpretation didn't leave out any language; and said she and staff are trying to be reasonable and fair so this regulation can be applied Metro wide.

Discussion:

Member Jarboe said the regulation does not include "buffer". Ms. Liu said no, but the Board could change the regulation to include this.

Deliberation:

Chair Proffitt said he feels the language is ambiguous and agrees with changing the code to clarify; but that he agrees with the staff's interpretation. Member Allendorf said he also agrees with staff's interpretation and as a fire marshal sees this occur throughout Louisville all the time. He said if there's a business next to residential and trash removal is 100 feet from the residential, then they would have to abide by the restricted hours; if 101 feet wouldn't. Member Fishman agreed with Member Allendorf. Member Jarboe said she thinks the regulation should be re-written and that 100 feet is not enough protection from noise nuisances for residential properties.

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 January 11, 2016 public hearing proceedings.

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

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that this is an Appeal of a written interpretation which states that operating hour restrictions in the Land Development Code (LDC), Section 4.1.6 only apply to portions of the subject property within 100 feet of a residential use or zoning district; and

WHEREAS, the Board finds that the staff interpretation for Section 4.1.6 of the LDC is valid and official because Emily Liu, Planning & Design's Director,

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directed staff case manager, Brian Mabry, to apply the existing interpretation regarding this Appeal and e-mail it to the Counsel for Swift as per their request ; and because PDS staff and the public frequently relies on hundreds of interpretations in the form of hard copy files and digital files that are in various formats, ranging from Word files, to PDF's, to e-mails; and because some of the interpretations are on letterhead and some are not; and because the Kentucky Revised Statutes (KRS) 61.870 defines public records as multiple physical forms (books, papers, maps, photographs etc.) and are available for inspection by anyone; and because Counsel for Swift requested an interpretation on the matter and very quickly received it; and because an interpretation not generally distributed by the government agency to potential stakeholders should not invalidate it or make it unofficial as the appellant claimed; and

WHEREAS, the Board finds that for various reasons, staff provides interpretations for provisions across the spectrum from clear to murky, and staff judges the provisions at hand are somewhere in the middle and worthy of a written interpretation; and

WHEREAS, the Board finds that the preamble of Section 4.1.6 of the Land Development Code (see page 1 in staff report) sets the parameters for where the noise standards apply, which is 100 feet from residentially zoned or used property and that "site" means the specific parts of the site called out in the preamble where various uses are prohibited from taking place (collection of garbage; loading and unloading and exterior construction activity); and

WHEREAS, the Board finds that if the operating hour requirements applied to the entire site, then there would be no need to mention the 100' applicability area in the regulations—the regulations would just state that the operating hour restrictions apply to sites adjacent to a residentially zoned or used property;

NOW, THEREFORE, BE IT RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **AFFIRM** the Director of Planning & Design's Interpretation with regard to the Land Development Code, Section 4.1.6 and

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

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YES: Members Allendorf, Fishman, Tharp, Turner and Proffitt.

NO: Member Jarboe.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member
Bergmann.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1003

Request: An application for a Conditional Use Permit from Section 4.2.42 of the Land Development Code to allow a potentially hazardous or nuisance use (proposed staging lot for trucks and trailers) in an M-3 zoning district.

Project Name: Truck & Trailer Staging/Cabel Street Lot

Location: 151 & 201 Cabel Street

Owners: Swift Pork Company
1770 Promontory Circle
Greeley, CO 80634

Louisville Gas & Electric Company
S. L. Cockerill, Director Operating Services
220 West Main Street
Louisville, KY 40202

Metropolitan Sewer District
c/o Chief Engineer
700 West Liberty Street
Louisville, KY 40203

Applicant: JBS USA, LLC & Swift Pork Company
John Cliff
1200 Story Avenue
Louisville, KY 40206

Representatives: Glenn Price, Esq.
Frost Brown Todd, LLC
400 West Market Street, Suite 3200
Louisville, KY 40202

QK4
Todd Springer, V.P./Ashley Bartley
1046 East Chestnut Street
Louisville, KY 40204

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CASE NO. 14CUP1003

Jurisdiction: Louisville Metro
COUNCIL DISTRICT 4—David Tandy
Staff Case Manager: Steve Hendrix, Planning Supervisor
**(CONTINUED FROM JUNE 15, 2015; AUGUST 24, 2015; OCTOBER 19, 2015
AND NOVEMBER 30, 2015).**

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, Steve Hendrix discussed the case summary, standard of review and staff analysis from the staff report. He said this case was continued due to the large volume of information submitted by the applicant and other concerned citizens.

The following spoke in favor of this request:

Glenn Price, Attorney for the applicant.

Christopher Long, Gradient, 20 University Road, Cambridge, MA 02138.

Todd Royer, URS Corp., 500 W. Jefferson Street, Suite 1600, Louisville, KY 40202.

Todd Roman, 1101 E. Washington Street, Louisville, KY 40206.

Andy Blieden, 1201 Story Avenue, Louisville, KY 40206.

Chris Sanders, 1228 E. Breckinridge Street, Louisville, KY 40204.

John Cliff with JBS USA, LLC.

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Bart Greenwald, Environmental Attorney for the applicant, 9750 Ormsby Station Road, Louisville, KY 40223.

Ray Carter, 151 Cabel Street, Louisville, KY 40206.

Summary of testimony of those in favor:

Glenn Price, Attorney for the applicant, submitted conditions of approval; a Certificate of Appropriateness and other information into the record. Mr. Price said he wanted to cross-examine Ms. Cunningham since there wasn't enough time at the last hearing.

Discussion:

Jon Salomon, attorney for the Butchertown Neighborhood Association, said Ms. Cunningham will have review the new information submitted before she testifies.

Summary of testimony of those in favor:

Dr. Christopher Long said he prepared an air quality report last October using the "modeling" method. He said this is preferred by most chemical engineers and even the EPA since it captures pollutant amounts with 5 years of weather conditions (which way the air is blowing, temperatures outside etc.). Dr. Long said there is a lot of outdated, misleading material regarding diesel emissions today and that there is evidence that low level exposure does not lead to adverse health effects. He said the dose creates the poison.

Cross-examination:

Mr. Salomon asked how many times he has visited the subject property. Dr. Long said 2-3 times. Mr. Salomon asked him if there was a "good level" of diesel emissions. Dr. Long said not that he knows of.

Summary of testimony of those in favor:

Todd Royer with URS Corporation said they are one of the largest air quality consulting companies and he is in charge of evaluating and estimating air pollution and ambient air impacts. Mr. Royer discussed his findings of the actual on-site testing results that were performed October 11-14, 2015. Mr. Royer said they recommended minimizing idling trucks and trailers and to pave the graveled areas to reduce pollutants.

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Cross-examination/Discussion:

Mr. Salomon asked Mr. Royer how many trucks and trailers were on the site and what years they were made. Mr. Royer said he didn't know but was informed by the applicant that the days he tested were "typical". Mr. Salomon asked Mr. Royer if he was aware that slaughtering occurs on Sundays. Mr. Royer said no. Mr. Salomon said there are 15 carcinogens in diesel emissions. Mr. Royer said yes, but short term. Mr. Salomon said people live in Butchertown year round.

John Cliff, the applicant, said there were about 35 Transportation Refrigerated Units (TRU's) on site during on site testing. Member Fishman said roughly between 30-40. Mr. Cliff said yes. Mr. Salomon objected since this information was not submitted prior to the hearing. Mr. Salomon said the expert modeled 24 TRU's not 30-40. Mr. Royer said this is why modeling offers better results going back 5 years vs. a 4-day study. Mr. Price asked Mr. Cliff if all the trailers have refrigerated units. Mr. Cliff said no.

Summary of testimony of those in favor again:

Glenn Price presented a PowerPoint to the Board. He said they have added a sidewalk along the entire frontage which will include plantings; added a Landscape Buffer Area (LBA) along Cabel and Quincy Streets; adding decorative receptacles; removing old signage; removing all barbed wire and razor wire; installing a 12-foot tall wooden privacy fence (approved by Butchertown ARC); providing Vehicle Use Area (VUA) perimeter plantings; and signs so trucks will be prohibited from traveling along certain streets in the area. He said from 12:00 a.m. to 6:00 a.m. the trucks/trailers will be washed and moved behind the building which is away from the residential properties.

Todd Roman read a letter from a business owner in the area who said Swift has been great a neighbor, and there employees are polite and friendly. He asked the Board not to make it more difficult for Swift to do business here. Mr. Roman said he also owns a business in the area and doesn't even notice the trucks from Swift.

Andy Blieden said he's lived in Butchertown for 20 years and is surrounded by the Swift business; and just recently purchased 9 more properties in the area. He said the neighborhood association will not be happy until Swift is gone. He said he hopes that the neighborhood association can start getting along and stop

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the lawsuits. Mr. Blieden said he's known Mr. Cliff for years and that he's very credible; and without the parking would be negatively affected. Mr. Blieden said his business has been doing well and if Swift were so bad, people wouldn't come to his business. He said even Mr. Salomon has a nice restaurant right across the street from Swift.

Chris Sanders said he used to be the union president for the Swift employees but still wanted to be here today to represent them. He said the jobs at Swift pay well and offer great benefits. He said the trucks used to park right across the street and on the lot which took up parking for employees, who would then park in the neighborhoods. He said moving the trucks to the Cabel Street lot was a smart decision and has benefited the entire neighborhood.

