

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

**May 21, 2018**

A meeting of the Louisville Metro Board of Zoning Adjustment was held on May 21, 2018 at 1:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Members Present:**

Mike Allendorf, Chair  
Rosalind Fishman, Vice Chair  
Lula Howard, Secretary  
Lester Turner, Jr.  
Richard Buttorff  
Kimberly Leanhart  
Dwight Young (left at approximately 5:32 p.m.)

**Staff Members Present:**

Joe Haberman, Planning & Design Manager  
Steve Hendrix, Planning & Design Coordinator  
Julia Williams, Planning & Design Supervisor  
Dante St. Germain, Planner I  
Jay Lockett, Planner I  
Ross Allen, Planner I  
Beth Jones, Planner II  
John Carroll, Legal Counsel  
Paul Whitty, Legal Counsel  
Sue Reid, Management Assistant

The following cases were heard:

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**APPROVAL OF MINUTES**

**MAY 7, 2018 BOARD OF ZONING ADJUSTMENT MEETING MINUTES**

**00:02:28** On a motion by Member Turner, seconded by Member Howard, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on May 7, 2018.

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Howard, Leanhart, and Vice Chair Fishman**  
**Abstain: Member Young, and Chair Allendorf**

**BOARD OF ZONING ADJUSTMENT MINUTES**  
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**BUSINESS SESSION**

**Case Number 18VARIANCE1044**

Request:	Variance to allow an accessory structure to encroach into the required side yard setback
Project Name:	4030 Leland Road Addition
Location:	4030 Leland Road
Owner:	Elaine & Stephen Gravatte
Applicant:	Steve Gravatte
Jurisdiction:	City of St. Matthews
Council District:	9 – Bill Hollander
Case Manager:	Dante St. Germain, Planner I

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

**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:**

**00:04:11** Dante St. Germain presented the case and showed the site plan (see staff report and recording for detailed presentation).

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

Steve Gravatte, 4030 Leland Road, Louisville, KY 40207

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

**00:06:13** Steve Gravatte spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

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**00:07:13      Board Members' deliberation**

**00:07:33**      On a motion by Member Howard, seconded by Member Young, the following resolution, based upon the Standard of Review and Staff Analysis, and the presentations by staff and the applicant, was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the garage currently exists, which has caused no known adverse effects, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the garage has been in its current position for many years and other properties in the neighborhood have garages with similar setbacks, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the setbacks of the existing garage are not changing, which have caused no known hazard or nuisance, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the current setback is an existing condition which is proposed to be maintained, and

**WHEREAS**, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as a garage exists with the proposed setback already, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring the applicant to relocate part of the driveway leading to the garage after the garage is shifted to the side, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction; now, therefore be it

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**Case Number 18VARIANCE1044**

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18Variance1044 does hereby **APPROVE** Variance from St. Matthews Development Code Section 4.6.C.2.b to allow a structure to encroach into the required side yard setback (**Requirement 6 ft., Request 2.8 ft., Variance 3.2 ft.**).

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

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**PUBLIC HEARING**

**CASE NUMBER 18DEVPLAN1002**

Request:	Variance to allow the structure to encroach within the rear setback and a Waiver to not provide a pedestrian access from the structure to the public sidewalk and two Waivers related to landscaping
Project Name:	3255 Bardstown Road
Location:	Cat 2B 3255 Bardstown Road
Owner:	Drew Zazofsky –Thorntons Inc.
Applicant:	Prateek Gupta – Realcraft Property Solutions LLC.
Representative:	Michael Hill – Land Design and Development Inc.
Jurisdiction:	Louisville Metro
Council District:	26 – Brent T. Ackerson
Case Manager:	Ross Allen, Planner I

**NOTE: Item #7 on the agenda was heard out of order, prior to this case.**

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 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:**

**00:18:22** Ross Allen presented the case and showed a Powerpoint presentation. Mr. Allen 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

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

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**00:33:41** Nick Pregliasco spoke in favor of the request and showed a Powerpoint presentation. Mr. Pregliasco responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

**00:52:51 Board Members' deliberation**

**00:54:10** Public Hearing was reopened to allow Mr. Pregliasco and Mr. Allen an opportunity to respond to further questions from the Board Members.

**00:57:42 Board Members' deliberation**

**01:00:06** On a motion by Vice Chair Fishman, seconded by Member Young, the following resolution, based upon the discussion, the presentation, and the site plan, was adopted:

**Category 2B Development Plan for a 4-story (sq. ft. to be determined) hotel:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that all of the applicable Guidelines of Cornerstone 2020 and the Comprehensive Plan are being met; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1002 does hereby **APPROVE** Category 2B Development Plan for a 4-story (sq. ft. to be determined) hotel, **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. A revised landscaping plan shall be submitted for existing case #15LSCAPE1072 for the gas station site located at 3255 Bardstown Rd. and a separate landscaping plan be submitted for tract 2-2 as shown on case #18DEVPLAN1002.

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2. The variance and three waivers will be on condition that 18MINORPLAT1011 is recorded with a defined access agreement as reviewed by Planning Commission Legal Counsel and consistent with the 18DEVPLAN1002 prior to Category 2B Development Plan approval.
3. Per note #16 under General Notes on the Preliminary approved development plan elevations will need to be submitted to staff for approval prior to issuance of building permits prior to staff approving the Category 2B development plan.
4. Access from Goldsmith Lane shall be approved by the Department of Public Works.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**01:02:38** On a motion by Vice Chair Fishman, seconded by Member Howard, the following resolution, based upon the presentation, the Standard of Review and Staff Analysis, and the variance application, was adopted:

**Variance from Land Development Code 5.3.2.C.2.b to allow the proposed 4-story hotel to encroach into the 25 ft. rear setback adjacent to the Father Maloney's Boys and Girls Haven:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the proposed 4 story hotel is approximately 5 feet at the closest point from the rear property line and the adjacent parcel being an R-5 zoned parcel, consist of an existing tree line with a large open space. The closest structure on the adjacent property is approximately 62 feet north/northeast of the proposed hotel, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity because the site had previously been used as a hotel with multiple structures, and

**WHEREAS**, the Board further finds that the requested variance will not cause a nuisance to the public because the proposed 4 story hotel is adjacent (parallel) to the property line and will not be accessible by hotel patrons nor the general



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public. No access is proposed for the north side of the proposed 4 story hotel so, the proximity of the building will have no negative impacts on the area, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the applicant is requesting approval to locate the proposed hotel upon the footprint of where a previously demolished hotel was present, and

**WHEREAS**, the Board further finds that special circumstances in this case include the fact that a hotel building was located on the property in this location for many years prior to the adoption of the non-residential to residential setback regulations being adopted, and

