

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

JUNE 2, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, June 2, 2014, at the Metro Development Center, 444 S. 5th Street, Room 101, Louisville, Kentucky.

Members present were:

David Proffitt, Chairperson
Mike Allendorf, Vice Chairperson
Betty Jarboe
Dean Tharp
*Paul Bergmann

Members absent:

Rosalind Fishman, Secretary
Frederick Liggin

Staff members present were:

Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Jessica Wethington, Planning Information Specialist
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
Sherie' Long, Landscape Architect
Jon Crumbie, Planner II
Latondra Yates, Planner II
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

*Member Bergmann left the meeting at approximately 11:30 a.m.

The following cases were heard:

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APPROVAL OF MINUTES

Approval of the minutes of the meeting held on May 19, 2014:

On a motion by Member Tharp, seconded by Member Bergmann, the minutes of the meeting held on May 19, 2014 were approved.

The vote was as follows:

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

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin
and Fishman.**

ABSTAINING: No one.

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BUSINESS SESSION:

CASE NO. 14VARIANCE1039

Applicant: Primera Services
Paul Parker
710 Grant Avenue
Louisville, Kentucky 40222

Owner: GPHH, LLC
Bill Nunery, Treasurer
1323 S. 2nd Street
Louisville, Kentucky 40208

Subject: An application for a variance from the Land Development Code to allow a proposed garage to encroach into the east and rear required yards.

Premises affected: On property known as 2306 Burrell Drive and being in Louisville Metro.

COUNCIL DISTRICT 6—David James
Staff Case Manager: Regina Thomas, Associate Planner

(REMOVED BY STAFF)

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

Discussion:
Chair Proffitt announced that this case has been removed by staff.

No vote required.

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NEW BUSINESS:

CASE NO. 14VARIANCE1033

Applicant/Owner: Adrian Batts
2306 Burrell Drive
Louisville, Kentucky 40216

Representative: Blue Grass Garage Builders
Joe Willis
15823 Brush Run Road
Louisville, Kentucky 40299

Project Name: Proposed Garage

Subject: An application for a variance from the Land Development Code to allow a proposed detached garage to encroach into the side and rear yards.

Premises affected: On property known as 2306 Burrell Drive and being in the City of Shively.

COUNCIL DISTRICT 3—Mary Woolridge
Staff Case Manager: Sherie' Long, Landscape Architect

(CONTINUED FROM MAY 19, 2014)

Appearances for Applicant:
Joe Willis, 15823 Brush Run Road, Louisville, Kentucky 40299.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

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NEW BUSINESS:

CASE NO. 14VARIANCE1033

On April 17, 2014, Adrian Batts filed an application for a variation from the requirements of the Land Development Code to allow a proposed detached garage to encroach into the side and rear yards.

The case was continued from the May 19, 2014 public hearing, because the applicant was not present when the Board called the case.

On June 2, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the June 2, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Sherie' Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the owner is requesting two variances to allow a detached garage to encroach into the side and rear property line. She said one structure will be removed; and upon a second site inspection noticed a gate which allows access to the church.

SUMMARY OF TESTIMONY OF PROPONENTS:

Joe Willis, the applicant's contractor, was sworn in. Chair Proffitt said because of the gate will change the variance along the east property line to 1 ft. instead of 2 ft. Member Allendorf asked where the water will drain from the structure. Mr. Willis said he will be installing gutters and the water will drain onto their property.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

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NEW BUSINESS:

CASE NO. 14VARIANCE1033

BUSINESS SESSION:

No discussion.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances from the Land Development Code, Section 5.4.2.D, to allow a proposed detached garage to encroach into the side and rear yards; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health safety or welfare because the proposed structure will be located in the rear of the parcel; and because the adjacent neighbor to the east has no objection; and because it will be adjacent to the church's open space to the south; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the detached garage will be located at the rear of the property; and because the adjacent property owner to the east has no objection to the location; and because the property to the south is open space for the church; and because the walls of the garage will be located 12" from the property line with only the overhang and guttering extending to the property line; and because the applicant stated that the runoff from the structure will remain on the subject property (downspouts away from adjacent properties, etc.); and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the structure only encroaches into a small portion of the required rear and side yards; in addition, a similar request has been granted for a garage nearby at 2320 Burrell Drive; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the applicant has existing pavement which may need to be removed to allow the construction of the detached garage when the required yards are applied;

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

The variances allow:

1. The proposed detached garage to be 1 foot from the east property line.
2. The proposed detached garage to be 2 feet from the south property line.

The vote was as follows:

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin and Fishman.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1035

Applicant/Owner: Biomet TriState Orthopedics
Karen Force
207 Eline Avenue
Louisville, Kentucky 40207

Representative: Force Construction Company
Mick Miller
990 N. National Road
Columbus, IN 47201

Subject: An application for a variance from the Development Code, Article 9.2.R., to allow an existing detached garage, as a resultant of a porch addition, to be 2 feet from the north side yard property line; and a variance of 9.67 feet between the garage and house (added at hearing).

Premises affected: On property known as 207 Eline Avenue and being in the City of St. Matthews.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Sherie' Long, Landscape Architect

Appearances for Applicant:
Karen Force, 207 Eline Avenue, Louisville, Kentucky 40207.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On April 28, 2014, Karen Force filed an application for a variation from the requirements of the Development Code to allow an existing detached garage, as

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a resultant of a porch addition, to be 2 feet from the north side yard property line; and a variance of 9.67 feet between the garage and house (added at hearing)..

