

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

**DECEMBER 1, 2014**

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:40.A.M. on Monday, December 1, 2014, 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  
Dean Tharp  
Paul Bergmann

**Members absent:**

Frederick Liggin

**Staff members present:**

Emily Liu, Director, Planning & Design Services  
John Carroll, Legal Counsel  
Steve Hendrix, Planning Supervisor  
Joe Reverman, Planning Supervisor  
Sherie Long, Landscape Architect  
Jon Crumble, Planner II  
Latondra Yates, Planner II  
Beth Stevenson, Management Assistant

**Others present:**

David Marchal, Assistant Director/Construction Review Manager

\*Member Allendorf arrived at 8:45 a.m. and left at 10:42 a.m.

The following cases were heard:

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**APPROVAL OF MINUTES**

**NOVEMBER 17, 2014 BOARD OF ZONING ADJUSTMENT MINUTES**

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

**RESOLVED**, that the Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on November 17, 2014.

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

**NO: No one.**

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

**ABSTAINING:       Members Fishman and Bergmann.**

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**DECEMBER 1, 2014**

**BUSINESS SESSION:**

**CASE NO. 14CUP1019**

**Request:** Modification of an approved Conditional Use Permit to increase the number of duplex buildings from 12 to 17.

**Project Name:** Trilogy Healthcare Campus

**Location:** 12806 Westport Road

**Owner:** Charles W. & Shirley Taylor  
12806 Westport Road  
Louisville, KY 40245

**Applicant:** Trilogy Health Services, LLC  
Peter Massey  
303 N. Hurstbourne Pkwy., Suite 200  
Louisville, KY 40222

**Attorney:** Frost Brown Todd, LLC  
Glenn Price, Esq.  
400 West Market Street, Ste. 3200  
Louisville, KY 40202

**Representatives:** Suburban Design Group, LLC  
Chris Schipper  
1527 Highland Avenue  
Louisville, KY 40204

DMK Development Group, LLC  
Mike Kitchen  
9400 Williamsburg Plaza, Ste. 300  
Louisville, KY 40222

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 17—Glen Stuckel**  
**Staff Case Manager: Jon Crumbie, Planner II**

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**BUSINESS SESSION:**

**CASE NO. 14CUP1019**

The applicant submitted an application to Planning & Design Services for a Modified Conditional Use Permit to increase the number of buildings from twelve (12) to seventeen (17) (i.e., an increase of twenty-four (24) to thirty-four (34) individual villas or units) on July 11, 2014.

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

**Agency Testimony:**

Staff case manager, Jon Crumbie explained the request and said the Modified Conditional Use Permit can either be approved by the Board or decide if a public hearing is necessary. Mr. Crumbie said although the applicant was not required, held a neighborhood meeting

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

Glenn Price, Attorney, Frost Brown Todd, LLC  
Chris Schipper, P.E., Suburban Design Group, LLC  
Mike Kitchen, DMK Development Group, LLC

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

Glenn Price, Chris Schipper and Mike Kitchen, the applicant's representatives, explained the request. Mr. Price said they held a neighborhood meeting where 4 people attended and were not opposed.

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

No one.

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

No one.

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

No one.

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

No one.

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**CASE NO. 14CUP1019**

**Deliberation:**

Member Jarboe felt the Board should schedule a public hearing to get input from area residents.

**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 1, 2014 public hearing proceedings.**

**Modified Conditional Use Permit to allow an increase in the number of duplex buildings from 12 to 17—an increase of 24 to 32 individual villas or units:**

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

**WHEREAS**, the Board finds from the file of this case, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Modified Conditional Use Permit to allow an increase in the number of duplex buildings from 12 to 17—an increase of 24 to 32 individual villas or units; and

**WHEREAS**, the Board finds that the original Conditional Use Permit was approved (Case No. 18461) and that this change to the plan is minimal ; and because the applicant held a neighborhood meeting which was not required per KRS, where four people attended and were not opposed;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Modified Conditional Use Permit to allow an increase in the number of duplex buildings from 12 to 17—an increase of 24 to 32 individual villas or units on the site **SUBJECT** to the applicable previously approved Conditions of Approval:

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

**NO: Member Jarboe.**

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

**ABSTAINING: No one.**

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**DECEMBER 1, 2014**

**BUSINESS SESSION:**

**CASE NO. 14VARIANCE1091**

**Request:** Non-hearing variances from the Land Development Code to allow a proposed detached garage to encroach into the required rear yard and to exceed the maximum accessory use area.