**WHEREAS**, the Board further finds that the strict application of the applicable setback regulation would require the building to be moved south approximately 20 feet, which would require a complete redesign of the existing parking lot. Recent changes to MSD rules related to the elevation of parking lots located in the floodplain would restrict the applicant since the previous impervious surface is being reutilized , and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought. The applicant is proposing to develop the site after the adoption of the applicable regulation; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1002 does hereby **APPROVE** Variance from Land Development Code 5.3.2.C.2.b to allow a proposed 4-story hotel to encroach into the 25 ft. rear setback adjacent to the Father Maloney's Boys and Girls Haven.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**01:04:00** On a motion by Vice Chair Fishman, seconded by Member Buttorff, the following resolution, based upon the presentation, and the Standard of Review and Staff Analysis, was adopted:

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**Waiver from Land Development Code 5.9.2.A.1.b.i and v to not provide a pedestrian connection from the Bardstown right-of-way traversing a parking lot with more than 100 spaces to the proposed 4-story, 119 room hotel:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that This waiver will not adversely affect adjacent property owners because this property has never had a pedestrian connection to Bardstown Road and there are plenty of other pedestrian walkways in the vicinity, and

**WHEREAS**, the Board further finds that Guideline 9, Policy A.1 states “New development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with walkways for access to public transportation stops.” The applicant has a recessed frontage along Bardstown Road/I-264 east bound on-ramp with an existing sidewalk. However, to the interior of the sidewalk along that frontage there is a drainage culvert present. Vehicular access to the site will be off of Goldsmith Lane via an appurtenance which traverses two other properties one being a parcel owned by AMF Bowling Centers Inc. The applicant states granting the waiver will not violate the Comprehensive Plan because there are multiple options for pedestrian and vehicular circulation in this area, and

**WHEREAS**, the Board further finds that the applicant is requesting the minimum necessary relief that will allow the property to be redeveloped in the manner it was originally designed and developed many years ago, and

**WHEREAS**, the Board further finds that due to natural features in the right-of-way adjacent to the site, that would better serve the area if preserved, it is not practical to require a pedestrian connection from this site to the existing sidewalk along Bardstown Road; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1002 does hereby **APPROVE** Waiver from Land Development Code 5.9.2.A.1.b.i and v to not provide a pedestrian connection from the Bardstown right-of-way traversing a parking lot with more than 100 spaces to the proposed 4-story, 119 room hotel.

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**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**01:05:20** On a motion by Vice Chair Fishman, seconded by Member Leanhart, the following resolution, based upon the Standard of Review and Staff Analysis, was adopted:

**Waiver from Land Development Code 10.2.4.A, Table 10.2.3 to not provide a 35 ft. LBA with 1.0 planting density requirement with an 8 ft. screen along the northern property line for an approximate length of 383 ft. as facing R-5 zoned parcels in a Campus Form District for proposed tract 2-2:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect the adjacent property owners because there will still be a significant amount of greenspace between the proposed building and the existing buildings on the adjacent developed property, and

**WHEREAS**, the Board further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The

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development, even with the waivers will still meet the intent of the Comprehensive Plan in that the building will still be located a significant distance from the buildings on the adjacent property. Furthermore, existing and proposed plantings along the affected property line will provide sufficient screening between the two properties. The proposed hotel acts as a screen for the vast majority of the vehicular use area as adjacent to the R-4 zoned property to the north, and

**WHEREAS**, the Board further finds that the applicant is requesting the minimum necessary relief that will allow the new hotel to occupy the area on the site where the previous hotel building was located, keeping the building in a similar fashion to how the property was originally designed and developed many years ago, and

**WHEREAS**, the Board further finds that the strict application of the applicable setback regulation would require the building to be moved south approximately 35 feet, which would require a complete redesign of the existing parking lot due to recent changes to MSD rules related to the elevation of parking lots located in the floodplain. The applicant is reutilizing the vast amount of existing asphalt/pavement that existed on this site from the previous hotel; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1002 does hereby **APPROVE** Waiver from Land Development Code 10.2.4.A, Table 10.2.3 to not provide a 35 ft. LBA with 1.0 planting density requirement with an 8 ft. screen along the northern property line for an approximate length of 383 ft. as facing R-5 zoned parcels in a Campus Form District for proposed tract 2-2.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**01:06:35** On a motion by Vice Chair Fishman, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, was adopted:

**Waiver from Land Development Code 10.2.4.A, Table 10.2.3 to not provide a 20 ft. LBA with 1.0 planting density requirement with a 6 ft. screen along**

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**the western property line for an approximate length of 162 ft. as facing Interstate 264 Ramp East for proposed tract 2-2:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect the motorists or pedestrians along Bardstown Rd./I-264 east bound on-ramp because there will still be a significant amount of existing plantings between the proposed building and right of way, and

**WHEREAS**, the Board further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants. The development, even with the waivers will still meet the intent of the Comprehensive Plan in that the building will still be located a significant distance from the buildings on the adjacent property. Furthermore, existing plantings along the affected property line will provide sufficient screening between the subject property and Bardstown Rd./I-264 east bound on-ramp, and

**WHEREAS**, the Board further finds that the applicant is requesting the minimum necessary relief that will allow the new hotel to occupy the area on the site where the previous hotel building was located, keeping the building in a similar fashion with how the property was originally designed and developed many years ago, and

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**WHEREAS**, the Board further finds that the strict application of the applicable landscape buffer setback regulation would duplicate the existing screening when screening is already present and buffering the proposed 4-story hotel; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1002 does hereby **APPROVE** Waiver from Land Development Code 10.2.4.A, Table 10.2.3 to not provide a 20 ft. LBA with 1.0 planting density requirement with a 6 ft. screen along the western property line for an approximate length of 162 ft. as facing Interstate 264 Ramp East for proposed tract 2-2.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

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**PUBLIC HEARING**

**CASE NUMBER 18DEVPLAN1038**

Request:	Variance to exceed maximum setback
Project Name:	Louisville City FC
Location:	237-243, 249-251, 255-257, 261, 267-275, & 270 N. Campbell St., 250, 350, 375, & 1080 Adams St., 214, 225-229, 249-257, 261-265, & 271 Mill St., 200, 203/203R Cabel St., 275 N Shelby St
Owner:	Louisville Metro Government
Applicant:	Louisville City FC
Representative:	Mindel Scott and Assoc., Bardenwerper Talbott and Roberts PLLC.
Jurisdiction:	Louisville Metro
Council District:	4- Barbara Sexton Smith
Case Manager:	Julia Williams, RLA, AICP, Planning Supervisor

**NOTE: Item #7 was recalled and heard prior to this case.**

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 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:**

**02:21:57** Julia Williams presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

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

John Talbott, 1000 N. Hurstbourne Pkwy., Louisville, KY 40223  
Lee Hasken, 13307 Magisterial Drive, Louisville, KY 40223

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

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**02:26:14** John Talbott spoke in favor of the request and showed a Powerpoint presentation. Mr. Talbott responded to questions from the Board Members (see recording for detailed presentation).