On June 2, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the June 2, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION

Staff case manager, Sherie' Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She discussed the request and said the applicant will need to show the 2 ft. setback on the plan. Chair Proffitt asked about the distance between the house and garage. Ms. Long said she and Steve Hendrix, Planning Supervisor, discussed this at great length with Jack Ruf, Code Enforcement for the City of St. Matthews. Chair Proffitt said it's a dimensional issue and another variance is needed.

SUMMARY OF TESTIMONY OF PROPONENTS:

Karen Force, the owner, said she originally applied for the 15 ft. variance between the house and garage; and that the variance now being requested was recommended by Jack Ruf.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

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BUSINESS SESSION:

The Board decided to include an additional variance of 9.67 feet between the garage and house. The site plan will need to be revised.

VARIANCE—North Property Line:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan which will need to be revised; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Development Code, Article 9.2.R, to allow an existing detached garage, as a resultant of a porch addition, to be 2 feet from the north side property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure is existing and located at the rear of the property; and because the adjacent neighbor to the north has no objection to the new porch construction or location of the existing garage; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the structure is an existing detached garage; is located at the rear of the property; and is compatible with the architecture throughout the neighborhood; and because most lots in the neighborhood have rear detached garages; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the detached garage is located at the rear of the property and the adjacent property owner to the north has no objection to the location; and because this will allow for maintenance and up-keep because the wall of the garage will be located 2 feet and the overhang and gutter will be located 1 foot from the side property line; and

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WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the structure only encroaches into a small portion of the required side yard; in addition, it is an existing condition; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the porch addition will deduce the distance between the structures to less than the required 15 feet; and because the required detached garage setback will be increased from 2 feet to 4 feet; therefore, to build the new porch addition, a variance of 2 feet is needed for the existing detached garage to remain where currently located; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the existing detached garage would need to be either moved or removed and rebuilt to meet the required 4 ft. side yard setback; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation because the detached garage is an existing structure, however, the construction of the porch addition has created the circumstance which now requires relief from the side yard setback regulation for the existing detached garage; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow an existing detached garage to be 2 feet from the north property line.

The vote was as follows:

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin and Fishman.

ABSTAINING: No one.

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VARIANCE—Between the Garage and the House:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan which will need to be revised; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Development Code, to allow 5.33 feet of space between the garage and the house, or a variance of 9.67 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure is existing and located at the rear of the property; and because the adjacent neighbor to the north has no objection to the new porch construction or location of the existing garage; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the structure is an existing detached garage; is located at the rear of the property; and is compatible with the architecture throughout the neighborhood; and because most lots in the neighborhood have rear detached garages; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the detached garage is located at the rear of the property and the adjacent property owner to the north has no objection to the location; and because it will be enough room for maintenance because the wall of the garage will be located 2 feet from the side property line with gutter overhang will be located 1 foot from the side property line; and;

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the structure only encroaches into a small portion of the required side yard; in addition, it is an existing condition; and

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WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the porch addition will deduce the distance between the structures to less than the required 15 feet; and because the required detached garage setback will be increased from 2 feet to 4 feet; therefore, to build the new porch addition, a variance of 2 feet is needed for the existing detached garage and a variance of 9.67 feet needed for the porch to remain where currently located; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the existing detached garage would need to be either moved or removed and rebuilt to meet the required 4 ft. side yard setback; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation because the detached garage is an existing structure, however, the construction of the porch addition has created the circumstance which now requires relief from the side yard setback regulation for the existing detached garage; and the distance between the structures; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow 5.33 feet between the garage and the house, or a variance of 9.67 feet.

The vote was as follows:

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin and Fishman.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1037

Applicant/Owner: A & A Land & Development
John Summers
11696 Dixie Hwy.
Louisville, Kentucky 40272

Representative: Commonwealth Sign Company
Clara Bowman
1824 Berry Blvd.
Louisville, Kentucky 40215

Project Name: Aamco

Subject: An application for a variance from the Land Development Code to allow a freestanding sign to exceed the maximum 60 sf. area; and a variance to allow a freestanding sign to exceed the maximum 12 ft. height.

Premises affected: On property known as 11696 Dixie Highway and being in Louisville Metro.

COUNCIL DISTRICT 14—Cindi Fowler
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Clara Bowman, 1824 Berry Blvd., Louisville, Kentucky 40215.

John Summers, 11696 Dixie Hwy., Louisville, Kentucky 40272.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

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CASE NO. 14VARIANCE1037

On April 29, 2014, John Summers filed an application for a variation from the requirements of the Land Development Code to allow a freestanding sign to exceed the maximum 60 sf. area; and a variance to allow a freestanding sign to exceed the maximum 12 ft. height.

On June 2, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the June 2, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said two variances are being requested for signage area and height. Ms. Yates passed out photographs for the Board to peruse; and pointed out where the sign will be located. Chair Proffitt asked if the applicant has a cross-over access agreement with Thornton's. Ms. Yates said yes

SUMMARY OF TESTIMONY OF PROPONENTS:

Clara Bowman said the business needs more visibility from the south because there are trucks parked there all day. She said the church is not opposed to the signage.

