

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

**AUGUST 17, 2015**

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:38 A.M. on Monday, August 17, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

**Members present:**

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

**Members absent:**

No one

**Staff members present:**

- Emily Liu, Director, Planning & Design Services
- Jonathan Baker, Legal Counsel
- Steve Hendrix, Planning Supervisor
- Brian Davis, Planning Supervisor
- Sherie Long, Landscape Architect
- Jon Crumble, Planner II
- Chris Brown, Planner II
- Matthew Doyle, Planner II
- Beth Stevenson, Management Assistant

\*Chair Proffitt arrived at 10:00 a.m. and Member Tharp left the meeting at approximately 10:45 a.m.

The following cases were heard:

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**APPROVAL OF MINUTES**

**AUGUST 3, 2015 BOARD OF ZONING ADJUSTMENT MEETING MINUTES**

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

**RESOLVED**, that the Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting held on August 3, 2015.

**YES: Members Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: Member Allendorf.**

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**BUSINESS SESSION:**

**NON-HEARING VARIANCE**

**CASE NO. 15VARIANCE1050**

**Request:** Variance from the Land Development Code to allow an addition to encroach into the required side yard.

**Project Name:** Residence

**Location:** 230 S. Hite Avenue

**Owner:** Ted Bressoud  
230 S. Hite Avenue  
Louisville, KY 40206

**Applicant:** Same as owner

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT:** **9—Bill Hollander**  
**Staff Case Manager:** **Matthew Doyle, Planner II**

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

**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & 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 August 17, 2015 public hearing proceedings.**

**DISCUSSION:**

Steve Hendrix, Planning Supervisor, said the applicant submitted the required signatures from adjoining property owners who are not opposed.

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**NON-HEARING VARIANCE**

**CASE NO. 15VARIANCE1050**

**Non-Hearing Variance—To allow an addition to encroach into the required side yard:**

On a motion by Board Member Fishman, 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; and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow an addition onto the rear of the principal structure to encroach into the required side yard; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the addition will maintain the current setback of the principal structure; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since the addition will maintain the current setback of the principal structure, which is consistent with the area; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since the addition will maintain the current setback of the principal structure; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the addition will maintain the current setback of the principal structure, which is consistent with the area; 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 lot is substandard; 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 since the addition will maintain the current setback of the principal structure, which is consistent with the area;

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**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed addition onto the rear of the principal structure to be 0.5 feet from the side property line;

**BE IT FURTHER RESOLVED**, that this action be effective immediately.

**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Proffitt**

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1015**

**Request:** Variances from the Land Development Code to allow the building to not be at the corner and exceed the maximum setback; and to allow the building to encroach into the street side transition zone setback; various waivers and a Category 2B Development review.

**Project Name:** Sethi Station

**Location:** 2124 West Market Street

**Owner:** Sethi Properties, LLC  
Meena Sethi  
4901 Hunters Point Circle  
Louisville, KY 40216

**Applicant:** Same as owner

**Representative:** Miller Wihry  
John Miller  
1387 S. 4<sup>th</sup> Street  
Louisville, KY 40208

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 4—David Tandy**

**Staff Case Manager:** Sherie' Long, Landscape Architect

**(CONTINUED FROM AUGUST 3, 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. 5<sup>th</sup> Street).

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**Agency Testimony:**

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant submitted a revised plan on August 14, 2015, showing a fence from Congress to Market Street to separate this proposal from the existing multi-family property. She said with this change, will eliminate the 7<sup>th</sup> waiver request. Ms. Long explained other revisions the applicant made to the plan. The Board had questions about installing the required wall, landscaping and signage.

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

John Miller.

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

John Miller, the applicant's representative, explained the changes they made to the plan at the Board's request. He said his client still does not want the required wall because it will be a 24 hour store and they do not want to encourage loitering. Mr. Miller pointed out the trees on the plan including the 6 ft. tall wood fence; and said they will submit a landscape plan. He said they will have a sign on 22<sup>nd</sup> Street and one on Market Street which will backlit and nothing flashing. Ms. Long said a waiver may need to be added now for the signage since it will be an LED sign 300 feet from residential property. Emily Liu, Planning & Design's Director, said if they don't meet the regulations for the signage, they will have to come back before the Board for this waiver.

**The following spoke neither for nor against the request:**

No one.

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

No one.

**The following spoke in opposition to this request:**

No one.

**Summary of testimony of those in opposition:**

No one.