**02:33:13** Lee Hasken spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

**02:38:14 Board Members' deliberation**

**02:39:33** On a motion by Member Turner, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, and the Variance justification, was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since there will still be access to the buildings with the increased setbacks. The additional setbacks are to accommodate controlled entry/exit to the athletic facility, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the area currently has no established character. The lots were previously used industrially, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since there will still be access to the buildings with the increased setbacks. The additional setbacks are to accommodate controlled entry/exit to the athletic facility, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since there will still be access to the buildings with the increased setbacks. The additional setbacks are to accommodate controlled entry/exit to the athletic facility, and



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**WHEREAS**, the Board further finds that the site is surrounded by multiple roadways with surrounding development that has been under developed which is an unusual circumstance, and

**WHEREAS**, the Board further finds that setting the buildings to the property lines could create an unnecessary hardship on the safety and security of the athletic facility. The current layout allows for controlled access to the athletic facility, and

**WHEREAS**, the Board further finds that the variance will not adversely affect the public health, safety or welfare because this Soccer Stadium District development project represents a unified plan of development such that all impacts are internal to the overall site. The location of all buildings relative to the public ways have been thoughtfully considered taking into account the location of landscaping, buildings, pedestrian ways, to assure the optimal public experience in terms of aesthetics, safety, and project viability, and

**WHEREAS**, the Board further finds that the variance will not alter the essential character of the general vicinity because this Soccer Stadium District development project represents a unified plan of development such that all impacts are internal to the overall site, and

**WHEREAS**, the Board further finds that the variance will not cause a hazard or a nuisance to the public because it is actually intended to assure the protection of the public's safety while at the same time increasing the aesthetics and economic viability and practical usage of both every individual property and the overall Soccer Stadium District site, and

**WHEREAS**, the Board further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because this is a unique project designed in a unified manner taking into account characteristics barely, if at all, similar to anything else in Metro Louisville, even though given its location, mix of uses, and how these uses will need to interact one with another, and

**WHEREAS**, the Board further finds that the Variance arises from special circumstances, which do not generally apply to land in the general vicinity because, as said above, everything about this project, both in terms of its location and mix of uses is really different than elsewhere, and

**WHEREAS**, the Board further finds that strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would

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create unnecessary hardship because it would not be able to accomplish, what is explained above it needs to accomplish as this unique location, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation but rather, are the result of this unique project at this unique location; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18DEVPLAN1038 does hereby **APPROVE** Variance from Chapter 5.2.1.C.3-6 to permit Buildings D (325' +/-) and E (410' +/-) to exceed the 15' setback along Adams Street (a 310' +/- variance for Building D and 395' +/- variance for Building E).

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

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**CASE NUMBER 18VARIANCE1036**

Request:	Variance to allow an existing chain link fence to be 5 feet in the required front yard
Project Name:	Fence height
Location:	2615 Virginia Avenue
Owner:	Everett Bradford Properties
Representative:	Latonya Smith
Jurisdiction:	Louisville Metro
Council District:	1 – Jessica Green
Case Manager:	Steve Hendrix, Planning 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 5<sup>th</sup> 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:**

**02:42:06** Steve Hendrix presented the case and showed a Powerpoint presentation. Mr. Hendrix responded to questions from the Board Members (see staff report and recording for detailed presentation).

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

Latonya Smith, 6008 Ashby Lane, Louisville, KY 40272  
Everett Bradford, 3025 Kingswood Way, Louisville, KY 40216 (was sworn in but did not speak)

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

**02:47:09** Latonya Smith spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

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No one spoke.

**02:50:31      Board Members' deliberation**

**02:54:35**      On a motion by Member Young, seconded by Member Howard, the following resolution, based upon the testimony heard today, the Staff findings, and the applicant's justification statement, was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare, since the fence is located approximately 12 feet from the Virginia Avenue pavement and will not create any type of sight distance concerns, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity, since there are several chain link fences along Virginia Avenue and Hale Avenue, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public, since the fence is approximately 12 feet from the Virginia Avenue pavement, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations, since the variance is only for 18 inches, and

**WHEREAS**, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the owner is trying to limit theft and destruction, bring the yard back and allow the future residents a sense of security, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation may create an unnecessary hardship on the applicant, since the fence might have to be lowered and/or removed, and

**WHEREAS**, the Board further finds that the applicant has stated that a contractor was hired to install the fence. The owner was not aware a permit was required for the fence, and

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**PUBLIC HEARING**

**CASE NUMBER 18VARIANCE1036**

**WHEREAS**, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1036 does hereby **APPROVE** Variance from Land Development Code Chapter 4.4.3.A.1.a.i to allow an existing chain link fence to be 5 feet in the required front yard (**Requirement 42 inches, Request 60 inches, Variance 18 inches**).

**The vote was as follows:**

**Yes: Members Young, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**No: Member Buttorff**

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**PUBLIC HEARING**

**CASE NUMBER 18VARIANCE1019**

Request:	Variance to allow a proposed building addition to encroach into a required street side yard setback and side setback
Project Name:	Hometown Brewery
Location:	4031 Preston Highway
Owner:	Thomas Brown
Representative:	BTM Engineering
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Jay Luckett, Planner I

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

**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:**

**02:56:27** Jay Luckett presented the case and showed a Powerpoint presentation. Mr. Luckett responded to questions from the Board Members (see staff report and recording for detailed presentation).

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

Chris Brown, 3001 Taylor Springs Drive, Louisville, KY 40220  
Thomas Brown, 4031 Preston Highway, Louisville, KY 40213

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

**03:03:32** Chris Brown spoke in favor of the request and showed a Powerpoint presentation. Mr. Brown responded to questions from the Board Members (see recording for detailed presentation).

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**CASE NUMBER 18VARIANCE1019**

**03:09:41** Thomas Brown spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

**03:13:37 Board Members' deliberation**

**03:14:36** On a motion by Vice Chair Fishman, seconded by Member Turner, the following resolution, based upon the presentation, the Standard of Review and Staff Analysis, the Variance justification, the testimony, and the discussion, was adopted:

**Variance from Land Development Code Section 5.3.2.C.2.a to allow a structure to encroach approximately 12 feet into the required side setback along Preston Highway:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the variance will not adversely affect the public health, safety or welfare because the proposed addition continues the existing setback of the structure along Preston Hwy., and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity because the addition will continue the existing setback of the structure, and will match the materials and design of the existing structure, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as provisions for safe vehicular and pedestrian circulation have been reviewed as part of the review of the associated development plan, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the addition follows the existing setback line of the structure, and

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**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed addition would not be able to be built, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, and

**WHEREAS**, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare since the encroachment follows the existing building pattern on the site and the existing parking along the Preston Highway ROW, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the encroachment into the required yard follows an existing pattern of parking and buildings constructed at or near the property boundaries along Preston Highway, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the encroachment follows the existing building pattern on the site and the existing parking along the Preston Highway ROW, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the encroachment into follows an existing pattern of construction on the site with the building and parking located at the ROW line along the Preston Highway frontage of the subject site, and