Discussion:

Mr. Price discussed the Acoustifence® and said they would be placing it near the residential areas down to the washout building. Mr. Salomon said the washout building area is where loading and unloading will occur and be within the 100 ft. setback. Mr. Price said no truck idling will be going on. Chair Proffitt suggested a truck route. Mr. Cliff said when "the Bridges Project" is complete they will be re-routing the trucks. Chair Proffitt said the trucks will also need to know in advance of what streets they are not supposed to travel on.

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:

John Salomon, Attorney for the Butchertown Neighborhood Association, 3600 National City Tower, 101 S. Fifth Street, Louisville, KY 40202.

Sarah Lynn Cunningham, 1711 Edgeland Avenue, Louisville, KY 40204.

Andy Cornelius, 806 E. Washington Street, Louisville, KY 40206 (didn't sign in).

Pattie Pugh, 120 Adams Street, Louisville, KY 40206 (didn't sign in).

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Summary of testimony of those in opposition:

John Salomon, attorney for the Butchertown Neighborhood Association, said the applicant was told over 6 years ago that they need a CUP for this request, but have continuously used it anyway. He said the applicant doesn't know how old the TRU's are; and that California uses a 1,000 ft. setback instead of 100 ft. Mr. Salomon said the only way to reduce the emissions and carcinogens from the trucks is to use electric TRU's or Hybrid units since the distance can't be expanded. He said it's the Board's job to protect the public health, safety and welfare.

Sarah Lynn Cunningham was questioned by Mr. Salomon. He asked her to comment on the test that was recently submitted. Ms. Cunningham said Test Site A, is not one of the best locations they could have used. She didn't know if they were facing up or down; that the wind data is unclear; and how many trucks were coming and going on the lot. She said stricter standards for diesel emissions are being implemented across the U.S. and most states are following California standards. She said there is no question that diesel emissions are cancerous; and when air pollution spikes, there are more reported cases of asthma and heart attacks. She said truck drivers are also sleeping on the lot leaving the trucks running for heat or air; and suggested building a place for the truck drivers to sleep on the site. Ms. Cunningham explained that Swift could use hybrid and electrical TRU's and that diesel filters would eliminate 90% of the emissions. Member Fishman questioned the filters. Ms. Cunningham said that TARC has retrofitted the buses with them to reduce pollution. She also suggested that Swift use electric shag trucks; and that they quit providing free diesel to the trucks.

Andy Cornelius submitted 5 letters of area residents in opposition to this request. He submitted four photos showing serious accidents with various trucks in the Butchertown neighborhood.

Pattie Pugh said she has lived in the area for 5 years would like Swift to comply with the regulations, not only for people living in the area, but their employees. She said lives in an old building and that trucks passing by rattle her windows. Ms. Pugh said Swift should spend whatever money they need to, to improve the neighborhood.

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Cross Examination:

Bart Greenwald, Attorney, for the applicant cross-examined Ms. Cunningham. He asked her if she's a certified environmental engineer. Ms. Cunningham said she's a licensed engineer, and said he could file a complaint if he felt she wasn't qualified. Chair Proffitt said he knows the engineering laws and licensure process and said she has proven to be qualified to discuss this case. Mr. Greenwald asked if she was an expert with emissions and if she has taken any diesel emissions classes. Ms. Cunningham said she has taken classes. He asked her if she did any modeling studies. Ms. Cunningham said no, that the burden is on the applicant. Mr. Greenwald asked if she did any independent testing of her own. Ms. Cunningham said she has been to the site to point out problems with the applicant's testing methods.

Discussion:

Chair Proffitt asked why they don't specify the type of TRU's on the site and asked if they have filters. Mr. Cliff said he can't control the types of trucks and trailers that go in and out of the lot but believes they all have filters. Mr. Cliff said he would like Ray Carter, who runs the lot, to discuss this.

Summary of testimony of those in favor again:

Ray Carter said all new trucks have the filters which include about 80% on their lot. He said most companies are following the stricter California regulations. Mr. Carter said that the lot is not a truck stop and said they have 15 minutes to park and turn the trucks off. Chair Proffitt asked how long it would take for the trucks on this lot to be California compliant. Mr. Carter said about 2 years. Member Fishman asked if they would agree to this. Mr. Carter said yes.

Cross-examination:

Mr. Salomon asked Mr. Carter if he could estimate the number of trucking companies that utilize this lot. Mr. Carter said about 80% are Swift. Mr. Carter said he works for Continental but manages the lot for Swift. Mr. Salomon said that Swift could tell him to only allow hybrid TRU's or electric. Mr. Carter said yes, that they like to do whatever their customers want.

Rebuttal:

Mr. Price explained again the measures they are taking to mitigate the nuisances. Chair Proffitt asked if he would agree to a condition of approval regarding using electric or hybrid TRU's on the property by implementing the

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current California standards for diesel fuel emissions. Mr. Price said yes, that they could do this in 18 months to, not 2 years.

Deliberation:

Chair Proffitt mentioned all the conditions of approval that will need to be incorporated into the motion if the Board approves; and that the applicant will need to submit a revised plan illustrating all the changes. He said Swift is trying to be a good neighbor by adding the sound barrier fence; adding sidewalks, landscaping and agreeing to using hybrid or electric TRU's within 18 months of approval. The other Board members agreed that Swift is working with the neighborhood and asked that they continue to do so.

**FINAL DEMONSTRATION OF APPROPRIATENESS
CONDITIONAL USE PERMIT PURSUANT TO LAND DEVELOPMENT CODE
§4.2.43 [“POTENTIALLY HAZARDOUS OR NUISANCE USES”]
(amended November 2, 2015) AS SUBMITTED BY THE APPLICANT**

**JBS USA, LLC and SWIFT PORK COMPANY¹
151 and 201 Cabel Street
Louisville, Kentucky**

This is a proposal for a Conditional Use Permit pursuant to Land Development Code (“LDC”) §4.2.43 [“Potentially Hazardous or Nuisance Uses”] applicable to an 8.9012-acre property [referred to as the “Cabel Street Lot,” the “Site,” or the “CUP Property”].

1. **Explain the two (2) lots comprising the Site.** The overall area of the Site is 8.9012-acres. The Site is comprised of two underlying properties: the northernmost site is owned by Louisville Gas & Electric Company (DB 1369, P 365), which is 3.5672-acres. This property is leased to the City of Louisville, which has sub-leased it to Swift Pork Company. The remainder of the Site is owned by Swift Pork Company (DB 10342, P 474), which is 5.334-acres.

¹ The reference to JBS USA, LLC is inclusive of JBS, LLC, Swift Pork Company, JBS/Swift & Co., and Swift-Ecrich, Inc.

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- **Proposed Conditional Use Permit area.** The proposed conditional use permit area is the entire area shown on the CUP Plan.

- 2. **Truck route to and from the Site.** Trucks arrive at the Site via Interstate-71 to Zorn Avenue to River Road to Witherspoon Street to Cabel Street.² When trucks/trailers leave the Site, they reverse this route to I-71.

- 3. **Description of the overall operation.** The Cabel Street Lot is an 8.9012-acre property bounded by Cabel Street, Adams Street, Webster Street, Quincy Street and the Marshall Auto Parts, Inc. property to the north of the site as shown on the conditional use permit plan ("CUP Plan").

- 4. **Activities conducted on the Cabel Street Lot.** Trailers, which are ultimately used to transport meat products per customer order, first arrive at the Cabel Street Lot and enter the Site via the entrance on Cabel Street. They are then driven to the Wash-Out Building (2 bays), where trailer interiors are washed out with ordinary water from a hose. Typically, vegetable products and/or pieces of pallets are hosed out of the trailers, and refuse is placed in an on-site dumpster. Following wash out, the empty trailers are tagged and driven to the Empty Trailer Staging Area by "shag" trucks operated by Continental Express, Inc. for later use.

Trailers which are staged on the Cabel Street Lot are owned by:

- customers using common carriers or their own trucking lines to deliver meat products to customer destinations; or

- common carriers hired by JBS USA, LLC ("JBS") to deliver meat products to customer destinations.

Empty trailers are "called" to, and then driven to, the Story Avenue plant by shag trucks for packing of sealed meat products. About an hour prior to being

² While Witherspoon Street is temporarily closed due to the bridges construction, trucks arrive via Interstate-64 to Story Avenue or Mellwood Avenue to Adams Street to Cabel Street and to the Site or from Interstate-71 to Zorn Avenue to Mellwood Avenue to Story Avenue to Adams Street to the Site.

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loaded, the TRU³ refrigeration unit is turned on to chill the trailer to an appropriate temperature. TRUs are refrigerated to a temperature of (i) 26 - 28°F for fresh meat products or (ii) less than 10°F for frozen meat products. The refrigeration units are thermostat-controlled so that when the trailer temperature rises above the appropriate set temperature the refrigeration cycle will begin operating until the temperature drops below the set temperature.

When these trailers have been packed and refrigerated they are referred to in the industry as "TRUs." Loaded and sealed TRUs are staged on the Cabel Street Lot where shown in the TRU staging area until they are connected to a cab and delivered to customer destinations.

The length of time a TRU refrigeration unit operates is dependent on the ambient temperature. In winter months the refrigeration units operate with less frequency. JBS/Swift supplies diesel fuel for the TRUs [see FUEL TANK on the CUP plan], and during summer months a TRU uses one (1) gallon of diesel/hour of run time, on average

Neither JBS USA, LLC nor Swift Pork Company "stores" meat products at the Cabel Street Lot. The Cabel Street Lot is a temporary staging lot for (i) empty trailers, and (ii) TRUs containing meat products which have already been purchased by, and have become the property of, the customer.