**Deliberation:**

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Member Bergmann said he appreciates the changes, but still thinks a wall along 22<sup>nd</sup> and Market would look nice. He said he would have liked to see a landscape plan; and that this property needs extensive landscaping. Member Turner said he has concerns about traffic backing up and creating accidents for southbound traffic on 22<sup>nd</sup>. The other members liked the changes made including the fence and panels added for animating features.

**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 August 17, 2015 public hearing proceedings.**

**Variance #1—To allow the building to not be at the corner and exceed the maximum 25 ft. setback:**

After the public hearing in open business session, on a motion by Member Jarboe, 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 including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting variances from Section 5.5.1.A.1.a, of the Land Development Code to allow the building to not be at the corner and exceed the maximum 25 ft. setback; and

**WHEREAS**, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because safe pedestrian access is provided from the public rights-of-way to the building entrance; and

**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity because landscaping will be provided; and because the infrastructure of the previous gas station and convenience store (gas tanks, pumps, canopies etc.) was already established prior to the applicant purchasing this property; and because the distance from the street will provide more security for the employees; and



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**WHEREAS**, the Board finds that the variances will not cause a hazard or nuisance to the public since safe pedestrian access is provided from the public rights-of-way to the building entrance; and because safe vehicular maneuvering is being provided; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations due to the physical restraints of the property because the infrastructure of the previous gas station and convenience store (gas tanks, pumps, canopies etc.) was already established prior to the applicant purchasing this property; and because the distance from the street will provide more security for the employees;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

**The variances allow:**

1. The building to not be at the corner.
2. The building to be 131.25 feet from the front corner property line.

**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Variance #2—To allow the building to encroach into the street side transition zone setback:**

After the public hearing in open business session, on a motion by Member Jarboe, 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 including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.7.1.B of the Land Development Code to allow the building to encroach into the street side transition zone setback; and

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**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since safe pedestrian access is provided from the public rights-of-way to the building entrance; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since the site is located in a Traditional Neighborhood Form District that requires non-residential structures to be constructed close to the street, however, the transition zone setback requirement of 15 feet applies to the proposed location of the building; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since safe pedestrian access is provided from the public rights-of-way to the building entrance and since safe vehicular maneuvering has been provided; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulation because it would be consistent with variances provided for other business types; and because the infrastructure of the previous gas station and convenience store (gas tanks, pumps, canopies etc.) was already established prior to the applicant purchasing this property; and because the distance from the street will provide more security for the employees;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the building to be 5 feet from the street side property line along South 22<sup>nd</sup> Street.

**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Waiver #1—To allow parking in front of the building:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report, the site plan, the PowerPoint presentations, evidence including the applicant's

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justification statement, testimony and discussion at the public hearing, the applicant is requesting a waiver from Section 5.5.1.A.3.a and 5.9.2.C.4 of the Land Development Code to allow parking in front of the building; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners since safe pedestrian access is provided from the public rights-of-way; and

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because all other gas station/convenience stores are basically laid out the same way due to maneuverability and safety issues; and

**WHEREAS**, the Board finds that the waiver of the regulation is the minimum necessary to afford relief to the applicant because the infrastructure of the previous gas station and convenience store (gas tanks, pumps, canopies etc.) was already established prior to the applicant purchasing this property; and

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the applicant would have to totally redesign and reconstruct the use removing gas tanks, pumps, plumbing etc. to accommodate the new gas station and convenience store; and because parking and the gas pumps in the front of the store will provide more safety for the public and employees; and because all other gas station/convenience stores are basically laid out the same way due to maneuverability and safety;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the waiver to allow parking in front of the building.

**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Waiver #2—To allow the gas pump canopy to be located between the building and the street:**

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

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**WHEREAS**, the Board finds from the file of this case, the staff report, the site plan, the PowerPoint presentations, evidence including the applicant's justification statement, testimony and discussion at the public hearing, the applicant is requesting a waiver from Section 5.5.1.A.5 of the Land Development Code to allow the gas pump canopy to be located between the building and the street; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners because safe pedestrian access is provided from the public rights-of-way to the building entrance; and

**WHEREAS**, the Board finds that the waiver will not alter the essential character of the general vicinity because the applicant has improved the design including a fence between the proposed use and the existing multi-family development; and will be including shrubs and other landscaping to aesthetically improve the site; and

**WHEREAS**, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the infrastructure of the previous gas station and convenience store (gas tanks, pumps, canopies etc.) was already established prior to the applicant purchasing this property

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the infrastructure of the previous gas station and convenience store (gas tanks, pumps, canopies etc.) was already established prior to the applicant purchasing this property

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the gas pump canopy to be located between the building and the street.