**WHEREAS**, the Board further finds that the variance arises from the narrower ROW and distance from centerline for this lot along Preston Highway that has been established, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the yard would reduce the usable areas of the lot for the building area and the associated needed parking, and

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



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from which relief is sought since the lot with established ROW existed prior to the adoption of the current zoning regulation; and

**Variance from Land Development Code Section 5.3.2.C.2.b to allow a structure and parking area to encroach into the required 25' side yard setback where the development abuts a structure with a first floor residential use:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the variance will not adversely affect the public health, safety or welfare because the proposed addition continues the existing setback encroachment of the parking area, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity because the addition will continue the existing setback of the structure, and will match the materials and design of the existing structure, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as provisions for safe vehicular and pedestrian circulation have been reviewed as part of the review of the associated development plan, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the addition follows the existing setback line of the structure, and

**WHEREAS**, the Board further finds that the requested variance is required because of the odd shape of the existing lot and structure are laid out in a way that is different from other similar land uses in the general vicinity, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the proposed addition would not be able to be built, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, and

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**WHEREAS**, the Board further finds that the requested variance will not adversely affect the public health, safety or welfare since the encroachment follows the existing building pattern on the site and the existing parking along the Preston Highway ROW, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the encroachment into the required yard follows an existing pattern of parking and buildings constructed at or near the property boundaries along Preston Highway, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the encroachment follows the existing building pattern on the site and the existing parking along the Preston Highway ROW, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the encroachment into follows an existing pattern of construction on the site with the building and parking located at the ROW line along the Preston Highway frontage of the subject site, and

**WHEREAS**, the Board further finds that the variance arises from the narrower ROW and distance from centerline for this lot along Preston Highway that has been established, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the yard would reduce the usable areas of the lot for the building area and the associated needed parking, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the lot with established ROW existed prior to the adoption of the current zoning regulation; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1019 does hereby **APPROVE** Variance from Land Development Code Section 5.3.2.C.2.a to allow a structure to encroach approximately 12 feet into the required street side setback along Preston Highway, and Variance from Land Development Code Section 5.3.2.C.2.b to allow a structure and parking

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area to encroach into the required 25' side yard setback where the development abuts a structure with a first floor residential use.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

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**CASE NUMBER 18VARIANCE1021**

Request:	Variance to allow a proposed building to exceed infill maximum height standards and encroach into infill minimum setback standards
Project Name:	Aptitude 4 <sup>th</sup> St
Location:	2420 S 4 <sup>th</sup> St
Owner:	University Point, LLC.
Applicant:	Aptitude 4 <sup>th</sup> St, LLC.
Representative:	Dinsmore & Shohl, LLP.
Jurisdiction:	Louisville Metro
Council District:	6 – David James
Case Manager:	Jay Lockett, Planner I

**NOTE: This case was heard out of order, after Item #2 on the Agenda.**

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 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:**

**00:09:47** Jay Lockett presented the case and showed a Powerpoint presentation. Mr. Lockett responded to questions from the Board Members (see staff report and recording for detailed presentation).

**00:17:23** **NOTE: This case was held to later in the docket since the applicant had not yet arrived.**

**01:07:55** **NOTE: This case was recalled, and heard prior to Item #4 on the Agenda.**

**Agency Testimony:**

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**01:08:24** Jay Lockett quickly reviewed the Variance requests for this case and responded to questions from the Board Members (see staff report and recording for detailed presentation).

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

Cliff Ashburner, 101 S. 5<sup>th</sup> Street, Suite 2500, Louisville, KY 40202

Jon Henney, 101 S. 5<sup>th</sup> Street, Suite 1470, Louisville, KY 40202

Mark Mitchell, 1616 Camden, Suite 250, Charlotte, NC 28203

Jared Hutter, 669 River Drive, Elmwood Park, NJ 07407

James W. Hill, Jr., 3509 Colmar Drive, Louisville, KY 40211

Tia Lashan, 5311 Cane Run Road, Louisville, KY 40258

Ronald Combs, 2411 S. 5<sup>th</sup> Street, Louisville, KY 40208

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

**01:09:51** Cliff Ashburner spoke in favor of the request and showed a Powerpoint presentation. Mr. Ashburner responded to questions from the Board Members (see recording for detailed presentation).

**01:13:49** Jon Henney spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**01:18:16** Mark Mitchell spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**01:25:54** Cliff Ashburner completed his Powerpoint presentation (see recording for detailed presentation).

**01:30:44** Jared Hutter spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**01:35:29** Mr. Ashburner, Mr. Mitchell, Mr. Hutter, and Mr. Henney responded to questions from the Board Members (see recording for detailed presentation).

**01:44:19** James W. Hill, Jr. spoke in favor of the request (see recording for detailed presentation).

**01:51:14** Tia Lashan spoke in favor of the request (see recording for detailed presentation).

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**01:53:03** Ronald Combs spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

Bob Rosenbarger, 420 Creel Avenue, Louisville, KY 40208

Cery Autry, 418 Creel Avenue, Louisville, KY 40208

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

**01:54:57** Bob Rosenbarger spoke in opposition of the request and responded to questions from the Board Members (see recording for detailed presentation).

**01:58:05** Cery Autry spoke in opposition of the request (see recording for detailed presentation).

**REBUTTAL:**

**02:01:17** Cliff Ashburner spoke in rebuttal. Mr. Ashburner and Mr. Mitchell responded to questions from the Board Members (see recording for detailed presentation).

**02:13:29 Board Members' deliberation**

**02:19:24** On a motion by Vice Chair Fishman, seconded by Member Buttorff, the following resolution, based upon the presentation, the Standard of Review and Staff Analysis, and the variance justification, was adopted:

**Variance from Land Development Code Section 5.1.12.A.2.a to allow a proposed structure to encroach approximately 4 feet into the infill front yard setback standards along Creel Avenue:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the variance will not adversely affect the public health, safety or welfare because the

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structure will be setback as all other required setbacks and buffering requirements will be met on site, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity because, as there is a variety of building types in the area with a variety of existing setbacks, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the proposed structure is closer to the required setback than the existing structure on site, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the proposed setback is the same as the non-infill Land Development Code requirements for the form district, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because providing additional setback beyond the normal minimum setback for the form district would unreasonably restrict the useable area of the lot, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, and

**WHEREAS**, the Board further finds that the proposed variance, which will allow for a ten story student apartment building, will not adversely affect the public health, safety or welfare. The proposed structure will have two stories of parking, and eight stories of housing. The proposal is appropriate for the area as it is located one block from the University of Louisville main campus, and is bordered to the east across Fourth Street by four-story student housing developments known as The Arch Apartments and Reynolds Lofts. The proposed development will comply with all aspects of the Land Development Code (LDC) for a residential building of its size, and will include a multi-level parking garage on the lower levels of the building to accommodate the parking needs of residents and minimize impacts on the surrounding neighborhood, and

