

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

FEBRUARY 3, 2014

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:55.A.M. on Monday, February 3, 2014, at the Mayors Gallery, 527 W. Jefferson Street, 4th Floor, Louisville, Kentucky.

Members present were:

David Proffitt, Chairperson
Rosalind Fishman, Secretary
Betty Jarboe
Dean Tharp

Members absent:

Fred Liggin
Mike Affendorf, Vice Chairperson

Staff members present were:

Jim Mims, Director, Codes and Regulations
Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Jessica Wethington, Planning Information Specialist
Steve Hendrix, Planning Supervisor
Joe Reverman, Planning Supervisor
Jon Crumby, Planner II
Latondra Yates, Planner II
Chris Brown, Planner II
Julia Williams, Planner II
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

The following cases were heard:

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OATH OF OFFICE – DEAN THARP

Dean Tharp was sworn in as a Board Member of the Louisville Metro Board of Zoning Adjustment by Assistant County Attorney, John Carroll.

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APPROVAL OF THE MINUTES

APPROVAL OF THE MINUTES—JANUARY 13, 2014:

On a motion by Member Fishman, seconded by Member Jarboe, the minutes of the meeting conducted on January 13, 2014 were approved.

The vote was as follows:

YES: Members Jarboe, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: Member Tharp.

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BUSINESS SESSION:

CASE NO. 13VARIANCE1051

Request: Reconsideration of the Board's decision made on December 16, 2013 (amended on January 13, 2014) regarding a variance to allow an existing garage to encroach into the required rear yard requested by:

Diane L. Yates
6206 Ree Court
Louisville, Kentucky 40216

Applicant/Owner: Same as above

Premises Affected: On property known as 6206 Ree Court and being in Louisville Metro.

COUNCIL DISTRICT 12—Rick Blackwell
Staff Case Manager: Jessica Butler, Planner I

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

The recording of this hearing will be found on the DVD of the February 3, 2014 proceedings.

A letter was received from Diane Yates on January 6, 2014, requesting a reconsideration of the Board's decision made on December 16, 2013 (amended on January 13, 2014) regarding a variance to allow an existing garage to encroach into the required rear yard. Members who voted to deny the variance were: Jarboe, Fishman and Proffitt. A motion would need to be made from one of those three.

DISCUSSION:

John Carroll, the Board's legal counsel, said the Board could either reconsider their motion or conduct a new hearing. Member Jarboe said based on the letter submitted by the applicant feels a new hearing is justified. Chair Proffitt said the people who spoke in opposition should be notified of the new hearing.

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BUSINESS SESSION:

CASE NO. 13VARIANCE1051

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment will hereby **RECONSIDER** this case based on the information in the letter provided by the applicant; and conduct a new hearing on **FEBRUARY 17, 2014**; and that the opposition is notified of this hearing.

The vote was as follows:

YES: Members Jarboe and Fishman.

NO: Member Proffitt.

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

ABSTAINING: Member Tharp.

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BUSINESS SESSION:

CASE NO. 13CUP1022

Applicant/Owner: Masonic Homes of Kentucky
Gary Marsh
3671 Johnson Hall Drive
Masonic Home, Kentucky 40041

Representative: Qk4
Ashley Bartley
1046 East Chestnut Street
Louisville, Kentucky 40204

Subject: An application for the modification of an existing Conditional Use Permit for an expansion to their existing Independent Senior Living facility, Phase 2. This will provide an additional 3 units for a total of 132 units.

Premises Affected: On property known as 320 Joe Conway Circle and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Christopher Brown, Planner II

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

The recording of this hearing will be found on the DVD of the February 3, 2014 proceedings.

On November 18, 2013, the applicant requested a modification of the approved Conditional Use Permit to allow minor site plan revisions for an additional 3 apartments for a proposed independent senior living facility. The total units will be 132.

The related cases are: 9-19-83; 14169; 15987 and 13DEVPLAN1105.

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BUSINESS SESSION:

CASE NO. 13CUP1022

On February 3, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

DISCUSSION:

9:05 Steve Hendrix, Planning Supervisor, said the applicant is requesting a Modified Conditional Use Permit for the addition of 3 independent senior living apartments. The Revised Detailed District Development Plan and Landscape Waiver requests will be reviewed by the Development Review Committee.