**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

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**Waiver #3—To not provide 50% glass along the west street building façade on South 22<sup>nd</sup> Street:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report, the site plan, the PowerPoint presentations, evidence including the applicant's justification statement, testimony and discussion at the public hearing, the applicant is requesting a waiver from Section 5.6.1.C.1 of the Land Development Code to not provide 50% glass along the west building façade on South 22<sup>nd</sup> Street; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners because the applicant will be providing some clear glass and an entrance along with accent panels to animate and enhance the appearance on the 22<sup>nd</sup> Street side façade; and

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 since the applicant will be providing some clear glass and an entrance along with accent panels to animate and enhance the appearance on the 22<sup>nd</sup> Street side façade; and

**WHEREAS**, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since some clear glass and an entrance along with accent panels to animate and enhance the appearance on the 22<sup>nd</sup> Street side façade; and

**WHEREAS**, the Board finds that the applicant has incorporated other design measures to compensate for non-compliance with the requirements because some clear glass and an entrance along with accent panels to animate and enhance the appearance on the 22<sup>nd</sup> Street side façade;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide 50% glass along the west building façade on South 22<sup>nd</sup> Street.

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**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Waiver #4—To not provide the transition zone required architectural animation to the building façade or the 15' Landscape Buffer Area (LBA) along Congress Street:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report, the site plan, the PowerPoint presentations, evidence including the applicant's justification statement, testimony and discussion at the public hearing, the applicant is requesting a waiver from Sections 5.6.1.A.1 & 5.6.1.C.1 of the Land Development Code to not provide the transition zone required architectural animation to the building façade or the 15' LBA along Congress Street; and

**WHEREAS**, the Board finds that the waiver will not adversely affect adjacent property owners since the property nearest to the rear of the building is vacant; and because a 10' landscape area is being provided with the required plantings to mitigate the lack of animating features and the 15' LBA; and

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 since the applicant is providing 10' landscape area and plantings to mitigate the lack of animation; and

**WHEREAS**, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since a 10' landscape area and plantings are being provided; and

**WHEREAS**, the Board finds that the applicant has incorporated other design measures to compensate for non-compliance with the requirements to be waived since a 10' landscape area and plantings are being provided;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the transition zone required architectural animation to the building façade or the 15' LBA along Congress Street.

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**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Waiver #5—To not provide a 3' wall between the Vehicle Use Area (VUA) and the adjacent streets:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report, the site plan, the PowerPoint presentations, evidence including the applicant's justification statement, testimony and discussion at the public hearing, the applicant is requesting a waiver from Section 5.5.1.A.3.a, of the Land Development Code to not provide a 3' wall between the VUA and the adjacent streets; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners since landscape buffer plantings will be provided along the perimeter; and because the applicant has agreed to provide architectural enhancements and urban design elements (posts, fencing, etc.) along 22<sup>nd</sup> and Market Street in addition to the required LBA plantings; these site improvements are to be reviewed by staff and then presented to the Board for review in business session; and

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 since a 3' screen planting will be provided; and because the applicant has agreed to provide architectural enhancements and urban design elements (posts, fencing, etc.) along 22<sup>nd</sup> and Market Street in addition to the required LBA plantings; these site improvements are to be reviewed by staff and then presented to the Board for review in business session; and

**WHEREAS**, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since a 3' screen planting will be provided around the perimeter to reduce the impact of the VUA in place of the required wall; and because the applicant has agreed to provide architectural enhancements and urban design elements (posts, fencing, etc.) along 22<sup>nd</sup> and Market Street in addition to the required LBA plantings; these site improvements

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are to be reviewed by staff and then presented to the Board for review in business session; and

**WHEREAS**, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) because the applicant will be providing a 3' screen planting around the perimeter to reduce the impact of the VUA in place of the wall; and because the applicant has agreed to provide architectural enhancements and urban design elements (posts, fencing, etc.) along 22<sup>nd</sup> and Market Street in addition to the required LBA plantings; these site improvements are to be reviewed by staff and then presented to the Board for review in business session;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide a 3' tall wall between the VUA and the adjacent streets **ON CONDITION** that the applicant provide architectural enhancements and urban design elements (posts, fencing, etc.) along 22<sup>nd</sup> and Market Street in addition to the required LBA plantings; these site improvements are to be reviewed by staff and then presented to the Board for review in business session.