**WHEREAS**, the Board further finds that the variance will not alter the essential character of the general vicinity as the height of the proposed building is consistent with the other student apartment buildings nearby. The subject property is located one block from the University of Louisville main campus, and

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is bordered to the east across Fourth Street by four-story student housing developments known as The Arch Apartments and Reynolds Lofts. The applicant's proposed student housing building will be very similar in appearance, density, and use as these neighboring properties, but will have the added benefit of a built-in parking garage, without which the proposed building would be nearly identical in height and density to the surrounding student apartment buildings, and

**WHEREAS**, the Board further finds that the variance will not cause a hazard or nuisance to the public. The proposed development will comply with all aspects of the LDC for a residential building of its size, and will include a multi-level parking garage on the lower levels of the building to accommodate the parking needs of residents and minimize impacts on the surrounding neighborhood and the need to create additional off-street parking lots, and

**WHEREAS**, the Board further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal balances the need for off-street parking and the size limitations of the subject property. The variance will allow for a denser development while still providing all necessary parking on-site, and

**WHEREAS**, the Board further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The variance is the result of the need to create off-street parking on the site sufficient to service a multi-story student apartment building within the size limitations of the subject property. The other student apartment buildings in the area have large lots that accommodate multi-story apartment buildings and off-street surface parking lots. The small size of the subject property requires a multi-story parking garage to service a similar density student apartment building, which in-turn requires variance from the height restrictions of the LDC, and

**WHEREAS**, the Board further finds that the strict application of the regulations would create an unnecessary hardship because the size of the subject property limits the possible configurations of the property to accommodate both a multi-story student housing building and the requisite off-street parking. Strict application of the regulations would force the applicant to significantly reduce the number of housing units and/or on-site off-street parking spaces. The proposed variance will permit the applicant to provide student housing that is similar in density to surrounding apartment buildings while offering the requisite number of on-site off-street parking spaces, and



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**WHEREAS**, the Board further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the height requirements to this property for what will essentially be a commercial use. The proposed building will be very similar in appearance, density, and use as the other student apartment buildings across Fourth Street and near the University of Louisville campus, but will have the added benefit of a built-in parking garage; and

**Variance from Land Development Code Section 5.1.12.A.2.b to allow a proposed structure to exceed the infill maximum building height by approximately 91.5 feet:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect public health safety or welfare since the structure will be constructed up to all required standards, including fire code, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity since there are several large multi-family residential structures in the area, including multiple towers of similar height on the campus to the north of the subject site, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since the proposed structure is similar in scale to other large multi-family developments in the area, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the request will allow for an efficient use of the subject site, allowing the proposed density to be constructed and accommodate all required parking on site without the need for surface parking lots, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land, as it would be impossible to fit the number of units allowable by the zone while also meeting the parking requirements and applicable height maximums, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, and

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**WHEREAS**, the Board further finds that the proposed variance, which will allow for a ten story student apartment building, will not adversely affect the public health, safety or welfare. The proposed structure will have two stories of parking, and eight stories of housing. The proposal is appropriate for the area as it is located one block from the University of Louisville main campus, and is bordered to the east across Fourth Street by four-story student housing developments known as The Arch Apartments and Reynolds Lofts. The proposed development will comply with all aspects of the Land Development Code (LDC) for a residential building of its size, and will include a multi-level parking garage on the lower levels of the building to accommodate the parking needs of residents and minimize impacts on the surrounding neighborhood, and

**WHEREAS**, the Board further finds that the variance will not alter the essential character of the general vicinity as the height of the proposed building is consistent with the other student apartment buildings nearby. The subject property is located one block from the University of Louisville main campus, and is bordered to the east across Fourth Street by four-story student housing developments known as The Arch Apartments and Reynolds Lofts. The applicant's proposed student housing building will be very similar in appearance, density, and use as these neighboring properties, but will have the added benefit of a built-in parking garage, without which the proposed building would be nearly identical in height and density to the surrounding student apartment buildings, and

**WHEREAS**, the Board further finds that the variance will not cause a hazard or nuisance to the public. The proposed development will comply with all aspects of the LDC for a residential building of its size, and will include a multi-level parking garage on the lower levels of the building to accommodate the parking needs of residents and minimize impacts on the surrounding neighborhood and the need to create additional off-street parking lots, and

**WHEREAS**, the Board further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. The proposal balances the need for off-street parking and the size limitations of the subject property. The variance will allow for a denser development while still providing all necessary parking on-site, and

**WHEREAS**, the Board further finds that the variance arises from special circumstances that do not generally apply to land in the vicinity of the project. The variance is the result of the need to create off-street parking on the site sufficient to service a multi-story student apartment building within the size

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limitations of the subject property. The other student apartment buildings in the area have large lots that accommodate multi-story apartment buildings and off-street surface parking lots. The small size of the subject property requires a multi-story parking garage to service a similar density student apartment building, which in-turn requires variance from the height restrictions of the LDC, and

**WHEREAS**, the Board further finds that the strict application of the regulations would create an unnecessary hardship because the size of the subject property limits the possible configurations of the property to accommodate both a multi-story student housing building and the requisite off-street parking. Strict application of the regulations would force the applicant to significantly reduce the number of housing units and/or on-site off-street parking spaces. The proposed variance will permit the applicant to provide student housing that is similar in density to surrounding apartment buildings while offering the requisite number of on-site off-street parking spaces, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions taken by the applicant subsequent to the adoption of the zoning ordinance but are, instead, the result of misapplication of the height requirements to this property for what will essentially be a commercial use. The proposed building will be very similar in appearance, density, and use as the other student apartment buildings across Fourth Street and near the University of Louisville campus, but will have the added benefit of a built-in parking garage; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1021 does hereby **APPROVE** Variance from Land Development Code Section 5.1.12.A.2.a to allow a proposed structure to encroach approximately 4 feet into the infill front yard setback standards along Creel Avenue, and Variance from Land Development Code Section 5.1.12.A.2.b to allow a proposed structure to exceed the infill maximum building height by approximately 91.5 feet.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

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**02:21:11      Meeting was recessed.**

**02:21:37      Meeting was reconvened.**

**02:21:40      NOTE:** Public Hearing returned to Item #4 on the Agenda. See Page 15 of these minutes.

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**CASE NUMBER 18VARIANCE1040**

Request:	Variance to allow a fence to exceed the allowable height in the street side setback
Project Name:	1259 Bassett Avenue Fence
Location:	1259 Bassett Avenue
Owner:	R Craig Strachan & Katharine Dobbins
Applicant:	Katharine Dobbins
Jurisdiction:	Louisville Metro
Council District:	8 – Brandon Coan
Case Manager:	Dante St. Germain, Planner I

