

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

**DECEMBER 7, 2015 – 8:30 A.M.**

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, December 7, 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  
Lester Turner  
Dean Tharp  
Paul Bergmann

**Members absent:**

No one

**Staff members present:**

Emily Liu, Director, Planning & Design Services  
Joe Reverman, Assistant Director, Planning & Design Services  
John Carroll, Legal Counsel  
Steve Hendrix, Planning Supervisor  
Jon Crumby, Planner II  
Ross Allen, Planner I  
Laura Mattingly-Humphrey, Planner I  
Sherie Long, Landscape Architect  
Beth Stevenson, Management Assistant

\*Member Jarboe arrived at 8:42 a.m.

The following cases were heard:

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**APPROVAL OF THE MINUTES**

**1.) NOV. 16, 2015 BOARD OF ZONING ADJUSTMENT MINUTES**

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

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on November 16, 2015.

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

**NO: No one.**

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

**ABSTAINING: Member Fishman.**

**2.) NOV. 30, 2015 BOARD OF ZONING ADJUSTMENT MINUTES**

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

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting held on November 30, 2015.

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**2016 BOZA SCHEDULE OF HEARINGS**

**APPROVAL OF THE 2016 BOZA SCHEDULE OF HEARINGS**

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

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the **2016 BOZA SCHEDULE OF HEARINGS**.

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**BUSINESS SESSION:**

**NON-HEARING VARIANCE**

**CASE NO. 15VARIANCE1082**

**Request:** Variance from the Land Development Code to allow a reduction in the required private rear yard area to 1,775 SF (requirement 2,299 SF or a variance of 525 SF) for the construction of a rear home addition and covered pergola.

**Project Name:** Rear Home Addition

**Location:** 1895 Rutherford Avenue

**Owners:** Larry & Lois Owsley  
1895 Rutherford Avenue  
Louisville, KY 40205

**Applicant:** Foster Brothers Construction  
David Foster  
637 Rubel Avenue  
Louisville, KY 40204

**Representative:** Same as Applicant

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT:** 8—Tom Owen

**Staff Case Manager:** Laura Mattingly-Humphrey, Planner I

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

On December 7, 2015, at a meeting of the Board, this case was presented to the Board in open business session pursuant to KRS 100.241 and KRS 100.243. A drawing showing the premises affected and the existing structure was presented to each Board member.

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**NON-HEARING VARIANCE**

**CASE NO. 15VARIANCE1082**

**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 December 7, 2015 (8:30 a.m.) public hearing proceedings.**

On a motion by Board Member Tharp, 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 Section 5.4.1.D of the Land Development Code to allow a reduction in the required private rear yard area to 1,775 SF (requirement 2,299 SF or a variance of 525 SF) for the construction of a rear yard addition and covered pergola; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed addition is in the rear of a private property; and because it doesn't obstruct any public right-of-way or the visibility of drivers or pedestrians; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity as the home addition design appears to be consistent with the existing residence as well as surrounding homes; and because the addition is in the rear and cannot be viewed from the public right-of-way; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the house is on a single family lot and is intended for single family use; and because the adjacent property owners have no objection to the decrease in private rear yard area; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations as the applicant is still allowing 1,775

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square feet of open, unenclosed private yard; and because the addition is also proportionate to the home; 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 home addition design would not be able to be built as proposed;

**RESOLVED**, that the Board does hereby **GRANT** the variance to allow the private rear yard area to be 1,775 square feet for a proposed rear home addition and covered pergola; and

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

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 15VARIANCE1082**

**Request:** Variance from the Land Development Code to allow the dumpsters and dumpster pad to encroach into the side yard setback; a waiver from the Land Development Code to allow the dumpsters and concrete pad to encroach into the 5' perimeter Landscape Buffer Area (LBA); and a waiver from the Land Development Code to not provide the required screening of the dumpsters.

**Project Name:** Islamic Center

**Location:** 4104 River Road

**Owner:** Louisville Islamic Center, Inc.  
(Formerly Feisal Mosque, Inc.)  
Ozair M. Shariff, Attorney & Board Member  
4007 River Road  
Louisville, KY 40206

**Applicant:** Same as Owner

**Attorney:** Ozair M. Shariff  
Stites & Harbison, PLLC  
400 West Market Street, Ste. 1800  
Louisville, KY 40202

**Jurisdiction:** Indian Hills

**COUNCIL DISTRICT 7—Angela Leet**

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

**(CONTINUED FROM NOVEMBER 16, 2015)**

The file is maintained at the Planning and Design Services offices located at 444 S. 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 the Customer Service staff to view the recording or to**

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**obtain a copy. The recording of this hearing will be found on the CD of the December 7, 2015 (8:30 a.m.) public hearing proceedings.**

**DISCUSSION:**

Cliff Ashburner, the applicant's attorney, said he would like to continue this case to February 1, 2016, since he was just hired by the applicant.

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

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **FEBRUARY 1, 2016** at the applicant's request.

