

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

OCTOBER 5, 2015

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, October 5, 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
- John Carroll, Legal Counsel
- Joe Reverman, Planning Manager
- Jessica Wethington, Planning Information Specialist
- Steve Hendrix, Planning Supervisor
- Brian Davis, Planning Supervisor
- Sherie Long, Landscape Architect
- Beth Stevenson, Management Assistant

Others present:

April Robbins, Code Enforcement Supervisor

*Chair Proffitt left the meeting at 12:46 p.m.

The following cases were heard:

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APPROVAL OF MINUTES

**SEPTEMBER 21, 2015 BOARD OF ZONING ADJUSTMENT MEETING
MINUTES**

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 minutes of the meeting conducted on September 21, 2015.

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

NO: No one.

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

ABSTAINING: Member Allendorf.

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OCTOBER 5, 2015

BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 15VARIANCE1060

Request: Variance from the Land Development Code to allow a reduction in the required private yard area.

Project Name: Rear Home Addition

Location: 1209 Garvin Place

Owner: 1st and Kentucky, LLC
Dustin Hensley
1201 S. Brook Street, #501
Louisville, KY 40203

Applicant: Same as Owner

Jurisdiction: Louisville Metro

COUNCIL DISTRICT: 6—David James
Staff Case Manager: Sherie' Long, Landscape Architect

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 5th Street.)

On October 5, 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.

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 October 5, 2015 public hearing proceedings.

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OCTOBER 5, 2015

BUSINESS SESSION:

NON-HEARING VARIANCE

CASE NO. 15VARIANCE1060

DISCUSSION:

Staff case manager, Sherie' Long, said the owner is here today if the Board should have questions.

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.3 of the Land Development Code to allow a reduction in the required private yard area to 372SF (requirement is 697SF; a variance of 325SF); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed addition is located in the rear of the parcel; and because the adjacent neighbors' have no objection to the new addition or to the reduction of the private yard area; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are several lots which do not have any private yard area provided; and because the addition is to be located at the rear of the property; and because the applicant is adding additional square footage to the parcel to compensate for the reduction in yard area; and because the building addition has been approved by the Old Louisville Architectural Review Committee and is compatible with the architecture throughout the neighborhood; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the building addition is located at the rear of the property; and because there will be some yard area provided on both sides of the new addition; and because the adjacent property owners have no objection to the reduction; and

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CASE NO. 15VARIANCE1060

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the lot square footage is being increased to compensate for the loss of private yard area; and because there is yard area provided on both sides of the new addition accessible to the property owner; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the lot is very narrow and located in an established residential neighborhood; and because the size and configuration of the lot limits the area for the construction of an addition; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed addition could not be built;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the private yard area to be 372 square feet;

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

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

NO: No one.

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

ABSTAINING: No one.

**MINUTES OF THE MEETING
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OCTOBER 5, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1059

Request: Variance from the Land Development Code to allow an existing fence in the front yard to exceed the maximum height.

Project Name: Existing Fence

Location: 1913 Stevens Avenue

Owner: Irvon E. & Carol Clear
1913 Stevens Avenue
Louisville, KY 40205

Applicant: Same as owner

Attorney: Cliff Ashburner
Dinsmore & Shohl, LLP
101 S. 5th Street, #2500
Louisville, KY 40202

Representative: Richard C. Williamson Jr.
Milestone Design Group, Inc.
108 Daventry Lane, Suite 300
Louisville, KY 40223

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Sherie' Long, Landscape Architect

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

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

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NEW BUSINESS:

CASE NO. 15VARIANCE1059

Agency Testimony:

Staff Case Manager, Sherie Long discussed the case summary, standard of review and staff analysis from the staff report. The applicant received a Notice of Violation for the existing height of the fence. Member Fishman asked if the fence was built without a permit. Ms. Long said to ask the applicant's attorney.

The following spoke in favor of this request:

Cliff Ashburner, Attorney.

Summary of testimony of those in favor:

Cliff Ashburner, the applicant's attorney, said a fence was already installed when the owner bought the house 12 years ago. He said his client was just replacing and hired a contractor, who he thinks received a permit. He said the fence will shield the owners' property from the LG&E substation. Member Fishman asked about the letter from the neighbor in opposition.

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:

Member Tharp said the fence will shield the owners' view of the sub-station. Member Fishman said the opposition is not present today, and the owner and contractor should have checked the regulations.

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 October 5, 2015 public hearing proceedings.

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NEW BUSINESS:

CASE NO. 15VARIANCE1059

Variance—To allow an existing fence to exceed the maximum height in the front yard:

After the public hearing in open business session, 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 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 Chapter 4, Section 4.4.3.A.1.i of the Land Development Code to allow an existing fence to be 8 feet tall in the front yard (requirement 3.5 feet; a variance of 4.5 feet); and

WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare because the existing 8' tall solid wood fence is separating the existing front yard from the existing barbed wire security fence and concealing the view of the adjacent utility substation; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the 8' tall wood privacy fence compliments the residential character of the area; and because the existing wood fence hides the 7-8 ft. security barbed wire fencing located between the brick column and access drive of the utility substation adjacent to the applicant's home; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the existing 8' tall wood fence provides a separation of the front yard from the existing barbed wire security fence; and because the barbed wire fence could be considered a hazard to the public; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the location of the substation adjacent to the subject property has required the use of the taller fence to screen views and provide a separation from the existing barbed wire security fence; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity due to the adjacent LG&E substation and existing barbed wire security fence

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CASE NO. 15VARIANCE1059

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow an existing fence to be 8 feet tall in the front yard.