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

**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:**

**03:17:25** Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

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

Katharine Dobbins, 1259 Bassett Avenue, Louisville, KY 40204

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

**03:22:39** Katharine Dobbins spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

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**03:26:20      Board Members' deliberation**

**03:28:21**      On a motion by Member Howard, seconded by Vice Chair Fishman, the following resolution, based upon the Standard of Review and Staff Analysis, the applicant's justification, the packet that was submitted showing similar fences in the neighborhood, and that the fence has received a Certificate of Appropriateness, was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the fence is set back from the corner and will not affect public health, safety or welfare for vehicles turning, and

**WHEREAS**, the Board further finds that the requested variance will not alter the essential character of the general vicinity as there are other, similar fences in the vicinity, and the fence has received a Certificate of Appropriateness, and

**WHEREAS**, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the proposed fence is not at the corner and will not create a hazard for vehicles or pedestrians, and

**WHEREAS**, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the fence is needed to create privacy in the otherwise-exposed rear yard of a corner lot, and

**WHEREAS**, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is a corner lot that is separated from the alley, with no alley access to this lot, and

**WHEREAS**, the Board further finds that the strict application of the provisions of the regulation may deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by preventing the applicant from enjoying the use of a private rear yard, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction, and

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**WHEREAS**, the Board further finds that the applicant's justification statements adequately justify this request; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18VARIANCE1040 does hereby **APPROVE** Variance from Land Development Code Section 4.4.3.A.1.a.i to allow a fence to exceed 3.5 feet in height in the street side yard setback **(Requirement 3.5 ft., Request 6 ft., Variance 2.5 ft.)**.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

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**CASE NUMBER 18CUP1019**

Request:	Conditional Use Permit for a Short Term Rental in the Traditional Neighborhood Zoning District
Project Name:	Short Term Rental
Location:	617 W St. Catherine Street
Owner:	Andrew & Mary Huenefeld
Applicant:	Mary Huenefeld
Jurisdiction:	Louisville Metro
Council District:	6 – David James
Case Manager:	Dante St. Germain, Planner I

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

**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:**

**03:30:34** Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

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

Danielle Huenefeld, 617 W. St. Catherine St., Louisville, KY 40203

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

**03:36:01** Danielle Huenefeld spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.



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**PUBLIC HEARING**

**CASE NUMBER 18CUP1019**

**03:39:42 Board Members' deliberation**

**03:46:45** On a motion by Vice Chair Fishman, seconded by Member Howard, the following resolution, based upon the presentation, and the Standard of Review and Staff Analysis, was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the proposal does not conflict with any Comprehensive Plan policies, and

**WHEREAS**, the Board further finds that the proposal is compatible with surrounding development. No exterior alterations to the existing structure or site are proposed, and

**WHEREAS**, the Board further finds that the subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site, and

**WHEREAS**, the Board further finds that:

**4.2.63** Short Term Rental of a dwelling unit that is not the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and Short Term Rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. 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.
- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. **According to the applicant, the residence has four bedrooms, allowing twelve guests; however, the Board has limited the number of guests to eight.**

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- D. The dwelling unit shall be a single-family residence or duplex or condominium. This provision shall not be waived or adjusted. **The property contains a single-family residence.**
- E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.
- F. Outdoor signage which identifies the short term rental is prohibited.
- G. 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. **There is no on-street parking in front of the subject property. Although the property has a garage, the garage is too shallow to be legal off-street parking. The item has been addressed by the Board through Condition of Approval #3.**
- H. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.
- I. 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**, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1019 does hereby **APPROVE** Conditional Use Permit to allow short term rental of a dwelling unit in the Traditional Neighborhood Zoning District, **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental with Develop Louisville and with the Louisville Metro Revenue Commission. If the short term rental is not registered with Develop Louisville and with the Revenue Commission within 60 days of the approval of the minutes of this case, then the Conditional Use Permit shall be deemed null and void.

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2. The short term rental and host shall meet all additional provisions set forth in the Louisville Metro Code of Ordinances.
3. Number of guests shall be limited to eight due to parking issues.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

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**PUBLIC HEARING**

**CASE NUMBER 18CUP1026**

Request:	Conditional Use Permit for Off-Site Parking with relief and waivers
Project Name:	Off-Site Parking
Location:	714 S. 24th Street
Owner:	Land Bank Authority
Applicant:	JenCare Senior Medical Center
Representative:	Cardinal Planning & Design
Jurisdiction:	Louisville Metro
Council District:	6 – David James
Case Manager:	Beth Jones, AICP, Planner II

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 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:**

**03:50:40** Beth Jones presented the case and showed a Powerpoint presentation. Ms. Jones responded to questions from the Board Members (see staff report and recording for detailed presentation).

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

Kathy Matheny, 9009 Preston Highway, Louisville, KY 40219  
Ken Silkey, 209 Filly Drive, Brooks, KY 40109

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

**04:00:49** Kathy Matheny spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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**04:06:06** Ken Silkey spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

**04:07:43 Board Members' deliberation**

**04:09:27** On a motion by Vice Chair Fishman, seconded by Member Young, the following resolution, based upon the presentation, the Standard of Review and Staff Analysis, and the discussion, was adopted:

**Conditional Use Permit for Off-Street Parking Area (LDC 4.2.39):**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with Comprehensive Plan policies regarding use for off-site parking, and

**WHEREAS**, the Board further finds that the proposed parking area is small in scale and will not create significant negative impacts on the general character of the area, and

**WHEREAS**, the Board further finds that the proposal will not create substantial additional public facility requirements for the site, and

**WHEREAS**, the Board further finds that:

**4.2.39 Off-Street Parking Areas**

An Off-Street Parking Area may be permitted in a district where it is ordinarily prohibited, provided it serves a use in a building for which insufficient off-street parking space is provided, and where the provision of such parking space will materially relieve traffic congestion on the streets and when developed in compliance with the listed requirements.

- A. The area shall be located within 200 feet of the property on which the building to be served is located measured by the shortest walking distance (using sidewalks and designated crosswalks).

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- B. Walls, fences, or plantings shall be provided in a manner to provide protection for and be in harmony with surrounding residential property. **The proposal includes a 6 ft. high wood privacy fence to be installed at the property line adjoining the residential use. The applicant is providing all required LBAs and plantings at the front and rear of the property.**
- C. The minimum front, street side, and side yards required in the district shall be maintained free of parking. **The proposal requires a waiver of the north side yard to provide access to the pull-in parking spaces. All other yard requirements are met.**
- D. The area shall be used exclusively for transient parking of motor vehicles belonging to invitees of the owner or lessee of said lot. **The parking area will be used as staff parking for the adjoining senior medical clinic.**
- E. The approval of all plans and specifications for the improvement, surfacing, and drainage for said parking area will be obtained from the appropriate Director of Works prior to use of the parking area. **The proposal has received preliminary approval from Transportation Planning and MSD.**
- F. The approval of all plans and specifications for all entrances, exits, and lights shall be obtained from the department responsible for transportation planning prior to the public hearing on the Conditional Use Permit. **The proposal has received preliminary approval from Transportation;** now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1026 does hereby **APPROVE** Conditional Use Permit for Off-Street Parking Area (LDC 4.2.39), granting relief from Item #C, 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 by and approval of 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

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Permit is not so exercised, the site shall not be used for Off-Street Parking without further review by and approval of the Board.

