

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

JUNE 15, 2015

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, June 15, 2015, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present:

*David Proffitt, Chairperson
Mike Allendorf, Vice Chairperson
Rosalind Fishman, Secretary
Paul Bergmann
Lester Turner, Jr.

Members absent:

Betty Jarboe
Dean Tharp

Staff members present:

Emily Liu, Director, Planning & Design Services
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Steve Hendrix, Planning Supervisor
Sherie Long, Landscape Architect
Jon Crumblie, Planner II
Chris Brown, Planner II
Lee Wells, Planning Technician
Regina Thomas, Administrative Coordinator
Beth Stevenson, Management Assistant

*Chair Proffitt left the meeting at 12:38 p.m.

The following cases were heard:

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JUNE 15, 2015

APPROVAL OF MINUTES

JUNE 1, 2015 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting held on June 1, 2015.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

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JUNE 15, 2015

APPROVAL OF MINUTES

JUNE 1, 2015 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting held on June 1, 2015.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

**MINUTES OF THE MEETING
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JUNE 15, 2015

BUSINESS SESSION:

CASE NO. 15VARIANCE1027

Request: Board to review redesign of patio area; or the addition of 50% landscaping

Project Name: Aloft Hotel

Location: 10700 Westport Road

Owner: Indian Springs, LLC
By: William B. Bardenwerper, Attorney & Agent
1000 N. Hurstbourne Parkway, 2nd Floor
Louisville, KY 40223

Applicant: Same as owner

Representative: Mindel Scott & Associates
Amy Cooksey
5151 Jefferson Blvd.
Louisville, KY 40219

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 17—Glen Stuckel

Staff Case Manager: David Wagner, 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 was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained at the Planning and Design Services offices located at 444 S. 5th Street).

Agency Testimony:

Steve Hendrix, Planning Supervisor, presented the case for staff case manager, David Wagner. He said the applicant submitted renderings showing the patio area with the additional greenspace the Board requested.

Discussion:

Chair Proffitt said it looks good and appreciates the applicant adding more landscaping.

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BUSINESS SESSION:

CASE NO. 15VARIANCE1027

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 15, 2015 public hearing proceedings.

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

WHEREAS, the Board finds from the file of this case and the additional landscaping requested by the Board in the outdoor patio area is sufficient;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the renderings showing the redesign of the outdoor patio area which includes additional greenspace/landscaping which was requested by the Board at the June 1, 2015 public hearing.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

**MINUTES OF THE MEETING
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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 14CUP1003

Request: An application for a Conditional Use Permit to allow potentially hazardous or nuisance use (staging lot for trucks and trailers) in an M-3 Zoning District.

Project Name: Cabel Street lot

Location: 151 & 201 Cabel Street

Owner: Swift Pork Company
1770 Promontory Circle
Greeley, CO 80634

Applicant: JBS USA, LLC & Swift Pork Company
John W. Cliff
1200 Story Avenue
Louisville, KY 40206

Representative: Frost Brown Todd, LLC
Glenn Price
400 West Market St., Ste. 3200
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Steve Hendrix, Planning Supervisor

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

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

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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 14CUP1003

DISCUSSION:

Glenn Price, the applicant's attorney; and Jon Salomon, representative for the Butchertown Neighborhood Association, discussed various dates to continue to and decided on August 24, 2015. Emily Liu, Planning & Design's Director, said this date should work, if there are no scheduling issues with the Old Jail Courtroom. She said if there are, they will have to discuss it again at the next BOZA meeting on July 6, 2015. ;

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 15, 2015 public hearing proceedings.

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. 14CUP1003 to **AUGUST 24, 2015**.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

**MINUTES OF THE MEETING
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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1024

Request: Variances to allow a proposed building to exceed required setbacks.

Project Name: Thornton's

Location: 4500, 4506 & 4508 S. Third Street

Owner/Applicant: Thorntons Inc.
Jode Ballard, Sr. Manager of Development
10101 Linn Station Road, #200
Louisville, KY 40223

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

Representative: Land Design & Development, Inc.
Ann Richard
503 Washburn Avenue, Suite 101
Louisville, KY 40222

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 21—Dan Johnson

Staff Case Manager: Christopher Brown, Planner II

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

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

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NEW BUSINESS:

CASE NO. 15VARIANCE1024

Agency Testimony:

Staff Case Manager, Chris Brown discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant will be removing the existing building and construct a larger building in a similar location. He said that the Development Review Committee (DRC) approved the development plan and associated waivers on June 3, 2015. Member Fishman asked if there were any elevations. Mr. Brown said the applicant may have them.

The following spoke in favor of this request:

Glenn Price, Attorney.

Summary of testimony of those in favor:

Glenn Price, the applicant's attorney, said the plan and waivers were unanimously approved at DRC. Chair Proffitt asked if the landscaping will be similar to what's on the PowerPoint, since none is shown on the plan. Mr. Price said yes and agreed to a condition of approval regarding this.

Jode Ballard, the applicant, said they will be updating the entire fuel system on the property.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

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NEW BUSINESS:

CASE NO. 15VARIANCE1024

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 15, 2015 public hearing proceedings.