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

NO: No one.

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

ABSTAINING: No one.

**MINUTES OF THE MEETING
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OCTOBER 5, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1061

Request: Variance from the Land Development Code to allow an existing fence to exceed the maximum height requirement in the front yard setback.

Project Name: Proposed Fence

Location: 4005 Mamaroneck Road

Owners: Ronald D. Davis, Jr. & Michon J. Davis
4005 Mamaroneck Road
Louisville, KY 40218

Applicant: Same as owners

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 26—Brent Ackerson

Staff Case Manager: Sherie' Long, Landscape Architect

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

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

Agency Testimony:

Staff Case Manager, Sherie Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant is proposing a 6' tall fence within the front yard setback. She said she used a plot plan from the applicant and that a survey was not provided.

The following spoke in favor of this request:

Michon Davis.

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CASE NO. 15VARIANCE1061

Roland Davis.

Summary of testimony of those in favor:

Michon Davis said her and her husband hired a contractor who told them they needed a variance. She said an existing 6 ft. tall fence was there over 30 years. Ms. Davis said they did a staked survey because their neighbor will also be installing a fence, but said she couldn't find it to submit into the record.

Roland Davis said the fence will be white vinyl and that they will be planting azaleas and other shrubs between the fence and the sidewalk.

Member Bergmann said he doesn't see the applicant's hardship.

Ms. Davis said they want more room in the front since they don't have any rear yard.

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:

The Board had various opinions about the fence, but said if they should approve, to add conditions of approval regarding the applicant submitting a partial survey along the yellow highlighted area on the plan to staff prior to receiving a building permit; and that landscaping will be added along the outside of the fence to soften the appearance.

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NEW BUSINESS:

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Variance—To allow a proposed fence to exceed the maximum height in the front yard setback:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 4, Section 4.4.3.A.1.i of the Land Development Code to allow an existing fence to be 6 feet tall along the front yard (requirement 4 feet tall; a variance of 2 feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed 6 ft. tall vinyl fence will not block views or impede traffic; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed 6 ft. tall vinyl privacy fence compliments the residential character of the area; and because there are other fences in the vicinity that are similar to the proposed fence; also, because the applicant will be providing new shrubs along the perimeter of the fence to soften the appearance; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed 6 ft. tall vinyl privacy fence will provide separation of the side yard from the street providing privacy for the applicant; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the configuration of this corner

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lot does not provide a useable rear yard, therefore, the side yard takes on a greater value and need to be screened for privacy; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the corner lot does not provide a rear yard area, therefore, the side yard area will take the place of private yard space and will be screened for privacy; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because without a taller fence, the yard would not be private and less area would be available for use as private yard;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed fence to be 6 feet in height along the front property line **ON CONDITION**:

The conditions are as follows:

1. The applicant shall submit a partial survey along the yellow highlighted area on the plan to staff for review, prior to receiving a building permit.
2. The applicant shall provide shrubs/landscaping between the fence and the sidewalk to soften the appearance of the fence.

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

NO: Member Bergmann.

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

ABSTAINING: No one.

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OCTOBER 5, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1054

Request: Variances to allow a proposed house to encroach into the front and side infill yards; and a waiver to not provide the entrance on the front façade and oriented toward the primary street.

Project Name: New House

Location: 553 Wainwright Avenue

Owners: Frank & Brenda Mosser
553 Wainwright Avenue
Louisville, KY 40217

Applicants: Same as Owner

Attorney: Taylor M. Hamilton
Morgan & Pottinger, P.S.C.
601 West Main Street
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 15—Marianne Butler

Staff Case Manager: Sherie' Long, Landscape Architect

(This case was previously removed by staff from the Sept. 21, 2015 agenda)

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

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

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NEW BUSINESS:

CASE NO. 15VARIANCE1054

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 will be removing a dilapidated house and replacing it with a new one. She said the applicant owns two lots which will not be consolidated. Chair Proffitt asked if they had a survey. Ms. Long said no, they just submitted a plot plan.

Chair Proffitt said the plan submitted will allow the gutters and water runoff to encroach into adjacent properties without the consolidation. Ms. Long agreed and said staff does not support the granting of the requests per the Land Development Code and Cornerstone 2020.

The following spoke in favor of this request:

Taylor Hamilton, Attorney.

Frank Mosser.

Summary of testimony of those in favor:

Taylor Hamilton, the applicant's attorney, said his family will be building a new home here which will complement the neighborhood. He said they are having the survey done today and will consolidate the lots. Chair Proffitt said the house is not in keeping with the setbacks either.

Frank Mosser, the owner, explained the layout of the house and said it is what his contractor suggested.

Chair Proffitt said this case should be continued until the survey is submitted to staff, the lots are consolidated and that the applicant redesigns the layout to keep the established setbacks. Mr. Hamilton 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.

The following spoke in opposition to this request:

No one.

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NEW BUSINESS:

CASE NO. 15VARIANCE1054

Summary of testimony of those in opposition:

No one.

Deliberation:

The Board decided that this case should be continued to November 2, 2015. Mr. Hamilton and Mr. Mosser agreed to this date.

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 October 5, 2015 public hearing proceedings.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **NOVEMBER 2, 2015** to allow the applicant time to submit a survey to staff for review; consolidate the two lots; and redesign the layout to keep the established setbacks.

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

NO: No one.

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

ABSTAINING: No one.

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OCTOBER 5, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1063

Request: Variance from the Land Development Code to allow a menu board to exceed the maximum size.