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

**NO: No one.**

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

**ABSTAINING: No one.**



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**NEW BUSINESS:**

**CASE NO. 15CUP1026**

**Request:** Conditional Use Permit for a Bed and Breakfast Inn.

**Project Name:** The Inn at Saint James Court

**Location:** 1440 St. James Court

**Owner:** Pat Mahaun  
1440 St. James Court  
Louisville, KY 40208

**Applicant:** Same as Owner

**Representative:** Bardenwerper, Talbott & Roberts  
Nick Pregliasco, Esq.  
1000 N. Hurstbourne Parkway, Ste. 200  
Louisville, KY 40223

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 6—David James**

**Staff Case Manager: Steve Hendrix, Planning Supervisor**

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

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

**Agency Testimony:**

Staff case manager, Steve Hendrix discussed the case summary, standard of review and staff analysis from the staff report. He said the proposal is for 3 guest rooms and includes enough parking. He said he has received letters of opposition from area residents.

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

Nick Pregliasco, Esq.

Pat Mahaun.

John Crum, 1448 St. James Court, Louisville, KY 40208.

Robert Wessels, 1353 S. 4<sup>th</sup> Street, Louisville, KY 40208.

Cindee Q. Rapp, 1453 St. James Court, Louisville, KY 40208.

Michael Major, 13000 Ridgemoor Drive, Prospect, KY 40059.

Renee Major, 13000 Ridgemoor Drive, Prospect, KY 40059.

Kimberly Crum, 1448 St. James Court, Louisville, KY 40208.

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

Nick Pregliasco, the applicant's attorney, presented a PowerPoint presentation to the Board; and said they have various letters of support. He said the applicant is not changing the structure or adding anymore bedrooms. The sign on the house will be changed to reflect the name of the business and will not be lit.

Pat Mahaun, the owner, said she counted the number of parking spaces throughout the day for a month; and said it may be hard to find parking after 9:00 p.m. She said most of the guests will not be driving, but fly in and take a cab.

John Crum read a letter from Herb Warren, who operates two Bed & Breakfast Inns (B&B), but was unable to attend. He said most people take taxis from the airport, so it will decrease the demand for parking vs. more apartments.

Robert Wessels said he is the President of the Louisville Bed & Breakfast Association, and fully supports this proposal. He said this unique neighborhood encourages tourism in Louisville.

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Cindee Q. Rapp said she moved into the area from Michigan and loves the neighborhood. She said the applicant has spent a great deal of money fixing up this home; and the proposal will be good for the neighborhood.

Michael Major said he knows the applicant, and that she cares a great deal for her community and the neighborhood.

Renee Major said her sister owns the home. She said she is a licensed broker and submitted a market analysis for the Board to review. She said the proposal will only increase property values; and that her sister has already spent \$100,000.00 upgrading the property.

Kimberly Crum said she has met people from all over the world living in this neighborhood and said it's a perfect fit.

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

No one.

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

No one spoke as an interested party.

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

Kirby Halladay, 1407 St. James Court, Louisville, KY 40208.

Karen MacAller, 1425 St. James Court, Louisville, KY 40208.

Michael Mawood, 1428 St. James Court, Louisville, KY 40208.

Steve Zocklein, 1428 St. James Court, Louisville, KY 40208.

Barbara Townsend, 1445 St. James Court, Louisville, KY 40208.

Todd McGill, 1433 St. James Court, Louisville, KY 40208.

Marilyn Lattis, 1433 St. James Court, Louisville, KY 40208.

Matthew Heusted, 1433 St. James Court, Louisville, KY 40208.

Maria Eckerle, 1444 St. James Court, Louisville, KY 40208.

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Sena Naslund, 1436 St. James Court, Louisville, KY 40208.

David Stewart, 510 Belgravia Court, Louisville, KY 40208.

Deborah Stewart, 510 Belgravia Court, Louisville, KY 40208.

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

Kirby Halladay, President of the St. James Court Neighborhood Association, said the location is not suitable considering lack of parking and that it will increase traffic on already congested streets. He said 32 people in the area are opposed and only 4 or 5 in support.

Karen MacAller said she owns three properties in the area and that her tenants constantly complain about the lack of parking. She said the applicant should utilize the parking spaces in the back. Ms. MacAller said she has concerns about events going on, such as weddings or other large events; and asked what the difference is between an “event” and a “meeting”.

Michael Mawood said he lives in close proximity to this property and sells real estate in the area. He said the owner is increasing the density by 3, against the standards of the Traditional Neighborhood Form District. He said the owner told them at the neighborhood meeting, that she had an agreement with the church to use their lot for overflow parking, but has not seen a written agreement. He said the area is overly crowded and a commercial business will only aggravate the situation.

Steve Zocklein said he would not have bought his house if knew a B&B was going in near him. He said the area is becoming increasingly dangerous with people going the wrong way on the one-way streets and that tour buses block the roads. He said the applicant has a large wrap around porch that could hold a lot of people and create noise and other nuisances.