Variances—To allow a proposed building to exceed the maximum setbacks:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.2.2.C.1.a. of the Land Development Code to allow a proposed building to exceed the 25' maximum setback from South Third Street by 122 feet; and a variance from Chapter 5.5.1.A.2 of the Land Development Code to allow the proposed building to exceed the 0' corner setback from Southern Heights Avenue and South Third Street; and

WHEREAS, the Board finds that the variances will not adversely affect the public health, safety or welfare since the building will be located in a similar location as the existing structure; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the building follows the established pattern of extended setbacks on the subject site for the gas canopy and associated structures; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public since the building is located to the rear of the site and maintains the extended setbacks previously established on the subject site for the gas canopy and vehicular access; and

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NEW BUSINESS:

CASE NO. 15VARIANCE1024

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since additional building setbacks had previously been granted on the subject site; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship by requiring construction of the building at the maximum setback line and not following the established building pattern on the site with gas canopy as well as parking being required to move to the rear of the site; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the building pattern of the site had been previously established by prior approved variances;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances **ON CONDITION** that the landscaping presented at today's hearing in the PowerPoint presentation be substantially the same.

The variances allow:

1. The proposed building to be 147 feet from South Third Street.
2. The proposed building to be 133'/21' at the right of way intersection between Southern Heights Avenue and South Third Street.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

**MINUTES OF THE MEETING
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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1039

Request: Variance to allow a proposed building to exceed the maximum setback.

Project Name: Chipotle

Location: 420 South Hurstbourne Parkway

Owner: JHS Vinings, LLC
Aaron Thompson
11411 Park Road
Anchorage, KY 40223

Applicant: JDG Vinings IV, LLC
Brian Evans
320 Whittington Parkway, Suite 304
Louisville, KY 40222

Representative: Blomquist Design Group, LLC
Marv A. Blomquist
10529 Timberwood Circle, Suite D
Louisville, KY 40223

Jurisdiction: Hurstbourne

COUNCIL DISTRICT 18—Marilyn Parker

Staff Case Manager: Christopher Brown, Planner II

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

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

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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 15DEVPLAN1039

Agency Testimony:

Staff Case Manager, Chris Brown discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing a 2,300 sq. ft. Chipotle restaurant with a 700 sq. ft. outdoor patio. The development plan and associated waivers will go before the Development Review Committee on June 17, 2015. Mr. Brown said the current regulations and the 2006 regulations are conflicting, so the Board should decide what to follow. Chair Proffitt asked if they have a landscape plan. Mr. Brown said they will be meeting the landscape requirements.

The following spoke in favor of this request:

Marv Blomquist, submitted information into the record.

Summary of testimony of those in favor:

Marv Blomquist, the applicant's representative, said the proposed restaurant will match the existing Panera Bread's setbacks; and discussed the access in and out of the property. Mr. Blomquist said the landscaping will look similar to Panera Bread but without the wall.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Board of Zoning Adjustment deliberation.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to

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NEW BUSINESS:

CASE NO. 15DEVPLAN1039

obtain a copy. The recording of this hearing will be found on the CD of the June 15, 2015 public hearing proceedings.

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.5.1.A.2 of the 2006 Land Development Code to allow the proposed building to exceed the 0' corner setback from South Hurstbourne Parkway Avenue and Williamsburg Plaza to 20'/105'; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since safe pedestrian access is provided from the public right-of-way to the building entrance; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the proposal is compatible with the pattern of development in the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since safe pedestrian access is provided from the public right-of-way to the building entrance and since safe vehicular maneuvering has been provided; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the proposal is compatible with the pattern of development within the area; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship since the proposal is compatible with the pattern of development within the area and allows for the majority of the required parkway buffer to be provided along the street frontages; and

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NEW BUSINESS:

CASE NO. 15DEVPLAN1039

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

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building to be 20'/105' from the right of way intersection from South Hurstbourne Parkway Avenue and Williamsburg Plaza.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1030

Request: Variances from the Land Development Code to allow a proposed addition to encroach into the required side yard; and to allow a reduction in the private yard area.

Project Name: Residential request

Location: 1204 Rogers Street

Owner: Timothy & Vonako Engle
1204 Rogers Street
Louisville, KY 40204

Applicant: American Home Design
163 Old Todds Road
Lexington, KY 40509

Representative: Robert Klein, Esq.
239 S. 5th Street, 17th Floor
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 4—David Tandy

Staff Case Manager: Jon Crumie, Planner II

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

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

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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1030

Agency Testimony:

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing a room addition to the existing house. He said gutters and downspouts are not on the plan and that the applicant will need to explain where they will be placed and where the water will flow.

The following spoke in favor of this request:

No one appeared for this case.

Summary of testimony of those in favor:

No one.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Chair Proffitt said if the Board votes to approve the request to add a condition of approval that the gutters and downspouts be shown on the plan and that the downspouts be directed toward the applicant's rear yard.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 15, 2015 public hearing proceedings.

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

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NEW BUSINESS:

CASE NO. 15VARIANCE1030

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances from the Land Development Code to allow a proposed addition to encroach into the required side yard; and to allow a reduction in the required private yard area; and

WHEREAS, the Board finds that the variances will not adversely affect the public health, safety or welfare because the proposed addition will be matching the current condition on site; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the proposed addition will be compatible with the existing structure and match the existing building alignment; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the proposed addition will not affect adjacent residential properties to the east; and

WHEREAS, the Board finds that the variance for the side yard will not allow an unreasonable circumvention of the zoning regulations because there are similar encroachments of this type throughout the surrounding area; and the variance for the reduction of the private yard area will not allow an unreasonable circumvention of the zoning regulations because even without the addition, the private yard requirement will not be met; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the site was developed before the current regulations were adopted; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the owner is trying to conform to the existing conditions on site;

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NEW BUSINESS:

CASE NO. 15VARIANCE1030

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances **ON CONDITION** that gutters and downspouts be provided where the downspouts will be directed away from adjacent property owners.