Project Name: Taco Bell Menu Board

Location: 1805 South Brook Street

Owner: Redbird Acquisitions, LLC
Elizabeth Jurich
710 W. Main Street, 4th Floor
Louisville, KY 40202

Applicant: GPD Group
Adam Macke
520 S. Main Street, Ste. 2531
Akron, OH 44311

Attorney: Kaplan Partners, LLP
Earl F. Hamm, Jr.
710 W. Main Street, 4th Floor
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 6—David James

Staff Case Manager: Sherie' Long, Landscape Architect

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

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

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NEW BUSINESS:

CASE NO. 15VARIANCE1063

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 is proposing to construct a new 3,045 square foot Taco Bell with a drive-thru; and want a larger menu board.

The following spoke in favor of this request:

Adam Macke.

Summary of testimony of those in favor:

Adam Macke, the applicant's representative, said they need a larger menu board to have enough space for the entire menu. Mr. Macke pointed out where the landscaping will be to conceal it; and said there isn't any residential on this side. Member Allendorf asked if this size is used corporate wide. Mr. Macke said yes.

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 October 5, 2015 public hearing proceedings.

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NEW BUSINESS:

CASE NO. 15VARIANCE1063

Variance—To allow a menu board to exceed the maximum size:

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 a variance from Section 8.3.3.C of the Land Development Code to allow the reader board to be 44.5 SF (requirement 40SF; a variance of 4.5SF); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the location of the menu board will not interfere or impede traffic; and because the applicant is providing the necessary screening of the drive-thru and providing street trees between the menu board and the street; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because perimeter plantings will be provided to buffer and enhance the street side yard of the property which will reduce the impact of both the location of the drive-thru lane and the size of the menu board; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the applicant will be providing perimeter plantings including trees and shrub hedge will reduce the impact of the drive-thru and the size of the menu board located so close to the street and pedestrian sidewalk; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the request will allow the menu board lettering to be sized large enough for customers to see; and because the menu portion of the overall board is only 34.27SF, but when the supporting structures are included, the total will be 44.5 SF; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the larger size is being requested to allow all menu items to be included without reducing the size of the text used on the menu board; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the larger size is needed to include all menu items without reducing the size of the text;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the menu board to be 44.5 square feet.

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

NO: No one.

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

ABSTAINING: No one.

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OCTOBER 5, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1056

Request: Variance to allow a proposed sign to exceed the maximum height.

Location: 4405 Bardstown Road

Owner: Todd's Place Express, LLC
Todd Grace, Owner & Manager
4405 Bardstown Road
Louisville, KY 40218

Applicant: Same as Owner

Representative: Clara Bowman
Commonwealth Sign Company
1824 Berry Blvd.
Louisville, KY 40218

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 2—Barbara Shanklin

**Staff Case Managers: Matthew Doyle, Planner II and Steve Hendrix,
Planning Supervisor**

(This case was previously removed by staff from the Sept. 21, 2015 agenda)

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

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

Agency Testimony:

Staff Case Manager, Steve Hendrix discussed the case summary, standard of review and staff analysis from the staff report. Mr. Hendrix said there are similar

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CASE NO. 15VARIANCE1056

size signs on both sides of this property. Member Turner asked why they want a taller sign. Mr. Hendrix said due to the elevation of the subject property. Mr. Hendrix presented a rendering of the sign to the Board.

The following spoke in favor of this request:

Clara Bowman.

Summary of testimony of those in favor:

Clara Bowman, the applicant's representative, said the sign will be LED; backlit; and have an automated environmental dimmer. She said the neighbors won't see the sign; and that there are other businesses and a cemetery near the site.

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 October 5, 2015 public hearing proceedings.

Variance—To allow a proposed sign to exceed the maximum height:

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

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NEW BUSINESS:

CASE NO. 15VARIANCE1056

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 8.3, Table 8.3.2 of the Land Development Code to allow a proposed sign to be 20 feet in height (requirement 12 feet; a variance of 8 feet); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the sign will be located more than 10 feet from the pavement and will not obstruct views of vehicular and/or pedestrian traffic; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the site is along a major commercial corridor that has many establishments with freestanding signs; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the sign will be located more than 10 feet from the pavement and will not obstruct views of vehicular and/or pedestrian traffic; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the sign has a similar height to other existing commercial signs 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 because the existing grade is approximately 3 feet lower than the street; and because this subject property is within a Neighborhood Form District that has numerous commercial businesses nearby; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the existing grade is 3 feet lower than the street; and

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NEW BUSINESS:

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WHEREAS, the Board finds that the circumstances are not the result of actions taken subsequent to the adoption of the zoning regulation from which relief is sought because the existing grade is 3 feet lower than the street;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed sign to be 20 feet in height.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15CUP1031

Request: Conditional Use Permit for a rehabilitation home per 4.2.31 of the Land Development Code.

Project Name: Landmark Rehabilitative Medicine

Location: 4418 Malcolm Avenue

Owner: Jewish Hospital & St. Mary's Healthcare
c/o Catholic Health Initiatives – Jennifer Nolan
200 Abraham Flexner Way
Louisville, KY 40202

Applicant: Simsbury Associates, Inc.
DBA Landmark Senior Living
14 Storrs Avenue
Braintree, MA 02184

Attorney: Robert Maddox, Esq.
Dinsmore & Shohl, LLP
101 S. Fifth Street, Suite 2500
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 15—Marianne Butler

Staff Case Manager: Jon Crumbie, Planner II, presented by 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. 5th Street).

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Agency Testimony:

Staff case manager, Steve Hendrix discussed the case summary, standard of review and staff analysis from the staff report; and presented a PowerPoint presentation. Member Fishman said there were no minutes for the neighborhood meeting.

