

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

January 23, 2017

A meeting of the Louisville Metro Board of Zoning Adjustment was held on January 23, 2017 at 8:30 a.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Members Present:

Mike Allendorf, Chair
Betty Jarboe, Vice Chair (arrived at approximately 8:36 a.m.)
Rosalind Fishman, Secretary
Paul Bergmann
Lester Turner
Dean Tharp

Members Absent:

Lula Howard

Staff Members Present:

Emily Liu, Planning & Design Manager
Steve Hendrix, Planning & Design Supervisor
Brian Mabry, Planning & Design Supervisor
Joe Haberman, Planning & Design Manager
Jon Crumbie, Planning & Design Coordinator
Ross Allen, Planner I
Laura Mattingly, Planner I
Beth Jones, Planner II
John Carroll, Legal Counsel
Paul Whitty, Legal Counsel (arrived at approximately 9:15 a.m.)
Sue Reid, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

JANUARY 9, 2017 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

00:02:20 On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on January 9, 2017.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, and Chair Allendorf

Abstain: Member Tharp

Absent: Member Howard and Vice Chair Jarboe

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BUSINESS SESSION

CASE NUMBER BOZA_Bylaws

Request: Amendments to Bylaws and Policies
Case Manager: Jon Crumbie

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

00:03:09 Jon Crumbie stated the Bylaws were presented to the Mayor's office and they recommended changes, and those changes have been incorporated so they're ready to be approved (see recording for detailed presentation).

00:03:30 John Carroll, Legal Counsel, advised that the Board has to approve the amendments by majority vote of the total Board, so it requires at least four votes (see recording for detailed presentation).

00:03:52 Member Bergmann asked Mr. Crumbie what changes were made (see recording for detailed presentation).

00:04:01 Mr. Crumbie stated in the past we've given you the ones with the strike-throughs, so this is the final copy. Mr. Crumbie stated the main things that were changed was the order of the business and also just to change the address (see recording for detailed presentation).

00:05:27 On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** amendments to the BOZA Bylaws and Policies.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Vice Chair Jarboe and Chair Allendorf

Absent: Member Howard

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BUSINESS SESSION

CASE NUMBER 17DEVPLAN1001

Request: Amendment of the development plan and expansion of its nonconforming use as permitted by KRS 100.253(2).
Project Name: Starting Gate Suites
Location: 700 Central Avenue
Owner: Churchill Downs Incorporated
Applicant: Calhoun Construction Services
Representative: Brian O'Reilly
Jurisdiction: Louisville Metro
Council District: 15- Marianne Butler
Case Manager: Steve Hendrix, Planning Supervisor

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.)

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

00:06:33 Steve Hendrix presented the case and responded to questions from the Board Members. Mr. Hendrix reminded the Board Members that Churchill Downs is exempt as far as nonconforming rights (see staff report and recording for detailed presentation).

00:07:58 On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 17DEVPLAN1001, does hereby **APPROVE** Amendment of the development plan and expansion of its nonconforming use as permitted by KRS 100.253(2).

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CASE NUMBER 17DEVPLAN1001

The vote was as follows:

**Yes: Members Fishman, Turner, Bergmann, Tharp, Vice Chair Jarboe and
Chair Allendorf**

Absent: Member Howard

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PUBLIC HEARING

CASE NUMBER 16CUP1073

Request: Conditional Use Permit for off-street parking in a residential zone, Setback and Height Variance
Project Name: Town Place Suites
Location: 10200 & 10455 Champion Farms Drive
Owner: Stephen E. Poe, Springhurst Development, LLC
Applicant: Valentin Staller, Poe Companies, LLC
Representative: Glenn Price, Frost Brown Todd, LLC
Jurisdiction: Louisville Metro
Council District: 17 – Glen Stuckel
Case Manager: Laura Mattingly, Planner I

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

00:09:40 Laura Mattingly presented the case and showed a Powerpoint presentation. Ms. Mattingly responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Glenn Price, 400 W. Market, Suite 3200, Louisville, KY 40202
Valentin Staller, 1250 River Road, Louisville, KY 40206

Summary of testimony of those in favor:

00:19:03 Glenn Price spoke on behalf of the applicant in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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00:30:41 Valentin Staller responded to a question by Vice Chair Jarboe in regard to lighting (see recording for detailed presentation).

00:31:30 Glenn Price spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

00:36:25 Valentin Staller spoke in favor of the request (see recording for detailed presentation).

The following spoke in opposition to the request:

No one spoke.