Barbara Townsend said she lives across the street and doesn't want a commercial business in the neighborhood. She said all of the first tier property owners are opposed in addition to some that live in the second tier. Ms. Townsend said she is very concerned about other large events that may occur if this is approved.

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Todd McGill said there are 90 actual parking spaces on St. James Court and with the 77 properties in the area (including Belgravia and Fountain Court) approximately 215 people need parking. He said this figure is only counting one person per household with one car. He said the tour busses park on this street and has seen them unattended. Mr. McGill said he is strongly opposed and asked the Board to deny the request.

Marilyn Lattis said she has lived in the area for 10 years and enjoys older homes. She said it is hard to find parking after 5:30 p.m. and has had to walk a great distance to get home. She said if she plans a dinner at her house they always discuss parking first. Ms. Lattis said the location is not appropriate or fair to the people who live in the area.

Matthew Heusted said if the Conditional Use Permit is approved, could set a precedent in the area. He said Mr. Pregliasco said this is the only house that could be used as a B&B, but said this is untrue. He said although Mr. Warren runs two B&B's, he lives in Prospect. Mr. Heusted said the owner is increasing the density which goes against the TNZD standards.

Maria Eckerle said she lives 15 feet from Ms. Mahaun and feels this business invades her privacy and the quiet enjoyment of her property. She said her guests sit out on the porch, drink, talk and throw their cigarette butts into her yard. She said if the Board approves the CUP, they need to stipulate that only 6 people will be allowed as guests. Ms. Eckerle said this is not what she expected after living here 28 years.

Sena Naslund said 100% of the first tier property owners are opposed and submitted this petition into the record. She said this business will degrade their neighborhood and the peaceful enjoyment of their property; and hopes no more B&B's are allowed. She said if large parties or events are allowed, will be an additional nuisance. She said that Ms. Mahaun will be "profiting" and the neighbors "suffering".

David Stewart said he and his wife have lived in the area for 25 years; and totally objects to this request. He said if approved, will set a precedent in the neighborhood.

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Deborah Stewart said she is not opposed to B&B's, but that this is not the right place for it. She said this is a close nit community and anything that challenges that, concerns her. She asked the Board to deny the CUP.

**Rebuttal:**

Nick Pregliasco said his client will comply with the Land Development Code; and that she does not want to harm the neighborhood, but enhance it. He said there is only one table on the porch with 6 chairs, so there won't be a lot of people outside at once.

Ms. Mahaun said she doesn't believe her business will set a precedent in the area; and that people can also park on Belgravia, Hill Street, 4<sup>th</sup> and 6<sup>th</sup> Streets. Ms. Mahaun said she does not have an agreement with the church for overflow parking.

The Board had several questions with regard to overflow parking at the church; noise and other nuisances.

**Deliberation:**

The Board discussed conditions of approval to mitigate nuisances.

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**Conditional Use Permit to allow a Bed & Breakfast Inn (3 guest rooms) within the TNZD:**

On a motion by Member Allendorf, 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, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow a Bed & Breakfast Inn with three guest rooms within the Traditional Neighborhood Zoning District; and

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**WHEREAS**, the Board finds that the proposed CUP complies with the applicable guidelines of the Comprehensive Plan; and

**WHEREAS**, the Board finds that the proposal is compatible with the surrounding land uses and the general character of the area since the number of guest rooms is limited to three (3); and no exterior changes are proposed for the structure; and

**WHEREAS**, the Board finds that the necessary public facilities (both on and off-site) such as transportation, sanitation, water, sewer, drainage, emergency services, etc. because the Transportation Department and MSD have preliminarily approved the plan; and

**WHEREAS**, the Board finds that the proposal complies with specific standards required to obtain the Conditional Use Permit because the proposal is for three (3) guest rooms and guests will be limited to staying no more than 14 consecutive days; and because this proposal will be subject to Section 4.3.7 of the Land Development Code regarding obtaining a temporary activities permit for any outdoor activities and/or events that are attended by anyone that is not a current registered overnight guest of the bed and breakfast inn; and because the applicant has received design approval for signage; and meets the parking requirements;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a bed and breakfast inn with three (3) guest rooms on the site **SUBJECT** to the following Conditions of Approval:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is so not exercised, the site shall not be used for a bed and breakfast inn without further review and approval by the Board.

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3. Section 4.3.7 of the Land Development Code shall be met and a temporary activities permit for any outdoor activities and/or events that are attended by anyone that is not a current registered overnight guest of the bed and breakfast inn shall be obtained. This provision shall not be altered or waived by the Board.
4. Outdoor events/activities shall cease by 7:30 p.m.
5. There shall be no additional direct or spot-light type illumination of the proposed bed and breakfast signage.
6. The signage for the bed and breakfast inn shall be substantially the same as shown in the applicant's exhibit book on page 19, dated December 7, 2015.
7. The applicant will comply with any and all ADA regulations if applicable.

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

**NO: Members Fishman and Turner.**

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

**ABSTAINING: No one.**



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**The meeting adjourned at 12:22 p.m.**

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**CHAIRPERSON**

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**SECRETARY**