**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Waiver #6—To allow the building to encroach into the 15' Landscape Buffer Area (LBA) and Type C Yard of the transition zone along the Congress Street perimeter:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report, the site plan, the PowerPoint presentations, evidence including the applicant's justification statement, testimony and discussion at the public hearing, the applicant is requesting a waiver from Section 5.7.1.B.2 of the Land Development Code to allow the building to encroach into the 15' LBA and Type C Yard of the transition zone along the Congress Street perimeter; and



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**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners because 10 ft. of LBA will still be provided between the residential property to the south and the proposed building; and

**WHEREAS**, the Board finds that the waiver will not violate specific Guidelines of Cornerstone 2020 because 10 ft. of LBA will still be provided between the residential property to the south and the proposed building which will allow the planting of trees and shrubs to mitigate the impact of incompatible uses; and

**WHEREAS**, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the required plantings will be provided in the remaining 10 ft. landscape area;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the building to encroach into the 15' LBA and Type C Yard of the transition zone along the Congress Street perimeter.

**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Waiver #7 – LBA Encroachment –This waiver is no longer needed with the applicant’s revisions to the plan.**

**Waiver #8—To not provide the Interior Landscape Area (ILA) within the Vehicle Use Area:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report, the site plan, the PowerPoint presentations, evidence including the applicant’s justification statement, testimony and discussion at the public hearing, the applicant is requesting a waiver from Section 10.2.12 of the Land Development Code to not provide the ILA within the VUA; and

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**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners because a 6 ft. tall wooden fence will be installed to protect the adjacent residential; and because the owner would not have enough room for an ILA since the lot is small and parking is necessary to accommodate the business including room for vehicular maneuvering and deliveries; and

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because ILA's are not a significant component with this specific use; and

**WHEREAS**, the Board finds that the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant due to the size of the lot, the use and the need for parking;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the Interior Landscape Area within the Vehicle Use Area.

**YES: Members Allendorf, Fishman, Tharp, Jarboe, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1049**

**Request:** Variance to increase the maximum front building setback of 15 feet to approximately 80 feet along the Taylorsville Road property line.

**Project Name:** Outlot 5B—Tyler Retail Center

**Location:** 12607 Taylorsville Road

**Owner:** NEDCO, LLC  
David Nicklies  
6060 Dutchmans Lane, Ste. 110  
Louisville, KY 40205

**Applicant:** Nicklies Development  
Jim Calvery  
6060 Dutchmans Lane, Ste. 11-  
Louisville, KY 40205

**Representative:** Heritage Engineering, LLC  
John Campbell  
642 South 4<sup>th</sup> Street, Ste. 100  
Louisville, KY 40202

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 20—Stuart Benson**

**Staff Case Manager:** **Brian Davis, AICP, Planning Supervisor**

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

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

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

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1049**

**Agency Testimony:**

Staff Case Manager, Brian Davis discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing a 6,600 sq. ft. retail building on Outlot 5B of the Tyler Retail Center and requesting a variance for the setback along Taylorsville Road. He said the form district was Neighborhood but changed to Town Center in 2010. The setbacks are greater than the required 15 feet since it was built prior to the form district change. Mr. Davis said the applicant has met the standard of review regulations.

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

Jim Calvery.

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

Jim Calvery, the applicant, said the retail center was built in 2004 or 2005 and that the buildings can't be moved up due to the utilities already being in place.

**The following spoke neither for nor against the request:**

No one.

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

No one.

**The following spoke in opposition to this request:**

No one.

**Summary of testimony of those in opposition:**

No one.

**Deliberation:**

Board of Zoning Adjustment deliberation.

**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the August 17, 2015 public hearing proceedings.**

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

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1049**

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.4.C.3.A to increase the maximum front building setback of 15 feet to approximately 80 feet along Taylorsville Road or the southern property line; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed setback is in keeping with the established development pattern in the area; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed setback is in keeping with the established development pattern in the area; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed setback is in keeping with the established development pattern in the area; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the proposed setback is in keeping with the original development and original form district, which was changed between plan approval and development of this parcel; and

**WHEREAS**, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the form district was changed after the approval of the original development plan; also because this is for a proposed development for a building located between two existing buildings; and

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by causing an unneeded break from the established development pattern along Taylorsville Road;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the front building setback to be 80 feet from the southern property line along Taylorsville Road.