The following spoke in favor of this request:

Clifford Boyle, 134 Rockland Street, Hingham, MA 02043.

Summary of testimony of those in favor:

Clifford Boyle said the property is under contract with KentuckyOne Health. He said they have a psychiatric license which will be used for the drug and alcohol detox and rehabilitation home. Mr. Boyle said they didn't submit minutes of the neighborhood meeting because there was only one person there, and didn't know if she was an area resident. He said there will be a total of 18 rooms and they could put two people per room. The residents won't have cars; and they will have staff 24/7.

The following spoke neither for nor against the request:

Susan Hughes, Legislative Assistant to Councilmember Marianne Butler, 601 W. Jefferson Street, Louisville, KY 40202.

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

Susan Hughes, Legislative Assistant to Marianne Butler, said she attended the neighborhood meeting and asked several questions about how it will affect the neighborhood, parking; and how the residents will be released from the facility. She was told that no one would be released unless they had an address. Ms. Hughes said she was satisfied with their answers.

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.

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Board of Zoning Adjustment Deliberation:

No deliberation

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Conditional Use Permit to allow a rehabilitation home:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit for a rehabilitation home per Chapter 4.2.31 of the Land Development Code; and

WHEREAS, the Board finds that the property is within an R-5, Traditional Neighborhood Form District; and

WHEREAS, the Board finds that the proposal is consistent with the guidelines of the Comprehensive Plan because the variances and waivers were approved under the prior proposals filed under Docket Numbers: B-66-05VW; B-211-06VW and B-9238-07; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area because it will use the existing structure and parking; and

WHEREAS, the Board finds that the necessary public facilities (both on and off-site), such as transportation, sanitation, water, sewer, drainage, emergency services, education, recreation etc. because the proposal has been reviewed and preliminarily approved by Transportation Planning and MSD; and

WHEREAS, the Board finds that the proposal complies with specific standards required to obtain the conditional use permit request;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a rehabilitation home 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 not so exercised, the site shall not be used for a rehabilitation home without further review and approval by the Board.
3. All conditions of approval from prior cases B-66-05VW, B-211-06VW and B-9238-07 are still in effect.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15MISC1012 & 15VARIANCE1055

Request: Category 2B Plan Review; a variance to allow proposed parking to encroach into the required west side yard; and waivers to reduce the required 35-foot property perimeter landscape buff area (LBA) and vehicle use area (VUA); to reduce the required 35-foot expressway buffer; and a sidewalk waiver along Dutchmans Lane

Project Name: Paragon Centre Expansion

Location: 6040 and 6060 Dutchmans Lane

Owner: Paragon Centre Holdings, LLC
c/o Jim Calvery—Nicklies Development
6060 Dutchmans Lane, Suite 110
Louisville, KY 40205

Applicant: Nicklies Development
Jim Calvery
6060 Dutchmans Lane, Suite 110
Louisville, KY 40205

Representative: Heritage Engineering, LLC
John Campbell
642 South Fourth Street, Ste. 100
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 26—Brent Ackerson

Staff Case Manager: Jon Crumbie, Planner II presented by 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

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to any interested party prior to the public hearing. (The staff report is part of the case file maintained at the Planning and Design Services offices located at 444 S. 5th Street).

Agency Testimony:

Steve Hendrix, Planning Supervisor, presented the case for staff case manager, Jon Crumbe and discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing site improvements to the existing Paragon Centre that will include an expansion of the existing parking area which will satisfy the immediate needs of the tenants.

The following spoke in favor of this request:

Jim Calvery.

Summary of testimony of those in favor:

Jim Calvery, the owner's representative, said they want to update the building to include more cubicles instead of private offices. He said they will need 163 additional parking spaces which is not the maximum allowed. The large area of trees will remain; will be relocating trees from another area and add more trees on the site. Mr. Calvery said will be submitting the landscape plan to staff for review. The accent pond will remain (with the inclusion of swans) and that a water detention area exists along the front of the property.

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:

Chair Proffitt said the water will be contained underground if the pond overflows. He said to add a condition of approval regarding submittal of the landscape plan.

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Category 2B Plan:

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

WHEREAS, the Board finds, from the file of this case, the staff report, the site plan, the PowerPoint presentation(s); the evidence including the applicant's justification statement; testimony and discussion at the public hearing, that the applicant is requesting approval of a Category 2B Development Plan for the construction of a proposed parking lot addition on the subject property located at 6040 and 6060 Dutchmans Lane; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area because the applicant will only be increasing the amount of parking into an area of the property that is currently being used as a retention basin; and because the applicant will be planting additional trees; and

WHEREAS, the Board finds that the necessary public facilities (both on and off-site), because the proposal has been reviewed and preliminarily approved by Transportation Planning and MSD; and

RESOLVED, that the Board does hereby **APPROVE** the Category 2B Development Plan for a proposed parking lot addition at the Paragon Centre located at 6040 and 6060 Dutchmans Lane **ON CONDITION** that the applicant submit a landscape plan to staff for review and approval.

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

NO: No one.

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

ABSTAINING: No one.

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CASE NO. 15VARIANCE1055

Variance—To allow proposed parking to encroach into the required west side yard:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, Part 3; Section 5.3.3.C.2.b of the Land Development Code to allow proposed parking to be 10 feet from the west property line (requirement 50 feet; or a variance of 40 feet (Case No. 15VARIANCE1055); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because required landscape plantings will be provided for mitigation and a visual buffer along the west property line; and

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

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed parking will be approximately 30 feet from the nearest residence; and because landscaping will be provided along the property line to serve as mitigation; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the encroachment will be compatible with the existing parking alignment; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the site was developed prior to the adoption of the current regulations; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulations from

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which relief is sought because the owner is trying to conform to the existing conditions on site;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the variance to allow the proposed parking to be 10 feet from the west property line.