**Project Name:** Arnett's Garage

**Location:** 265 Haldeman Avenue

**Owners:** David & Stacy Arnett  
265 Haldeman Avenue  
Louisville, KY 40206

**Applicants:** Same as owners

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT:** 9—Tina Ward-Pugh  
**Staff Case Manager:** Regina Thomas, Associate Planner

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

**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact customer service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the December 1, 2014 public hearing proceedings.**

**DISCUSSION:**

Steve Hendrix, Planning Supervisor, said the adjacent property owners signed the Non-Hearing Consent Form and are not opposed.

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**BUSINESS SESSION:**

**CASE NO. 14VARIANCE1091**

**Variances to allow a proposed detached garage to encroach into the required rear yard and to exceed the maximum accessory use area:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; and discussion at the public hearing that the applicant is requesting variances to allow a proposed detached garage to encroach into the required rear yard and to exceed the maximum accessory use area; and

**WHEREAS**, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because it will allow private vehicles and yard equipment to be safely stored from public access or view along the private alley; and

**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity because the garage will be constructed in compliance of the Clifton ARC approval and that it remain in character with the area; and

**WHEREAS**, the Board finds that the variances will not cause a hazard or nuisance to the public because it will allow the applicant to provide a more secure and safe environment by constructing a garage to store vehicles and lawn equipment which will be more aesthetically pleasing; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the layout and condition of the rear of the property will not allow the applicant to construct a garage without reconstructing the rear of the lot; and because the lot's terrain was created prior to the current owners purchase; and

**WHEREAS**, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the rear of the site is largely sloped with heavy trees and brush, not suitable for any type of construction; and

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**CASE NO. 14VARIANCE1091**

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the lot has a steep hillside at the rear of the lot, which would cause the owners an economic hardship;

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

**The variances allow:**

1. The private yard area to be 1,160 square feet.
2. The length of the accessory use area to be 118 feet.

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

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

**NO: No one.**

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

**ABSTAINING: No one.**



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**BUSINESS SESSION:**

**CASE NO. 14MOD1015**

**Request:** Amendment of the development plan and expansion of its non-conforming use as permitted by KRS 100.253 (2).

**Project Name:** Renovation of Owners' Suites

**Location:** 700 Central Avenue

**Owner:** Churchill Downs, LLC  
Ryan Jordan, General Manager  
700 Central Avenue  
Louisville, KY 40208

**Applicant:** PC Sports  
Mark Giles  
700 Central Avenue  
Louisville, KY 40208

**Representative:** CDI  
Ekumene Lysonge  
600 N. Hurstbourne  
Louisville, KY 40222

**Representative:** Populous  
Stewart J. Ervie, AIA  
300 Wyandotte Street  
Kansas City, MO 64105

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 15—Marianne Butler**

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

The applicant submitted an application to Planning & Design Services for an amendment to the development plan and expansion of its non-conforming use rights as allowed by KRS 100.253 (2) on July 11, 2014.

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**BUSINESS SESSION:**

**CASE NO. 14MOD1015**

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

**Discussion:**

Staff case manager, Steve Hendrix, said Churchill Down has non-conforming use rights; and that the renovations will be interior.

**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 December 1, 2014 public hearing proceedings.**

**Amendment to the Development Plan and Expansion of Non-Conforming Rights Use:**

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

**WHEREAS**, the Board finds from the file of this case, site plan; the evidence, and discussion at meeting that the applicant is requesting an amendment of the development plan and expansion of its non-conforming use rights as permitted by KRS 100.253 (2); and

**WHEREAS**, the Board finds that the scope of the project will take place within existing boxes and general seating sections 118, 119, 120, 218, 219 and 220 located within the immediate area of the Twin Spires; and because the renovations will provide Oaks and Derby horse owners with a more exclusive VIP experience with expanded hospitality areas and private restrooms located in the Jockey Club behind the suites and a new Courtyard; also, because the applicant will be relocating the Trackside Winner's Circle which will be located approximately at the center of the new suites and will include new restrooms and upgrading the existing restrooms; other upgrades will include a new Audio Booth

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and Superintendent's Office along with additional box seating at the mezzanine level; and two new stair wells will offer improved circulation and service by food service staff;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the amendment to the development plan and expansion of its non-conforming use rights as allowed by KRS 100.253 (2)

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**BUSINESS SESSION:**

**2015 BOZA SCHEDULE OF PUBLIC HEARINGS**

The Board received a schedule of the meetings to review; and had no issues with the scheduled dates.