- **Entrance to the Site.** The sole functioning entrance to the Site is situated at the northwestern corner of the Site as shown on the Conditional Use Permit Plan providing direct access to and from Cabel Street. The entrance is approximately 40-feet wide.
- **The "Wash Out" Building.** The washing out of empty trailers which come onto the site occurs at two (2) functioning bays in the "Wash Out" Building. Wash out occurs with ordinary water from a hose.
- **Staging of empty trailers and trucks.** See staging locations shown on the CUP Plan.

³ TRU means "transportation refrigeration units." An empty trailer becomes a TRU when it is loaded with fresh or frozen meat products and the trailer refrigeration units are activated.

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- **Staging of TRUs (refrigerated trailers with meat products).** See staging locations shown on the CUP Plan.
- **Other uses on the Cabel Street Lot.** (1) One building identified on the CUP Plan has been and will continue to be used by the Louisville Metro Department of Public Works and the Waterfront Development Corporation for equipment storage purposes. In the event these city agencies depart from the Site, JBS/Swift would use it for a storage building (no storage of meat) similar to other buildings on site. (2) Louisville Gas & Electric Company has a right to use the Cabel Street Lot as a staging area for storm restoration pursuant to (Sub) Lease Agreement, p. 2, Paragraph 3.D. In addition, Louisville Gas & Electric Company maintains an overhead electric transmission line that crosses the Site.
- **Hours of operation.** The Cabel Street Lot is open seven (7) days per week, 24 hours per day. The Lot must remain open for JBS/Swift customers because over-the-road haulers arrive from distant locations to pick up loaded trailers (TRU's) at all hours for delivery of products to customer destinations.
- **Surface pavement.** The surface of the Cabel Street Lot is shown on the "Paving Plan." The Paving Plan depicts areas that will be paved. All surfaces of the Cabel Street Lot will have a hard and durable surface. No gravel areas will remain. Areas of the asphalt pavement having defects (e.g., potholes) will be paved. Any remaining area tending to produce windblown dust will be coated with surfactant.
- **Surfactant application to gravel areas.** As provided in the Fugitive Dust Control and Trailer Staging Plan approved by APCD in FEDOOP Permit No. 111-01-F(24), surfactant is applied to areas of the Site with gravel surfaces. At the recommendation of the Metropolitan Sewer District, EK35®, a synthetic organic dust control product, is utilized as the surfactant. EK35® is a binder that provides highly effective and durable dust control for the Site while minimizing the potential impacts to the environment. Minimizing potential impacts to the environment is especially important because the Cabel Street Lot is located within MSD's Combined Sewer System. EK35® is approved by the EPA Environmental Technology Verification Program. It is one of only 5 products found on the EPA website. Surfactant is to be

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applied on a regular basis prior to occurrences of dust. Any other surfactant will be applied only after MSD has certified that the alternative may be used.

5. **Truck route from the Cabel Street Lot to the loading area at 1100 - 1200 Story Avenue (the plant), and the times when trailer loading occurs at the plant.** The truck route begins at the entrance to the Cabel Street Lot and goes southbound on Cabel Street to and through the JBS parking lot opposite the plant at 1100 – 1200 Story Avenue, approximately 1570 feet. Trailers are then driven through this parking lot across Story Avenue to the plant dock. Normal trailer loading hours are 7 AM to 2:30 AM.

6. **Air Quality Analysis of Operations on the Cabel Street Lot.**

Emissions from on-Site diesel engines have been analyzed in depth by independent consultants hired by JBS/Swift.

A. **The September 11, 2014 Memorandum from Todd P. Royer, URS Corporation, to Glenn Price.**

JBS/Swift hired URS Corporation to estimate air emissions from the staging operations conducted on the Cabel Street Lot. URS then conducted air dispersion modeling of those emissions to characterize their impacts to the nearby neighborhood. URS reported its modeling results in the September 11, 2014 Memorandum to Glenn Price from Todd P. Royer, PE, URS Corporation, (“JBS USA LLC Cabel Street Lot Diesel emissions Modeling”) reflecting the impact of all diesel emission sources at the Cabel Street Lot. The diesel combustion emissions of NO_x (nitrous oxide), SO₂ (sulfur dioxide), fine particulate (PM_{2.5}), CO (carbon monoxide) and trace hazardous pollutants are the pollutants of interest from this Site and are from mobile sources. Diesel combustion emissions are generated at the Site from the TRUs on the trailers and from the engines of transport trucks used to move the trailers.

URS estimated emissions (and performed air quality modeling) based on two scenarios: peak facility throughput (= 2008 levels), and more typical (= 2013 levels).

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Overall plant operations were at their peak in 2008; however, more recently in 2013 [and since 2013] operations have been at somewhat lower levels. Key operating parameters that affect emissions are summarized below.

TRUs staged on site

- On an average day in 2008, the number of TRUs staged on site at any one time was 24.23.
- On an average day in 2013, the number of TRUs on-Site at any one time was 20.67.
- In both instances, the refrigeration units of the TRUs cycle on and off as needed to maintain the trailer temperature. On average, during typical warm weather they are cycled on approximately 25% of the time. (In extreme summer heat, they would cycle on somewhat more. However, in winter cold they would be on much less, and in extreme winter conditions they would be mostly off.)
- *[Note. TRU counts reflect trailers that have been filled with meat products, have their TRU refrigeration units activated, and are staged (on the west end of the Site) awaiting pickup. Additionally, on the east end of the Site there are a larger number of empty trailers that are staged and are not in use. The diesel refrigeration units on these empty trailers are not operating and have no emissions.]*

Trailers called to plant for packing

- On an average day in 2008, the daily average number of trailers called to the plant from the Cabel Street Lot for packaging was 35.2.
- On an average day in 2013, (which is more typical recently) the daily average number of trailers called to the plant for packaging was 30.0.

The mobile source emissions consist of emissions from diesel truck engines used to transport semi-trailers containing meat products produced at the JBS Story Avenue facility and the diesel-fueled TRUs on the semi-trailers that are used to refrigerate the meat products when staged for pick up and in

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transit. *[Note. There are no "stationary" sources at the Cabel Street Lot other than a small amount of fugitive dust from roadway surfaces (paved and gravel) generated when vehicle wheels travel across the road surface. This small amount of dust is predominantly coarse in nature, is characteristically different than the diesel combustion emissions, and is not a significant concern from an ambient air quality standard standpoint.]*

Diesel exhaust constituents are ubiquitous in ambient air due to numerous sources other than the operations conducted at the Cabel Street Lot, and it is not possible to use monitoring to quantify the emissions from the Cabel Street Lot operations. Contributions of diesel exhaust emissions from the Cabel Street Lot operations are difficult to distinguish from diesel exhaust emissions from other sources in the area, such as diesel truck traffic on the nearby interstates and other diesel truck traffic on roads in the vicinity.

Diesel emissions are directly proportional to the number of truck engines and TRUs operated on the Cabel Street lot. The number of truck engines and TRUs operating on the Cable Street lot is directly proportional to the amount of meat products produced and shipped. Consequently, URS modeled emissions for two production rate scenarios:

1. Current typical emissions based upon the number of hogs processed in 2013; and
2. Emissions from the highest past actual facility processing rate, which was in 2008.

**URS used emission factors representative of current
average fleet of TRUs in service.**

URS used emission factors that are representative of the current average fleet of TRUs in service. Applicable federal regulations that are now being phased in will require lower emission standards for new off-road diesel engines such as TRUs. The federal standards must be met by new engines based on their date of manufacture, and have been phased in since 2004, with the last phase starting in 2013. As older TRUs are replaced by new units, the average fleet emissions from TRUs will significantly decrease for particulate matter,

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nitrous oxides and hydrocarbons. As a result, future emissions from TRUs for those pollutants will be less.

URS used air dispersion modeling to estimate the impact of the air emissions from the diesel truck engines and TRUs as shown in its Memorandum referenced above. The modeling was conducted using USEPA approved air dispersion modeling software and using five (5) years of meteorological data (wind speed, direction, temperature, etc.) obtained from the Louisville Metro Air Pollution Control District ("APCD") website.

The modeling was used to determine the maximum concentration expected to occur anytime within a one-year period. Average concentrations over longer periods of time will be much lower than the maximum concentration. The modeling was used to determine the highest concentration in the neighborhood, which occurs at the Cabel Street Lot fence line. The modeling was also used to determine the highest concentration at a point in the middle of the neighborhood between the Cabel Street Lot and Story Avenue to illustrate the concentration expected to be representative of exposures within the neighborhood as a whole.

URS compared the maximum modeled concentration at the fence line from sources at the Cabel Street Lot to the Ambient Air Quality Standards established in APCD Regulation 3.01 Section 7. The Ambient Air Quality Standards set by APCD are identical to the National Ambient Air Quality Standards established under the Clean Air Act by USEPA.

In all instances, the maximum modeled concentration from the Cabel Street Lot was less than the applicable Ambient Air Quality Standard.

Moreover, to establish a basis to determine whether the incremental increase in ambient concentrations caused by diesel emissions from the Cabel Street lot operations might cause an exceedance of an Ambient Air Quality Standard, URS reviewed the data for the monitors operated by APCD which are used to determine compliance in Louisville with the Ambient Air Quality Standards. URS selected the maximum concentration detected by any of the relevant monitors of each of the pollutants that were modeled for the emissions from the Cabel Street Lot. That *maximum monitored "background"* concentration

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was then added to the *maximum modeled* concentration for the emissions from the Cabel Street lot and compared against the Ambient Air Quality Standards.

In all instances, the combined maximum monitored concentration and modeled concentrations are less than the Ambient Air Quality Standards, which demonstrates that emissions from the Cabel Street Lot operations do not result in exceedances of Ambient Air Quality Standards.