Chair Proffitt asked the applicant, John Summers, if he would agree to an 18 ft. tall sign instead of 24 ft. tall. Mr. Summers said yes

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

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BUSINESS SESSION:

Member Jarboe said she is not opposed since the sign is away from the church property. Member Bergmann felt the variances are not justified and that the applicant chose this site for their business. He said it could set a precedent and at what point does the Board deny such requests. Chair Proffitt disagreed and said the Board reviews each request individually. Member Allendorf did not object.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance of Table 8.3.2 of the Land Development Code to allow a freestanding sign to be 97.5 sq. ft. in area; and a variance to allow the freestanding sign to be 18 feet tall; and

WHEREAS, the Board finds that the variances will not adversely affect the public health, safety or welfare because of the location of the sign away from adjacent residential and other structures; and because the sign will not be LED and the lighting of the sign should not negatively impact adjacent property owners; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the sign will be located in the area of a commercial corridor off Dixie Highway; and because the proposed signage is consistent with the size of signage allowed and which exists along Dixie Highway; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the signage appears to be directed toward the commercial frontage of Dixie Highway; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the signage is intended to be visible from Dixie Highway, which would allow signage of this area and height;

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and because the applicant agreed to reduce the height of the sign from 24 feet tall to 18 feet tall; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity because of the location of the lot which is separated from Dixie Highway by another commercial lot; and because large trucks are parked near the site blocking the view coming south; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because visibility of the signage from Dixie Highway would be impacted if the sign isn't large enough to be clearly visible; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because of the placement of the proposed signage and separation of the lot from Dixie Highway by another commercial lot;

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

The variances allow:

1. The proposed freestanding sign to be 97.5 square feet in area along the northeast property line.
2. The proposed freestanding sign to be 18 feet in height along the northeast property line.

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The vote was as follows:

YES: Members Jarboe, Proffitt, Tharp and Allendorf.

NO: Member Bergmann.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin
and Fishman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1038

Applicants/Owners: Lowell D. & Phyllis R. Hughes
406 Macon Avenue
Louisville, Kentucky 40207

Representative: Nicholas Kayrouz
3812 Warner Avenue
Louisville, Kentucky 40207

Project Name: Existing Garage & Proposed House Addition

Subject: An application for a variance from the Development Code to allow an existing garage to be 2 feet from the north side yard property line (resultant of a rear addition); a variance to allow a proposed house addition to be 2'10" from the south side yard property line; and a variance to allow 9 feet between the garage and the new addition (this variance added on at the public hearing).

Premises affected: On property known as 406 Macon Avenue and being in the City of St. Matthews.

COUNCIL DISTRICT 9—Tina Ward-Pugh

Staff Case Manager: Sherie' Long, Landscape Architect

Appearances for Applicant:

Phyllis and Doug Hughes, 406 Macon Avenue, Louisville, Kentucky 40207.

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

Appearances Interested Party:

No one.

Appearances Against Applicant:

No one.

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

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NEW BUSINESS:

CASE NO. 14VARIANCE1038

On April 30, 2014, Lowell D. & Phyllis R. Hughes filed an application for a variance from the requirements of the Development Code to allow an existing garage to be 2 feet from the north side yard property line (resultant of a rear addition); a variance to allow a proposed house addition to be 2'10" from the south side yard property line; and a variance to allow 9 feet between the garage and the new addition (this variance added on at the public hearing)..

On June 2, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the June 2, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Sherie' Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant received all signatures of adjacent property owners who are not opposed, but the notice of the hearing had already been mailed. She said due to the construction of a rear addition on the existing house, the existing detached garage is located too close to the north side property line. She said another variance may be needed for the space between the garage and the addition, which is not included in the staff report.

SUMMARY OF TESTIMONY OF PROPONENTS:

Phyllis Hughes, her husband and their contractor were all sworn in. Chair Proffitt asked if anyone is living in the basement. Ms. Hughes said no, it's their laundry room and an office. Chair Proffitt said there's not enough access out of the basement if there should be a fire.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

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NEW BUSINESS:

CASE NO. 14VARIANCE1038

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

1st VARIANCE—North Property Line:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Development Code, Article 4.6.C.2(b) to allow an existing detached garage to be 2 feet from the north side yard property line (resultant of a rear addition); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure is existing and located to the rear of the parcel; and because the adjacent neighbor to the north has no objection to the new house addition construction or the location of the existing garage; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the structure is an existing detached garage; and because it is located at the rear of the parcel; and because it is also compatible with the architecture throughout the neighborhood; and because most lots in the neighborhood have rear detached garages; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the detached garage is located at the rear of the property and the adjacent property owner to the north has no objection to the location; and because it will allow room for maintenance and up-keep because the wall of the garage is located 2 feet and the overhang and gutter is located 1 foot from the side property line; and

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NEW BUSINESS:

CASE NO. 14VARIANCE1038

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the house addition will deduce the distance between the structures to less than the required 15 feet, and the required detached garage setback will be increased from 2 feet to 5 feet; therefore, to build the new house addition, a variance of 3 feet is needed for the existing detached garage to remain where it is currently located; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the existing detached garage would need to be moved or removed and rebuilt to meet the required 5 foot side yard setback; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow an existing detached garage to be 2 feet from the north side property line (resultant of a rear addition).

The vote was as follows:

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin and Fishman.

ABSTAINING: No one.

VARIANCE #2—South side property line:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Development Code, Article 4.6.C.2(b) to allow the proposed house addition to be 2'10" from the south side property line; and

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CASE NO. 14VARIANCE1038

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed house addition will be located at the rear of the existing house and match the existing house side yard setback of 2' 10"; also because the adjacent neighbor to the south has no objection to the new addition; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed addition will be located to the rear of the parcel; and because the addition will be compatible in mass, scale and architecture of the existing home and existing homes in the neighborhood; and because it will be setback the same distance from the side yard property line as the existing house; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the addition is located at the rear of the property; and because all adjacent property owners have no objection to the location; and because the addition will be setback the same distance as the existing house along the south property line; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the addition only encroaches into a small portion of the required side yard and matches the setback of the existing house; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the addition will match the setback of the existing house; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring a reduction in the width of the addition and a reduction in the square footage; and because the setback of the existing house is being honored that would deprive the applicant of a reasonable use of the land; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed house addition to be 2 feet 10 inches from the south side property line.