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1049**

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

**NO: No one.**

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

**ABSTAINING: No one.**

**MINUTES OF THE MEETING  
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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1048**

**Request:** Variances from the Land Development Code to allow pavement and a dumpster to encroach into the required 25' side and rear yard setbacks.

**Project Name:** Liquor Palace

**Location:** 4002 Preston Highway

**Owner:** Kentucky Property Investments, LLC  
Sukh Bains  
14619 Inspiration Court  
Louisville, KY 40245

**Applicant:** Same as owner

**Representative:** Garber/Chilton  
David F. Garber  
P.O. Box 425  
LaGrange, KY 40031

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 21—Dan Johnson**

**Staff Case Manager: Christopher Brown, Planner II**

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

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

**Agency Testimony:**

Staff Case Manager, Chris Brown discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing

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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1048**

to construct a 2,818 SF building on the existing three parcels that will be consolidated along Preston Highway. He said the property next door is not used for residential.

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

David Garber.

Sukh Bains.

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

David Garber, the applicant's representative, said the property to the rear is owned by the airport. The property to the south is an insurance office.

Sukh Bains, the applicant, said there are other projects going into the area to make it more appealing.

**The following spoke neither for nor against the request:**

No one.

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

No one.

**The following spoke in opposition to this request:**

No one.

**Summary of testimony of those in opposition:**

No one.

**Deliberation:**

Board of Zoning Adjustment deliberation.

**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the August 17, 2015 public hearing proceedings.**



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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1048**

**Variances—To allow pavement and dumpster to encroach into the required 25' side and rear yard setbacks:**

After the public hearing in open business session, on a motion by Member Fishman, 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 variances from Chapter 5.3.2.C.2.b of the Land Development Code to allow pavement and a dumpster to encroach into the required 25' side and rear yard setbacks; and

**WHEREAS**, the Board finds that the requested variances will not adversely affect the public health, safety or welfare since the encroachments will be buffered from adjacent properties with required landscape areas; and

**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity since the encroachments will follow the established pattern along the Preston Highway corridor and will reduce the existing amount of pavement on the subject site; and

**WHEREAS**, the Board finds that the variances will not cause a hazard or nuisance to the public since the encroachments will be buffered from adjacent properties with required landscape areas; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations since the reductions will maintain additional setback area beyond the existing pavement on the sites; and

**WHEREAS**, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone due to the extent of pavement covering the subject sites; 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 by not allowing the development to meet the minimum parking requirement and have access as shown from Preston Highway; and

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**CASE NO. 15VARIANCE1048**

**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 since the pattern of development for the area was established prior to the current proposal and the existing pavement was in place on the subject sites;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances.

**The variances allow:**

1. The pavement and dumpster to be 10 feet from the south side property line.
2. The pavement and dumpster to be 17 feet from the rear property line.

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

**NO: No one.**

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

**ABSTAINING: No one.**

**MINUTES OF THE MEETING  
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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1046**

**Request:** Variances from the Land Development Code to allow a reduction in the required private yard area; to allow the maximum depth of the accessory structure/use area to exceed 50 feet; and to allow an accessory structure to encroach into the required side yards.

**Project Name:** Residence

**Location:** 2105 Bradley Avenue

**Owner:** Joe Brooks  
2105 Bradley Avenue  
Louisville, KY 40217

**Applicant:** Same as owner

**Representative:** Louisville Room Additions  
Joe Willis  
3972 Fincastle Road  
Louisville, KY 40217

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 15—Marianne Butler**

**Staff Case Manager: Matthew Doyle, Planner II**

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

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

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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1046**

**Agency Testimony:**

Staff Case Manager, Matt Doyle discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant needs three variances to construct a one-story detached garage because it's a substandard lot with a utility pole and ground wires in the way. He said there are similar garage types and setbacks throughout the neighborhood. Chair Proffitt asked how many feet between the proposed garage and the rear property line. Matt said about 35 feet.

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

Joe Willis.

Joe Brooks.

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

Joe Willis, the applicant's representative, was sworn in. Chair Proffitt asked him how much space from the pole to the rear. Mr. Willis said about 15 feet. Member Fishman asked what the garage will be made of. Mr. Willis said it will be a 2 ½ car cinderblock garage; and that gutters will be facing the alley so drainage won't be a problem.