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**04:10:57** On a motion by Vice Chair Fishman, seconded by Member Young, the following resolution, based upon the presentation, and the applicant's justification, was adopted:

**Waiver of required VUA LBA on the norther property line (LDC 10.2.10):**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners. The only adjacent property owner on the north side is the facility (medical center) the parking lot will serve immediately across the alley. The lot's side yard is an alley, thus, the need for a waiver. A parking lot on a 35 foot wide lot cannot be constructed without using the alley as part of the pull out area. The block is not heavily occupied or the alley widely used. The parking lot will not have any adverse effects on the area, and

**WHEREAS**, the Board further finds that the intent of the requirements for setbacks in the Comprehensive Plan is when the side yard is not an alley, and

**WHEREAS**, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the parking lot cannot otherwise be constructed on this lot which the Louisville Land Bank is giving to Jen Care for this specific purpose, and

**WHEREAS**, the Board further finds that strict application of the provisions of the regulation would create an unnecessary hardship on the applicant; and

**Waiver of required PP LBA on the south property line (LDC10.2.4):**

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**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners. The lot next door is vacant. There is then one house and no other immediate neighbors to the south. There is some vegetation on the vacant lot. This and the proposed 6 foot privacy fence is sufficient buffering for the site and any headlight issues with the vehicles, and

**WHEREAS**, the Board further finds that the waiver will not violate the intent of the Comprehensive Plan. The one adjoining neighbor has sufficient buffering. The tree canopy requirements for this size lot are over double the required amount, and

**WHEREAS**, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant given the available space. The 5 feet of area on the south property line does not allow for tree plantings, and

**WHEREAS**, the Board further finds that the Site Plan has double the required tree canopy proposed and a 6 foot privacy fence; and

**Waiver of required 3 ft. high masonry wall (LDC 5.5.1.A.3.a):**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners. There are no street walls on 24th street. This lot actually goes up about 3 feet in the front yard with a slight hill from the street. No purpose is served in this location by having a street wall. The parking lot will have the required VUA bushes and is 15 feet back from the street, and

**WHEREAS**, the Board further finds that the waiver will not violate the Comprehensive Plan, and

**WHEREAS**, the Board further finds that the extent of the waiver of the regulation this is the minimum necessary to afford relief to the applicant. A row of VUA bushes and a Type A tree will be planted on the front yard area, and

**WHEREAS**, the Board further finds that the proposed landscaping is the design measure for this area; now, therefore be it



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**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1026 does hereby **APPROVE** Waiver of required VUA LBA on the north property line (LDC 10.2.10), Waiver of required PP LBA on the south property line (LDC10.2.4), and Waiver of required 3 ft. high masonry wall (LDC 5.5.1.A.3.a).

**The vote was as follows:**

**Yes: Members Young, Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**04:12:53      Meeting was recessed.**

**04:13:31      Meeting was reconvened.**

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**CASE NUMBER 18CUP1034**

Request:	Modification of a Conditional Use Permit to permit an institutional use in M-3 and EZ-1 zone with variances
Project Name:	Parking addition and modification
Location:	1100 E. Market Street
Owner/Applicant:	HOTI Realty II LLC
Representative:	Land Design & Development
Jurisdiction:	Louisville Metro
Council District:	4 – Barbara Sexton Smith
Case Manager:	Beth Jones, AICP, Planner II

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 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:**

**04:13:54** Beth Jones presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

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

Sarah Beth Sammons, 503 Washburn Avenue, Louisville, KY 40222

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

**04:19:09** Sarah Beth Sammons spoke in favor of the request and showed a Powerpoint presentation. Ms. Sammons responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**

No one spoke.

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**04:22:46      Board Members' deliberation**

**04:25:15**      On a motion by Member Howard, seconded by Member Buttorff, the following resolution, based upon the Standard of Review and Staff Analysis, and the letter of explanation from the applicant, was adopted:

**Modification of a Conditional Use Permit to permit an institutional use to be located within M-3 and EZ-1 zoning districts; Addition of new parking area (Area 1.A) near railroad track to add 35 spaces; Modification of previously approved parking area (Area 1.B) to change the configuration and add twelve spaces:**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the proposal is consistent with Comprehensive Plan policies regarding compatibility with adjoining sites, mitigation of traffic effects and visual impact, and

**WHEREAS**, the Board further finds that the proposal is compatible with adjoining commercial and industrial uses, and

**WHEREAS**, the Board further finds that the site currently adequately served by all required public facilities; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1034 does hereby **APPROVE** Modification of a Conditional Use Permit to permit an institutional use to be located within M-3 and EZ-1 zoning districts; Addition of new parking area (Area 1.A) near railroad track to add 35 spaces, and Modification of previously approved parking area (Area 1.B) to change the configuration and add twelve spaces, **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 by and approval of the Board.
2. The Modified 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

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Use Permit is not so exercised, the site shall not be used for the purposes approved herein without further review by and approval of the Board.

3. The applicant will consolidate the two parcels containing the subject parking areas prior to final construction plan approval.
4. All existing Conditions of Approval attached to the site shall remain in effect.

**NOTE: Member Young left at approximately 5:32 p.m.**

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**Absent: Member Young**

**04:27:18** On a motion by Member Howard, seconded by Vice Chair Fishman, the following resolution, based upon the Standard of Review and Staff Analysis, and the applicant's presentation, was adopted:

**Variance to permit new parking area (Area 1.A) to encroach into the required 20 ft. rear setback (LDC 5.3.5.C.3.c):**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested reduction of the required rear yard will not adversely affect the public health, safety or welfare, and

**WHEREAS**, the Board further finds that the vicinity of the requested variance is a mix of commercial and industrial zoning and uses and the rear yard that is the subject of this request is adjacent to a railroad line, and

**WHEREAS**, the Board further finds that the proposed construction will meet current construction requirements and will not cause a public hazard or nuisance through excessive noise, vibration, odor or light, and

**WHEREAS**, the Board further finds that the proposed variance will not negatively impact adjoining properties, and

**WHEREAS**, the Board further finds that the site of the proposed variance is along a railroad line, and

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**WHEREAS**, the Board further finds that the proposed land use is reasonable and the development cannot take place without the variance, and

**WHEREAS**, the Board further finds that the existing lot was in place prior to the zoning regulation from which relief is being sought; and

**Variance to permit modified parking area (Area 1.B) to encroach into the required 50 ft. public street setback (LDC 5.3.5.C.3.a):**