00:37:02 Board Members' deliberation

00:38:25 On a motion by Vice Chair Jarboe, seconded by Member Bergmann, the following resolution was adopted:

Conditional Use Permit to allow off-street parking in an R-7 zone

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with the Comprehensive Plan as adequate parking is being provided for the hotel use and, although the required buffer area is not being provided along the north property line shared with a residential use, the applicant will mitigate with the required screenings and plantings along that property line, and

WHEREAS, the Board further finds that the proposal for the parking to the north of the hotel is compatible with surrounding land uses with respect to scale, intensity, traffic, drainage and appearance, and

WHEREAS, the Board further finds that Transportation Planning and the Metropolitan Sewer District have reviewed and approved the plan. The Worthington Fire District did not provide comments on the proposal, and

WHEREAS, the Board further finds that the parking is directly behind the hotel it is serving, approximately five feet from the rear of the building, and

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WHEREAS, the Board further finds that a note has been placed on the plan that states that either fencing or landscaping will be provided in order to provide protection for and be in harmony with the adjacent residential property, and

WHEREAS, the Board further finds that this location of the parking is not affected by front or street side setback requirements and there is no side yard setback requirement. There is a 50' residential to non-residential setback on the north property line that the applicant has asked for relief from, and

WHEREAS, the Board further finds that the parking lot is for hotel use only, and

WHEREAS, the Board further finds that the proposal has received preliminary approvals from Transportation and will be required to get full construction approval prior to issuance of building permits, and

WHEREAS, the Board further finds that Transportation Planning has given their preliminary approval on the proposal, and

WHEREAS, the Board further finds that upon the approval of (i) a variance from LDC Table 5.3.2 to permit the building height to be 47-feet, and (ii) a variance from LDC §5.3.1.C.5 Table 5.3.2 to vary the 50-foot non--residential to residential setback (no loading) for the proposed hotel parking and dumpster enclosure, and (iii) a waiver from LDC §10.2.4 to allow the encroachment of the hotel parking area into the 25-foot Landscape Buffer Area, all LDC requirements will have been met. All "Listed Requirements" of LDC §4.2.39 have been met. All other requirements of the Land Development Code have been met, and

WHEREAS, the Board further finds that the proposal conforms to Community Form Guideline 1 and all Policies adopted thereunder, including Policy 1.B.3 because the site is located within the Neighborhood Form District. Provision of off-street parking in the Neighborhood Form District is a desirable use, being accessory and necessary to serve the proposed hotels, and

WHEREAS, the Board further finds that the proposal conforms to Centers Guideline 2 and all applicable Policies adopted thereunder, including Policy 15. The proposed parking for the hotels is safely situated and will be sufficient for the hotels, and

WHEREAS, the Board further finds that the proposal conforms to Compatibility Guideline 3 and all applicable Policies adopted thereunder, including Policy 2 [Non-Residential Expansion] because the parking lot will be used by the hotels,

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which are located within Springhurst Village. The parking area will be substantially screened by an existing brick wall to the west from the single family residences; the proposal conforms to Policy 6 [Minimize Impacts of Parking, Loading and Delivery] because the nearest parking spaces to the adjacent R-4-zoned property will be more than 130 feet away and the brick wall will provide a screen and buffer to the parking areas; the proposal also conforms to Policies 7 [Lighting] and 8 [Visual Impacts] because the lighting will be similar to what exists and will meet Land Development Code requirements and because the brick wall will protect the character of the single family residences to the west, and

WHEREAS, the Board further finds that the proposal conforms to Flooding and Stormwater Guideline 10 and all applicable Policies adopted thereunder, including Policies 10.1, 10.4, 10.6, 10.7, 10.10 and 10.11. Detention facilities have been based on a fully developed watershed model. Post development run-off will not exceed pre- development rates; drainage will utilize a "through" drainage system, and

WHEREAS, the Board further finds that the proposal conforms to all other applicable Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the off-street parking will serve the proposed extended stay hotels [Town Place Suites and Fairfield Inn & Suites] just as parking serves the existing Marriott Courtyards, also located at Springhurst Village. The parking for these hotels will be substantially similar to the parking which serves the Marriott Courtyards. The proposed parking area will not cause intense use of the parking areas, noise, odor, drainage difficulties, dust problems or visual impacts, and

WHEREAS, the Board further finds that the proposal will not require the extension or addition of necessary public facilities, whether on-site or off-site, such as transportation, sanitation, sewer, drainage, emergency services, education, recreation or other public facilities; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1073, does hereby **APPROVE** the CUP to allow off-street parking in an R-7 zone, based on Staff's Standard of Review and Analysis for Conditional Use Permits, the site plan, the applicant's justification statement and testimony of the applicant, and **SUBJECT** to the following Conditions of Approval:

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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 day care facility without further review and approval by the Board.
3. Proposal is subject to full construction plans being submitted to the Department of Public Works for traffic and MSD for storm water approvals. Once those have been approved, the plan is subject to Inspections, Permits and Licenses for building/parking permits.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Vice Chair Jarboe and Chair Allendorf

Absent: Member Howard

00:40:36 On a motion by Vice Chair Jarboe, seconded by Member Bergmann, the following resolution was adopted:

Variance from 5.3.1.C.5 to allow parking to reduce the required 50' non-residential to residential setback

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the variance will not adversely affect the public health, safety or welfare as provisions for safe vehicular traffic is being provided for and the applicant is providing landscaping to screen the residential use from any negative impacts the vehicles may have on the residential development, and

WHEREAS, the Board further finds that the requested variance will not alter the general character of the general vicinity as the setback cannot be viewed from any public right of way, and

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WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as all required plantings and screening are being provided along the northern side of the property line to screen lights and noise from vehicles, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the parking is needed to meet parking requirement for the hotel use, and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances as this particular proposal is unusually located within the development and shares a property line with a residential development, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would cause an unnecessary hardship on the applicant as they would not be able to provide the required amount of parking for the hotel use without the parking to the north, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant as the non-residential to residential setback regulation was in place prior to the proposal, and

WHEREAS, the Board further finds that the closest building in the adjacent Champion Farms Apartments is over 200- feet away from the proposed off-street parking area. Because of this substantial distance, the reduction of the setback will not adversely affect the public health, safety or welfare, and

WHEREAS, the Board further finds that because the hotel will be located more than 200 feet from the nearest building in Champion Farms Apartments the variance will not alter the essential character of the general vicinity, and

WHEREAS, the Board further finds that the granting of the variance will not cause a hazard or nuisance to the public because of the substantial 200-foot distance between the off-street parking area and the nearest building in Champion Farms Apartments, and

WHEREAS, the Board further finds that because the adjacent use is an apartment complex, and because the nearest apartment building in Champion Farms Apartments is over 200-feet away from the off-street parking area and is 3-stories in height, the grant of the setback variance will not allow an unreasonable circumvention of the requirements of the zoning regulations; and

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Variance (16VARIANCE1092) from 5.3.1.C.5 to allow a building height of 62'

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the variance will not adversely affect the public health, safety or welfare as the height of the building will not affect vision clearance for vehicular traffic, and

WHEREAS, the Board further finds that the requested variance will not alter the general character of the general vicinity as the building massing and architectural details are similar to those already developed in this area, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the building height will not block views or natural light from any adjacent property due to the 480' between the proposed hotel and the nearest existing apartment building, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the requested height is similar to other structures within the same and adjoining developments and is a typical design for a hotel, and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances as hotels are generally multiple stories in order to accommodate an appropriate number of guest rooms without a large building footprint, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would cause an unnecessary hardship on the applicant as the hotel would not be able to offer as many hotel rooms, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant as the building height regulation was in place prior to the proposal, and

WHEREAS, the Board further finds that the adjacent Marriott Courtyard building is 52 feet in height. The hotel will be located more than 200 feet from the nearest building in Champion Farms Apartments, which is a 3-story multi-family building. The hotel is more than 480 feet from any single family residence on Springhurst Gardens Circle. Hence, the proposed height of 62 feet will not adversely affect the public health, safety or welfare, and

WHEREAS, the Board further finds that because the hotel will be located more than 200 feet from the nearest building in Champion Farms Apartments and

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more than 480 feet from single family homes on Springhurst Gardens Circle. Because of (1) the substantial distance from nearby residential uses, and (2) the existing Marriott Courtyard Inn at 52 feet in height, the proposed height of the hotel building will not alter the essential character of the general vicinity, and

WHEREAS, the Board further finds that the hotel building is situated so as not to constitute a hazard or nuisance to nearby single-family homes which are over 480 feet away or nearby multi-family residents or others, and

WHEREAS, the Board further finds that Because the Marriott Courtyard is 52 feet in height, the Montessori School steeple has a height between 55 and 60 feet, and the previously approved personal care home proposed for this site allowed for a height of 54.5 feet (see BOZA case #10742), the variance to allow the proposed hotel to be 62 feet in height does not constitute an unreasonable circumvention of the requirements of the zoning regulations; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment in Case Number 16CUP1073, does hereby **APPROVE** Variance from 5.3.1.C.5 to allow parking to reduce the required 50' non-residential to residential setback (**Requirement 50', Request 2', Variance 48'**), and Variance (16VARIANCE1092) from 5.3.1.C.5 to allow a building height of 62' (**Requirement 35', Request 62', Variance 27'**), based on the Staff Report and the applicant's justification statement on Chapters 6 and 7 of the booklet.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Vice Chair Jarboe and Chair Allendorf