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

NO: No one.

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

ABSTAINING: No one.

Waivers—To allow a reduction of the required LBA/VUA along the west property line:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review; 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 waivers from the Land Development Code to reduce the required 35-foot west property perimeter LBA and VUA to 10 feet; or variances of 25 feet; and

WHEREAS, the Board finds that the requested waivers will not adversely affect adjacent property owners since the required landscape plantings will be provided for mitigation and as a visual buffer along to adjoining properties as required by code; and

WHEREAS, the Board finds that the waivers will not violate the Comprehensive Plan because it will not alter the essential character of the general vicinity because the proposed parking addition will have a setback that allows for landscape plantings to ensure a visual buffer to adjoining property while implementing the high standards of design typical of a corporate office development; and

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WHEREAS, the Board finds that the granting of the waivers is the minimum necessary to afford relief to the applicant as the proposed parking addition encroachment will still allow for the required landscaping for a visual buffer and appeal; and

WHEREAS, the Board finds that the strict application of the provisions of the regulations would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because it would not allow for the construction of new parking spaces along the west property line to satisfy the growth and immediate needs of the tenants;

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

The waivers allow:

1. The reduction of the required Landscape Buffer Area along the west property line to 10 feet.
2. The reduction of the required Vehicle Use Area along the west property line to 10 feet.

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

NO: No one.

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

ABSTAINING: No one.

Waiver—To allow a reduction in the required 35-foot expressway buffer:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review; 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 from the Land Development Code to reduce the required 35-foot expressway buffer to 10 feet; or a waiver of 25 feet; and

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WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the area abuts I-264; and

WHEREAS, the Board finds that the waiver will not violate Guideline 3 (Compatibility) of Cornerstone 2020 which calls for the protection of roadway corridors and public areas from visual intrusions for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered; and because the waiver will not violate Guideline (Landscape Character), which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs; and because the purpose of vehicle use area and landscape buffer area is to improve the appearance of vehicular use areas and property abutting public rights-of-way; and because the setback will allow landscape plantings to ensure a visual buffer to adjoining property, while implementing the high standards of design typical of a corporate office development; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant since the proposed parking will still allow for the property to be enhanced with code compliant landscaping; 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 because the applicant would not be able to update the existing building and parking area vital to its economic development;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow a reduction in the expressway buffer to 10 feet.

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

NO: No one.

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

ABSTAINING: No one.

Sidewalk Waiver along Dutchmans Lane:

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

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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 to eliminate the sidewalk along Dutchmans Lane; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because there are no existing sidewalks along the south side of Dutchmans Lane; and because the granting of the waiver will allow the additional parking to be constructed onsite while maintaining a transitional streetscape from offices to the east and single family properties to the west; and because the softening of the streetscape that currently occurs along the frontage is of a greater benefit to the neighbors than a more urban streetscape with additional pavement; and

WHEREAS, the Board finds that the waiver will not violate Guideline 7, Policy 1, which states the development should be evaluated for their impact on the street and roadway system and to ensure that those who propose new developments bear or reasonably share in the costs of the public facilities and services made necessary by development; and because Guideline 9, Policy 1 states that new development should provide, where appropriate, the movement of pedestrians, bicyclists and transit users with sidewalks along the streets of all developments where appropriate; and because elimination of the sidewalk will promote a positive transition from residential to office with a neighborhood landscaped streetscape containing roadside swales and grassy areas within the public right-of-way; 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 sidewalk could negatively impact the roadside swales and grassy areas;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to eliminate the sidewalk along Dutchmans Lane.

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

NO: No one.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15APPEAL1007

Request: An Appeal of a Notice of Violation issued by the Department of Codes and Regulations concerning non-conforming use rights for outside alcohol consumption in a C-1 zoning district.

Location: 5013 Poplar Level Road

Appellant: Liquor Palace 3, Inc.
Sukhjit Bains
5013 Poplar Level Road
Louisville, KY 40219

Owner: Same as Appellant

Attorney: Middleton Reutlinger
Kenneth S. Handmaker
401 S. 4th Street, Ste. 2600
Louisville, KY 40219

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 2—Barbara Shanklin

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 Planning and Design Services offices located at 444 S. 5th Street).

Background:

On June 8, 2015, a Notice of Violation was issued by the Department of Codes and Regulations. An Appeal application was submitted on July 8, 2015; and upon site inspection on September 23, 2015, revealed a new 1,645 SF outside

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drinking area formed by an 8' 2" tall wooden privacy fence. The consumption of alcohol inside the package store is allowed per Docket No. B-254-96. The appellant is contending that the approval in 1996 included outside consumption as well.

On October 5, 2015, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

Agency Testimony:

Staff case manager, Steve Hendrix presented the case to the Board discussing the background information and included a PowerPoint presentation. Mr. Hendrix said the description of what was approved in 1996 has been written in various forms in the minutes; legal ad and ABC License. He said he included definitions of "premise(s)" from the American Heritage College Dictionary and the American Planning Association dictionary in his staff report. He said the Board will need to determine if the non-conforming use approved in 1996 includes outside consumption of beer and or alcoholic beverages; and if the Notice of Violation was proper. The Board asked various questions regarding other similar uses in the area and when the fence was constructed creating the beer garden.