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the requested reduction of the required rear yard will not adversely affect the public health, safety or welfare, and

**WHEREAS**, the Board further finds that the vicinity of the requested variance is a mix of commercial and industrial zoning and uses which will not be negatively affected, and

**WHEREAS**, the Board further finds that the proposed construction will meet current construction requirements and will not cause a public hazard or nuisance through excessive noise, vibration, odor or light, and

**WHEREAS**, the Board further finds that the proposed variance will not negatively impact adjoining properties, and

**WHEREAS**, the Board further finds that the site of the proposed variance is similar to setbacks on the remainder of the site, and

**WHEREAS**, the Board further finds that the proposed use of the land is reasonable and in character with the remainder of the site, and

**WHEREAS**, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought; now, therefore be it

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18CUP1034 does hereby **APPROVE** Variance to permit new parking area (Area 1.A) to encroach into the required 20 ft. rear setback (LDC 5.3.5.C.3.c) **(Requirement 20 ft., Request 2 ft., Variance 18 ft.)**, and Variance to permit modified parking area (Area 1.B) to encroach into the required 50 ft. public street

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setback (LDC 5.3.5.C.3.a) **(Requirement 50 ft., Request 40 ft., 6 in., Variance 9 ft., 6 in.).**

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**Absent: Member Young**

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**CASE NUMBER 18APPEAL1001**

Request:	Review of Land Use Determination
Project Name:	Conley Appeal
Location:	4301 Mud Lane
Owner:	Rickey and Janice Conley
Representative:	Bart L. Greenwald
Jurisdiction:	Louisville Metro
Council District:	13 – Vicki Aubrey Welch
Case Manager:	Chris French, AICP, Planning & Design 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 5<sup>th</sup> 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:**

**04:30:41** Joe Haberman presented the case on behalf of the Case Manager and showed a Powerpoint presentation. In reviewing the background of this case, Mr. Haberman advised the Board Members that the appellants had filed a waiver request regarding the size of the accessory structure and this waiver request was denied by DRC on October 18, 2017. Mr. Haberman stated the denial of the waiver was not appealed to his knowledge. Mr. Haberman reminded the Board Members that they are not hearing an appeal of the waiver, rather an appeal of the enforcement action. Mr. Haberman responded to questions from the Board Members (see staff report and recording for detailed presentation).

**The following spoke in favor of the appeal:**

Bart Greenwald, 9750 Ormsby Station Road, Louisville, KY 40223

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**CASE NUMBER 18APPEAL1001**

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

**04:45:05** Bart Greenwald spoke in representation of the appellants and cross-examined Mr. Haberman. Mr. Greenwald discussed the definition of agricultural use. Mr. Greenwald stated the appellants have blackberries, an apple orchard, a pear orchard, and chicken coops on the property, and they are paid to board horses. Mr. Greenwald asked Mr. Haberman if that were information you would want to have to determine whether or not this is agricultural use. Mr. Haberman stated a lot of the things Mr. Greenwald had referred to, staff had not observed on the property previously, so when he mentions them, he does not have an opinion on them. Mr. Haberman stated some of them may meet the definition of agricultural use, but we haven't had an opportunity to consider those things. Mr. Haberman stated all that has been considered at this point were the two cows, which was all that was in the appeal application was a picture of the two cows and the hay; not of the orchards, not of the horses and these other things that have just been mentioned. Mr. Greenwald asked if staff had been denied access to the property. Mr. Haberman explained the process of the enforcement officer observing the property from the right-of-way, and the subsequent site visit by Mr. French. Member Buttorff stated the staff person that can answer the questions is not here due to a medical emergency, and asked if it would not be better justice to postpone this until everyone is here. Mr. Greenwald stated that may be, but they have been sitting here for six hours and he would like to at least present his presentation, or maybe staff needs to go back and do this again. Chair Allendorf stated we don't have the administrative official who was out there and physically laid eyes on there. Chair Allendorf stated we're kind of getting this third party, and although Mr. Haberman is an administrative official, he did not physically lay eyes, he's just going by the documentation that was presented. Chair Allendorf stated we now have testimony entered into the record that there's chickens out there, there's horses, there's blackberries, pear trees, apple trees, all that. Chair Allendorf stated the continuation is probably something worth looking at. Paul Whitty, Legal Counsel, stated in the interest of getting the full facts and the testimony of the enforcement officer that was on site, we should continue this until we can have them present (see recording for detailed presentation).

**The following spoke in opposition of the appeal:**

Matthew Doyle, 110 Trimingham Road, New Albany, IN 47150



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

**05:08:31** Matthew Doyle spoke in opposition of the appeal. Mr. Doyle stated he was not available June 4 or June 18 for continuance. Board Members discussed available hearing dates in July (see recording for detailed presentation).

**Discussion:**

**05:11:13** Mr. Greenwald stated they are ready to go now and he can show pictures of everything that Mr. Doyle stated does not exist now (see recording for detailed presentation).

**05:11:30** Chair Allendorf stated he would like to continue this until July that way we can get the administrative official who physically walked the property and saw everything (see recording for detailed presentation).

**05:13:05** Mr. Greenwald suggested he and anyone on the opposition side work with Mr. Whitty regarding legal definitions of what things mean because staff is making some legal arguments on what things mean. Mr. Whitty stated we may be able to do that, although it is the Board's job to interpret the regulations (see recording for detailed presentation).

**05:14:05** Member Howard stated the staff report talks about an accessory structure that is larger than the primary residence, and we cannot forget about what we are here for in terms of the Notice of Violation (see recording for detailed presentation).

**05:14:53** Chair Allendorf stated if the determination is that it is agricultural, then the accessory structure will just go away, because if it's a farm then it can be bigger than your primary structure (see recording for detailed presentation).

**05:15:07** Mr. Whitty stated we are going to look at the Notice of Violation with respect to the unlawful uses as of the time the NOV was issued. Mr. Whitty stated the second part of whether it's an agricultural use relative to the size of the structure would resolve that (see recording for detailed presentation).

**05:15:39** Mr. Haberman stated we can get to whether or not actions taken subsequent to the Notice of Violation remedied the situation and allow us to close

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the case, but from an enforcement perspective, what existed on March 7<sup>th</sup> when we inspected it has some merit (see recording for detailed presentation).

**05:16:28** Board Members discussed a date for continuance (see recording for detailed presentation).

**05:20:05** On a motion by Member Howard, seconded by Member Buttorff, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 18APPEAL1001 does hereby **CONTINUE** the case to the July 2, 2018 Board of Zoning Adjustment Public Hearing.

**The vote was as follows:**

**Yes: Members Buttorff, Turner, Howard, Leanhart, Vice Chair Fishman, and Chair Allendorf**

**Absent: Member Young**

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**ADJOURNMENT**

The meeting adjourned at approximately 6:47 p.m.

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**Chair**

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**Secretary**