B. The November 5, 2014 Evaluation of Potential Air Exposures Associated with Diesel Exhaust Emissions from the JBS/Swift Cabel Street Lot Operations prepared by Christopher M. Long, Sc.D., DABT.

JBS/Swift also hired Gradient Corporation to conduct an assessment of the public health significance of the emissions from the Cabel Street lot operations. Gradient conducted a comparative exposure assessment using comparison data specific to Louisville and data from literature regarding common exposures to the diesel exhaust constituents as described in the November 5, 2014 Memorandum to Glenn Price from Christopher M. Long, Sc.D, DABT, Gradient Corporation ("Evaluation of Potential Air Exposures Associated with Diesel Exhaust Emissions from the JBS/Swift Cabel Street Lot Operations").

The incremental exposures that may result from diesel exhaust emissions from the Cabel Street lot operations are generally a small fraction of the everyday exposures that result from the other common sources of diesel exhaust emissions.

Gradient also compared the modeled emissions from the Cabel Street Lot operations to modeling results from USEPA's National Air Toxics Assessment ("NATA"), which predicts chronic outdoor ambient air concentrations down to the census tract level. The NATA data used by Gradient was based upon 2005 emissions inventory data, which is before JBS began using the Cabel Street lot, and before the federal diesel emission standards which are being phased in to reduce diesel emissions became effective.

Gradient concluded that the emissions from Cabel Street Lot operations are negligible compared to background chronic outdoor air concentrations associated with other sources based upon the 2005 NATA data.

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Gradient also compared the modeled results for the Cabel Street Lot operations to the nearest ambient air monitor operated by APCD at Bowman Field, off of Cannons Lane.

Gradient concluded that the modeled concentrations from Cabel Street lot operations are negligible compared to the corresponding concentrations monitored at Bowman Field.

Diesel exhaust emission from the Cabel Street lot operation will not cause Ambient Air Quality Standards to be exceeded, nor will the Cabel Street Lot operation pose a risk to public health.

7. **Proposed mitigation of sounds/noise from the Site.** Skelly and Loy, Inc. performed an analysis of the acoustical environment of the Site and reported that sounds produced on the Cabel Street Lot are "significantly less than the acceptable levels [of sound] outlined in HUD regulations and EPA documents [addressed in the analysis]," and "[t]he measured sound levels are comparable to a typical suburban/urban environment."⁴ See November 10, 2014 Memorandum of Bill Kaufell, Skelly and Loy, Inc. A sound attenuation device, depicted in Figure 5 of the November 10, 2014 Memorandum of Bill Kaufell, Skelly and Loy, Inc. is proposed adjacent to Webster Street and will continue through to Adams Street.

The most southerly one-half (approximately 62 +/- feet) of the proposed **12-foot** sound fence (outside the Webster Street right-of-way, and connected to the Wash Out Building, and as shown on the CUP Plan) will be erected first. Following successful partial right-of-way closure of Webster Street described in the CUP Plan General Notes and upon obtaining necessary property rights, the remainder of the sound wall will be constructed.

8. **Closest distance from a TRU to adjacent residence.** The closest distance from a TRU to adjacent residence shown on the CUP Plan is approximately 405 feet to the residence, which has a street address of 1301 East Washington Street.

⁴ See pp. 4 – 5, November 10, 2014 Memorandum from Bill Kaufell, Skelly and Loy, Inc. to Glenn Price, Frost Brown Todd LLC.

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9. **Neighborhood meeting summary.** A noticed neighborhood meeting was held at Copper & Kings, 1121 East Washington Street on November 13, 2014. A summary of this neighborhood meeting is enclosed with the application.

10. **Marshall's Auto Parts, Inc.** Marshall's is an approximate 4.3 - acre auto salvage property located at 375 Adams Street on which auto parts and similar metal products are sold. Marshall's Auto Parts' business is unrelated to Cabel Street Lot operations or JBS/Swift's business.

Requirements of Land Development Code §11.5A.1

1. **This request for a conditional use permit meets the purpose, intent and all requirements of the Land Development Code.**

The proposed CUP will not have an adverse effect on neighboring property because of the historic use of this property as a staging lot and because the TRU's on-Site do not cause emission levels that would raise health concerns, because sound/noise concerns due to the movement of vehicles will be addressed by a 12-foot sound attenuation fence together with an Acoustifence® sound absorbing product on the east side of the Site near Webster Street extending to Adams Street, and also because the existing buildings will continue to attenuate sound that would otherwise be heard within the nearby neighborhood, and because on-Site dust will be substantially eliminated by paving gravel areas and areas with broken pavement and by application of surfactant to areas that tend to cause windblown dust. The surfactant will be an MSD-recommended surfactant. In addition, the proposal is not in conflict with the goals and plan elements of the Comprehensive Plan as detailed below in this Demonstration of Appropriateness.

The proposal is essential to or will promote the public health, safety and general welfare in one or more zones because it does not cause air quality exceedances as demonstrated in the URS/AECOM reports of Todd Royer and the Gradient reports of Dr. Christopher Long. Additionally, the paving of the lot and the application of surfactant will prevent on-site dust concerns. Noise concerns for nearby residents will be addressed by 12-foot solid wood privacy fencing with Acoustifence® and will be in compliance with the requirements of the Land Development Code ("LDC"), and because the proposal is in compliance

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with the listed standards and requirements of the Land Development Code in that:

- A. The proposal conforms to the Comprehensive Plan as detailed below;
- B. The proposal adequately addresses environmental and health related concerns by the operation as indicated in the modeling of the site's air quality impact for diesel emissions and plans to pave the lot to eliminate windblown dust;
- C. The proposal has adequate site design and security measures to mitigate impacts to the public health, safety and general welfare because of the proposed fencing surrounding the site together with landscaping and a sidewalk along Cabel Street, all as indicated on the CUP Plan and in this Demonstration of Appropriateness; and
- D. The operation and any associated nuisances will be properly managed and the public health, safety and general welfare will be protected by the perimeter fencing, landscaping, sound attenuation protections, improved lighting controls in conformance with the Land Development Code, and because the Applicant has demonstrated that there are no adverse air quality concerns or adverse health effects from the thermostat-controlled operation of TRUs on site.

Conformance with LDC §5.2.2. The proposal conforms to Land Development Code ("LDC") §5.2.2 because the proposed amenities described in this Demonstration of Appropriateness (i.e., solid wood fencing, Acoustifence®, landscaping and the proposed sidewalk on Cabel Street) make the development consistent with Butchertown's traditional neighborhood pattern and form of development.

Conformance with LDC §4.1.6. The proposal conforms to LDC §4.1.6 because (i) no loading or unloading operations or (ii) truck idling occur within 100 feet of a residentially zoned or used property between the hours of 10 PM and 7 AM.

- 2. The proposal is consistent with all applicable Goals, Objectives, Guidelines and Policies of the Comprehensive Plan.**

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Community Form Guideline 1. The proposal conforms to Form Districts Goal A1 and Objective A1.4, A1.5 and A1.6, Land Development Regulations Goal A3 and Objectives A3.1, A3.4 and A3.6, Traditional Neighborhood Goal C1 and Objectives C1.1 and C1.2, Community Design Goal C2 and Edge Objective C2.3, Access and Circulation Objective C2.4, Streetscape Objective C2.5 because a substantial wood screen will be placed along the Cabel Street perimeter, the Quincy Street perimeter and the eastern perimeter of the site together with street trees and landscaping where appropriate and a sidewalk along Cabel Street which will provide a desirable, pleasant and safe pedestrian connection between the Butchertown neighborhood and Louisville's Waterfront and downtown which assists in making the neighborhood a more healthy, livable place; Land Use Goal C3 and Objectives C3.1 and 3.2, Traditional Neighborhood District Objective C3.2 and Objective C3.7 because this medium intensity industrial use will have solid wood perimeter screening throughout the site perimeter (except the north side bordering Marshall's Auto Parts) and because of the 12-foot sound attenuation fencing generally on the east side of the property and because all razor wire and barbed wire fencing will be removed all of which will make the staging use compatible with nearby residences and the neighborhood and will protect the residential area from any adverse impacts and will protect the character of the adjacent residential area of Butchertown in accordance with Site Design Goal C4 and Objectives C4.1 and C4.2, Building Height Objective C4.3, Setback and Lot Dimension Objective C4.4, Building Design Objective C4.5 and Buffers and Compatibility Objective C4.6, Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy B.2 (Traditional Neighborhood); and the proposal is consistent with the Executive Summary of the Butchertown Neighborhood Plan and Louisville Ordinance No. 24, Series 2008.

This industrial business and the predecessor industrial staging uses on the Site⁵ pre-date the adoption of the Comprehensive Plan in 2000, and its designation of this Site and the surrounding industrial area are a unique part of the Traditional Neighborhood Form District in Butchertown. Nevertheless, the use of the Site for industrial staging conforms to the Goals, Objectives, Guidelines and Policies for the Traditional Neighborhood form in Butchertown, and the location and level of intensity of development that is appropriate for this form district in Butchertown.

⁵Louisville Gas & Electric Company took title to the northern parcel in 1924; Metropolitan Sewer District took title to the parcel that Swift Pork Company now owns in 1967.