Absent: Member Howard

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CASE NUMBER 16VARIANCE1074

Request: Reconsideration hearing concerning case 16VARIANCE1074, request for conditions to be placed on the approved variance.
Project Name: 7206 Hollow Creek Road
Location: 7206 Hollow Creek Road
Owner: Michael Secor
Applicant: Michael Secor
Representative: Stephen Porter
Jurisdiction: Hollow Creek
Council District: 23 – James Peden
Case Manager: Ross Allen, Planner I

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

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

00:43:19 Ross Allen presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Steve Porter, 2406 Tucker Station Road, Louisville, KY 40299

Summary of testimony of those in favor:

00:52:33 Steve Porter spoke on behalf of the applicant and the opposing neighbor in favor of the request. Mr. Porter stated both parties have reached an agreement to these plantings. Mr. Porter asked that these Conditions of Approval be added (see recording for detailed presentation).

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CASE NUMBER 16VARIANCE1074

00:54:48 Board Members' deliberation

00:56:00 On a motion by Vice Chair Jarboe, seconded by Member Bergmann, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1074, does hereby **APPROVE** the request for **CONDITIONS** to be placed on the approved Variance. The Conditions of Approval are as follows:

CONDITIONS OF APPROVAL:

1. Secor will be able to construct and retain a deck on their property as shown in Planning and Design Case #16VARIANCE1074.
2. Rivoli will not raise any objections to that deck, either in administrative or judicial venues.
3. The following planting, as shown on the attached drawing, will be accomplished no later than March 31, 2017:
 - a. A Thuja Green Giant Arborvitae, 7-8 ft. in height at planting, at the northeast corner of the deck.
 - b. Several Emerald Green Arborvitae, planted 3' on center, along the east side of the larger deck.
 - c. Several Thuja Green Giant Arborvitae, 8-9 ft. in height, planted 3' on center, along the east side of the narrower deck.
 - d. Several Thuja Green Giant Arborvitae, 8-9 ft. in height, planted 3' on center, along the remaining east side of the Secor property.
4. Secor shall pay the full cost of purchasing, planting and maintaining or replacing as necessary the plantings noted above in 3a, 3b, and 3c.
5. Secor shall pay 2/3, and Rivoli shall pay 1/3 of the cost of purchasing, planting and maintaining or replacing as necessary the plantings noted above in 3d.
6. This agreement shall be proposed to the Louisville Metro Board of Adjustment to be added as a condition of approval of the variance in 16VARIANCE1074 and shall take effect as of the approval by that Board.
7. The Lawn Pro schematic of the layout of the landscaping.

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The vote was as follows:

**Yes: Members Fishman, Turner, Bergmann, Tharp, Vice Chair Jarboe and
Chair Allendorf**

Absent: Member Howard

00:57:53 Meeting was recessed.

00:57:58 Counsel John Carroll introduced Counsel Paul Whitty.

00:58:50 Meeting was reconvened.

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PUBLIC HEARING

CASE NUMBER 16CUP1050

Request:	Conditional Use Permit to allow a proposed short term rental that is not the primary residence of the host in an R-5 zoning district
Project Name:	Short Term Rental
Location:	614 Bellewood Road
Owner:	Tamela Pumphrey
Applicant:	Tamela Pumphrey
Representative:	Tamela Pumphrey
Jurisdiction:	Louisville Metro
Council District:	19 – Julie Denton
Case Manager:	Jon E. Crumbie, Planning and Design Coordinator

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.)

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

00:59:15 Jon Crumbie presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Tamela Russell Pumphrey, 8114 Bohannon Station Road, Louisville, KY

Summary of testimony of those in favor:

01:02:16 Tamela Russell Pumphrey responded to questions from the Board Members regarding use of the garage. Ms. Pumphrey stated the two car attached garage is part of the rental, not the two car detached garage. Ms. Pumphrey stated she is located about fifteen miles from the rental (see recording for detailed presentation).

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The following spoke in opposition to the request:

No one spoke.