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The vote was as follows:

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

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin
and Fishman.**

ABSTAINING: No one.

VARIANCE—Area Between the Garage and the Addition:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from the Development Code to allow 9 feet between the garage and the new addition where the requirement is 15 feet; and because the Board added this variance at the public hearing; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed structure exists and located at the rear of the parcel; and because the adjacent neighbor to the north has no objection to the new house addition construction or the location of the existing garage; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the structure is an existing detached garage and is located and the rear of the parcel; and because the structure will be compatible with the architecture throughout the neighborhood; and because most lots in the neighborhood have rear detached garages; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the detached garage is located at the rear of the property and the adjacent property owner to the north has no objection to the location; and because it will allow for maintenance and up-keep, the wall of the garage is

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located 2 feet and the overhang and gutter is located 1 foot from the side property line; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the structure only encroaches into a small portion of the required side yard; and because it is an existing condition; and

WHEREAS, the Board finds that variance arises from special circumstances which do not generally apply to land in the general vicinity because the house addition will deduce the distance between the structures to less than the required 15 feet, the required detached garage setback will be increased from 2 feet to 5 feet; therefore, to build the new house addition, a variance of 3 feet is needed for the existing detached garage to remain where it is currently located; and because a variance is needed to allow 9 feet between the garage and the addition; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the existing detached garage would need to be either moved or removed and rebuilt to meet the required 5 ft. side yard setback; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because of the layout of the existing structures on the lot; and this will include a variance to allow the distance between the addition and the existing garage to be 9 feet;

NOW, THEREFORE, BE IT RESOLVED, the Board does hereby **GRANT** the variance to allow the space between the proposed addition and the existing garage to be 9 feet.

The vote was as follows:

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin and Fishman.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1041

Applicants/Owners: Carter & Jennifer Chapman
3600 St. Germaine Court
Louisville, Kentucky 40207

Project Name: Proposed Wooden Deck

Subject: An application for a variance from the Development Code to allow a proposed wooden deck to encroach into the required Thompson Avenue street side yard.

Premises affected: On property known as 3600 Germaine Court and being in the City of St. Matthews.

COUNCIL DISTRICT 9—Tina Ward-Pugh

Staff Case Manager: Sherie' Long, Landscape Architect

Appearances for Applicant:
Jennifer Chapman, 3600 St. Germaine Court, Louisville, Kentucky 40207.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On May 6, 2014, Carter & Jennifer Chapman filed an application for a variation from the requirements of the Development Code to allow a proposed wooden deck to encroach into the required street side yard.

On June 2, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the June 2, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Sherie' Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. Ms. Long said the variance is to allow a proposed wooden deck to encroach into the street side yard along Thompson Avenue. Member Bergmann wanted to see a landscape plan and feels it should part of the approval process.

SUMMARY OF TESTIMONY OF PROPONENTS:

Jennifer Chapman, the applicant, said she just moved into the house in January and the screened porch was already there. She said she would plant more azalea bushes and other landscaping for screening.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one.

BUSINESS SESSION:

Member Bergmann said he wanted to include the applicant's justification and that landscaping will be added.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a

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variance from the Development Code, Article 4.6.C.2 (c), to allow a proposed wooden deck to encroach into the required Thompson Avenue street side yard; and

WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare because the proposed wooden deck will not be located any closer to the street than the adjacent existing screened porch, therefore, the sight distance at the intersection is not being impacted; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the wooden deck will not be any closer to the street than the existing screened porch; and because the deck will be landscaped to lessen the impact from the street; and because it is compatible with the architecture throughout the neighborhood; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance the public because the proposed wooden deck will not be any closer than the screened porch; and because the landscaping will be planted to lessen the impact from the street and adjacent properties; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the existing house and screened porch currently encroach into the required street side yard; and because the addition of the wooden deck will not encroach any further into the street side yard than the limits of the existing screened porch encroachment; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because this is a corner lot with large setbacks along both St. Germaine Court and Thompson Avenue; and because these setbacks limit the buildable area of the lot which creates a special circumstance which would not apply if this lot were not at the intersection of two streets; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed wooden deck would not be able to be built in the location proposed; and

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WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the house is on a corner lot;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed wooden deck to be 4.4 feet from the Thompson Avenue street side yard **ON CONDITION** that the applicant plant more landscaping (azaleas etc.) around the deck.

The vote was as follows:

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

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggitt
and Fishman.**

ABSTAINING: No one.

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JUNE 2, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1042

Applicant/Owner: Habitat for Humanity of Metro Louisville
Sharri Zink
1620 Bank Street
Louisville, Kentucky 40203

Project Name: Single Family Residence

Subject: An application for a variance from the Land Development Code to allow a proposed structure to encroach into the required side yard.

Premises affected: On property known as 1511 S. 31st Street and being in Louisville Metro.

**COUNCIL DISTRICT 3—Mary Woolridge
Staff Case Manager: Latondra Yates, Planner II
(WITHDRAWN BY THE APPLICANT)**

Chair Proffitt announced that the applicant has withdrawn this case.

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

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JUNE 2, 2014

NEW BUSINESS:

CASE NO. 14VARIANCE1043

Applicants/Owners: Michael & Nancy Loring
2 River Hill Road
Louisville, Kentucky 40207

Representative: Timothy R. Winters Architect
Tim Winters
8009 New LaGrange Road, Suite 8
Louisville, Kentucky

Project Name: Proposed Brick Wall

Subject: An application for variances from the Development Code to allow a proposed brick wall to exceed the maximum 4 ft. height along the front and street side yards.