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

**RESOLVED**, that the Board does hereby **APPROVE** the schedule of public hearings for 2015.

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 14DEVPLAN1134**

**Request:** Variances from the Land Development Code (LDC) that requires all corner lots within the Downtown Form District (DFD) to maintain a zero ft. setback from the street wall for at least 50 feet from the intersection of S. Preston and E. Jefferson Streets; a waiver to not provide the required 50% of the first floor façade to be developed for retail or office uses along S. Preston and E. Jefferson Streets; and a Revised Category 3 Plan for the construction of a new parking garage.

**Project Name:** J.D. Nichols Parking Garage

**Location:** 220 S. Preston Street

**Owner:** Nucleus, LLC  
Kathleen M. Smith, Manager  
103 Grawemeyer Hall/U of L  
Louisville, KY 40292

**Applicant:** NTS Development Co.  
Matthew A. Ricketts  
600 N. Hurstbourne Pkwy., Ste. 300  
Louisville, KY 40222

**Attorney** Frost Brown Todd, LLC  
Glenn Price, Esq.  
400 West Market Street, Ste. 3200  
Louisville, KY 40202

**Representative:** Dunaway Engineering, Inc.  
Kim Dunaway, EIT, LSIT  
3404 Stony Spring Circle  
Louisville, KY 40220

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 4—David Tandy**  
**Staff Case Manager: Latondra Yates, Planner II**

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**NEW BUSINESS:**

**CASE NO. 14DEVPLAN1134**

**This case was continued from November 3, 2014 and November 17, 2014.**

**Due to a conflict of interest, Member Proffitt did not participate in the entire proceedings of this case.**

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, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant has proposed a decorative feature located at the corner, in lieu of providing retail or office uses. The applicant will also provide short and long term bicycle storage and car charging stations. Ms. Yates said the applicant could provide the retail or offices since the site is near Mercantile Gallery Lofts, retail, a hotel and the NULU area.

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

Glenn Price, the applicant's attorney, submitted an exhibit book approved parking garages downtown from 2000 to 2010; the Downtown Master Plan and other information into the record.

Rob Donhoff, 716 E. Market Street, Louisville, KY 40202.

Brian Lavin, NTS Development Co.

Kim Dunaway. Dunaway Engineering.

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

Glenn Price, the applicant's attorney, said the Nucleus building has been built; and that this is Phase 2 of the development for a parking garage. He said future

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Phases 3 and 4 will include office buildings. Mr. Price submitted the Downtown Master Plan, which he said supports their request to not provide 50% of the first floor façade to be developed as retail or offices.

Rob Donhoff, said the parking garage is beautifully designed accented with LED lighting in the evening. He said the materials for the garage will be similar to the Nucleus building. He said they are still working with TARC on the canopies and a 3 foot overhang which will provide TARC riders protection from inclement weather. Member Jarboe said three feet is not very much protection. Mr. Donhoff said they could increase this and will continue working with TARC. Member Bergmann said they should incorporate a rooftop garden; and feels the design is inadequate since it will be so visible from the expressway. The Board expressed concerns with the exterior lighting and signage. Mr. Price said the Downtown Development Review Overlay Committee oversees this aspect.

Brian Lavin said they worked diligently to find the right architects. He said they chose not to build offices since it's so close to the expressway; and that the garage will be open to the public during special events downtown (Light Up Louisville, Thunder Over Louisville etc.). He said the exterior lighting will be tasteful and nothing flashy or distracting.

Kim Dunaway, the applicant's civil engineer, said they had to move some of the TARC stops due to the Bridges Project; and that they added a note to the plan that they will maintain and clean the TARC stops as needed.