Joe Brooks, the applicant, said he will be trimming back the neighbors' tree to accommodate the garage.

**The following spoke neither for nor against the request:**

No one.

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

No one.

**The following spoke in opposition to this request:**

No one.

**Summary of testimony of those in opposition:**

No one.

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1046**

**Deliberation:**

Chair Proffitt said if the Board approves the variances to add a condition of approval that the downspouts be pointed away from adjacent properties.

**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 August 17, 2015 public hearing proceedings.**

**Variance to allow a reduction in the required private yard area:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and 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 Land Development Code to allow a reduction in the required private yard area from 742 SF to 400 SF; a variance of 342 SF; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the garage will be set back 16 feet from the principal structure and accessible from the alley; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since some of the private yard area will be maintained similar to other lots in the area; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since the garage will be set back 16 feet from the principal structure and accessible from the alley; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since some of the private yard area will be maintained similar to other lots in the area; 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 as a utility pole and ground wire obstruct access to the rear of the property from the alley; 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 since the utility pole and ground wire obstruct access to the rear of the property from the alley;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the private yard area to be 400 square feet **ON CONDITION** that the downspouts be pointed away from adjacent properties.

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

**NO: No one.**

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

**ABSTAINING: No one.**

**VARIANCE—To allow the maximum depth of the accessory structure/use area to exceed 50 feet:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and 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 Land Development Code to allow the maximum depth of the accessory structure/use area to exceed 50 feet to 59 feet; or a variance of 9 feet; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the garage will be set back 16 feet from the principal structure and accessible from the alley; and

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**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since some of the private yard area will be maintained similar to other lots in the area; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since the garage will be set back 16 feet from the principal structure and accessible from the alley; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since some of the private yard area will be maintained similar to other lots in the area; 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 since a utility pole and ground wire obstruct access to the rear of the property from the alley; and

**WHEREAS**, the Board finds that the strict application of the provision of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since a utility pole and ground wire obstruct access to the rear of the property from the alley; and

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the maximum depth of the accessory structure/use area to be 59 feet **ON CONDITION** that the downspouts be pointed away from adjacent properties.

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

**NO: No one.**

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

**ABSTAINING: No one.**

**Variance—To allow a proposed accessory structure to encroach into the required side yards:**

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

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1046**

**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 Land Development Code to allow a proposed accessory structure to encroach into the required side yards; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the garage will maintain a 1 foot setback from each side yard; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since the garage would maintain a setback from the side yard similar to other accessory structures in the area; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the garage would maintain a setback from the side yard similar to other accessory structures in the area; 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 since the lot is substandard; 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 since the garage would maintain a setback from the side yard similar to other accessory structures in the area;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed accessory structure to be 1 ft. from the required side yards **ON CONDITION** that the downspouts be pointed away from adjacent properties.



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**CASE NO. 15VARIANCE1046**

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

**NO: No one.**

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

**ABSTAINING: No one.**

**MINUTES OF THE MEETING  
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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1047**

**Request:** Variance from the Land Development Code to allow a proposed addition to encroach into the required infill setback along Canoe Lane.

**Project Name:** Residential

**Location:** 3724 Canoe Lane

**Owner:** Estate of George Moseley, Jr.  
George Moseley, Jr.  
3724 Canoe Lane  
Louisville, KY 40207

**Applicant:** Same as owner

**Representative:** Cardinal Surveying  
Kathryn Matheny  
9009 Preston Highway  
Louisville, KY 40219

**Jurisdiction:** Rolling Fields

**COUNCIL DISTRICT 7—Angela Leet**

**Staff Case Manager: Jon Crumbie, Planner II**

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

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

**Agency Testimony:**

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1047**

to enclose an existing porch and make it a 2-story entry way, where the 2<sup>nd</sup> floor will be a dressing room.

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

Kathy Matheny.

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

Kathy Matheny, the applicant's representative, said the addition will be brick matching the existing home. She said the addition will make the house look more attractive.

George Moseley, the owner, said the footprint will remain the same.

**The following spoke neither for nor against the request:**

No one.

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

No one.

**The following spoke in opposition to this request:**

No one.

**Summary of testimony of those in opposition:**

No one.

**Deliberation:**

Board of Zoning Adjustment deliberation.