Premises affected: On property known as 2 River Hill Road and being in the City of Indian Hills.

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

Appearances for Applicant:
Mike & Nancy Loring, 2 River Hill Road, Louisville, Kentucky 40207.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

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

On May 9, 2014, Michael & Nancy Loring filed an application for a variation from the requirements of the Development Code to allow a brick wall to exceed the maximum 4 foot height.

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On June 2, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the June 2, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the variances are for a 6 ft. tall brick wall to enclose a swimming pool along River Hill Road and Columbia Boulevard. Chair Proffitt asked if there are any other brick walls in the area. Ms. Yates said yes and submitted photographs of these into the record. Member Bergmann asked if they would be adding any metal type fencing to keep the view open.

SUMMARY OF TESTIMONY OF PROPONENTS:

Michael & Nancy Loring, the applicants' were sworn in. Chair Proffitt asked if they considered using any other material other than brick. Mr. Loring said he discussed a pierced wall, but his architect said it wouldn't work. Member Bergmann suggested a different design.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

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NEW BUSINESS:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances of Section 9.B.1.a. of the Development Code adopted by the City of Indian Hills to allow a wall to exceed the maximum 4 ft. height along River Hill Road and Columbia Boulevard; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposed wall will secure the pool; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the wall will be replacing an existing one; and because there are similar fences and brick walls of similar heights in the neighborhood; and

WHEREAS, the Board finds that variances will not cause a hazard or nuisance to the public because the wall will secure the pool and screen the pool equipment from neighboring properties; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because there are other similar walls in the neighborhood of similar heights;

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

The variances allow:

1. A proposed brick wall to be 6 feet tall along the front property line along River Hill Road.
2. A proposed brick wall to be 6 feet tall along the street side property line along Columbia Blvd.

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The vote was as follows:

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

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin
and Fishman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14VARIANCE1044

Applicants/Owners: Gregory A. & Stephanie Smith
3923 Warner Avenue
Louisville, Kentucky 40214

Representative: Joe Willis
15823 Brush Run Road
Louisville, Kentucky 40214

Project Name: Residential Garage

Subject: An application for variances from the Development Code to allow a proposed detached garage to be 5 feet from the rear property line; and to allow the proposed detached garage to occupy more than 30% of the rear yard (40.5% or 456 square feet).

Premises affected: On property known as 3923 Warner Avenue and being in the City of St. Matthews.

COUNCIL DISTRICT 9—Tina Ward Pugh

Staff Case Manager: Sherie' Long, Landscape Architect

Appearances for Applicant:
Joe Willis, 15823 Brush Run Road, Louisville, Kentucky 40214.

Appearances Interested Party:
Fred Bleuel, 3924 Grandview Avenue, Louisville, Kentucky 40207.

Appearances Against Applicant:
No one.

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

On May 12, 2014, Gregory & Stephanie Smith filed an application for a variation from the requirements of the Development Code to allow a proposed detached

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garage to be 5 feet from the rear property line; and to allow the proposed garage to occupy more than 30% of the rear yard area.

On June 2, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the June 2, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Sherie' Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. Ms. Long said the applicant is proposing to construct a 720 SF detached garage in the rear of the property. She said the request is not compatible with other garages in the area since they are not built back this far. In addition, there is already an existing concrete slab where a garage would be more appropriate. She said she received a call from an area resident opposed because of the easement that he maintains and would decrease the space for maintenance. Ms. Long said the location of the garage would impact the existing trees root zones.

Member Bergmann said the proposed garage wouldn't be uniform with other built garages and would not be hardship on the applicant. Ms. Long agreed. Chair Proffitt said one of the trees looks like it's dead. Ms. Long said she is not concerned about this specific tree. Member Allendorf asked how tall the garage would be since the house is two stories. Ms. Long said she thinks the garage will be as tall as the house or a bit lower.

SUMMARY OF TESTIMONY OF PROPONENTS:

Joe Willis, the applicant's contractor was sworn in. Chair Proffitt asked why they want to build the garage back so far; and asked if the second floor of the structure will be occupied. Mr. Willis yes, for friends. Member Bergmann asked if it would have a bathroom and kitchen. Mr. Willis said yes. Chair Proffitt said

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the owners might need a Conditional Use Permit for this; and said the Board could continue this case to hear from the owners. Member Bergmann said he is veering towards denial. Ms. Jarboe and Tharp agreed. Member Allendorf said he would like to hear from the owners.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

Fred Bleuel said his backyard abuts the subject property; and that he is totally opposed if there will be a residence on the second floor.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

No discussion.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentation; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Article 4.7.C.2(d) of the Development Code to allow a proposed two-story detached garage to be 5 feet from the rear property line; and a variance of Article 9.2.Q of the Development Code to allow the proposed two-story garage to occupy more than 30% of the rear yard; and

WHEREAS, the Board finds that the requested variances will adversely affect the public health, safety or welfare because the proposed structure when located further back requires additional pavement to access the garage, therefore, additional pervious area of the lot is lost resulting in additional runoff; and because the construction of the footer or foundation will impact the existing root systems of the large trees located on or around the area of the proposed garage; and

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WHEREAS, the Board finds that the variances will alter the essential character of the general vicinity because the proposed garage will be setback further than the adjacent garages or accessory structures on the surrounding properties; and