The variances allow:

1. The proposed addition will be 0 feet from the east side property line.
2. The private yard area will be 431 square feet.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1031

Request: Variances from the Land Development Code to allow a proposed addition to encroach into the required yards.

Project Name: Thornton's

Location: 8400 Dixie Highway

Owner: Thornton's Inc.
Jode Ballard, Agent
10101 Linn Station Road
Louisville, KY 40223

Applicant: Same as owner

Representative: American Engineers
Joe Watson
65 Aberdeen Drive
Glasgow, KY 42141

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 14—Cindi Fowler

Staff Case Manager: Jon Crumbie, Planner II

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

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

Agency Testimony:

Staff Case Manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing

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NEW BUSINESS:

CASE NO. 15VARIANCE1031

an addition to the existing Thornton's; and has suggested adding faux windows or more animating features along the West Pages Lane facade.

The following spoke in favor of this request:

Joe Watson.

Jode Ballard.

Summary of testimony of those in favor:

Joe Watson said he would answer any questions the Board had.

Jode Ballard explained the design. Chair Proffitt asked him to provide animating features on two sides of the building; and that this will be staff approvable. Chair Proffitt said the Board will review the changes in business session on July 6, 2015. Mr. Ballard asked if he could still get his permits now. Chair Proffitt said yes.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Chair Proffitt restated the condition of approval as stated above.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 15, 2015 public hearing proceedings.

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NEW BUSINESS:

CASE NO. 15VARIANCE1031

Variances—To allow a proposed addition to encroach into the required yards:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting variances to allow a proposed addition to encroach into the required west and front property lines; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposed addition will be matching the current conditions on the site; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity because the proposed addition will be compatible with the existing structure and match the existing building alignment; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public because the existing structure has been in place for approximately 20 years

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the structure in its existing configuration is approximately 15 feet from the side property line; and because landscaping will be added near the addition along the front property line; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the site is located on a corner and transition zone; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the addition could not be built considering the existing condition; and

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CASE NO. 15VARIANCE1031

WHEREAS, the Board finds that the variances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the owner is trying to conform to the existing conditions on the site;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variances **ON CONDITION** that the applicant include animating features (windows etc.) on two sides of the building and will come back before the Board to review and approve on July 6, 2015 in business session.

The variances allow:

1. The proposed addition to be 15 feet from the west property line.
2. The proposed addition to be 22.2 feet from the front property line.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1019

Request: Variance and waiver from the Land Development Code to allow a proposed building and menu board to encroach into the required street side yard and to allow a proposed dumpster to encroach into the required side yard; also a Category 2B Review.

Project Name: Taco Bell

Location: 1805 South Brook Street

Owner: Louisville & Jefferson County Metro Government
Cathy Duncan
527 W. Jefferson Street
Louisville, KY 40202

Applicant: Redbird Acquisitions, LLC
c/o Miller & Wells, PLLC
710 W. Main Street, 4th Floor
Louisville, KY 40202

Representative: WD Partners
Yumma Siddiqi
19100 Von Karman Avenue, #600
Irvine, CA 92612

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 6—David James

Staff Case Manager: Sherie' Long, Landscape Architect

Chair Proffitt recused himself from this case.

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

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

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JUNE 15, 2015

NEW BUSINESS:

CASE NO. 15VARIANCE1019

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

Agency Testimony:

Staff Case Manager, Sherie' Long discussed the case summary, standard of review and staff analysis from the staff report. She said the applicant is building a new Taco Bell since the previous site will be used for student housing for the University of Louisville. She said more animating features should be added along East Bloom Street; and that the applicant needs to discuss mitigation of headlights and noise. Mr. Turner said the applicant should provide a buffer near the railroad tracks for the safety of citizens.

The following spoke in favor of this request:

Ellen Selle, GPD Group, 520 S. Main Street, Suite 2531, Akron, OH 44311.

Matthew Visiano, Yum Brands Inc., 1900 Colonel Sanders Lane, Louisville, KY 40213.

Mr. C. Hamm, Redbird Acquisitions c/o Miller & Wells, PLLC, 710 W Main Street, 4th floor, Louisville, KY 40202.

Thomas Lee, 1900 Colonel Sanders Lane, Louisville, KY 40213.

Summary of testimony of those in favor:

Ellen Selle, the applicant's representative, said the new Taco Bell will be one of a kind, with outdoor seating and nice landscaping. Ms. Selle discussed the access points and said it meets the turning radius. She discussed the landscaping that will be provided which meets the overall requirements. Ms. Long said the development should have continuous screening around the site; and is deficient two perimeter trees. Chair Proffitt asked if there were any obstacles to create a controlled crossing at the railroad. Ms. Selle said she is not sure, but could install a fence. Chair Proffitt said any roof mechanicals need to be screened; and that a more durable material should be used to screen the dumpster. Member Allendorf said he liked the U of L mural; and that the applicant could add the Twin Spires or other city highlights. The Board discussed the safety of access during peak traffic hours.

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Matthew Visiano with Yum Brands Inc. said they are trying a new concept where guests can see their food being made. He said they are not adding more windows because it will be stock area; but said the restaurant and landscaping will look nice.

Mr. Hamm, the developer, was sworn in. Chair Proffitt asked if this development is associated in any way to the University of Louisville. Mr. Hamm said they are working on it. Chair Proffitt said he would have to abstain due to a conflict of interest. Member Fishman had concerns about headlights shining into a nearby building (possibly dorms). Mr. Hamm said he doesn't know if there will be windows there.