**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the August 17, 2015 public hearing proceedings.**

**Variance—To allow a proposed addition to encroach into the required infill setback along Canoe Lane frontage:**

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

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1047**

**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 statement, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code to allow a proposed addition to encroach 32.4 feet into the required infill setback along Canoe Lane; a variance of 7.6 feet; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed addition will match the current condition on site; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed addition will be compatible with the existing structure and match the existing porch alignment; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed addition will be approximately 50 feet from the edge of pavement; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the encroachment has been in place for a number of years; and

**WHEREAS**, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the site was developed before the current regulations;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed addition to be 32.4 feet from the front property line along Canoe Lane.

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15VARIANCE1029**

**Request:** Variances from the Land Development Code to allow a proposed building to exceed the maximum setback and height; and waivers from the Land Development Code to not provide the required building entrances facing the abutting streets; and to not provide the required vehicle and pedestrian connections to the abutting properties.

**Project Name:** Southeast Christian Chapel In The Woods

**Location:** 1200, 1302 Watterson Trail & 1401 Moser Road

**Owner:** Southeast Christian Church of Jefferson County KY, Inc.  
Gary Whitenack, Director of Finance  
920 Blankenbaker Parkway  
Louisville, KY 40243

**Applicant:** Same as Owner

**Representatives:** Milestone Design Group, Inc.  
Doug Ernst  
108 Daventry Lane  
Louisville, KY 40223

Bayus Design Works  
Tony Bayus, Architect  
2908 Eastpoint Parkway  
Louisville, KY 40223

**Jurisdiction:** City of Middletown

**COUNCIL DISTRICT 19—Julie Denton**

**Staff Case Manager:** Sherie' Long, Landscape Architect

**(SEE SEPARATE SET OF MINUTES DATED AUGUST 17, 2015)**

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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15CUP1030**

**Request:** Modified Conditional Use Permit to allow an expansion of the existing cemetery; and a waiver to allow the Gene Snyder Freeway buffer to be reduced.

**Project Name:** Bethany Memorial Cemetery

**Location:** 10915 Dixie Highway

**Owner:** The Bethany Memorial Park and Cemetery Association, Inc.  
John Keith, Secretary & Roy Keith  
P.O. Box 1511  
Elizabethtown, KY 42702

**Applicant:** Same as owner

**Attorney:** Bardenwerper Talbott & Roberts, PLLC  
Bill Bardenwerper  
1000 N. Hurstbourne Parkway, 2<sup>nd</sup> Floor  
Louisville, KY 40223

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

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 25—David Yates**

**Staff Case Manager: Jon Crumbie, Planner II**

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

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

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**AUGUST 17, 2015**

**NEW BUSINESS:**

**CASE NO. 15CUP1030**

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

**Agency Testimony:**

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing to expand the cemetery near the Gene Snyder Freeway right-of-way; and requesting a waiver to reduce the Gene Snyder Freeway buffer to be reduced. Mr. Crumbie went over the history of the previous requests for this site.

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

Nick Pregliasco, Esq.

Ann Richard.

Roy Keith.

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

Nick Pregliasco, the applicant's attorney, said they are asking for a waiver to reduce the Gene Snyder Parkway Buffer from 50 feet to 10 feet. He said existing trees will remain and that they will be adding trees where there are none. He said 20% of the sales will be retained for a perpetual maintenance fund.

Ann Richard reiterated that they will be planting trees and other landscaping along the Gene Snyder Parkway Buffer where it is bare. She said 52 trees are required and they will be planting all of them. Chair Proffitt asked if a plot layout has been done.

Roy Keith, the applicant, said not yet. Chair Proffitt said the plot plan needs to be submitted for the file for future record keeping. Mr. Keith agreed.

**The following spoke neither for nor against the request:**

No one.

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

No one.



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**CASE NO. 15CUP1030**

**The following spoke in opposition to this request:**

No one.

**Summary of testimony of those in opposition:**

No one.

**Deliberation:**

Chair Proffitt said if the Board decides to approve the request, to add two conditions of approval, that the applicant will continue the landscape buffer with trees and plantings down Dixie Highway where there is currently none; and that the applicant submit a plan of all the plots for the file for record keeping purposes.