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

No one.

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

No one.

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

No one.

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

No one.

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**Deliberation:**

The Board questioned the height of the garage which is 73 feet tall, not 122 feet as written in the staff report. Member Fishman had concerns about the waiver request to not provide the retail and office on the first floor façade and said rooftop gardens are very attractive. Member Allendorf said he might consider a rooftop garden if the proposal was an office building. Member Bergmann said the building doesn't need the large parapets, which he feels will be used for large billboard type signage.

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**Variances to allow corner lots to not maintain a zero ft. setback:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting variances of Section 5.2.1.C.6 of the Land Development Code to allow the proposed parking garage to be 24.5 feet from South Preston Street and 24.5 feet from East Jefferson Street; and

**WHEREAS**, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposed setbacks are compatible with those of some of the surrounding structures; and because the proposed decorative feature serves as mitigation for the variance requests; and

**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity because there are other structures in the area that have similar setbacks; and because the variances are for the corner only and allow for a decorative feature that helps mitigate the setback; and because



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the majority of the building will observe the required setback and appears to be compatible with others in the area; and

**WHEREAS**, the Board finds that the variances will not cause a hazard or nuisance to the public because the site is being redeveloped in a manner that is consistent and compatible with the surrounding area; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the proposed setbacks are consistent with other structures in the area; and because the variances are also mitigated by compatibility of the proposed height and building materials; 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 because without the variance could not provide the sidewalks adjoining the proposed parking garage;

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

**The variances allow:**

1. The proposed structure to be 24.5 feet from South Preston Street.
2. The proposed structure to be 24.5 feet from East Jefferson Street.

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 14DEVPLAN1134**

**Waiver to not provide the required 50% of the first floor façade to be developed for retail or office uses along South Preston Street and East Jefferson Street:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report; the site plan; the PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a waiver of Section 5.5.1.B.1.b.ii of the Land Development Code to not provide the required 50% of the first floor façade to be developed for retail or office uses along South Preston Street and East Jefferson Street; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners because it will allow the use of all parking spaces within the garage to be utilized for parking; and

**WHEREAS**, the Board finds that the waiver will not violate the Comprehensive Plan because it conforms to Transportation Facility Design Guideline 8 and all applicable Policies adopted thereunder, include Policy 8.1 and 8.7 because the parking garage is intended to accommodate most modes of transportation, including bicycles and an electric car charging station; in addition, the parking garage will be an accessory use to the Nucleus development, providing safe and convenient parking opportunities for the users of the J.D. Nichols campus; and because the applicant said the public could use the parking garage for special events downtown and individually lease parking spots; and

**WHEREAS**, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because the request would enable the garage to be utilized for parking purposes; and because this is a minimal waiver request which will benefit all who utilize the J.D. Nichols campus and the public during special events or individually lease parking spots; 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 and would create an unnecessary hardship on the applicant because both the Comprehensive Plan and the Land Development Code foster the provision of

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parking facilities in the Downtown Form District; and because the purpose of the LDC, Section 5.6.2.G.3 is to require parking structures in the Downtown Form District to provide retail or office use within a parking structure (i) where the provision of retail or office would cause a new activity center Downtown, or (ii) to provide consistency of use with an existing activity center providing retail or office Downtown and because neither of these conditions prevail at this location, nor will they prevail in the future due to the location of Interstate-65;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the required 50% of the first floor façade to be developed for retail or office uses along South Preston Street and East Jefferson Street.

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

**NO: No one.**

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

**ABSTAINING: No one.**

**Revised Category 3 Plan for the construction of a parking garage:**

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

**WHEREAS**, the Board finds, from the file of this case, the staff report, the site plan, the PowerPoint presentation(s); the renderings, the evidence and testimony submitted at the public hearing, that the applicant is requesting a Category 3 Review for the construction of a parking garage;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Category 3 plan to construct a parking garage.

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

**NO: Member Bergmann.**

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

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1096**

**Request:** Variance and waivers from the Land Development Code and a Category 2B Plan for the construction of an addition to Pitt Academy.