Thomas Lee, the applicant's architect, said he can answer any questions the Board may have.

The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

Member Bergmann suggested a buffer or fence near the railroad tracks; and a buffer along the south property line. Member Allendorf said it might be difficult since the applicant might have to receive federal government approvals. Member Turner said he is concerned about the safety of people living in the area without a buffer or fence by the railroad tracks. The Board discussed the condition of approval that the applicant submit a revised plan resolving the 27 technical review items; and a condition of approval for the 7th waiver that the applicant include a fence or buffering along the east property line to detour people from crossing the railroad tracks and that this be brought back before the Board on July 6, 2015 for review.

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Variance—To allow a proposed building (Taco Bell) and menu board to encroach into the street side setback along East Bloom Street:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.3.5.C.3.a, of the Land Development Code to allow a new building and menu board to encroach into the street side setback along East Bloom Street; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the location of the building and menu board will not interfere or impede traffic; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the perimeter planting will be provided to buffer and enhance the street side yard of the property which will reduce the impact of the location of the building, drive-thru lane and menu board and overall, improve the existing condition along East Bloom Street; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed perimeter plantings including trees and shrub hedge will reduce the impact of the building and drive-thru being so close to the street and pedestrian sidewalk; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because this is a corner lot; and because corner lots are required to provide large setbacks along both street frontages

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which reduce the buildable area of the lot; however, the applicant has utilized the limit area of the site; and because the layout of the site provides access to the drive-thru and parking in a safe and reasonable configuration; and

WHEREAS, the Board finds that the variance arises from special circumstances because the lot is a corner lot with large setbacks along both street frontages which reduce the buildable area of the site; and because the proposed use, restaurant with drive-thru, is restricted by the requirement to have sufficient stackable area for the drive-thru and be located on the site to provide safe and adequate traffic flow; and because this requirement limits the configuration and layout; and

WHEREAS, the board finds that the strict application of the provisions of the regulation would create an unnecessary hardship and deprive the applicant of the reasonable use of the land because locating the building outside the setbacks would not allow for adequate vehicular and pedestrian circulation;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow a proposed new building and menu board to be 16.5 feet from the north side property line **ON CONDITION** that the applicant submit a revised development plan resolving the 24 technical review items in the staff report; and that the revised plan be brought back before the Board in business session on July 6, 2015 for review.

YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: Member Proffitt.

Waiver #1—To allow parking in the front and side setbacks:

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

WHEREAS, the Board finds from the file of this case, the staff report; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the

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applicant is requesting a waiver from Section 5.5.2.C.2.a, of the Land Development Code to allow parking in the front and side setbacks; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the parking is located away from the building and street frontage; and because parking is located between the building and the adjacent property to the south; and because due to the lot width and the setback requirements, the buildable area is very limited to allow for the building, parking and drive-thru; and because the location of the parking is in the best location for the development; and

WHEREAS, the Board finds that the waiver is compatible and will not violate specific guidelines of Cornerstone 2020 because Guideline 2, Policy 15 states to encourage the design, quantity and location of parking in activity centers to balance safety, traffic, transit, pedestrian, environmental and aesthetic considerations; and because Guidelines 3, Policy 1 states to ensure compatibility of all new development and redevelopment with the scale and site design of nearby existing developments and with the pattern of development within the form district. Guideline 3, policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines. Guideline 7, policy 3 states to evaluate developments for their ability to promote mass transit and pedestrian use, encourage higher density mixed use developments that reduce the need for multiple automobile trips as a means of achieving air quality standards and providing transportation choices. Guideline 9, policy 1 states that new development and redevelopment should provide, where appropriate, for the movement of pedestrians, bicyclists and transit users with location of retail and office uses, especially close to the roadway to minimize the distance pedestrians and transit users have to travel. The purpose of the requirement is to promote mass transit and pedestrian use and reduce vehicle trips in and around the site, and to reduce the distance pedestrians and transit users have to travel. The applicant has provided the parking in the best location for this lot. The parking is located between the building and the adjacent property which reduces the impact on the two adjacent streets, plus side parking lots are preferred; and

WHEREAS, the Board finds that the extent of waiver of the regulation is the minimum necessary to afford relief to the applicant since the parking is located to

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the side of the building, which is preferred, and only 1.5 spaces encroach into the front setback; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived, because considering the lot width, the location of the parking to the side of the proposed building is the best configuration;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow parking in the front and side setbacks **ON CONDITION** that the applicant submit a revised development plan resolving the 24 technical review items in the staff report; and that the revised plan be brought back before the Board in business session on July 6, 2015 for review.

YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: Member Proffitt.

Waiver #2—To allow the ordering station/menu board and dumpster to be located in the setbacks:

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

WHEREAS, the Board finds from the file of this case, the staff report; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver to from Section 5.5.5A.1 of the Land Development Code to allow the ordering station/menu board and dumpster to be located in the setbacks; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the menu board is located adjacent to the street and will be screened by new plantings, including trees and a hedge which will reduce the impact of the menu board in the setback; and because the location of the dumpster will be located at the rear of the property and will be

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screened with an 8 ft. wooden structure which reduces the impact of the adjacent property owners; and

WHEREAS, the Board finds that the waiver is compatible and will not violate specific guidelines of Cornerstone 2020 because Guideline 2, Policy A.4 encourages proposed developments are compact and results in an efficient land use pattern and cost effective infrastructure investment; and because Guideline 3, Policy 1, states that compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district; and because Guideline 3, Policy 23 states that setbacks, lot dimensions and building heights should be compatible with those of nearby developments that meet form district guidelines; and because the waiver is compatible with the established pattern of development in scale and design of the vicinity; and because the menu board and dumpster are being screened with plantings or a wooden structure to lessen the impact of their location in the setbacks; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the impact of the location of both the menu board and dumpster are being reduced by plantings (trees and shrubs) of the wooden fencing; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and create an unnecessary hardship on the applicant because of the size of the lot and locating the menu board and trash dumpster in the required setback would eliminate the drive-thru service, which is an essential operation for Taco Bell;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow the ordering station/menu board and dumpster to be located in the required setbacks **ON CONDITION** that the applicant submit a revised development plan resolving the 24 technical review items in the staff report; and that the revised plan be brought back before the Board in business session on July 6, 2015 for review.