9:07 After the discussion, on a motion by Member Fishman, seconded by Member Jarboe and the following resolution was adopted:

WHEREAS, the Board finds that the applicant, Masonic Homes of Kentucky is requesting a modification of an approved Conditional Use Permit to allow minor site plan revisions for 3 additional apartments for a proposed independent senior living facility (Phase 2);and

WHEREAS, the Board finds that underground parking will be provided below the new building; and 24 additional surface parking spaces including 12 that will be covered by a carport; and

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

NOW, THEREFORE, BE IT RESOLVED, that the Modification of the existing Conditional Use Permit is hereby **APPROVED**, to allow revisions to the site plan to allow a total of 132 independent senior living apartments based on the previously approved conditions of approval.

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CASE NO. 13CUP1022

The vote was as follows:

YES: Members Jarboe, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: Member Tharp.

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NEW BUSINESS:

CASE NO. 13VARIANCE1002

Applicant/Owner: Shoppes at Gardiner Park, LLC
Ken Blacketer, Member
225 S. Hurstbourne Pkwy., Ste. 103
Louisville, Kentucky 40222

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

Representative: Land Design & Development
Kevin Young
503 Washburn Avenue, Ste. 101
Louisville, Kentucky 40222

Project Name: The Shoppes at Gardiner Park

Request: Deferral of the variances to increase the maximum setbacks to the March 17, 2014 public hearing.

Premises affected: On property known as 100 Flat Rock Road and 16411 Shelbyville Road and being in Louisville Metro.

COUNCIL DISTRICT 19—Jerry Miller

Staff Case Manager: Julia Williams, AICP, Planner II

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

RESOLVED, that the Board does hereby **DEFER** Case No. 14VARIANCE1002 to **MARCH 17, 2014**.

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NEW BUSINESS:

CASE NO. 13VARIANCE1002

The vote was as follows:

YES: Members Jarboe, Fishman and Proffitt.

NO: No one.

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

ABSTAINING: Member Tharp.

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FEBRUARY 3, 2014

NEW BUSINESS:

CASE NO. 13CUP1018

Applicant(s): Lubrizol Advanced Materials, Inc.
Richard Cronin
4200 Bells Lane
Louisville, Kentucky 40211

Owner(s): Lubrizol Advanced Materials, Inc.
Jim Leavesley
9911 Brecksville Road
Cleveland, Ohio 44141

Representatives: Chemstress Consultant Company
John Cunningham & Bradley Lightfoot
39 South Main Street
Akron, Ohio 44308

Subject: An application for a Conditional Use Permit (CUP) to allow a potentially hazardous or nuisance use.

Premises affected: On property known as 4200 Bells Lane and being in Louisville Metro.

COUNCIL DISTRICT 1—Attica Scott
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Richard Cronin, 4200 Bells Lane, Louisville, Kentucky 40211.

Appearances- Interested Parties:
No one.

Appearances Against Applicant:
No one.

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

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NEW BUSINESS:

CASE NO. 13CUP1018

On December 12, 2013, Lubrizol Advanced Materials, Inc. filed an application for a Conditional Use Permit to allow a potentially hazardous or nuisance use.

On February 3, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The audio/visual recording of this hearing will be found on the DVD of the February 3, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

9:09 Staff case manager, Latondra Yates, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant is requesting a CUP for the expansion and modifications to the Lubrizol Temprite production facility. She said the project will include the demolition of some of the existing buildings, and additions to existing and new stand-alone structures. She said a CUP for expansion of hazardous and objectionable use for B.F. Goodrich plant was heard by the Board February 5, 1996. According to the minutes, prior to this expansion, B. F. Goodrich was a legal, non-conforming use, but the CUP was never finalized (Docket No. B-10-96). Also, on May 27, 1993, a Minor Subdivision Plat was approved to create several lots. She said the plan meets Air Quality guidelines because it mitigates impacts of odor or emissions receiving an Air Quality Permit. Ms. Yates said the proposal meets the applicable guidelines of the Comprehensive Plan and the Land Development Code; and that the area is industrial to the north, south, east and west. Member Jarboe asked how long they've been operating without a CUP. Ms. Yates said she is unsure, but said the expansion triggered the request.