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There is a mixture of low to medium intensity industrial uses in the area. The Butchertown Neighborhood Plan identifies the area in which the Cabel Street Lot is located as the "Central Industrial Area" of Butchertown. See Butchertown Neighborhood Plan, p. 18.⁶ The Butchertown Neighborhood Plan recognizes, among other things, a connected public street and alley system in the Butchertown neighborhood, which is utilized by JBS/Swift among other users. JBS/Swift will continue to utilize the street system as indicated in this Demonstration of Appropriateness. The Site constitutes an appropriate "edge" to the abutting residential areas along Quincy Street and beyond because of the buildings situated at the southern and southeastern property lines of the Site, the floodwall along Quincy Street, the proposed sound attenuation fence adjacent to Webster Street extending to Adams Street and new landscaping to be planted in the Cabel Street right-of-way and elsewhere on-Site. The existing and proposed use of the site does not constitute a "new" heavy industrial use of the Site because the Site has been used as a staging site for heavy vehicles for many years, ever since MSD had an ownership interest in the Site. The continued use of the Site for staging purposes is consistent with the pattern of development in Butchertown as described in the Butchertown Neighborhood Plan, in which industrial uses bisect the residential areas of the Neighborhood. The operation at the Site allows industrial staging necessary to business of pork production and sale, and these activities allow for nearby residents to live without adverse consequence to safety and health. The existing on-site buildings, at one-to-two stories, are compatible with the character of the Neighborhood and are not anticipated to change. Nearby residential neighborhoods remain healthy, vibrant and livable. The development plan protects the existing neighborhood. Separation techniques are employed to make the development compatible with the scale and character of the neighborhood.

Centers Guideline 2. Centers Guideline 2 does not apply to this industrial use because the Comprehensive Plan's definition of "centers" provides that centers are "compact, walkable, activity areas." This site is a staging area for trucks and

⁶ Also see the Land Use & Community Form Map of the Butchertown Neighborhood Plan at **Tab 10** (p. 16), which shows that the Central Industrial Area of Butchertown, located within the Traditional Neighborhood Form District, runs approximately from Beargrass Creek near Mellwood Avenue to Adams Street to the Kennedy Interchange, bisecting the residential areas of Butchertown. Residential areas of Butchertown are located to the east and west of the Central Industrial Area. This industrial area contains a variety of active industrial uses as well as several vacant or underutilized buildings.

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trailers and, at approximately 8.9-acres, is a large site and does not contain a mixture of land uses. Nor is it designed to be internally walkable for area residents. Moreover, the definition of "activity center" is "an area of concentrated, mixed-use activity that often has a residential component." This site is not a site containing mixed-use activities.

Compatibility Guideline 3. The proposal conforms to Transportation and the Environment Goal C1 and Objectives C1.2 and C1.3, Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.1, 3.2, 3.5, 3.6, 3.7, 3.8, 3.9, 3.17, 3.18, 3.21, 3.22, 3.23, 3.24, 3.28 and 3.29. All buildings on the site are existing one-to-two story painted block buildings which have existed for many years. JBS/Swift will utilize on-site buildings for storage of mechanical parts and business equipment; one building will be used for storage of tanker trucks; one building will continue to be utilized for storage by the Louisville Metro Department of Public Works and the Waterfront Development Corporation. The floodwall, the height of which varies between approximately 14 – 17-feet in height, separates the Site from homes on Quincy Street just south of the Site. Existing buildings and a proposed sound attenuation fence will separate the Site from homes on Quincy Street east of Webster Street. Use of the site does not cause odor problems. Policy 3.4 does not apply because the site is zoned M-3 and is an existing industrial site. The use of the Site for staging purposes is an historic use of this Site, both before JBS/Swift came to this site and presently. The site is consistent with the pattern of development in Butchertown's Traditional Neighborhood Form District. Diesel emissions from on-Site sources are not at levels sufficient to cause health concerns in the Neighborhood as demonstrated by both air quality modeling and on-site testing. Lighting on the Site will conform to Land Development Code requirements. Adverse impacts from noise-producing impacts will be minimized due to the proposed sound attenuation fence. Visual impacts of the site have been minimized due to the location of buildings on-Site and the solid wood privacy fence surrounding all of the Site bordered by residences or public streets. An appropriate transition between the residential areas along Quincy Street and in Butchertown is achieved through the existing location of the on-site buildings, the floodwall and the proposed sound barrier. Impacts from parking, loading and delivery have been minimized by the fence and sound attenuation fence and landscaping which will also serve as a visual buffer, through the use of dust control, and through the proposed sound attenuation fence. Other than

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directional signs only one sign is proposed at the entrance to the Cabel Street Lot.

Natural Areas and Scenic and Historic Resources Guideline 5. The proposal conforms to Social and Cultural Resources Goal D1 and Objectives D1.1 and D1.2. Natural Areas and Scenic and Historic Resources Guideline 5 and all applicable Policies adopted thereunder, including Policies 5.1, 5.2, 5.3, 5.6 and 5.7. The proposed Conditional Use Permit will not cause a change to the topography of the site nor will it cause any degradation to the environment due to disturbance of natural systems. There are no distinctive cultural features, historic buildings or uses or archaeological sites on the Cabel Street Lot. There are no wet soils, hydric soils, highly permeable soils, or steep or unstable slopes on the site.

Economic Growth and Sustainability Guideline 6. The proposal conforms to Economic Growth and Sustainability Guideline 6 and all applicable Policies adopted thereunder, including Policies 6.3, 6.4, 6.8 and 6.11. The use of this site for staging of trailers incident to the JBS/Swift pork plant is consistent with the Butchertown Neighborhood Plan and the Traditional Neighborhood Form District in Butchertown. Use of the Cabel Street Lot serves the Swift Pork Company pork plant, located on Story Avenue, a major arterial roadway located approximately 1500+ feet from the Cabel Street Lot. The Cabel Street Lot is located within the established industrial area of Butchertown (see Butchertown Neighborhood Plan, p. 16), and is situated immediately across Cabel Street from an existing industrial use (i.e., Challenger Lifts at 200 Cabel Street).

Circulation Guideline 7. The proposal conforms to Circulation Guideline 7 and all applicable Policies adopted thereunder, including Policies 7.1, 7.10 and 7.16. No transportation impact mitigation has been requested by the Louisville Department of Public Works and Assets and the Department of Public Works and Assets has approved the proposal. Present access to, from and through the site is safe and efficient for vehicles and pedestrians. The CUP plan demonstrates sufficient off-street parking pursuant to the Land Development Code together with street improvements (i.e., a wood privacy fence, sidewalk and landscaping on Cabel Street and fencing and landscaping around the perimeter of the balance of the site). The Cabel Street Lot is adequately served by Adams Street, a primary collector, 625 linear feet to the north; and Story Avenue, a major arterial, 1275 linear feet to the south. Although multiple driveways currently

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serve the Site, they are all gated and secured to prevent access, with only a single ingress/egress, 40-feet in width, at Cabel Street, which serves the entire Site.

Bicycle, Pedestrian and Transit Guideline 9. The proposal conforms to Moving People and Goods Goal A1, Goal A2 and Objectives A2.1 and A2.2, Bicycle and Pedestrian Circulation Plan Goal H2 and Objective H2.2 and Promotion Goal H4, Site Design Standards Goal I1 and Objective I1.1, Goal I3, Objective I4.1, and Objective I7.1. Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policies 9.1, 9.2, 9.3 and 9.4. There are a minimal number of employees working at the Cabel Street Lot. Transit facilities are not needed to serve the Site, although transit service via Transit Authority of River City ("TARC") Route 31 serves Story Avenue and TARC Route 15 serves Mellwood Avenue. Bicycle facilities for bike parking will be located within the Wash Out Building. A sidewalk will be constructed along the Cabel Street frontage of the site to allow Butchertown residents to walk toward Louisville's Waterfront. JBS/Swift will petition Louisville Metro Government to create a bike lane or other bicycle lane markings on Cabel Street between Quincy Street to Adams Street to allow for safe bicycle movement on Cabel Street by Butchertown residents wishing to bike to the Waterfront or to Louisville's downtown.

Flooding and Stormwater Guideline 10. The proposal conforms to Flood Control and Stormwater Management Goal B1 and Objectives B1.1, B1.3, B1.5, B1.6 and B1.8 and Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 10.1, 10.4, 10.10 and 10.11. The Metropolitan Sewer District ("MSD") approved the proposal February 20, 2015. MSD's approval is based on the full development potential of the entire watershed and the impact of the proposal on the watershed, and the approval indicates that drainage systems will accommodate the "through" drainage capacity in a manner acceptable to MSD. MSD's approval also indicates that peak stormwater run-off rates or volumes post development will be consistent with regional and watershed plans and will not exceed pre-development rates. The bioswale at the Adams Street end of the site will provide approximately 4500 cubic feet of water quality volume or storage capacity which would exceed MSD's "green infrastructure" requirements if they were applicable. The site is located in the 100-year floodplain and is not protected by the floodwall. Truck/trailer storage is a desirable use on floodplain property not protected by the floodwall

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because the perishable product in trailers can be moved off-site quickly in the event of most storm events.

Air Quality Guideline 12. The proposal conforms to Transportation and the Environment Goal C1 and Objectives C1.2 and C1.3, Air Goal C1 and Objective C1.3, Objectives C3.1 and C3.2, Process Goal G4 and Objective G4.1, Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 12.1, 12.3 and 12.8 because refrigerated trailers ("TRU's") have been situated on the site as far away from nearby residences as possible (at the northwest corner of the site). Moreover, expert testimony at public hearing demonstrates that both modeled and monitored levels of pollutants of interest, including nitrogen dioxide and particulates from diesel TRU motors at the Cabel Street Lot, are well below the health-protective National Ambient Air Quality Standards for these pollutants, thus demonstrating that emissions from Cabel Street Lot operations do not result in exceedances of National Ambient Air Quality Standards nor will they cause adverse human health impacts; in fact, the modeled concentrations resulting from Cabel Street Lot operations are negligible compared to corresponding concentrations monitored at other Louisville locations; hence, diesel exhaust emissions from the Cabel Street Lot operation will not cause Ambient Air Quality Standards to be exceeded, nor will the Cabel Street Lot operation pose a risk to public health. In addition, a sidewalk extension is proposed along the Cabel Street frontage of the site to encourage alternative modes of travel, and the gravel portions of the site will be paved to reduce or eliminate windblown dust. This demonstrates that the site does not produce adverse air quality impacts from diesel emissions or otherwise on the Site.