01:05:09 Board Members' deliberation

01:07:03 On a motion by Vice Chair Jarboe, seconded by Member Bergmann, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with the applicable policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the underlying use of the property shall remain the same (single family dwelling). The proposal only involves allowing short term rentals within the existing dwelling unit. No additional development is proposed. As such, the proposal is compatible with the surrounding land uses with respect to height, bulk, scale, intensity, traffic, noise, odor, drainage, lighting and appearance, and

WHEREAS, the Board further finds that the underlying use of the property shall remain the same (single family dwelling). The proposal only involves allowing short term rentals within the existing dwelling unit. No additional development is proposed. MSD and Transportation Planning have approved the proposal, and

WHEREAS, the Board further finds that the maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental, and

WHEREAS, the Board further finds that the dwelling unit shall be limited to a single short term rental contract at a time, and

WHEREAS, the Board further finds that at no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. **The dwelling unit has 4 bedrooms which will allow a maximum of 12 occupants**, and

WHEREAS, the Board further finds that the dwelling unit shall be a single-family residence or duplex. This provision shall not be waived or adjusted, and

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WHEREAS, the Board further finds that food and alcoholic beverages shall not be served or otherwise provided by the host to any guest, and

WHEREAS, the Board further finds that outdoor signage which identifies the short term rental is prohibited, and

WHEREAS, the Board further finds that there shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. **The property has parking on the driveway and rear of the residence, and in the attached garage,** and

WHEREAS, the Board further finds that the short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances, and

WHEREAS, the Board further finds that if the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to section 11.5A.6; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1023, does hereby **APPROVE** the Conditional Use Permit to allow a short term rental that is not the primary residence of the host in an R-5 zoning district, based on the Staff Report and testimony heard today, and **SUBJECT** to the following Condition of Approval:

Condition of Approval

1. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinance.

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The vote was as follows:

**Yes: Members Fishman, Turner, Bergmann, Tharp, Vice Chair Jarboe and
Chair Allendorf**

Absent: Member Howard

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CASE NUMBER 16CUP1071

Request: Conditional Use Permit to allow a minor earth excavation/fill operation in a C-1 and C-2 zoning district
Project Name: None
Location: 100 English Station Way
Owner: Otte Patterson, LLC
Applicant: Otte Patterson, LLC
Representative: William Bardenwerper
Jurisdiction: Louisville Metro
Council District: 19 – Julie Denton
Case Manager: Jon E. Crumbie, Planning and Design Coordinator

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.)

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

01:10:16 Jon Crumbie presented the case and showed a Powerpoint presentation. Mr. Crumbie responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Nick Pregliasco, 1000 N. Hurstbourne Pkwy., Louisville, KY 40223
Ann Richard, 503 Washburn Ave., Louisville, KY 40222

Summary of testimony of those in favor:

01:17:53 Nick Pregliasco spoke on behalf of the applicant in favor of the request and showed a Powerpoint presentation. Mr. Pregliasco stated there will be a geotechnical engineer monitoring the fill. Mr. Pregliasco responded to questions from the Board Members (see recording for detailed presentation).

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01:28:17 Ann Richard spoke in response to questions from the Board Members (see recording for detailed presentation).

01:32:36 Nick Pregliasco responded to a question from Legal Counsel, John Carroll (see recording for detailed presentation).

The following spoke in opposition to the request:

No one spoke.

01:33:24 Board Members' deliberation

01:34:17 On a motion by Member Fishman, seconded by Member Tharp, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with the applicable policies of the Comprehensive Plan. No lighting or signage will be added, and

WHEREAS, the Board further finds that the subject site is located in an area that has a number of large tracts of land. A development plan has been approved for the site and will be compatible with the general character of the area with respect to height, bulk, scale, intensity, traffic, noise, dust, lighting, and appearance, and

WHEREAS, the Board further finds that the proposal has been reviewed by Transportation Planning and MSD and both have approved the plan. The Middletown Fire Protection District did not comment on the proposal, and

WHEREAS, the Board further finds that:

4.2.23 Earth Excavations/Fill, Minor not constituting a quarry, borrow pit or commercial operation and/or filling of land with non-combustible inorganic materials are allowed in any district upon the granting of a Conditional Use Permit and compliance with the listed requirements. The applicant did not ask for relief from any of the listed requirements.

A. A plan for minor excavations and/or filling must receive approval from the Metropolitan Sewer District, and the director of the Planning Commission with review and comment by the Soil Conservation Service.

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B. No excavation shall be below the normal water table, nor shall such operation have an adverse effect on the supply, quality, or purity of ground water or wells.

C. The finished surface of the site shall bear the proper relationship to that of adjoining properties.

D. Excavation and fill materials shall be moved off and on the site in vehicles approved by the City of Louisville and Jefferson County.

E. The operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or candescence to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No loose paper or debris shall be allowed on the site except on areas where active filling operations are taking place. Dusty conditions shall be corrected by sprinkling with water or by the use of calcium chloride or some other approved method. No fires shall be permitted. Any smoldering flame or spontaneous combustion shall be immediately extinguished.