SUMMARY OF TESTIMONY OF PROPONENTS:

9:20 Richard Cronin, the applicant, said they will produce a 50% increase in resin compound and ship to customers. Member Jarboe asked him why they didn't already have a CUP. Mr. Cronin said he is not sure, but said that the

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properties have changed in use and ownership over the years. Steve Hendrix, Planning Supervisor, interjected and said the CUP was for B.F. Goodrich, but eventually divided up into several companies and probably thought they all had non-conforming use rights. He said this company is trying to come into compliance. Member Jarboe asked if there have been any violations. Mr. Cronin said he doesn't know.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Member Jarboe said she would like to know if there are any violations, since there are residential properties in the area. Member Fishman said they should possibly continue this case to March 17, 2014, to see if there are any violations.

BACK INTO PUBLIC HEARING:

Chair Proffitt said that this is a new owner now and that they received the Air Quality Permit. Member Jarboe asked the applicant if he was aware that there was not a CUP.

Brad Lightfoot, the applicant's engineer, said the new companies felt they also could run their businesses under the CUP issued in 1996. He said they have corrected the violations and are trying to come into compliance.

BUSINESS SESSION:

Member Jarboe said the Board would be remiss if they didn't take a 50% increase of hazardous materials next to residential and schools seriously. She said this is more than just cleaning up paperwork. Chair Proffitt said he would agree, but the applicant has received all necessary approvals.

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, the development plan, the PowerPoint presentation, the applicant's justification and

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the evidence and testimony submitted at the public hearing that the applicant is requesting a Conditional Use Permit under Section 4.2.43 of the Land Development Code to allow a potentially hazardous or nuisance use; and

WHEREAS, the Board finds that the property is within a Suburban Workplace Form District; and

WHEREAS, the Board finds that the proposal meets the applicable guidelines of the Comprehensive Plan and meets 24 of the applicable guidelines of the Comprehensive Plan with the inclusion of Community Form guidelines because the expansion of an existing industrial use is in an established industrial area; and because the proposal meets Compatibility guidelines because the proposed structures are compatible considering the building materials that will be used, heights and setbacks with other industrial structures in the area; and because the plan meets Circulation guidelines because it mitigates impacts of traffic through right-of-way dedication to Bells Lane, and meeting other requirements for Transportation Planning Review preliminary approval; and because the proposal meets Air Quality guidelines because it mitigates impacts of odor or emissions through issuance of an Air Quality Permit; and because no additional lighting or signage is proposed; and because three of the guidelines can be addressed during construction review, including water for potable and firefighting purposes, as well as drainage plans; and because the CUP meets the standard of review; and

WHEREAS, the Board finds that the proposal meets the applicable guidelines of the Comprehensive Plan with regard to environmental and health related concerns raised by the operation and the applicant's proposal to mitigate any adverse effects to the public's health, safety and general welfare because the note required by the Health Department regarding construction trailers, mosquito control and sanitary sewage capacity has been added to the plan; and because the Air Quality Permit has been issued; and because the plan meets the applicable sections of the Land Development Code and the plan received approval by landscape staff; 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

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preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

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

The conditions are as follows:

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

The vote was as follows:

YES: Members Tharp, Fishman and Proffitt.

NO: Member Jarboe.

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

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 13CUP1012

Applicant(s):

Simsbury Associates, Inc.
Clifford F. Boyle
4835 East Cactus Road, Suite 120
Scottsdale, AZ 85254

Simsbury Associate, Inc.
William J. Giovannucci, VP Development
14 Storrs Avenue
Braintree, MA 02184

Owner(s):

Academy of Our Lady of Mercy
Michael Johnson
5801 Fegenbush Lane
Louisville, KY 40228

Project Name:

Louisville Center for Rehabilitative Medicine

Subject:

An application for a Conditional Use Permit to allow a rehabilitation home in an OR-3 zoning district.

Premises affected:

On property known as 1176 East Broadway and being in Louisville Metro.