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YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: Member Proffitt.

Waiver #3—To allow outdoor seating in the front setback; and to not provide the required 5' buffer planting between the outdoor seating area and the proposed residential development to the south:

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

WHEREAS, the Board finds from the file of this case, the staff report; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.5.5.A.1, of the Land Development Code to allow the outdoor seating area in the front setback and to not provide the required 5' buffer planting between the outdoor seating area and the proposed residential development to the south; and

WHEREAS, the Board finds that the requested waiver will not affect adjacent property owners because the proposed location of the outdoor seating is in keeping with the Campus Form and encourages pedestrian traffic in the area; and because a low wall, which separates the outdoor seating area from the drive-thru and street is being provided around the seating located in front of the building; and because the outdoor seating along the side of the building is separated from the adjacent property by the drive land and parking spaces; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy A.21, encourages appropriate transitions between uses that are substantially different in scale and intensity or density of development such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions or setback requirements; and because the proposed parking spaces and drive lane are located between the outdoor seating area and the adjacent property there is some what a transition between the uses; plus, the applicant is providing a low wall around the perimeter of the seating area in front of the building which helps provide screening; and

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WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the location of the outdoor seating will encourage pedestrian traffic and is located away from the adjacent property line; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district to compensate for non-compliance with the requirements to be waived because a low wall will be provided separating the outdoor seating area from the street; and because the applicant has located the outdoor seating away from the adjacent property line; and if the applicant should abide by the regulations, it would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the outdoor seating area would not be allowed as proposed;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to allow outdoor seating in the front setback and not provide the required 5' buffer planting between the outdoor seating area and the proposed residential to the south **ON CONDITION** that the applicant submit a revised development plan resolving the 24 technical review items in the staff report; and that the revised plan be brought back before the Board in business session on July 6, 2015 for review.

YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: Member Proffitt.

Waiver #4—To not provide the required entrance on the north façade facing East Bloom Street; and to not provide the required 50% wall surface in clear glass and doors:

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

WHEREAS, the Board finds from the file of this case, the staff report; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.5.2.A.1 of the Land Development

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Code to not provide the required entrance on the north façade facing East Bloom Street; and Section 5.6.1.C.1 of the Land Development Code to not provide the required 50% wall surface in clear glass and doors; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the applicant is providing entrances from the parking lot and the front of the building facing South Brook; and because providing an entrance on the East Bloom Street would require pedestrians to cross the drive-thru traffic lane which could be unsafe and dangerous; and because the design of the interior kitchen and equipment does not allow the required 50% of the wall surface to be clear glass; however, not providing the clear glass will not affect the adjacent property owners; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 1 and 2 calls for the compatibility of all new development and redevelopment with the scale and site design of nearby existing development and with the pattern of development within the form district; and because the type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code; and because when accessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code; and because the proposal is for a non-residential use; and because the Land Development Code provides building design standards for non-residential and mixed use buildings; and because the purpose of the regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, pilasters, piers, variation of material, entrances, storefront windows, and other animating features; and because the applicant is providing building materials and animation of the façade which mitigates the request to not provide an entrance on the façade facing East Bloom Street; and because the applicant is providing trees and shrub plantings along the perimeter of the East Bloom Street façade to mitigate the lack of clear glass and doors; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is

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providing adequate access to the facility for both pedestrian and vehicular customers; and

WHEREAS, the Board finds that the strict application of the provisions of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because requiring an entrance along the drive-thru façade will be dangerous for pedestrian customers; and

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the required entrance on the north property line facing East Bloom Street; and to not provide the required 50% of the wall surface to be clear glass and doors **ON CONDITION** that the applicant submit a revised development plan resolving the 24 technical review items in the staff report; and that the revised plan be brought back before the Board in business session on July 6, 2015 for review.

YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: Member Proffitt.

Waiver #5—To not provide one of the required interior trees:

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

WHEREAS, the Board finds from the file of this case, the staff report; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.13 of the Land Development Code to not provide one of the required interior trees; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the interior landscape planting proposed meets the square footage requirements; plus, the street perimeter tree planting will be provided and the tree canopy requirements will be met while allowing for adequate circulation and vehicular and pedestrian traffic; and

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WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 13, Policy 5 calls for standards to ensure the creation and/or preservation of tree canopy as a valuable community resource; and because the purpose of the interior landscape areas (ILA's) is to break up large impervious areas and allow for a greater distribution of tree canopy coverage; and because the applicant is providing two of the required interior trees and the required trees along the street perimeters; plus, the applicant is exceeding the tree canopy requirement of 20% coverage; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the applicant is providing two of the three interior trees, all the street perimeter trees and exceeds the tree canopy cover; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the lot is small and providing the third interior tree, would impede vehicle circulation on the site;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide one of the required interior trees **ON CONDITION** that the applicant submit a revised development plan resolving the 24 technical review items in the staff report; and that the revised plan be brought back before the Board in business session on July 6, 2015 for review.

YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: Member Proffitt.

Waiver #6—To reduce the required 10 ft. VUA/LBA along East Bloom Street to 3.3 feet:

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

WHEREAS, the Board finds from the file of this case, the staff report; the site plan; the PowerPoint presentations; the evidence including the applicant's

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justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.6 of the Land Development Code to reduce the required 10 ft. VUA/LBA along East Bloom Street to 3.3 feet; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the applicant is providing the required plantings in the reduced buffer area; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policy 9, calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigates when appropriate; and because Guideline 3, Policies 21 and 22 which calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact 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, dirt, litter, junk, outdoor storage and visual nuisances; and because Guideline 3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered; and because Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban and rural areas; and because Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses; and because 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 air borne and water borne pollutants; and since the applicant will be providing the required plantings in the reduced buffer area, the guidelines and policies of Cornerstone 2020 are not being violated; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, because required plantings in the reduced buffer area will be provided; and

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WHEREAS, the Board finds that the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship because the drive thru component is a unique circumstance which does not apply to commercial/retail uses which is also along a street side yard; the side yard allows adequate visibility and motor access to the restaurant;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to reduce the required 10' VUA/LBA along East Bloom Street to 3.3 feet **ON CONDITION** that the applicant submit a revised development plan resolving the 24 technical review items in the staff report; and that the revised plan be brought back before the Board in business session on July 6, 2015 for review.

YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: Member Proffitt.

Waiver #7—To reduce the required 5' VUA/LBA to 2.3'; and to eliminate the screening and planting along the southern perimeter:

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

WHEREAS, the Board finds from the file of this case, the staff report; the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.10 of the Land Development Code to reduce the required 5' VUA/LBA to 2.3'; and to eliminate the screening and planting along the southern perimeter; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because the proposed residential use will be campus housing or dormitories; and

WHEREAS, the Board finds that the waiver will not violate the Comprehensive Plan because the proposed Taco Bell restaurant site layout will allow for the

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merging of the adjacent residential use and installing a buffer along the south property line will reduce access from the property to the south; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the proposed layout and size of the lot will not allow enough room for a hedge; and because the proposed use of the property to the south should allow for access across the entire property line; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived because the proposed landscaping areas have been maximized to provide as much landscaping as possible but will still allow access throughout the site to integrate with the surrounding area;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to reduce the 5' VUA/LBA to 2.3' and eliminate the screening and planting along the southern perimeter **ON CONDITION** that the applicant revise the plan to possibly add a fence or buffering along the east property line to detour people from crossing the railroad tracks and that this be reviewed by the Board in business session on July 6, 2015.

YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: Member Proffitt.

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Request: Variances, Waivers and Category 3 Plan.

Project Name: Kroger L-785 – 4915 Dixie Hwy.

Location: 4915 Dixie Hwy.

Owner: Dixie Associates
Todd Metzmeier, Real Estate Manager
P.O. Box 6706
Louisville, KY 40206

Applicant: The Kroger Company
Dave Prueter
1600 Ormsby Station Road
Louisville, KY 40223

Representatives: Heritage Engineering, LLC
John Campbell
642 South 4th Street, Suite 100
Louisville, KY 40202

Scott Hannah
603 N. Shore Drive, #100
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 3—Mary Woolridge

Staff Case Manager: Brian Davis, AICP, Planning Supervisor

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

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and was available to any interested party prior to the public hearing. (The staff report is part of the

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case file maintained at the Planning and Design Services offices located at 444 S. 5th Street).

Agency Testimony:

Staff Case Manager, Brian Davis discussed the case summary, standard of review and staff analysis from the staff report. He said the applicant is proposing to demolish the existing retail and construct a new 123,180 sq. ft. grocery store. There will also be a fueling station; Park-n-Ride area; redesigned parking areas and new internal landscape areas (ILA). He said based on the standard of review and staff's analysis is not in favor of the waiver to not provide the parking lot connection to the south.

The following spoke in favor of this request:

Scott Hannah.

Dave Prueter.

Summary of testimony of those in favor:

Scott Hannah, the applicant's representative, explained the details of the proposal including landscaping, graffiti proof fence, construction materials (brick), lighting and the TARC stop. He said there will also be outdoor seating and internet shopping where customers can order on line and employees will bring the groceries to your car. Chair Proffitt asked if they have designed the proposal with the upcoming Dixie Highway improvements. Mr. Hannah said yes.

Dave Prueter, said he manages the real estate transactions with Kroger. He said there was a cross over access agreement that was supposed to be negotiated in 2010 but never transpired. He said this store will be the anchor for the area and does not want access from Aldi's to their property. Mr. Davis said there's a stub in place for this connection.

The following spoke neither for nor against the request:

No one.

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

No one.

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The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

The Board discussed the access points and cross-over access issue.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 15, 2015 public hearing proceedings.