**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 August 17, 2015 public hearing proceedings.**

**Modified Conditional Use Permit to allow an expansion of the existing cemetery:**

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, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a Modified Conditional Use Permit to allow an expansion of the existing cemetery; and

**WHEREAS**, the Board finds that the proposal is in conformance with the Comprehensive Plan because it complies with all appropriate guidelines, principles and objectives of the Comprehensive Plan; also because the applicant agreed to submit a plot plan of all plots to staff for the file for future record keeping purposes;

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**AUGUST 17, 2015**

**NEW BUSINESS:**

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**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Modified Conditional Use Permit to allow an expansion of the existing cemetery on the subject site **ON CONDITION**:

1. The applicant will provide a landscape plan for staff to review and approve showing trees and landscaping in the remaining 10 ft. Gene Snyder Parkway Buffer Area where no landscaping exists all the way down to Dixie Highway.
2. The applicant shall submit a plot plan of the entire cemetery to staff for the file to ensure the parameters of the cemetery operation.

**YES: Members Allendorf, Fishman, Jarboe, Proffitt, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

**Waiver—To allow the Gene Snyder Freeway Buffer Area to be reduced:**

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, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver of Section 10.3.7 to reduce the Gene Snyder Parkway Buffer from the required 50 feet to 10 feet; a 40 ft. waiver; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners because the area to be reduced is adjacent to the Gene Snyder Freeway and railroad right-of-way; and because no properties can see the area impacted by the waiver, and the only affected people might be those traveling the off-ramp from the Snyder Freeway onto Dixie Highway; and because those people would have the benefit of the additional 160 ft. State Right-Of-Way (ROW) in addition to the 10 ft. buffer; and because this property is a cemetery and is beautifully landscaped and maintained in a park-like setting; and

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**WHEREAS**, the Board finds that the waiver will not violate the Comprehensive Plan because the only guideline that could possibly apply would be Guideline 13, (Landscaping), which is addressed by virtue of this property being a fully landscaped setting; and because it is not a building being set close to the Snyder Freeway, but landscaped gravesites; and

**WHEREAS**, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because 10 of the 50 ft. are proposed to remain as a Snyder Freeway buffer setback, and the 40 ft. of waiver area will be a fully landscaped setting; in addition, the Snyder Freeway ROW is 160 ft. deep along the off-ramp; and because there is no room for expansion in any other area on the property; 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 would create an unnecessary hardship on the applicant because the cemetery is only requesting this waiver so that it can expand, providing more gravesites so that the perpetual fund for maintenance of this park-like cemetery can be adequately maintained long term; again, this is especially important long after the cemetery is filled and entirely dependent for maintenance thereafter on this fund;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the waiver to allow the Gene Snyder Freeway buffer area to be reduced to 10 feet along the south property line **ON CONDITION:**

1. The applicant will provide a landscape plan for staff to review and approve showing trees and landscaping in the remaining 10 ft. Gene Snyder Parkway Buffer Area where no landscaping exists all the way down to Dixie Highway.
2. The applicant shall submit a plot plan of the entire cemetery to staff for the file to ensure the parameters of the cemetery operation.

**YES: Members Allendorf, Fishman, Jarboe, Proffitt, Turner and Bergmann.**

**NO: No one.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 15CUP1023**

**Request:** Conditional Use Permit for a non-accessory alternative energy generator (anaerobic biodigester facility) with Land Development Code waivers and a setback variance.

**Project Name:** Jefferson Anaerobic Digester II

**Location:** 822 South 17<sup>th</sup> Street

**Owner:** Heumann, LLC  
William Heumann  
4750 New Middle Road  
New Albany, IN 47130

**Applicant:** Jefferson AD II, LLC  
Steve Edris  
7860 W. Jefferson Blvd., Suite D  
Fort Wayne, IN 46804

**Attorney:** Bingham Greenebaum Doll, LLP  
Brian Zoeller, Esq.  
101 S. 5<sup>th</sup> Street  
Louisville, KY 40202

**Representative:** Qk4, Inc.  
Ashley Bartley  
1046 E. Chestnut Street  
Louisville, KY 40202

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 6—David James**

**Staff Case Manager: Christopher Brown, Planner II**

**(REMOVED BY STAFF PER THE APPLICANT'S REQUEST)**

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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**NEW BUSINESS:**

**CASE NO. 15CUP1023**

Member Allendorf explained at the beginning of the meeting that this case has been removed from the docket at the applicant's request. He asked if anyone was present for this case.

Brian Zoeller, the applicant's attorney, said he wanted to be present for anyone who may have shown up today that had questions.

Member Allendorf asked if anyone else was present for this case. No one responded from the audience.

**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 August 17, 2015 public hearing proceedings.**

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The meeting adjourned at 12:18 p.m.

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**CHAIRPERSON**

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**SECRETARY**