F. In no event will the premises be used for salvage operations of any kind. No separation or picking of waste materials will be permitted. All unacceptable fill materials as noted elsewhere in this section shall be removed from the premises immediately after delivery.

G. No building or structure shall be erected in connection with the operation.

H. Fill material shall be limited to nonpolluting, inorganic, non-combustible materials and soil. Rubber tires, dead animals, and by-product wastes of a gaseous liquid, or semi- liquid nature such as tar, paints, solvents, sludge, rubber, and plastics and other flame or fume producers shall not be permitted as fill material.

I. Any of the requirements of Section 4.2.22 of this section which the Board finds to be appropriate or necessary may be applied to the operation.

J. Time limits and stabilization measures on completion shall be specified.

4.2.22 Earth Excavation, Filling, and Refuse Disposal Operations, Major Excavation, Filling, and Refuse Disposal Operations, Major may be allowed upon the granting of a Conditional Use Permit and compliance with the listed requirements.

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A. Defined - Any operation which involves a change in the existing ground surface, except (1) grading and shaping of land around a building or structure and except (2) minor earth excavations not constituting a quarry, borrow pit, or commercial operation and/or filling of land with non-combustible, inorganic materials (See Section 04-02-21) shall be subject to the following regulations. Such uses include but are not limited to the following: 1. Extraction and development of earth products, mineral and other natural resources, including sand, gravel pits, quarries, and borrow pits. 2. Landfills for non-combustible materials. 3. Incinerators, public/private. 4. Any other landfills (except for hazardous material). 5. Commercial composting.

B. Other Standards - The proposed operation shall meet all requirements of the adopted Environmental Performance Standards.

C. Neighborhood Protection - The operation shall be conducted in such a manner as to offer protection to the neighborhood against possible detrimental effects, taking into consideration the physical relationship to surrounding properties and access to the site including any nearby local (residential) streets

D. Information to be Filed: 1. Drawings - A plan drawn at a scale of not less than 100 feet to the inch showing the following: a. Boundaries - The exact boundaries of the site and access to public ways. b. Use of Land - Present and proposed use of land, the arrangement, fully dimensioned, of all existing and proposed buildings, structures, roads, drives, parking areas, loading spaces, water, sewer, power, and other utility lines, sanitary facilities, surface drainage, landscaping, fencing, and all other features and facilities to be installed or used in connection with the proposed operation. c. Contours - Show by contours of not less than 2 foot intervals (except on extremely steep slopes): i. The present surface of the site and the surrounding properties within 50 feet from its boundaries by the use of dashed contours. ii. The ultimate depth elevations of the area to be excavated or filled by the use of dot and dash contours. iii. The ultimate finished surface of the site after all excavation and filling operations are completed by the use of solid line contours. iv. If the ultimate finished surface elevation is exactly the same as the ultimate depth elevation, solid line contours alone may be used, but must be so labeled in the plan legend. d. Excavation Methods Cross sections at critical points to illustrate the methods to be employed in the process of excavation and fill. e. Sequence of Operations - Locations where excavation and filling operations will commence and the procedural sequence of operations. f. Surface Drainage - Methods to be employed for the management of quantity and quality of surface drainage during and after completion of operations. g. Volumes - The volumes of materials to be excavated and filled for each location on the site where operations are to take place. h. Off-Site Improvements - Improvements

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such as new roads and pavement to be installed off the site to enable the operation to be carried out. i. Adjoining Property Owners The plan shall show the names and addresses of the owners of the site and all adjoining properties, the name and address of the engineer who prepared the plan, scale, north point, the geographical relationship of the site to existing public ways and major or minor arterials as designated in the Comprehensive Plan for all of Jefferson County, Kentucky.

E. General Standards:

1. No excavation nor filling shall be made within 50 feet of any boundary of the site. **Fill will be located along the property line.**
2. Side slopes of excavation and fills in earth, sand or gravel shall not exceed one foot vertical to two feet horizontal and shall be blended into undisturbed existing surfaces.
3. A continuous fence a minimum of 6 feet high shall be placed along the boundaries of excavated areas and provided with gates of the same construction as the fence which shall remain locked at all times when active operations are not taking place and shall be properly maintained until all operations are completed.
4. Additional landscaping is required in the buffer areas between excavation and fill areas and buildings and structures.
5. Provisions shall be made for the disposal of surface water falling on or crossing the site at all times during and after completion of the operations. The operations shall not obstruct the normal flow of any public drain, or abrogate the riparian rights of any other party to a stream or drain. No operation shall begin until construction approval has been approved from the agency responsible for surface water drainage.
6. The depth of excavation and the materials to be used for fill shall not have any adverse effect on the supply, quality, or purity of ground water or wells. In no case shall an excavation be carried to a depth below an elevation of 410 feet above mean sea level.
7. A layer of clean earth at least two feet thick shall be deposited and thoroughly compacted over all fill to bring the surface to the finished surface grade as shown on the topographic plan filed with the application.
8. The finished surface of the site shall bear the proper relationship to that of adjoining properties.
9. The installation of roads, parking areas, buildings, structures, and operational facilities and equipment shall be located on the site so that adjoining properties will not be adversely affected.
10. Excavation and fill materials shall be moved off and onto the site in vehicles approved by the appropriate Director of Works.