Waiver #2—To not provide the parking lot connection to the south:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence including the applicant's justification statement, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 5.5.2.B.1.a. of the Land Development Code to not provide the parking lot connection to the south; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners because it will allow the existing site separation to remain as it exists today; and because a secondary indirect access is already provided from Brick Kiln Lane which serves the small neighborhood located directly behind the existing shopping center; and

WHEREAS, the Board finds that the waiver will not violate the Comprehensive Plan because it will not alter the essential character of the general vicinity as the proposed site design will be compatible with nearby businesses while implementing high standards of design associated with the Kroger grocery chain; and because the proposal will be an anchor use for the nearby community and

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will enhance pedestrian uses along the corridor by enlarging the sidewalk along Dixie Highway and providing a new TARC stop; and

WHEREAS, the Board finds that the granting of the waiver is the minimum necessary to afford relief to the applicant by allowing the existing condition to remain which will still allow for the property to be enhanced with a landscape buffer between the uses while allowing the secondary indirect access to the existing street (Brick Kiln Lane); and

WHEREAS, the Board finds that the strict application of the provisions of the regulation is the minimum necessary to afford relief to the applicant or create an unnecessary hardship because the development as proposed, will allow the property to be rebuilt with a modern new facility that would otherwise not occur if this connection is required;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to not provide the parking lot connection to the south.

YES: Members Allendorf, Fishman and Proffitt.

NO: Members Bergmann and Turner.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

Variance #1—To reduce the required 50-ft. non-residential to residential (no loading) setback to 5 feet to allow the proposed building to be placed within 45 feet of the existing property line; and the proposed parking to be placed within 5 feet of the existing property line:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.3.1.B.5, Table 5.3.2 of the land Development Code to reduce the 50-foot non-residential to residential (no loading) setback to 5 feet to allow the proposed building to be

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placed within 45 feet of the existing property line; and the proposed parking to be placed within 5 feet of the existing property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed construction is similar to the existing conditions and will allow the applicant to utilize existing parking along the southern property line; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed development will be compatible with nearby businesses, implement a high standard of design both in regards to the building and parking area; and because the landscaping will be enhanced as required for the subject property; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the overall changes to the plan will improve vehicular and pedestrian circulation throughout the site; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the conditions, particularly the parking, already exists so the variance allows the developer to minimize disturbance along the property boundaries and use existing parking areas; and

WHEREAS, the Board 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 parking layout along the south property line was developed before the current regulations and the applicant wants to utilize this area in the redesign; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the development could not be built as proposed and the minimum number of parking spaces would be difficult to achieve without utilizing the exiting parking along the south property line; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the owner is redeveloping the site utilizing the

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existing conditions along the southern boundary which was installed prior to the adoption of the current regulations

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to reduce the 50-foot non-residential to residential (no loading) setback to 5 feet to allow the proposed building to be placed within 45 feet of the of the existing property line; and the proposed parking to be placed within 5 feet of the existing property line.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

Variance #2—To reduce the 75-foot non-residential to residential (with loading) setback to 25 feet to allow the proposed Vehicle Use Area (VUA) area to be placed within 25 feet of the east property line:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.3.1.B.5, Table 5.3.2 of the Land Development Code to reduce the 75-foot non-residential to residential (with loading) setback to 25 feet to allow the proposed VUA to be placed within 25 feet of the existing eastern property line; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the granting of the variance will allow for reconstruction of the vacant building into a clean and modern grocery with a fuel center that will be well maintained and become an asset to the community; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed building will be placed further away

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from the property line than the existing building and a 25-foot landscape buffer area (LBA) will be incorporated along the eastern (rear) property line; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the proposed addition will not affect adjacent residential properties to the east; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the area in question was previously used for loading and unloading operations; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the variance allows the new building to be constructed in a near identical location as the existing building; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the proposed building could not be built as shown and would need to be modified; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the owner is redeveloping the site utilizing the existing conditions along the eastern boundary which was in place prior to the current regulations;

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to reduce the 75-foot non-residential to residential (with loading) setback to 25 feet to allow the proposed VUA to be placed within 25 feet of the existing property line.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

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Variance #3—To allow the proposed building to have a maximum setback of 540 feet along the west property line on Dixie Highway:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.3.2.C.2.a. of the Land Development Code to allow the proposed building to be 540 feet from the west property line along Dixie Highway; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed construction is similar, though closer, to the setback of the existing vacant retail department store; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed grocery store is closer to the street than the existing vacant retail department store, plus, the fueling station will be located closer to Dixie Highway, thus, eliminating the expanse of asphalt along the road and establishing development closer to the street; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are similar encroachments of this type along the corridor, however, the fuel station and proposed restaurant on the newly created outparcel provide development closer to the street; and because this type of infill development is encouraged in the Dixie Highway Corridor Master Plan; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the exiting conditions were in place before the adoption of the current regulations; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the layout of the building and parking is most

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appropriate given the existing conditions, location of the entrance along Dixie Highway, the environmental conditions which exist along Dixie Highway frontage and the conditions on the remaining portion of the development which are not being razed;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the variance to allow the proposed building to be 540 feet from the west property line along Dixie Highway.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

Waiver #1—To reduce the required 35 ft. property perimeter landscape buffer and 15 ft. VUA Landscape Buffer to 5 feet:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.2.4.A and 10.2.10 of the Land Development Code to reduce the required 35 foot property perimeter landscape buffer and 15 foot VUA Landscape Buffer to 5 feet; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the parking spaces along the southern property line already exist; and because the required buffer and tree plantings are being provided; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because Guideline 3, Policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate 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

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lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust, dirt, litter, junk, outdoor storage and visual nuisances; and because Guideline 3, Policy 24, states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts and that parking and circulation areas adjacent to streets should be screened or buffered; and because Guideline 13, Policy 4, calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban and rural areas; and because the intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin and to minimize the negative impacts resulting from adjoining incompatible land uses; and even though the width of the landscape buffer area is being minimized, the applicant will be providing planting/screening which meet the minimum required tree and shrub plantings for the perimeter buffers; and because the tree canopy requirements are being fulfilled on the site; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is proposing to utilize the conditions which exist along the southern property line; and because the landscape materials will be provided within the 5-foot area; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since the development of the site is utilizing the existing pavement to provide the required parking;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **GRANT** the waiver to reduce the required 35 foot property perimeter landscape buffer and 15 foot vehicle use area to 5 feet.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

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Category 3 Review:

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

WHEREAS, the Board finds, from the file of this case, the staff report, the site plan, the PowerPoint presentation(s); the renderings, the evidence and testimony submitted at the public hearing, that the applicant is requesting a Category 3 Review for the construction of a new Kroger grocery store with a fueling station;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **APPROVE** the Category 3 plan to construct a new Kroger grocery store with a fueling station.