Landscape Character Guideline 13. The proposal conforms to Landscape Character Guideline 13 and all applicable Policies adopted thereunder, including Policies 13.2, 13.4, 13.5 and 13.6. All landscaping and street trees to be planted will be native plant species appropriate for an urban neighborhood. A wood privacy fence (minimum 8-feet in height) and landscaping will be utilized to provide a suitable buffer protecting adjacent residents from operations on the Cabel Street Lot. Tree canopy requirements do not apply to the site because there is no increase in impervious surface area or building area on the site as shown by submittals at public hearing and because of the Land Development Code definition of "impervious surface."

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Infrastructure Guideline 14. The proposal conforms to Physical Infrastructure Goal B1, and Objectives B1.2 and B1.4, Infrastructure Guideline 14 and all applicable Policies adopted thereunder, including Policies 14.2, 14.3, 14.4, 14.6 and 14.7. The site is adequately served by existing utility providers. An adequate supply of potable water and water for fire-fighting purposes serves the site. The site is served by the sanitary sewer service facilities of the Metropolitan Sewer District. On-site utilities are located within easements as prescribed by each utility.

Community Facilities Guideline 15. The proposal conforms to Community Facilities Guideline 15 and all applicable Policies adopted thereunder, including Policy 15.9. The site is adequately served by the services of Louisville Fire Protection District No. 2, located at 235 East Jefferson Street.

The Conditional Use Permit proposal conforms to all other applicable Goals, Objectives, Guidelines and Policies of the Comprehensive Plan.

- 3. The proposal is compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc.**

As has been detailed in this Demonstration of Appropriateness, the proposal is compatible with the surrounding residential land uses by virtue of provisions shown on the CUP Plan for dust protection and sound attenuation from the proposed 12-foot tall sound attenuation fence on the east side of the Site, and the fact that on-Site TRUs do not produce emissions causing health impacts to residents living near the Site. Moreover, appropriate drainage from the Site is made through the use of MSD facilities and a bioswale to be located at the Adams Street end of the Site. No odors are produced on the Site. Lighting on the Site will conform to the Land Development Code and produces no nuisance. The appearance of the facility is compatible with surrounding residential areas due to the historic use of the Site for industrial staging, the existing on-Site buildings which separate nearby residences from staging activities on the Site, and the fact that the floodwall, approximately 12 – 14-feet in height, along Quincy Street, separates most abutting residences from the Site.

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- 4. Existing public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage and emergency services will be adequate to serve the proposed Conditional Use Permit.**

Existing public facilities, such as transportation, sanitation, water, sewer, drainage, and emergency services, are adequate to serve the proposed Site. The Cabel Street Lot is located reasonably near downtown Louisville and has easy access to all services provided by governmental agencies, including adequate transportation and roadway facilities, adequate water, sewer, drainage, gas and electric facilities, and adequate access to fire protection services and emergency medical services.

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 January 11, 2016 public hearing proceedings.

Conditional Use Permit to allow a potentially hazardous or nuisance use for proposed staging lot for trucks and trailers in an M-3 zoning district:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and staff analysis, a revised site plan; the PowerPoint presentations; the evidence including the applicant's demonstration of appropriateness and findings of fact, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit from Section 4.2.42 of the Land Development Code to allow a potentially hazardous or nuisance use for proposed staging lot for trucks and Transportation Refrigeration Unit trailers (TRU's) in an M-3 zoning district; and

WHEREAS, the Board finds that the subject property is in a Traditional Neighborhood Form District; and

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WHEREAS, The Louisville Metro Board of Zoning Adjustment Finds That the proposal conforms to the Land Development Code ("LDC"), specifically LDC §11.5A.1 and §4.2.43 ("Potentially Hazardous or Nuisance Uses"), and further conforms to all applicable requirements as set forth in these Findings of Fact because of the Findings made below; and

WHEREAS, The Board Further Finds That the request for a Conditional Use Permit meets the purpose, intent and all requirements of the Land Development Code because the proposed conditional use permit will not have an adverse effect on neighboring property because of the historic use of this property is as a staging lot and because the transportation refrigeration units ("TRUs") on-site do not cause emission levels to rise to a level that raises health concerns for nearby residents or others based on the scientific studies produced by the Applicant; because sound/noise concerns due to the movement of vehicles will be addressed by a 12-foot sound attenuation fence with an Acoustifence® sound attenuation product on the east side of the site near Webster Street extending to Adams Street, and also because the existing buildings will continue to attenuate sound that would otherwise be heard within the nearby neighborhood, and because on-site dust will be substantially eliminated by paving gravel areas and areas with broken pavement and by application of surfactant to areas that tend to cause windblown dust and because of continuing maintenance via street sweepers and surfactant application as needed; because surfactants used will be an MSD-recommended surfactant; because the proposal is not in conflict with the goals and plan elements of the Comprehensive Plan as detailed in these Findings; because the proposal is essential to or will promote the public health, safety and general welfare in one or more zones because it does not cause air quality exceedances nor does it cause air quality emissions rising to the level of human health concerns, dust concerns, or unaddressed noise concerns for nearby residents, and will be in compliance with all requirements of the Land Development Code ("LDC"); because the all perimeters of the site except the Marshall's Auto Parts perimeter will have a minimum 8-foot tall wood privacy fence (12 feet tall near Webster Street extending to Adams Street) together with landscaping; and

WHEREAS, The Board Further and Specifically Finds that the proposal conforms with Land Development Code §5.2.2 because proposed site amenities, including a solid wood fence, 12-foot tall sound attenuation fencing and landscaping and light controls in accordance with Land Development Code requirements

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demonstrate that the proposal is consistent with Butchertown's traditional neighborhood pattern and form of development; and

WHEREAS, The Board Further and Specifically Finds that the proposal conforms to LDC §4.1.6 because (i) no loading or unloading operations or (ii) truck idling occurs within 100 feet of a residentially zoned or used property between the hours of 10 PM and 6 AM; and

WHEREAS, The Board Further Finds That the proposal is consistent with all applicable Goals, Objectives, Guidelines and Policies of the Comprehensive Plan as stated in these Findings; and

WHEREAS, The Board Further Finds That the proposal conforms to Form Districts Goal A1 and Objective A1.4, A1.5 and A1.6, Land Development Regulations Goal A3 and Objectives A3.1, A3.4 and A3.6, Traditional Neighborhood Goal C1 and Objectives C1.1 and C1.2, Community Design Goal C2 and Edge Objective C2.3, Access and Circulation Objective C2.4, Streetscape Objective C2.5 because a substantial wood privacy fence will be placed along the Cabel Street perimeter, the Quincy Street perimeter and the eastern perimeter of the site together with street trees and landscaping where appropriate together with a sidewalk along Cabel Street which will provide a desirable, pleasant and safe pedestrian connection between the Butchertown neighborhood and Louisville's Waterfront and downtown; Land Use Goal C3 and Objective C3.1, Traditional Neighborhood District Objective C3.2 and Objective C3.7 because this medium intensity industrial use will have perimeter screening throughout the site perimeter (except the north side bordering Marshall's Audio Parts) and because of the 12-foot sound attenuation fencing generally on the east side of the property, and because all razor wire and barbed wire fencing will be removed, all of which will make the staging use compatible with nearby residences and the neighborhood and will protect the residential area from any adverse impacts which will protect the character of the adjacent residential area of Butchertown in accordance with Site Design Goal C4 and Objectives C4.1, Intensity C4.2, Building Height Objective C4.3, Setback and Lot Dimension Objective C4.4, Building Design Objective C4.5, Buffers and Compatibility Objective C4.6, and Parking and Transit Access Objective C4.7, Community Form Guideline 1 and all applicable Policies adopted thereunder, including Policy B.2 (Traditional Neighborhood), and the Executive Summary of the Butchertown Neighborhood Plan and Louisville Ordinance No. 24, Series 2008; because this

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industrial business and the predecessor MSD industrial staging uses on the Site pre-date the adoption of the Comprehensive Plan in 2000; because this site and the surrounding industrial area are a unique part of the Traditional Neighborhood Form District in Butchertown; because the use of the site for industrial staging conforms to the general guidelines for the form, location and level of intensity of development that is appropriate for the Traditional Neighborhood form district in Butchertown; because there is a mixture of low to medium intensity industrial uses in the area; because the Butchertown Neighborhood Plan identifies the area in which the Cabel Street Lot is located as the "Central Industrial Area" of Butchertown. See Butchertown Neighborhood Plan, p. 18; because the Butchertown Neighborhood Plan recognizes, among other things, a connected public street and alley system in the Butchertown neighborhood, which is utilized by JBS/Swift among other users; because JBS/Swift will continue to utilize the street system as indicated at public hearing and over-the-road haulers will utilize River Road and the I-71/Zorn Avenue interchange when the Ohio River Bridges Project has concluded in 2016; because the site constitutes an appropriate "edge" to the abutting residential areas along Quincy Street and beyond because of the buildings situated at the southern and southeastern property lines of the site, the floodwall along Quincy Street, the proposed sound attenuation fence adjacent to Webster Street extending to Adams Street and existing landscaping in the Cabel Street right-of-way and elsewhere on-site; because the existing and proposed use of the site does not constitute a "new" heavy industrial use of the site since the site has been used as a staging site for heavy vehicles for many years, ever since MSD had an ownership interest in the site; because the continued use of the site for staging purposes is consistent with the pattern of development in Butchertown as described in the Butchertown Neighborhood Plan, in which industrial uses bisect the residential areas of the Neighborhood; because the operation at the site allows industrial staging necessary to the business of pork production and sale, and these activities allow for nearby residents to live without adverse consequence to safety and health and quiet enjoyment of their homes and neighborhood; because the existing on-site buildings, at one-to-two stories, are compatible with the character of the Neighborhood and are not anticipated to change; because nearby residential neighborhood areas remain healthy, vibrant and livable; because the development plan protects the existing neighborhood via protective fencing and landscaping and because separation techniques are employed to make the development compatible with the scale and character of the neighborhood; and