WHEREAS, the Board finds that the variances will cause a hazard or nuisance to the public because the detached garage will be located further back resulting in more impervious areas, and less absorption of runoff at the rear of the property; and increased runoff on or into the combined sewer system; and because the critical root zones of the existing large trees will be compromised by the construction of the foundation resulting in the trees being damaged and/or possibly lost; and

WHEREAS, the Board finds that the variances will allow an unreasonable circumvention of the zoning regulations because the structure will be located further back than other accessory structures in the area; and because there is sufficient room for the garage to be located out of the required 25 feet rear yard and the critical root zones of the existing large trees; and

WHEREAS, the Board finds that the variances do not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the rear yard area size and the size and location of the existing house are similar to adjacent properties; and because these adjacent properties have garages which are located as required by the Development Code; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant; and because the garage could be relocated out of the rear yard; and because there is sufficient room and distance for the garage to be located as required by the Development Code; and

WHEREAS, the Board finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because this is new construction and the applicant can meet the requirements of the Development Code;

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NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **DENY** the variances to allow a proposed detached garage to be 5 feet from the north property line (rear); and to allow the proposed detached garage to occupy 40.5% or 456 SF of the rear yard area.

The vote was as follows:

YES: Members Jarboe, Proffitt, Tharp and Bergmann.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin
and Fishman.**

ABSTAINING: Member Allendorf.

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NEW BUSINESS:

CASE NO. 13CUP1019

Applicant/Owner: AT&T
Joseph Estep
601 W. Chestnut Street, Room 1 NE
Louisville, Kentucky 40203

Representatives: EXP
Joseph Murphy
205 N. Michigan Avenue, Ste. 3600
Chicago, IL 60601

J.R. Bowman Construction
Rick Smith
114 Bellamy Place
Stockbridge, GA 30281

Subject: An application for a Conditional Use Permit to allow off-street parking in an R-4 zoning district.

Premises affected: On property known as 411 Evergreen Road and being in the City of Middletown.

COUNCIL DISTRICT 19—Jerry Miller
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Earl Stuffan, 150 E. Gay Street, Columbus, OH 43215.

Appearances- Interested Parties:
No one.

Appearances Against Applicant:
No one.

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

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CASE NO. 13CUP1019

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

The audio/visual recording of this hearing will be found on the DVD of the June 2, 2014 proceedings available in the Planning and Design Services Office.

DISCUSSION:

Chair Proffitt said the applicant has asked for their case to be continued. Jon Crumie, case manager, said the applicant needs time to get more information about the use. He said the applicant is present to discuss the date of continuance.

Earl Stuffman, the applicant's architect, said they would prefer July 21, 2014.

After the discussion, on a motion by Member Tharp, seconded by Member Allendorf, the following resolution was adopted:

RESOLVED, that the Board does hereby **CONTINUE** this case to **JULY 21, 2014**.

The vote was as follows:

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin and Fishman.

ABSTAINING: No one.

Chair Proffitt announced that this case will be continued throughout the meeting, but no one responded.

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NEW BUSINESS:

CASE NO. 14CUP1006

Applicant/Owner: Kentuckiana Jones Properties, LLC
Stephen F. Jones
3012 Hilltop Court
Prospect, KY 40056

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

Representative: C.R.P. & Associates, Inc.
Charles Podgursky
7321 New LaGrange Road, Suite 111
Louisville, KY 40222

Subject: An application for a Conditional Use Permit to allow a proposed accessory apartment in an R-5 zoning district.

Premises affected: On property known as 1007 & 1009 Sylvia Street and being in Louisville Metro.

COUNCIL DISTRICT 10—Jim King
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Glenn Price, Attorney, 400 W. Market Street, Suite 3200, Louisville, KY 40202.

Steve Jones, 3012 Hilltop Court, Prospect, KY 40056

Appearances- Interested Parties:
No one.

Appearances Against Applicant:
Larry Kruer, 1011 Sylvia Street, Louisville, KY 40217.

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

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OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

JUNE 2, 2014

NEW BUSINESS:

CASE NO. 14CUP1006

On April 28, 2014, Stephen Jones filed an application for a Conditional Use Permit to allow a proposed accessory apartment in an R-5 zoning district.

On June 2, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The audio/visual recording of this hearing will be found on the DVD of the June 2, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is requesting a CUP for an existing two-story accessory apartment with 800 sq. ft. and will allow for 2 additional parking spaces inside the lower part of the structure. He said there is residential single family, a church and school surrounding the property. The house is ½ stories tall and the proposed garage will be 2 stories. The applicant is requesting to modify specific standards, Items A, B and C, where Item D has been met. Chair Proffitt asked if the owners will subdivide the lot. Member Allendorf asked if there is exterior access from the 2nd floor. Mr. Crumbie said they need to ask the applicant.

SUMMARY OF TESTIMONY OF PROPONENTS:

Glenn Price, the applicant's attorney, said the house and accessory structure have been there a long time and have non-conforming use rights. He said he doesn't think there is secondary access from the 2nd floor and that it's all internal. Mr. Price said they will have to go before DRC for a waiver. Mr. Price discussed the modification of Listed Requirements A, B and C. He said there are two meters on the property for the main residence, but his client turned this into one rental.

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Steve Jones, the applicant said there are two gas and two electric meters. Chair Proffitt asked if he would take one of each out. Mr. Jones agreed. He said the carriage house has its own meters.

Mr. Price said they would provide access to the sidewalk.

Mr. Crumbie said the use has not been expanded.