**Project Name:** Pitt Academy

**Location:** 7515 Westport Road

**Owner:** Westport Road Christian Church  
7515 Westport Road  
Louisville, KY 40222

**Applicant:** Same as owner

**Attorney:** John Singler, Esq.  
108 Republic Plaza Blvd.  
Louisville, KY 40202

**Representative:** Milestone Design Group, Inc.  
Mark Madison  
108 Daventry Lane  
Louisville, KY 40223

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 7—Ken Fleming**

**Staff Case Manager:** Latondra Yates, Planner II

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

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

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1096**

**Agency Testimony:**

Staff Case Manager, Latondra Yates discussed the case summary, standard of review and staff analysis from the staff report. She said the requests are for the construction of a 1 story, 20-ft. tall buildings for Pitt Academy. She said the parking calculations need to be revised to provide the minimums and maximums for both the church and the school.

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

John Singler, Attorney.

Mark Madison.

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

John Singler, the applicant's attorney, said the reason the school has moved several times because they don't have enough money. He said this is a "Special Needs" school and the requests will allow them to build the cheapest way possible, off the back for a cafeteria and 8 new classrooms.

Mark Madison, the applicant's representative, agreed to a condition of approval by the Board to have the parking approved at staff level.

**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 parking shouldn't be a problem, since it will be used mostly for staff and faculty.

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

**DECEMBER 1, 2014**

**NEW BUSINESS:**

**CASE NO. 14VARIANCE1096**

**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 1, 2014 public hearing proceedings.**

**Variance to allow the existing building to exceed the maximum 80-ft. setback:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a variance to allow the existing building to exceed the maximum 80-ft. setback—the existing setback is 175.16 feet or a variance of 95.16 feet; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the variance is for an existing building that is located at least 85 feet from the nearest residential property; and

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

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because it is for an existing building; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because of the existing condition of the building which pre-dates the current regulations; and because the existing building presents challenges to construct the addition closer to the required front setback; and

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**WHEREAS**, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the existing condition of the building pre-dates the current regulations; and because the existing building presents challenges to construct the addition closer to the required front setback; 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 of the existing layout of the site and request to re-use the site for the school;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the existing building to be 175.16 feet from the front property line.

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

**NO: No one.**

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

**ABSTAINING: No one.**

**Waivers to allow existing parking to encroach into the required Landscape Buffer Areas (LBA's); and to provide the required screening outside the required LBA:**

After the public hearing in open business session, on a motion by Member Fishman, 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 including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting waivers of Section 10.2.4 of the Land Development Code to allow existing parking to encroach into the required Landscape Buffer Areas; and to provide the required screening outside the required Landscape Buffer Area; and

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**WHEREAS**, the Board finds that the requested waivers will not adversely affect adjoining property owners since the parking spaces are existing and the overall number of parking spaces is being reduced; and because the existing buffers are not being reduced; and

**WHEREAS**, the Board finds that the waivers will not violate specific guidelines of Cornerstone 2020 since the applicant is submitting this request for review and approval and making an effort to mitigate where feasible; and

**WHEREAS**, the Board finds that the waivers are the minimum necessary to afford relief to the applicant because denying this request would require the applicant to remove existing parking areas and build them in a new location approximately 12 to 15 feet further from the property line; and would also create a financial hardship for this non-profit organization; and because the applicant has already provided the interior landscape requirements in an effort to mitigate the number of waivers being requested; and

**WHEREAS**, the Board finds that the applicant is making an effort to adaptively reuse the building and site; and because the existing conditions have been a major consideration by the applicant in this location; and because if the waivers are not approved, the parking would have to be removed and reconstructed on this site making it less desirable and may make it cost prohibitive for the non-profit school;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waivers to allow existing parking to encroach into the required LBA's; and to provide the required screening outside of the required LBA.

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

**NO: No one.**

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

**ABSTAINING: No one.**



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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1096**

**Category 2B Plan for the construction of an addition to Pitt Academy:**

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, the site plan; the PowerPoint presentations; the evidence and testimony submitted at the public hearing that the applicant is requesting approval of a Category 2B plan for the construction of an addition to Pitt Academy; and

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

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Category 2B Plan **ON CONDITION** that parking for the church and school be approved at staff level.

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**DECEMBER 1, 2014**

**NEW BUSINESS:**

**CASE NO. 14VARIANCE1103**

**Request:** Variance from the Land Development Code to allow a proposed structure to encroach into the street side yard.