April Robbins, Code Enforcement Supervisor, said she received a complaint about installation of the fence and beer garden. She said the beer garden used to be parking spaces. Member Fishman asked if they had a permit to build the fence. Ms. Robbins said not when they built it. She said clarification is needed from the 1996 approval to determine what will be legally allowed today.

The following spoke in opposition to the appeal:

Jared Dearing, District 2 Legislative Assistant, 601 W. Jefferson Street, Louisville, KY 40202.

Summary of testimony of those opposed to the appeal:

Jared Dearing, Legislative Assistant to Councilmember Barbara Shanklin, said the owner is trying to get this approved "after the fact". He said if the Board approves this appeal, will set a precedent for other liquors to do the same. He said their office has received the most complaints over this business than anything else in the district; and that they've been cited for underage drinking and other criminal activity. Chair Proffitt discussed the definition of "premise(s)" and

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said that the enclosed beer garden might contain the customers. He added that the Board takes action on each property individually depending on the circumstances, so it would not set a precedent. Member Jarboe asked Mr. Dearing if he felt this was an expansion of the non-conforming use. Mr. Dearing said yes, and that they shouldn't be "rewarded" considering the number of violations they've received. Member Bergmann asked when the criminal activity is going on. Mr. Dearing said any hour of the day.

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 favor of the appeal:

Kenneth Handmaker, Attorney, who submitted exhibit books into the record.

Robert Wilt, Sr., 4630 Zoneton Road, Shepherdsville, KY 40165.

William Anderson, 5611 Ridgecrest, Louisville, KY 40218.

Carl Burkhead, 7606 Aluma Lane, Louisville, KY 40214.

Mike Schalk, Sr., 4657 S. 6th Street, Louisville, KY 40214.

Wayne Dye, 4112 Melda Lane, Louisville, KY 40219.

Mike Schalk, Jr., 4657 S. 6th Street, Louisville, KY 40219.

Sachin "Sonny" Aurora, 624 Hillrose Drive, Louisville, KY 40243.

Summary of testimony of those in favor of the appeal:

Kenneth Handmaker, the appellant's attorney, submitted 3 exhibit books into the record. He said his client has owned the business since roughly 10 years; and doesn't understand why it's taken Codes and Regulations this long to issue a Notice of Violation. In Exhibit Book #3, is an affidavit from Ann Gregg, the previous owner, who said that drinking has occurred both inside and outside of

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the liquor store since 1966. Mr. Handmaker also included definitions of "premises" from various resources and said one included "land and building". He said there is also nothing on the ABC license that states "No Outdoor Drinking".

Robert Wilt said he would like the Board's approval for the beer garden stating that it will allow customers to drink outside and socialize. Mr. Handmaker asked how long he's been drinking outside at this establishment. Mr. Wilt said he moved into the area in 1967, so for about 50 years. Member Tharp asked if it's beer and alcohol. Mr. Wilt said yes.

William Anderson said he's lived in the area since 1965; and that there have been no problems. He said the beer garden is great for the neighborhood.

Carl Burkhead said he lived in the area for 25 years working for GE; and that they've always drank outside. He said although he doesn't live in the neighborhood anymore, still frequents the business because of his friends.

Mike Schalk, Sr., said he also worked for GE and agreed that people have been drinking outside for many years. He said the liquor store used to cash their checks; and that things have changed in the area. The smoking ordinance has created more outdoor patios for restaurant and bar establishments.

Wayne Dye spoke too fast didn't get address; said he retired from the Army in 1982 and started coming to this business. He said it's nice when you have 70 and 80 year old people still coming here to socialize. He said he lives two blocks away and that there's no other place close to him to socialize.

Mike Schalk Jr. said he's worked at this store since 2005, said there's a lot of good people that come here and that he'll even drive customers home that have had too much to drink. He said it was hard to control drinking on the lot years ago, but not everyone was their customer. He said customers can go outside now and enjoy a beer and a cigarette in the designated area.

Chair Proffitt said staff may have to do an interpretation of "premises".

Sachin "Sonny" Arora said he bought the store from Ann Gregg in 2005; and that the patio consolidates what has already gone on for years.

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Member Jarboe asked when the beer garden was built. Mr. Aurora said in 2015.

Mr. Handmaker discussed the city ordinance in 2015; and said their license doesn't state any drinking restrictions. He said ABC doesn't have the right to reword their license.

Rebuttal:

Mr. Dearing discussed the citations and said he normally talks to the Director of Codes and Regulations on a regular basis.

Chair Proffitt asked if he had copies of the citations. Mr. Dearing said no, but that there have been numerous citations over the years. He asked why they needed an enclosed area if they've been drinking outside for years.

Rebuttal April Robbins:

Ms. Robbins said it doesn't state in the 1996 minutes that the CUP allowed for drinking outside of the liquor store; and if so, wouldn't be here today. She said this is an expansion of the non-conforming use rights.

Deliberation:

Chair Proffitt said the Board should continue this case to allow staff to find more information regarding the intent of the Board in 1996 (transcript, tapes of meeting); and to give the Board time to review all the information that was submitted at today's hearing.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning and Design Services offices. Please contact Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the October 5, 2015 public hearing proceedings.

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

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CASE NO. 15APPEAL1007

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** this case to **NOVEMBER 2, 2015** to allow the Board time to review the information submitted at today's hearing; and to give staff time to retrieve more information (transcript, tapes etc.) of the Board's intent in Docket No. B-254-96

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

NO: No one.

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

ABSTAINING: Member Allendorf.

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OCTOBER 5, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1134

Request: Category 3 Plan to construct a 197,898SF, 4 story apartment building containing 194 dwelling units; five variances from the Land Development Code to reduce yard requirements; and a waiver from the Land Development Code for the four basic components of a lot or building site.