Member Allendorf said they should provide fire rated material.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

Larry Kruer, said he lives next door to the subject property, and said they need more off-street parking in the area. He said the neighborhood meeting notice and meeting was misleading since the owner is adding another residence. He said more people would have attended the meeting had they known. Chair Proffitt said this request will also have to go before DRC and possibly the Planning Commission to be approved.

Member Jarboe asked if the neighbors will be notified of the DRC meeting. Mr. Crumbie said yes.

REBUTTAL:

Mr. Price said he understands Mr. Kruer's concerns about parking, but would only be an issue if they subdivide. Mr. Price said they will use fire retardant material.

BUSINESS SESSION:

Member Allendorf said he is not opposed as long as they remove one of the gas and electric meters. Chair Proffitt said the square footage for the accessory apartment is 800 SF, not 1,024 as in the staff report.

Back Into Public Hearing:

Chair Proffitt asked the owner how he monitors his property. Mr. Jones agreed to give Mr. Kruer his phone number; and will check on his tenants

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Back into Business Session:

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

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation and the evidence and testimony submitted at the public hearing that the applicant is requesting a Conditional Use Permit to allow a proposed accessory apartment in an R-5 zoning district; and

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

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because no new lighting or landscaping will be provided; and because Plan Element B.2: The proposal preserves and renovates existing buildings if the building design of these structures are consistent with the predominate neighborhood building design; and

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

WHEREAS, the Board finds that the Board will hereby modify Items A., B., and C of the listed requirements because the property owner will not reside in the principal residence; and because the accessory apartment is 800 SF and the principal structure is 980 SF; and because the accessory apartment is 2-stories in height and the principal residence is 1 ½ stories; and

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

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

The conditions are as follows:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for an accessory apartment without further review and approval by the Board.
3. The owner shall remove 1 of the gas meters and 1 of the electric meters on the primary structure property.

The vote was as follows:

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Liggin and Fishman.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14APPEAL1002

Appellant: Russell & Harriet Patrick
122 N. 42nd Street
Louisville, Kentucky 40212

Attorney: Dennis M. Clare, Esq.
745 W. Main Street
Louisville, Kentucky 40202

Subject: An Appeal of a determination issued by the Department of Codes and Regulations concerning non-conforming use rights for a multi-family (3 units) structure.

Premises affected: On property known as 2123 Grand Avenue and being in Louisville Metro.

COUNCIL DISTRICT 6—David James
Staff Case Manager: Steve Hendrix, Planning Supervisor

Appearances Opposing the Appeal:
Joseph DeBow, 2116 Grand Avenue, Louisville, Kentucky 40210; who submitted a notarized letter from Constance C. Smith.

Appearances Interested Party:
No one.

Appearances in Support of the Appeal:
Dennis Clare, Attorney, 745 W. Main Street, Louisville, Kentucky 40202

Harriet Patrick, Owner, 122 N. 42nd Street, Louisville, Kentucky 40212.

Emma Evans, 850 Muhammad Ali Blvd., Louisville, Kentucky 40203.

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

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CASE NO. 14APPEAL1002

This case was continued from the April 7, 2014 hearing in order for the appellant to obtain more documentation to support that the structure has been a tri-plex since 1971.

The appellant submitted a personal affidavit along with additional affidavits, some of which were revised from the original submittal and pictures.

A letter was received from neighbor, Joseph DeBow.

Additional research was received from the Louisville Division of Fire.

Previously a determination letter was issued by the Department of Codes and Regulations concerning non-conforming use rights for 3 apartments which were sent to the owner of the subject property. The owners and appellants filed an appeal of this action of February 21, 2014.

On June 2, 2014, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The recording of this hearing will be found on the DVD of the June 2, 2014 proceedings.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Steve Hendrix gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said this case was continued today to allow the appellant more time to submit information verifying that the structure has been used continuously since 1971 as a tri-plex. He said the fire department did not inspect the apartments after the owner's purchased it, which is normally what would happen. Sergeant Drane Scrivener e-mailed staff a letter stating that he inspected the property on May 20, 2014. He said the property is a 3-plex with no common areas. The basement unit is a full 2

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bedroom apartment with 2 exits; the 1st floor unit has a front and rear exit; and the 2nd floor unit has an exterior entrance on the side. He also said he spoke with the tenant on the 1st floor who said she has been living there for 6 years and her neighbors' about 5. Sergeant Scrivener added that his office did not have a file or previous information on this property. Mr. Hendrix said PVA has the property listed as single family residential with 1 ½ baths. Mr. Hendrix said this is all the new information he has to present. Member Jarboe said she wasn't present at the original hearing and asked Mr. Hendrix to go over the original presentation, which he did.

SUMMARY OF TESTIMONY OPPOSED TO APPEAL:

Joseph DeBow submitted another affidavit into the record. He said he located the previous owner's son, Joseph S. Bush, is 75 years old who told him the property was never rented out or a boarding house. He said he also talked to his daughter, Gretchen, who said the same thing. Mr. DeBow said the appellant talked to Mr. Bush too, and asked him to testify that it has been multi-family. Mr. DeBow said Mr. Bush told him he would come to the hearing, but had so many people calling him, he became upset and said he wanted to be left alone. Mr. DeBow said Mrs. Bush kept up the property, until she couldn't do it anymore and was auctioned off. He said it was a peaceful neighborhood, which is now, congested with too many people and not enough on-street parking. Member Jarboe asked Mr. DeBow if he thinks the new owners remodeled it into 3 units. Mr. DeBow said yes. Mr. DeBow said he has nothing to gain in this situation, but would like his neighborhood back to the way it was.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF APPELLANT(S):

Dennis Clare, attorney for the appellants, said he has known Mr. Patrick for over 50 years and were lifeguards together at one point. He said his client's purchased the complex in 1993 at auction where the posted sign said "Sold as is—Income Potential". Mr. Clare said they have submitted several affidavits from people who used to rent rooms at the house. He said there are deadbolts on every door, so there is no doubt; it has been used as multi-family. Mr. Clare said he doesn't know why Mr. DeBow hasn't seen anyone coming or going from this property. He added that the lady who testified against this request at the last hearing said she was in the house and saw the staircase upstairs, but never said

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it wasn't multi-family. Chair Proffitt asked him if he saw the notarized letter from Constance Smith, who said it was never multi-family. Mr. Clare said no, and read the letter. Chair Proffitt asked him if they are claiming that the house has been used as multi-family since 1971. Mr. Clare said yes.