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WHEREAS, The Board Further Finds That Centers Guideline 2 does not apply to this industrial use because the Comprehensive Plan's definition of "centers" states that centers are "compact, walkable, activity areas;" because this site is a staging area for trucks and trailers and, at approximately 8.9-acres, is not compact because there are no mixed uses on site; because the site is not designed to be internally walkable for area residents; because the definition of "activity center" is "an area of concentrated, mixed-use activity that often has a residential component" and this site is not a site containing mixed-use activities; and

WHEREAS, The Board Further Finds That the proposal conforms to Transportation and the Environment Goal C1 and Objectives C1.2 and C1.3, Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policies 3.1, 3.2, 3.5, 3.6, 3.7, 3.8, 3.9, 3.17, 3.18, 3.21, 3.22, 3.23, 3.24, 3.28 and 3.29 because all buildings on the site are existing one-to-two story painted block buildings which have existed for many years; because JBS/Swift will utilize on-site buildings for storage of mechanical parts and business equipment; one building will be used for storage of tanker trucks; one building will continue to be utilized for storage by the Louisville Metro Department of Public Works and the Waterfront Development Corporation; because the floodwall, the height of which varies between approximately 14 – 17-feet in height, separates the site from most homes on Quincy Street just south of the site; because existing buildings and a proposed fence will separate the site from homes on Quincy Street, and a 12-foot sound attenuation fence will be located adjacent to Webster Street extending to Adams Street; because use of the site does not cause odors; because the use of the site for staging purposes is consistent with the pattern of development in Butchertown's Traditional Neighborhood Form District; because diesel emissions from on-site sources are not at levels sufficient to cause health concerns in the Neighborhood; because lighting on the site will conform to Land Development Code requirements; because adverse impacts from noise-producing impacts will be minimized due to the proposed sound attenuation fence; because visual impacts of the site have been minimized due to the location of buildings on-site, solid wood fencing and landscaping which will also serve as a visual barrier; because an appropriate transition between the residential areas along Quincy Street and in Butchertown is achieved through the existing location of the on-site buildings, the floodwall and the proposed sound barrier; because impacts from parking, loading and delivery have been minimized as has been demonstrated by the URS and Gradient Reports, through the use of

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dust control, proposed paving and through the proposed sound fence; and because other than directional signs only one sign on Cabel Street is proposed to identify the site; and

WHEREAS, The Board Further Finds That the proposal conforms to Social and Cultural Resources Goal D1 and Objectives D1.1 and D1.2., Natural Areas and Scenic and Historic Resources Guideline 5 and all applicable Policies adopted thereunder, including Policies 5.1, 5.2, 5.3, 5.6 and 5.7 because the proposed Conditional Use Permit will not cause a change to the topography of the site nor will it cause any degradation to the environment due to disturbance of natural systems; because there are no distinctive cultural features, historic buildings or uses or archaeological sites on the Cabel Street Lot; and because there are no wet soils, hydric soils, highly permeable soils, or steep or unstable slopes on the site; and

WHEREAS, The Board Further Finds That the proposal conforms to Economic Growth and Sustainability Guideline 6 and all applicable Policies adopted thereunder, including Policies 6.3, 6.4, 6.8 and 6.11 because the use of this site for staging of trailers incident to the JBS/Swift pork plant is consistent with the Butchertown Neighborhood Plan and the Traditional Neighborhood Form District in Butchertown; because the use of the Cabel Street Lot serves the Swift Pork Company pork plant, located on Story Avenue, a major arterial roadway located approximately 500+ feet from the Cabel Street Lot; and because the Cabel Street Lot is located within the established industrial area of Butchertown (see Butchertown Neighborhood Plan, p. 16), and is situated immediately across Cabel Street from an existing industrial use (i.e., Challenger Lifts at 200 Cabel Street); and

WHEREAS, The Board Further Finds That the proposal conforms to Circulation Guideline 7 and all applicable Policies adopted thereunder, including Policies 7.1, 7.10 and 7.16 because no transportation impact mitigation was required by the Louisville Department of Public Works and Assets, and the Department of Public Works and Assets approved the proposal on October 26, 2015; because present access to, from and through the site is safe and efficient for vehicles and pedestrians; because the Conditional Use Permit plan demonstrates sufficient off-street parking together with street improvements, including a wood privacy fence, sidewalk along the site's Cabel Street frontage and landscaping on Cabel Street together with a wood privacy fence extending down Quincy Street and a

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12-foot section of fence adjacent to the Webster Street right-of-way extending to Adams Street for sound attenuation and landscaping around the perimeter of the site (except along the Marshall's Auto Parts property line) pursuant to the Land Development Code; because the Cabel Street Lot is adequately served by Adams Street, a primary collector, 625 linear feet to the north; and Story Avenue, a major arterial, about 500 feet to the south; and because although multiple driveways are available to serve the site, they are all gated and secured to prevent access, with only a single ingress/egress, 40-feet in width, at the northwest corner of the Cabel Street Lot, serving the entire site; and

WHEREAS, The Board Further Finds That the proposal conforms to Moving People and Goods Goal A1, Goal A2 and Objectives A2.1 and A2.2, Bicycle and Pedestrian Circulation Plan Goal H2 and Objective H2.2 and Promotion Goal H4, Site Design Standards Goal I1 and Objective I1.1, Goal I3, Objective I4.1, and Objective I7.1. Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policies 9.1, 9.2, 9.3 and 9.4 because there are a minimal number of employees working at the Cabel Street Lot; because transit facilities are not needed to serve the site, although transit service via Transit Authority of River City ("TARC") Route 31 serves Story Avenue and TARC Route 15 serves Mellwood Avenue. And because bicycle facilities for bike parking will be located within the Wash Out Building; and a sidewalk will be constructed along the Cabel Street frontage of the site to allow Butchertown residents to walk to and from Louisville's Waterfront and downtown areas; and because JBS/Swift has agreed to petition Louisville Metro Government to create a bike lane or other bikeway facilities on Cabel Street between Quincy Street to Adams Street to allow for and encourage safe bicycle movement on Cabel Street to ; and

WHEREAS, The Board Further Finds That the proposal conforms to Flood Control and Stormwater Management Goal B1 and Objectives B1.1, B1.3, B1.5, B1.6 and B1.8 and Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 10.1, 10.4, 10.10 and 10.11 because the Metropolitan Sewer District ("MSD") approved the proposal on February 20, 2015; because the site is located in the 100-year floodplain; because truck/trailer storage is a desirable use on floodplain property that is not protected by the floodwall since the perishable product in refrigerated trailers can be moved off-site quickly in the event of storm events causing flooding; because MSD's approval is based on the full development potential of the entire

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watershed and the impact of the proposal on the watershed, and because the MSD approval further indicates that drainage systems will accommodate the "through" drainage capacity in a manner acceptable to MSD; because the bioswale to be constructed at the Adams Street end of the site will provide approximately 4500 cubic feet of water quality volume or storage capacity which would exceed MSD's "green infrastructure" requirements if they were applicable; and because peak stormwater run-off rates or volumes post development will be consistent with regional and watershed plans and will not exceed pre-development rates; and

WHEREAS, The Board Further Finds That the proposal conforms to Transportation and the Environment Goal C1 and Objectives C1.2 and C1.3, Air Goal C1 and Objective C1.3, Objectives C3.1 and C3.2, Process Goal G4 and Objective G4.1, Air Quality Guideline 12 and all applicable Policies adopted thereunder, including Policies 12.1, 12.3 and 12.8 because the refrigerated trailers ("TRUs") have been situated on the site as far away from nearby residences as possible (at the northwest corner of the site); because expert testimony at public hearing demonstrates that both modeled and monitored levels of pollutants of interest, including nitrogen dioxide and particulates from diesel refrigerated trailer ("TRU) motors at the Cabel Street Lot, are well below the health-protective National Ambient Air Quality Standards for these pollutants, which demonstrates that emissions from the Cabel Street Lot operations do not result in exceedances of National Ambient Air Quality Standards nor will they cause adverse human health impacts; in fact, the modeled concentrations resulting from Cabel Street Lot operations are negligible compared to corresponding concentrations monitored at other Louisville locations; hence, diesel exhaust emissions from the Cabel Street Lot operation will not cause Ambient Air Quality Standards to be exceeded, nor will the Cabel Street Lot operation pose a risk to public health; moreover, because a sidewalk extension is proposed along the Cabel Street frontage of the site to encourage alternative modes of travel, and because the gravel portions of the site will be paved to reduce or eliminate windblown dust, all of which demonstrates that the site does not produce adverse air quality impacts from diesel emissions or otherwise on the site; and