Project Name: Mercy Site Apartments

Location: 1170 & 1172 East Broadway

Owner: The Academy of Our Lady of Mercy
Michael C. Johnson
5801 Fegenbush Lane
Louisville, KY 40228

Applicant: Edwards Communities Development Co., LLC an Ohio limited liability company
Jonathan S. Wood, Vice President
495 S. High Street, Suite 150
Columbus, OH 43215

Attorney: Bardenwerper, Talbott & Roberts, PLLC
Bill Bardenwerper, Esq.
1000 N. Hurstbourne Parkway, 2nd floor
Louisville, KY 40223

Representative: Gresham Smith & Partners
Jon Henney
101 S. 5th Street, Suite 1400
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Brian Davis, Planning Supervisor

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

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

Agency Testimony:

Staff Case Manager, Brian Davis discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing to redevelop the existing site which contains the former Mercy Academy as well as a medical office and parking structure. He said the medical office and parking garage will remain. Mr. Davis said the proposed requests meets the standard of review items of the Land Development Code and Cornerstone 2020.

The following spoke in favor of this request:

Bill Bardenwerper, Esq.

Jon Henney.

Michael Johnson.

Summary of testimony of those in favor:

Bill Bardenwerper, the applicant's attorney, explained the requests including a PowerPoint presentation. He said the developer, from Ohio, has completed other developments throughout the years in Louisville. He said they will be consolidating the parking garage with the Mercy site and will be landscaped in the open space areas. He said there will be one entrance off Broadway into the apartment building; in addition to alley access. The building will be setback from the existing stone wall.

Jon Henney, the applicant's representative, explained the need for the variances and waiver. He said there will be 50 parking spaces in the back and 6 along the alley.

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Michael Johnson, with The Academy of Our Lady of Mercy, explained the history of the property. He said they decided to move the school to a new location in 2007 for a larger building and more acreage. Mr. Johnson said they've been trying to sell this property since 2008; and that they hope to salvage some of the limestone for reuse.

Bill Bardenwerper said infill projects are the most difficult including financing; and if they can't develop it the way proposed, will abandon the sale. He said this is a 50-60 million dollar project. They had two neighborhood meetings with the Highlands Neighborhood Association; Phoenix Hill Neighborhood Association and other surrounding homeowners trying to get as much community input as possible.

The Board questioned the streetscape along Broadway and discussed the renderings which showed the development in more detail (street trees, balconies, pool etc.).

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:

Martina Kunnecke, Neighborhood Planning & Preservation, 313 Northwestern Parkway, Louisville, KY.

Doug McGee, 1139 E. Broadway, Louisville, KY 40204.

Summary of testimony of those in opposition:

Martina Kunnecke said she disagrees with developers profiting that are located outside of Louisville. She said the apartments will be too expensive for most people that live in Louisville considering the lack of high paying jobs; and students who owe large student loan debts. She said the proposal is not honoring the historic community.

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Doug McGhee, Vice President of the Phoenix Hill Neighborhood Association, said he is not opposed to the entire project but suggested some changes. He said the building should be three stories instead of four; considering the two-story homes across the street; the trees will not screen the structure; and doesn't like the design being one contiguous building.

Rebuttal:

Mr. Bardenwerper said that Louisville is lucky to have outside developer's investing in our city, since the recession put a lot of them out of business. He said they are trying to rejuvenate the block. He said he hopes another 9 years doesn't pass before this property is redeveloped.

Discussion:

Member Fishman said she likes the look of historic buildings and feels the design does not capture this element. Member Fishman asked if the applicant would consider a condition of approval for additional landscaping where bare. Mr. Henney agreed and said the final landscape plan hasn't been completed. Member Bergmann said it should be street friendly and look similar to the homes across the street. Mr. Bardenwerper agreed to another condition of approval that they will add undulating features to the façade.

Deliberation:

Brian Davis read the conditions of approval into the record. Member Turner said the landscaping needs to be commanding because of the historic character of the area. The Board was generally in favor of the development with the two agreed upon conditions of approval.

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

Category 3 Plan:

On a motion by Member Jarboe, seconded by Member Bergmann, 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; the renderings, the evidence including the applicant's justification statement, testimony and discussion at the public hearing, that the applicant is requesting approval of a Category 3 Plan for the construction of a 197,898 SF, four-story apartment building consisting of 194 dwelling units;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Category 3 Plan to construct a 197,898 SF, four-story apartment building **ON CONDITION**:

1. The applicant agrees to submit a landscape plan to Planning & Design staff that includes a planting plan for the green space between the stone wall along Broadway and the proposed structure.
2. Final design of the proposed building shall include balconies, façade undulations and other architectural features to break up the continuity of the proposed building to be more in keeping with the character of the single family residences along Broadway.

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

NO: No one.

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

ABSTAINING: No one.

Variance—To allow the building height to be 60 feet tall:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.2, Table 5.2.2, to allow the proposed building to be four-stories and 60 feet tall (requirement 45 feet; a variance of 5 feet); and

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WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the height is an aesthetic issue; and because the adjoining existing parking garage and medical office buildings are also 4-stories tall, and the existing Mercy Academy building on site to the eave is approximately 53 feet above the lowest adjacent grade, meaning top of the wall or about 56 feet measured from the street entrance off Broadway; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed height of the apartments are in keeping with the existing medical office on Lot 2 and the existing parking garage on the site; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the request is aesthetic in nature; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the height variance is very modest mostly reflecting newer style apartment buildings that have taller ceilings; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the adjoining medical office building and parking garage are nearly the same height or taller; and because the height is reflecting new style apartment buildings which have taller ceilings; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant and would deprive the applicant of the reasonable use of the land because it would reduce the taller ceiling heights or eliminate a story, making the project impractical or financially infeasible; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation but rather the result of keeping competitive with modern day buildings which call for taller ceilings than in the past; and also is the result of the existing height of medical office on Lot 2 and the existing parking garage;

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building to be 4-stories and 60 feet tall.