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11. All filling operations and final approval shall be in strict conformity with the regulations of the Louisville and Jefferson County Board of Health; Air Pollution Control District; Kentucky Department for Environmental Protection and the appropriate Director of Works. Letters or Certificates of Approval of the plans by the above agencies indicating prior review shall be filed prior to the issuance of any Conditional Use Permit. Uses shall not begin until final approval has been obtained and filed in the Board of Zoning Adjustment docket file.

12. The operation shall be conducted so as not to create a nuisance or cause undue noise, vibration, dust, odor, or light to adjacent properties. The premises shall be kept in a neat and clean condition at all times. No loose paper or debris shall be allowed on the site except on areas where active filling operations are taking place. Dusty conditions shall be corrected by sprinkling with water or by the use of calcium chloride or other method that meets current state standards. No fires shall be permitted. Any smoldering flame or spontaneous combustion shall be immediately extinguished.

13. In no event will the premises be used for salvage operations of any kind. No separation or picking of waste materials will be permitted. All unacceptable fill materials as noted elsewhere in this section shall be removed from the premises immediately after delivery.

14. Except for protective fences, no building or structure erected in connection with the operation shall be located in any required yard or closer than 30 feet from any property line.

15. A specific written or site plan for vehicle cleaning facilities to prevent the tracking of mud, dirt or other debris onto any public roadway shall be reviewed and approved by the appropriate Director of Works before public hearing.

16. No materials defined as hazardous by these regulations, by the Kentucky Cabinet for Natural Resources and Environmental Protection or Federal Environmental Protection Agency will be allowed as fill.

F. Standards for Specific Operations:

1. In addition to the general standards listed above, the following additional standards shall apply to:

a. Land-fills for non-combustible material:

i. Fill material shall be limited to inorganic materials and other substances not subject to decomposition, combustion, or the production of odors.

ii. Materials shall be spread and thoroughly compacted as they are deposited.

c. Any other landfills (except hazardous materials):

i. No building or structure, except fencing, used in connection with the operation shall be located closer than 30 feet to any site boundary line.

ii. All plans shall show all pipelines used for gas collection, migration, etc. as well as the location of vents, flares, etc.

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- iii. The entire site shall be enclosed with fencing and gates as required by this Section.
- iv. All materials delivered to the site which are organic in origin and all paper, cardboard, plastic, metal and glass containers, wood fiber, sawdust, floor sweepings, plaster board, framing lumber, laths, tree stumps, trunks, branches, foliage, furniture, rags, garbage, and industrial wastes shall be deposited and thoroughly compacted in layers not to exceed two feet in depth. Rubber tires, dead animals, and by-product wastes of a gaseous, liquid, or semi-liquid nature such as tar, paints, solvents, sludge, rubber, and plastics and other flame or fume producers may be permitted as fill material after the Kentucky Natural Resources and Environmental Protection Cabinet issues permission, unless specifically prohibited by the Board of Zoning Adjustment. Each day's deposit, after compaction, shall be covered with a layer of earth at least 6 inches in thickness after compaction. The face of the fill as well as the horizontal surface shall be covered with a layer of earth to prevent any movement of fill by wind or water erosion. Alternative methods may be allowed if approved by the Kentucky Natural Resources and Environmental Protection Cabinet and the Board.
- v. There shall be no separation or picking of materials or storage for the salvage thereof (scavenging) on the site. All unacceptable fill materials as noted above shall be removed from the premises immediately after delivery.
- vi. Water lines shall be installed, connected to a public water supply, or to some other source, which by use of pumps will provide water in sufficient quantity to combat fires or settle dust.
- vii. Sanitary toilet facilities shall be installed in accordance with the requirements of the Department of Health.
- viii. No fires shall be permitted. Any smoldering flame or spontaneous combustion in the fill shall be immediately extinguished.
- ix. A watchman shall be stationed at the site at all times for whom a suitable shelter or living quarters and sanitary facilities shall be provided on the site.
- x. The premises shall be kept neat and clean at all times, no loose paper or debris shall be allowed on the site except on areas where active filling operations are taking place. Dusty conditions shall be corrected by sprinkling with water or by the use of calcium chloride or some other method that meets current state standards.
- xi. All deliveries of materials to the site, filling, spreading, compacting, and grading shall be done between the hours of 7:00 A.M. and 6:00 P.M. on weekdays only.
- xii. Filling operations shall begin immediately upon the issuance of a permit. All areas shall be refilled to finish grades as shown on the topographic map filed with the application within a period of five years after commencement of operations. The Board may extend such time limit after a public hearing, but in any event all excavations on the site shall be refilled to finish grade within 10 years after commencement of operations.