**Project Name:** New House

**Location:** 713 Washburn Avenue

**Owner:** Sarasota Properties, LLC  
Robert Buckler  
P.O. Box 7781  
Louisville, KY 40257

**Applicant:** Same as owner

**Representative:** Schroll Land Surveying  
Bill Schroll  
5450 Southside Drive  
Louisville, KY 40214

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 7—Ken Fleming**

**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. 5<sup>th</sup> 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

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proposing to construct a new house on a vacant lot; and that the existing large trees in the right-of-way will be preserved.

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

Robert Buckler.

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

Robert Buckler, the owner, said the house will be compatible with the neighborhood; and that he already has a buyer for it.

**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

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1103**

**Variance to allow a proposed new house to encroach into the street side yard (South Central Avenue):**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification, testimony and discussion at the public hearing that the applicant is requesting a variance from the Land Development Code, Chapter 5, Section 5.3.1.C.2 and Table 5.3.1, to allow a proposed new house to encroach into the street side yard along South Central Avenue; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the new house will not obstruct views of vehicular or pedestrian traffic; and

**WHEREAS**, the Board finds that the variance will not alter the general character of the general vicinity because the new house will be constructed with similar materials already being used in the vicinity; and because the new house will be a similar scale and size of existing houses located in the area; and because the proposed new house will be built to preserve the existing large trees located in the right-of-way; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the new house is being constructed with materials which are already being used in the neighborhood; and because the new house is a similar scale and size of existing houses in the vicinity; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the required setbacks for this corner lot have created a narrow building 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 this is a 50 foot wide corner lot, which has 25 feet of street side setback

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and a 5 ft. side yard setback limits the building area to only 20 feet; and because the proposed location of the new house on the lot is the best location considering these circumstances; 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 because the proposed house would not be able to be constructed; and

**WHEREAS**, the Board finds that the circumstances are not the result of actions of the applicant subsequent to the adoption of the zoning regulation from which relief is sought due to the narrow building area;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed new house to be 5.6 feet from the street side yard along South Central Avenue.

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

**NO: No one.**

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

**ABSTAINING: No one.**

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**DECEMBER 1, 2014**

**NEW BUSINESS:**

**CASE NO. 14CUP1035**

**Request:** Modified Conditional Use Permit to allow a potentially hazardous or nuisance use in an EZ-1 zoning district for a polypropylene catalyst manufacturing facility; and variances to allow the proposed structures to exceed the maximum setback.

**Project Name:** Clariant Inc., Manufacturing Facility

**Location:** 1300 South 11<sup>th</sup> Street

**Owner:** Clariant Corp., successor to United Catalysts, Inc.  
By: Stefan Brejc, Vice President  
P.O. Box 32370  
Louisville, KY 40232

**Applicant:** Same as owner

**Attorneys:** Wyatt, Tarrant & Combs, LLP  
Grover Potts and Deborah Bilitski  
500 W. Jefferson Street, Suite 2800  
Louisville, KY 40202

**Representative:** Miller Wihry  
John Miller  
1387 South Fourth Street  
Louisville, KY 40208

**Jurisdiction:** Louisville Metro

**COUNCIL DISTRICT 6—David James**

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

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

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and was available

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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. 5<sup>th</sup> Street).

**Agency Testimony:**

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the proposed modifications involve the removal of a rail spur; an addition of a one-story, 9,976 square foot warehouse on the northeast portion of the site. A one-story tank storage building has been removed from the plan, and other existing buildings will be pushed back 1 ft. The overall layout of the site and access points will remain unchanged (previously approved CUP, Case No. 13CUP1010). He said the applicant conducted a neighborhood meeting, even though this was not required; and the previously approved conditions of approval will remain in place.

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

Grover Potts, Attorney.

Hans-Peter Gabski, 1600 W. Hill Street, Louisville, KY 40210.

Richard Allen, Engineer, 1600 W. Hill Street, Louisville, KY 40210.

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

Grover Potts, the applicant's attorney said this is a 100 million dollar commitment to the area and a continuation of it. He said the site is surrounded by similar businesses and in compliance with the applicable regulations. He said the containment basin is shown on the new plan.