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

NO: No one.

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

ABSTAINING: No one.

Variance #2—To reduce the side yard requirement from 5 feet to 0 feet for the existing medical office building on Lot 1:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.3.D.3.b of the Land Development Code to reduce the east side yard requirement on Lot 1 from 5 feet to 0 feet (a variance of 5 feet); and

WHEREAS, the Board finds that the proposed variance will not adversely affect the public health, safety or welfare because the variance is internal to the overall development, having no impact on any other adjoining properties; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the variance is internal to the overall development and is similar to the existing setback between buildings on the sites; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the variance is internal to the overall development and adequate space is provided between the existing medical office and the proposed apartment structure; and

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WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there is no impact to adjoining properties because the variance is internal to the development; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the variance is internal to the development and will not have an impact on adjoining properties; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant because without the variance, the proposal would not be practical;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to reduce the east side yard to 0 feet of Lot 1.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Proffitt

ABSTAINING: No one.

Variance #3—To reduce the rear yard requirement from 5 feet to 0 feet for the existing medical office on Lot 1:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.3.D.3.c.ii of the Land Development Code to reduce the rear yard requirement along the southern property line of Lot 1 from the 5 feet to 0 feet; or a variance of 5 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the variance is internal to the overall development having no impact on any other adjoining properties; and

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WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the variance is internal to the overall development and is similar to the existing setback between buildings on the sites; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the variance is internal to the overall development and is an existing situation simply being cause by the need to subdivide the medical office from the rest of the site; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there is no impact to adjoining properties because the variance is internal to the development; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity because the variance is internal to the overall development, having no impact on other properties; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because denying the variance would render the project impractical;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to reduce the southern rear yard to 0 feet on Lot 1.

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

NO: No one.

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

ABSTAINING: No one.

Variance #4—To reduce the rear yard requirement from 5 feet to 1.5 feet for the existing parking garage on Lot 2:

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

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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 5.4.1.E.2 of the Land Development Code to reduce the rear yard requirement from 5 feet to 1.5 feet along the southern property line on Lot 2 for the existing parking garage; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the encroachment of the existing garage into its rear yard does not change the present circumstance; and is needed to accommodate and existing structure; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because it is already an existing condition; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the existing structure does not interfere with use of Mercy Way; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because it is an existing condition that predates the current regulations; 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 encroachment of the existing garage into its rear yard does not change the present circumstance and is simply needed to accommodate the existing structure; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because reconstruction of the garage would cause a financial hardship on the applicant; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from

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which relief is sought because the circumstance predates the existing setback requirement;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to reduce the rear yard along the southern property line on Lot 2 to 1.5 feet.

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

NO: No one.

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

ABSTAINING: No one.

Variance #5—To reduce the front yard requirement from 15 feet to 0 feet along the northern property line of Lots 1 and 2:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.2, Table 5.2.2 of the Land Development Code to reduce the front yard along the northern property line of Lots 1 and 2 to 0 feet; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed location of the structure relative to the supposed front setback is not a public health, safety or welfare issue, but rather an aesthetic one that is fully addressed in the plans and building elevations submitted with this overall application; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the existing structures being replaced with the proposed apartment building have a similar setback and many structures along this portion of Broadway are built at or near the front property line; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed structure will not interfere with the sidewalk, road or other right-of-way improvements; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the site was developed as if it complied with the mixed use site design standards, which presumably would be but for the lot lines around the office building; 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 applicant states that this development will be a great improvement over the vacant hodge-podge of buildings that have been constructed on this site over the decades which do not meet the form requirements for the Form District; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the applicant would be unable to construct its apartment complex in a sensible manner that has been designed based on its understanding and belief that the mixed use site design standards should apply instead; and

WHEREAS, that the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation, but rather a result of a late Department of Planning & Design Services staff interpretation that the mixed use design standards of Section 5.5.1 do not apply, but the residential design standards of Section 5.4.1 do;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to reduce the front yard to 0 feet along the northern property line on Lots 1 and 2.

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

NO: No one.

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

ABSTAINING: No one.

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Waiver—From the 5.4.1 for the four basic components of lot or building site:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review 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 from Section 5.4.1 of the Land Development Code, Traditional Form District requirement to satisfy the four basic components of a lot or building site, and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the existing development does not meet these standards and the general character is different than that of a traditional residential pattern; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the proposed development satisfies Guideline 1, Polices 1 (Compatibility), 2 (Consideration of Building Materials), 3 (Residential Compatibility, 10 (Variety of Housing Types), 11 (High Density in Appropriate Areas, 24 (Minimize Impacts of Parking, Loading and Delivery), in terms of use and design of the project; 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 the applicant is proposing a multi-family structure and continued use of the existing medical office and parking structure; 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 is incorporating two interior courtyards to serve as private yard area for the residents of the apartments and the unique design and architecture of the development is preferred along this portion of Broadway;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver for the four basic components of lot or building size.

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

NO: No one.

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

ABSTAINING: No one.

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The meeting adjourned at 1:37 p.m.

Mikel Allen
Vice- CHAIRPERSON

Roalind Fisher
SECRETARY