WHEREAS, The Board Further Finds That the proposal conforms to Landscape Character Guideline 13 and all applicable Policies adopted thereunder, including Policies 13.2, 13.4, 13.5 and 13.6 because all landscaping and street trees to be

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planted will be native plant species appropriate for an urban neighborhood; because a wood privacy fence (minimum 8-feet in height) and landscaping will be utilized to provide a suitable buffer protecting adjacent residents from the industrial use; and because tree canopy requirements do not apply to the site because there is no increase in impervious surface area or building area on the site as shown by submittals at public hearing and because of the Land Development Code definition of "impervious surface;" and

WHEREAS, The Board Further Finds That the proposal conforms to Physical Infrastructure Goal B1, and Objectives B1.2 and B1.4, Infrastructure Guideline 14 and all applicable Policies adopted thereunder, including Policies 14.2, 14.3, 14.4, 14.6 and 14.7 because the site is adequately served by existing utility providers; because an adequate supply of potable water and water for fire-fighting purposes serves the site; because the site is served by the sanitary sewer service facilities of the Metropolitan Sewer District; and because on-site utilities are located within easements as prescribed by each utility; and

WHEREAS, The Board Further Finds That the proposal conforms to Community Facilities Guideline 15 and all applicable Policies adopted thereunder, including Policy 15.9 because the site is adequately served by the services of Louisville Fire Protection District No. 2, located at 235 East Jefferson Street; and

WHEREAS, The Board Further Finds that the Conditional Use Permit proposal conforms to all other applicable Goals, Objectives, Guidelines and Policies of the Comprehensive Plan; and

WHEREAS, The Board Further Finds that the proposal is compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance, etc. because the proposal is compatible with the surrounding residential land uses by virtue of provisions shown on the Conditional Use Permit Plan for dust protection and sound attenuation from the proposed sound attenuation fence on the east side of the site, and because there are compatible surrounding land uses on three sides: to the south are three dwellings; the 15-19 foot floodwall and more residences; and because the subject site had been used as a similar parking/staging area in the past by LG&E; and the fact that on-site transportation refrigeration units do not produce sufficient emissions to cause adverse health impacts to residents living near the

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site; because appropriate drainage from the site is made through the use of MSD facilities; because no odors are produced on the site; because lighting on the site conforms to the Land Development Code and produces no nuisances; because the appearance of the facility is compatible with surrounding residential areas due to the historic use of the site for industrial staging, because the existing on-site buildings and the flood wall separate many nearby residences from staging activities on the site, and because an 8-foot tall wood privacy fence will be provided in areas up to the point where the 12-foot tall sound attenuation fence begins near the Webster Street right-of-way extending to Adams Street; because existing buildings on-site are one-to two stories in height and are generally hidden from the adjacent residential areas by the floodwall; because there is only one entry-exit point on Cabel Street – at the furthest point from the residential areas of Butchertown; and

WHEREAS, The Board Further Finds that existing public facilities (both on-site and off-site), such as transportation, sanitation, water, sewer, drainage and emergency services are adequate to serve the site; and because the Cabel Street Lot is located reasonably near downtown Louisville and has easy access to all services provided by governmental agencies, including adequate transportation and roadway facilities, adequate water, sewer, drainage, gas and electric facilities, and adequate access to fire protection services and emergency medical services; and because the proposal has been reviewed and preliminarily approved by Transportation Planning and MSD;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a potentially hazardous or nuisance use for the staging of trucks and transportation refrigeration units (TRU's) on the subject 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 ("CUP") is not so exercised, the site shall not be used for a staging lot for trucks and trailers without further review and approval by the Board.

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3. **Installation of fencing, Acoustifence®, landscaping and bioswale.**
 - A. Except for the area bordering the Webster Street right-of-way partial closure (See B. below), the fencing and Acoustifence® shown on the approved development plan shall be implemented within four (4) months of final approval of the CUP in favor of Applicant together with all time remaining for further appeal having elapsed.
 - B. Following completion of Item A. and upon obtaining closure of the Webster Street right-of-way as shown on the CUP Plan together with any zoning-related approvals, construction of the wooden fence and Acoustifence® bordering the closed right-of-way shall be implemented within thirty (30) days of closure and approvals.
 - C. Weather permitting, all landscaping and the bioswale as shown on the CUP Plan shall be implemented immediately following the completion of Item A., except for landscaping adjacent to the Webster Street right-of-way closure which shall be implemented immediately upon completion of Item B., weather permitting.
 - D. A sign conforming to the Land Development Code identifying the JBS/Swift Cabel Street Lot shall be attached to the fence near the entrance.
4. **Removal of all barbed and razor wire and MSD signage on building:** Within thirty (30) days of final approval (regardless of whether an appeal has been filed) all (i) barbed wire and razor wire on the site and (ii) all signs on buildings identifying them as MSD buildings shall be removed.
5. Within four (4) months of final approval (regardless of whether an appeal has been filed), the Applicant shall submit a certification statement to the Division of Planning & Design Services, from an engineer or other qualified professional, stating that the lighting of the development site conforms to Chapter 4, Part 1 of the Land Development Code. Lighting in conformance with the Land Development Code shall be maintained thereafter. No Certificate of Occupancy shall be issued unless such certification statement is submitted.

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6. Weather permitting, areas of the lot scheduled for paving as shown on the Paving Plan shall be paved within sixty (60) days of having received approval from all reviewing governmental agencies (regardless of whether an appeal has been filed).
7. No truck idling shall occur within the 100-foot setback line shown on the CUP Plan between the hours of 10 PM to 6 AM.
8. **Operation:**
 - A. No empty trailers or Transportation Refrigeration Units ("TRUs") located east of the "**10 PM to 6 AM line**" shown on the approved CUP Plan shall be moved or connected to a tractor or shag truck; nor shall any tractors or shag trucks be operated in this area.
 - B. **Exception:** Empty trailers brought to the Cabel Street Lot by over-the-road haulers may be taken to the Washout Building for cleaning, but must be moved immediately thereafter to the west of the "**10 PM to 6 AM line**" shown on the approved CUP Plan.
9. **Grass cutting and landscape maintenance:** The applicant shall maintain the grass and landscaping along its boundaries within the Cabel Street right-of-way and otherwise on-site. Grass shall be cut and landscaping shall be maintained and litter shall be removed from the site on a regular basis as necessary to maintain the premises in a presentable condition, including weed control and removal.
10. **Dust Control:** The site shall be maintained free of dust at all times in conformance with the Fugitive Dust Control and Trailer Staging Plan of October 7, 2010 which shall include the regular application of MSD-approved surfactant.

Shag Trucks/Trailers

11. **Late night shag truck/trailer movement.** Following the completion of improvements required by the Louisville Department of Public Works at the intersection of Buchanan Street and Franklin Street, and **between the**

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hours of 12 AM to 6 AM shag trucks/trailers shall use the following route to move between the Cabel Street Lot and the JBS/Swift plant at 1200 Story Avenue (the "plant"):

A. **Movement from the Cabel Street Lot to the plant.** Shag trucks/trailers shall travel Cabel Street to Franklin Street to Buchanan Street to Bickel Avenue to Mellwood Avenue to Spring Street to Story Avenue to the plant (thereby avoiding movement on Cabel Street between Franklin Street and Story Avenue).

B. **Movement from the plant to the Cabel Street Lot.** Shag trucks/trailers shall travel from the plant to Story Avenue to Buchanan Street to Franklin Street to Cabel Street to the Cabel Street Lot (thereby avoiding movement on Cabel Street between Franklin Street and Story Avenue).

12. An 8 ft. tall wooden perimeter fence shall surround the property and be substantially the same as what was presented in the Applicant's PowerPoint presentation at today's hearing, with the exception of the installation of a 12 ft. tall Acoustifence® as delineated on the plan. The existing chain link fence along the northern perimeter of the site adjacent to Marshall's Auto Parts business shall remain.
13. The on-site diesel fuel tank near the Webster Street right-of-way shall be screened from view of the adjacent residential property owners pursuant to Section 10.2.6 of the Land Development Code
14. Landscaping shall be provided as shown on the CUP Plan in the Cabel Street right-of-way; the Quincy Street right-of-way; the Webster Street right-of-way; and along Adams street frontage of the site and meet the minimum planting requirements of Section 10.2.2 of the Land Development Code.
15. Landscaping and buffer widths along Cabel Street and Quincy street perimeters of the property shall be implemented pursuant to the minimum requirements of the LDC with the exception of a 10 ft. Landscape Buffer Area from the right-of-way on Cabel Street.

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16. Decorative litter receptacles similar to receptacles on Story Avenue in Butchertown shall be provided in the Cabel Street right-of-way near the entrance to the Lot, and thereafter, placed approximately every 100 feet southwardly in the right-of-way immediately outside of the Lot.
17. A minimum 4-foot wide sidewalk shall be constructed along the Cabel Street frontage of the site extending from a point opposite Franklin Street to the northernmost point of the Cabel Street Lot as shown on the CUP Plan.
18. Within 18 months of January 11, 2016, the applicant shall reduce or eliminate diesel particulate matter by using electric or hybrid TRUs on the subject property by implementing the current California standards for diesel fuel emissions.
19. All diesel trucks shall be shut down within 15 minutes of being on the subject site.
20. The applicant shall submit a Revised Plan to staff illustrating all the conditions of approval noted herein.
21. The applicant shall submit a documented truck route to staff by February 10, 2016, illustrating the route to and from the Cabel Street Lot before and after "the bridges project" is complete.

YES: Members Tharp, Fishman, Jarboe, Turner and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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The meeting adjourned at 7:20 p.m.

Mrs. Camp

CHAIRPERSON

Ronald Fisher

SECRETARY