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

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp and Jarboe.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 14CUP1048

Request: Conditional Use Permit to allow a commercial kennel in an R-4 Zoning District.

Project Name: Pet Station Country Club

Location: 4802 & 4804 Murphy Lane

Owners: Richard Watson, Jr., Leonard Watson, Sr., Harold Watson,
Marcella Watson and Lenora Watson
4604 Leesburg Court
Louisville, KY 40241

Applicant: DF Development, LLC
Paul Blackburn & Rick Merritt
1473 S. 4th Street
Louisville, KY 40208

Representative: Heritage Engineering
John Campbell
642 S. 4th Street, Ste. 100
Louisville, KY 40202

Jurisdiction: Louisville Metro

COUNCIL DISTRICT 17—Glenn Stuckel

Staff Case Manager: Jon Crumbie, Planner II

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

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

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Agency Testimony:

Staff case manager, Jon Crumbie discussed the case summary, standard of review and staff analysis from the staff report. He said the request is for an upscale commercial kennel on 6 acres where only 2 acres will be used for the kennel. He said the existing older home will be used for an office. Mr. Crumbie said the applicant submitted a letter regarding the possible noise and mitigation efforts.

The following spoke in favor of this request:

John Campbell.

Paul Blackburn.

Scott Hannah, 603 N. Shore Drive #100, Louisville, KY 40202.

Summary of testimony of those in favor:

John Campbell, the applicant's representative, presented a PowerPoint presentation for the Board and explained the request and surrounding uses.

Paul Blackburn, the applicant, said Kentucky is the 3rd largest for the pet industry. He said noise will not be an issue because they will have sound insulation inside; and tempered glass to alleviate competitive barking in the dog runs. He said there will be 117 kennels which could house 2 dogs per kennel; and will also include a dog park and pool for therapy or just for fun.

John Campbell said they will have a select clearing and if a tree can be saved they will. He said there will be 35 ft. landscape buffer area along the residential and cemetery side. They will also be planting evergreens and shrubs for further buffering. He said the signs will comply with the regulations. Member Bergmann asked if they could increase the buffer to 50 feet. Member Allendorf said he doesn't feel this is necessary with the noise mitigation elements; and that no one is opposed.

Scott Hannah, the applicant's representative, said he prepared the landscape plan, and said there's a nice tree line for buffering and will also be installing a solid wood or vinyl fence. He said they will be surveying the trees to determine which are healthy or not.

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The following spoke neither for nor against the request:

No one.

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

No one.

The following spoke in opposition to this request:

No one.

Summary of testimony of those in opposition:

No one.

Deliberation:

The Board in general liked the proposal. Member Bergmann said he still thinks the 35 foot buffer should be increased to 50 feet to reduce noise for the existing residential.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the Planning & Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the June 15, 2015 public hearing proceedings.

Conditional Use Permit to allow a commercial kennel in an R-4 Zoning District:

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

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a Conditional Use Permit to allow a commercial kennel in an R-5 zoning district; and

WHEREAS, the Board finds that the proposal meets the applicable policies of the Comprehensive Plan; and that a 35 foot landscape buffer area is proposed along the north, south and west property lines; and

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WHEREAS, the Board finds that the proposal will be compatible with surrounding land uses with respect to scale, height, drainage, dust and appearance; and because the adjacent church, barns and fire house are the largest structures in the general area; and

WHEREAS, the Board finds that public facilities both on and off-site such as transportation, sanitation, water, sewer, drainage etc., because the plan has been reviewed by Public Works and MSD and both have preliminarily approved the plan; and

WHEREAS, the Board finds that the proposal complies with all 6 listed requirements regarding facility being fully enclosed; signage; fencing; screening; noise mitigation efforts and surface water quality due to animal wastes;

RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit to allow a commercial kennel in an R-4 zoning district **SUBJECT** to the following Conditions of Approval:

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

YES: Members Allendorf, Fishman, Turner and Bergmann.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Tharp,
Proffitt and Jarboe.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. 15CUP1000

Request: An application for a Conditional Use Permit to allow an accessory apartment greater than 650 square feet in an R-5 zoning district; and a variance.

Staff Case Manager: Julia Williams, AICP

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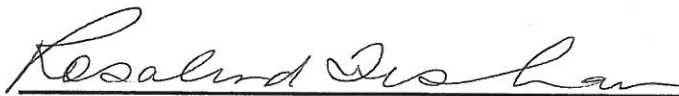
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The meeting adjourned at 1:30 P.M.

A handwritten signature in black ink, appearing to be "D. L. Quinn", written over a horizontal line.

CHAIRPERSON

A handwritten signature in black ink, appearing to be "Rosalind D. L. Quinn", written over a horizontal line.

SECRETARY