Harriet Patrick, the appellant, was questioned by her attorney. Mr. Clare asked her if she could tell the property was multi-family when she purchased it. Ms. Patrick said yes. Member Jarboe asked Ms. Patrick what renovations she has made to the home. Ms. Patrick said she replaced the heat and air system, replaced windows, doors and bought a new roof. She said when she replaced the heat and air system is when LG&E added another meter. Ms. Patrick said Mr. DeBow is disgruntled because there is not enough on-street parking, when he owns 3 vans. She said the police have never been called on anyone living there. Mr. Clare asked her if she has ever had any complaints. Ms. Patrick said never. Mr. Clare asked who rented rooms previously. Ms. Patrick said a cook and 3 or 4 railroad workers in the late 60's early 70's.

Mr. Hendrix said it doesn't appear a timeline from 1971 has been established for 3 apartments. He said the appellant's have mentioned boarding rooms and tenants, but not apartments. Member Tharp asked Mr. Hendrix if he spoke with Mr. Bush. Mr. Hendrix said yes, and that Mr. Bush said he would testify or submit a letter, but later told Mr. Hendrix to quit calling him. Mr. Hendrix said Mr. Bush didn't tell him either way, if it has been a single or multi-family. Mr. Hendrix said the Bush's may have rented rooms while they lived there, but doesn't think they were separate apartments with separate kitchens and bathrooms. Chair Proffitt asked Mr. Hendrix if there were three separate addresses. Mr. Hendrix said no. Member Jarboe asked Mr. Hendrix if it is in the code that there has to be 3 separate utility meters to be multi-family. Mr. Hendrix said no. Member Jarboe questioned how they would distribute mail.

REBUTTAL:

Mr. DeBow asked the Board to call Mr. Bush or his daughter, so they can tell the Board that it was never used as multi-family. Chair Proffitt said it's apparent that Mr. Bush doesn't want to be involved.

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BUSINESS SESSION:

John Carroll, the Board's legal counsel, said the Board's decision is if there were 3 apartments from 1971 forward. Member Jarboe said rooms for rent are not the same as 3 apartments. Chair Proffitt said since there is so much conflicting information, feels they need to go along with staff's conclusions.

BACK INTO PUBLIC HEARING:

Mr. Clare said Mr. DeBow's own brother submitted an affidavit stating that it was rented before her husband died.

Mr. DeBow said his brother didn't even know Mr. Bush and that his brother's affidavit is a lie. He asked why his brother is not here today to testify.

BACK INTO BUSINESS SESSION:

Mr. Carroll said the evidence is not concrete, so the Board should base their decision on what information they have. Chair Proffitt said the Patrick's bought the property believing it was multi-family; and Mr. DeBow has been convincing that the opposite is true, so reiterated, that he thinks the Board should go along with staff's analysis. Member Tharp said the Board gave the appellant enough time to provide more convincing evidence, but this has not occurred. Member Jarboe questioned if the property had been used for room rentals from 1971, would this validate the non-conforming use rights. Member Allendorf said they have said they rented out rooms in the 60's and 70's, but no contracts to substantiate this since most people didn't draw up contracts back then. He said Mr. Bush could have been here today to testify, but chose not to. Chair Proffitt asked someone to make a motion either way and explain their reasoning.

After the public hearing, in open business session, Member Jarboe made a motion to approve the appeal, stating that based on the affidavits and other evidence that the property has been used continuously used as multi-family residential since 1971 and that 3 apartment units exist at the subject property; and was seconded by Member Allendorf.

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The vote was as follows:

YES: Members Jarboe and Allendorf.

NO: Member Proffitt and Tharp.

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

ABSTAINING: No one.

Tie Vote

DISCUSSION:

Chair Proffitt suggested closing the record (no more testimony and evidence) for this case and put it first on the next agenda on June 16, 2014 for the Board to decide when there are more members present to avoid tie votes. He said staff needs to mail the minutes and cd's of both meetings to the Board members; the appellant's attorney Mr. Clare; and Mr. DeBow. Member Jarboe suggested sending Mr. Bush a subpoena, so he would testify. Member Tharp agreed. John Carroll, the Board's legal counsel, said they are hard to serve or to get people to respond to them.

After the discussion, in open business session, on a motion by Member Allendorf, seconded by Member Tharp the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CLOSE** the record of this case and **CONTINUE** it to **JUNE 16, 2014**, being placed first on the agenda for the Board to vote. In addition, staff will mail all minutes, staff reports and copies of the cd for both hearings to the Board Members, Mr. Clare and Mr. DeBow.

The vote was as follows:

YES: Members Jarboe, Proffitt, Tharp and Allendorf.

NO: No one.


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

ABSTAINING: No one.


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The meeting adjourned at 1:00 P.M.



CHAIRPERSON



SECRETARY