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:

Cliff Boyle, 4835 E. Cactus Road, Ste. 120, Scottsdale, AZ 85254.

Stephen Tracy, 654 S. Shelby Street, Louisville, KY 40202.

Appearances- Interested Parties:

No one.

Appearances Against Applicant:

No one.

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NEW BUSINESS:

CASE NO. 13CUP1012

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

On January 8, 2014, Simsbury Associates filed an application for a Conditional Use Permit to allow a rehabilitation home in an OR-3 zoning district.

On February 3, 2014, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

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

The audio/visual recording of this hearing will be found on the DVD of the February 3, 2014 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing a rehabilitation home with 69 beds for rehabilitative medicine and 36 beds for detox. The facility will have a total of 105 rooms; and the existing building will be remodeled. He said the proposal was reviewed against Cornerstone 2020, the Land Development Code, the Original Highlands Neighborhood Plan (November 2006) and a Comprehensive Housing Strategy for Louisville Metro (March 2005); and meets the guidelines and policies. Mr. Crumbie said the applicant is requesting a modification of Item D of the listed requirements, stating that the existing freestanding sign will be reused. He said the sign size and height was granted under Docket No. B-1377-87. Mr. Crumbie presented the Board with a colored photograph of similar uses within a mile radius of the subject site for the Board to review. He said the applicant also does not want to add anymore landscaping and should be included in the motion if the Board decides to approve the request.

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SUMMARY OF TESTIMONY OF PROPONENTS:

Clifford F. Boyle, the applicant, said the proposed rehabilitation facility will be private pay with some insurance claims. The patients will be under 24/7 care, strictly voluntary; and if they leave the premises, will be eliminated from the program. He said they want to reconstruct the entry way.

Stephen Tracy said he is the architect, and available to answer any questions the Board may have. Member Fishman asked if the existing gym will be used. Mr. Boyle said the patients can use it and may also be used for high school basketball. Member Jarboe asked where the company is based. Mr. Boyle said they have facilities in four different states including Boston and Arizona.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

Member Fishman asked if there is a full-time doctor on site at all times. Chair Proffitt said they have a staff doctor listed.

BACK INTO PUBLIC HEARING:

Chair Proffitt asked Mr. Boyle how many doctors will be at the facility. Mr. Boyle said they will have a Chief Doctor who runs the program; and a staff doctor. The staff doctor will work at the facility intermittently, but other staff will be there around the clock.

BACK INTO BUSINESS SESSION:

Chair Proffitt said the Board needs to decide if the landscaping is sufficient or if the applicant should add more and work with staff's landscape architect.

9:54 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 PowerPoint presentation and the evidence and testimony submitted at the public

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CASE NO. 13CUP1012

hearing that the applicant is requesting a Conditional Use Permit to allow a rehabilitation home in an OR-3 zoning district; and

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

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan, Guideline 3, A.4/5/6/7—Compatibility because the site was formally a school and will not be expansion into a residential area; and because lighting will be code compliant; and the existing signage will be used; and because traffic and noise will be minimal; and because the proposal meets Guideline 5, Plan Element A.2/4 historic resources because the proposal includes the preservation, use and reuse of buildings and site that are recognized as having historical and architectural value in the community; and because there is sufficient landscaping on the subject site; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area because existing structures are compatible with the surrounding neighborhood in terms of height, scale, intensity, lighting and appearance; and because the main building was built in 1901; and

WHEREAS, the Board finds that there are 5 requirements to allow a rehabilitation home, where 2 have been met; Items B and D do not apply; and the Board does hereby modify Item D, because the applicant will be reusing the existing sign which is 2 feet from the front property line and 16'4" tall—which was previously approved under Docket No. B-137-87; 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;

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

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The conditions are as follows:

1. The site plan 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. The maximum number of residents shall be 105.
4. The maximum number of employees on any given shift shall be 39.
5. The existing freestanding sign will be used which is 2 feet from the front property line and 16’4” tall.
6. No new landscaping is required.

The vote was as follows:

YES: Members Jarboe, Fishman, Tharp and Proffitt.

NO: No one.

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

ABSTAINING: No one.

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The meeting adjourned at 9:56 a.m.

CHAIRPERSON

SECRETARY