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xiii. No filling activities shall occur within 200 feet of a residential structure existing at the time of issuance of the Conditional Use Permit. **A veterinary clinic is located on site and will be near the fill operation.**

d. Borrow pits and Earth Excavations:

i. No building or structure, except fencing, used in connection with the operation shall be located closer than 30 feet from any site boundary line.

ii. Areas where excavations have been made and are taking place shall be enclosed with fencing as required above.

iii. Sanitary toilet facilities shall be installed in accordance with the requirements of the Department of Health. iv. A watchman shall be stationed at the site at all times when active operations are taking place for whom a suitable shelter or living quarters and sanitary facilities shall be provided on the site.

v. No excavation, screening, stockpiling, filling or hauling shall be done except between the hours of 7:00 A.M. and 6:00 P.M. on weekdays.

vi. Re-filling operations as required shall begin immediately on areas when excavations have been made to the ultimate depth and such areas shall be refilled to finish grade as shown on the topographic map filed with the application within a period of five years after commencement of excavation operations. The Board may extend such time limit after a hearing, but in any event all excavations on the site shall be refilled to finish grade within 10 years after commencement of operations.

G Guarantee: To insure the strict compliance with all of the above conditions and requirements, the applicant shall deposit with the Board a bond through an instrument satisfactory to the Board. The amount of the instrument shall be 150% of the estimate for remediation obtained from a qualified engineer licensed in the Commonwealth of Kentucky; now, therefore be it

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1071, does hereby **APPROVE** the Conditional Use Permit to allow a minor earth excavation/fill operation in a C-1 and C-2 zoning district, based on the Standard of Review and Analysis for Conditional Use Permits on Pages 2 through 6 of the Staff Report, the presentation and **SUBJECT** to the following Conditions of Approval:

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.

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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 an earth excavation/fill, minor without further review and approval by the Board.
3. Neighborhood Protection - The operation shall be conducted in such a manner as to offer protection to the neighborhood against possible detrimental effects, taking into consideration the physical relationship to surrounding properties and access to the site including any nearby local (residential) streets
4. All deliveries of materials to the site shall be done between the hours of 7:00 A.M. and 6:00 P.M. on weekdays only.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Vice Chair Jarboe and Chair Allendorf
Absent: Member Howard

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Request: Modification of an approved Conditional Use Permit to allow an increase in the number of units, access control gate, and deceleration lane
Project Name: Chamberlain Senior Care Facility
Location: 5217 Chamberlain Lane
Owner: Chamberlain Senior Care, LLC
Applicant: Chamberlain Senior Care, LLC
Representative: William Bardenwerper
Jurisdiction: Louisville Metro
Council District: 16 – Scott Reed
Case Manager: Jon E. Crumbie, Planning and Design Coordinator

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.)

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.

Agency Testimony:

None.

The following spoke in favor of the request:

Bill Bardenwerper, 1000 N. Hurstbourne Parkway, Louisville, KY 40223

Summary of testimony of those in favor:

01:36:41 Bill Bardenwerper requested this case be postponed indefinitely to allow the applicant and those opposed to continue their dialogue to reach some accommodations on the outstanding issues (see recording for detailed presentation).

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The following spoke in opposition to the request:

No one spoke.

01:37:53 Board Members' deliberation

01:38:42 On a motion by Member Fishman, seconded by Vice Chair Jarboe, the following resolution was adopted:

RESOLVED, that the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1084, does hereby **CONTINUE** the case to an **INDEFINITE DATE** at the request of the applicant.

The vote was as follows:

Yes: Members Fishman, Turner, Bergmann, Tharp, Vice Chair Jarboe and Chair Allendorf

Absent: Member Howard

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CHAIRMAN OR COMMISSION DIRECTOR'S REPORT

01:39:50 Chair Allendorf reminded the Board Members that February 6, 2017 will be the Board of Zoning Adjustment Annual Meeting (Election of Officers).

ADJOURNMENT

The meeting adjourned at approximately 10:20 a.m.

Chair

Secretary