Member Jarboe asked how the hazardous materials are delivered, moved and stored.

Hans-Peter Gabski, the applicant said they will have about 10 truck deliveries per month. He said they will be doing a risk assessment report per company policy.

Richard Allen discussed the process of how the plant works, including safety measures. Member Jarboe asked if they are increasing production. Mr. Allen said no, that the changes are storage issues.

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**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:**

No one.

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

No one spoke in opposition.

**Deliberation:**

Member Jarboe said she hopes the regulatory agencies are involved considering the use.

**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 1, 2014 public hearing proceedings.**

**Variances to allow proposed structures to exceed the maximum setbacks:**

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

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

**WHEREAS**, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because a 30-ft. drive aisle is being constructed around the perimeter of the buildings for emergency access; and because there are no residential structures in the general area; and



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**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity because the area is characterized by predominantly older industrial buildings; and because the height and design of the proposed buildings will be compatible with the surrounding industrial properties; and

**WHEREAS**, the Board finds that the variances will not cause a hazard or nuisance to the public because the building will be located in the Traditional Workplace Form District where adequate utilities and infrastructure exists to support the proposed use; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because a 30-ft. drive aisle will be constructed around the buildings for emergency access; and

**WHEREAS**, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity because an emergency access is needed for the proposal due to the nature of the business; and

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because there would be no way to provide emergency access to the site; and

**WHEREAS**, 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 consequence of providing a safe environment and emergency access to the site;

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

**The variances allow:**

1. The warehouse to be 67 feet from Ormsby Avenue and South 11<sup>th</sup> Street.
2. The pump house to be 35 feet from South 11<sup>th</sup> Street.
3. The electrical building to be 34.5 feet from Wilson Avenue.

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

**NO: No one.**

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

**ABSTAINING: No one.**

**Modified Conditional Use Permit to allow potentially hazardous or nuisance  
use in an EZ-1 zoning district:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence including the applicant's Letter of Explanation, testimony and discussion at the public hearing that the applicant is requesting a Modified Conditional Use Permit to allow a potentially hazardous or nuisance use; and

**WHEREAS**, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because the proposed development will be compatible with the industrial character of the area; and because the site is located in the Traditional Workplace Form District with no residential uses in the immediate vicinity that will be impacted by the use; and because adequate transportation infrastructure exists to accommodate the use, and the site is located on a TARC transit route; and because there are no natural, scenic, environmental, or historic resources on the subject property that would restrict the development; and because the subject site is not located in the 100-Year Floodplain and are no streams, wetlands or waterways on the site; and because all necessary utilities, including water, electricity, telephone and cable are available; and because the site has adequate potable water and water for firefighting purposes and is served by the Louisville Fire Department; and

**WHEREAS**, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise etc. because the proposal conforms with the general character of the area and surrounding neighborhoods; and because the site will be fully enclosed with an 8-foot tall masonry security wall; and

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**WHEREAS**, the Board finds that the necessary public facilities (both on and off site) such as transportation, sanitation, water, sewer etc. are provided; and because the proposal has been reviewed by Public Works and MSD, and both have preliminarily approved the plan; and

**WHEREAS**, the Board finds that the proposal complies with specific standards required to obtain the modified conditional use permit for potentially hazardous or nuisance uses, because the applicant is working with the Air Pollution Control District to mitigate environmental and health related concerns due to the nature of the operation;

**RESOLVED**, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Modified Conditional Use Permit to allow a potentially hazardous or nuisance use in an EZ-1 zoning district on the site **SUBJECT** to the previously approved Conditions of Approval.

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

**NO: No one.**


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

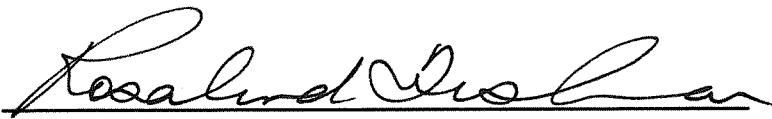
**ABSTAINING: No one.**

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The meeting adjourned at 12:03 p.m.

  
\_\_\_\_\_  
CHAIRPERSON

  
\_\_\_\_\_  
SECRETARY