

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

February 20, 2017

A meeting of the Louisville Metro Board of Zoning Adjustment was held on February 20, 2017 at 8:30 a.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

Members Present:

Mike Allendorf, Chair
Betty Jarboe, Vice Chair
Rosalind Fishman, Secretary
Paul Bergmann
Lester Turner
Dean Tharp

Members Absent:

Lula Howard

Staff Members Present:

Brian Mabry, Planning & Design Supervisor
Joe Haberman, Planning & Design Manager
Jon Crumbie, Planning & Design Coordinator
Ross Allen, Planner I
Dante St. Germain, Planner I
John Carroll, Legal Counsel
Sue Reid, Management Assistant

The following cases were heard:

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APPROVAL OF MINUTES

FEBRUARY 6, 2017 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

00:02:24 On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the meeting conducted on February 6, 2017.

The vote was as follows:

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

Absent: Member Howard

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BUSINESS SESSION

CASE NUMBER 16VARIANCE1097

Request:	Variance from the Land Development Code section 5.2.2.C, table 5.2.2 allow the existing structure and proposed second story addition to encroach into the side yard setback in a Traditional Neighborhood Form District on a parcel zoned R-5B.
Project Name:	907 Goss Ave. Addition
Location:	907 Goss Ave.
Owner:	Ray Ackerman
Applicant:	Ray Ackerman
Representative:	Ray Ackerman
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Ross Allen, Planner I

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

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

Agency Testimony:

00:03:21 Ross Allen presented the case. Mr. Allen stated the applicant has acquired signatures of all adjacent property owners. Mr. Allen responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in favor of the request:

Ray Ackerman, 1255 Eastern Parkway, Louisville, KY

Summary of testimony of those in favor:

00:07:26 Ray Ackerman responded to questions from the Board Members (see recording for detailed presentation).

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The following spoke in opposition of the request:

No one spoke.

00:08:50 Board Members' deliberation

00:09:41 On a motion by Vice Chair Jarboe, seconded by Member Bergmann, the following resolution was adopted:

Variance #1 from the Land Development Code (Jan. 2017) Section 5.2.2.C, table 5.2.2 to allow a second story addition on an R-6 zoned parcel within a Traditional Neighborhood Form District to encroach into the side yard setback on the southeastern property line

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the lot was created prior to the existing zoning regulations and the new addition will allow a distance between the structures of approximately 3 ft. The applicant will be required to meet building codes for the proximity to the multifamily dwelling, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the multi-family residential structure is already at a two story height and has the same zoning type, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since along the southeastern property line the adjacent property is a two story multi-family residential unit. Building codes will need to be met for construction purposes, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the zoning district, R-6, allows for a maximum floor area ratio of .75 which the applicant is meeting. Furthermore, the applicant is situated on a substandard parcel which was created prior to the current zoning regulations, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone since the applicant's parcel is considered substandard, as do many of the parcels in the general vicinity, and

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WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since several lots northwest of the subject site are substandard and predate the current zoning and form district regulations, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since several lots northwest of the subject site are substandard and predate the current zoning and form district regulations; and

Variance #2 from the Land Development Code (Jan. 2017) Section 5.2.2.C, table 5.2.2 to allow a second story addition on an R-6 zoned parcel within a Traditional Neighborhood Form District to encroach into the side yard setback on the northwestern property line

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since lot was created prior to the existing zoning regulations and the new addition will allow a distance between the structures of approximately 3 ft., the adjacent home to the northwest has a sidewalk along the applicant's property line. The applicant will be required to meet building codes for the proximity to the multifamily dwelling, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the multi-family residential structure is already at a two story height and has the same zoning type, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since along the northwestern property line the adjacent property is a camel-back shotgun house, a two story multi-family residential unit and a three foot sidewalk is found between the applicant's property line and the adjacent home. Building codes will need to be met for construction purposes, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the zoning district, R-6, allows for a maximum floor area ratio of .75 which the applicant is meeting. Furthermore, the applicant is situated on a substandard parcel which was created prior to the current zoning regulations, and

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WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which do generally apply to land in the general vicinity or the same zone since the applicant's parcel is considered substandard, as do many of the parcels in the general vicinity, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since several lots northwest of the subject site are substandard and predate the current zoning and form district regulations, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since several lots northwest of the subject site are substandard and predate the current zoning and form district regulations; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1097, does hereby **APPROVE** Variance #1 from the Land Development Code (Jan. 2017) Section 5.2.2.C, table 5.2.2 to allow a second story addition on an R-6 zoned parcel within a Traditional Neighborhood Form District to encroach into the side yard setback on the southeastern property line (**Requirement 3 ft., Request 1 ft., Variance 2 ft.**), and Variance #2 from the Land Development Code (Jan. 2017) Section 5.2.2.C, table 5.2.2 to allow a second story addition on an R-6 zoned parcel within a Traditional Neighborhood Form District to encroach into the side yard setback on the northwestern property line (**Requirement 3 ft., Request 0 ft., Variance 3 ft.**), based on the Staff Report, site plan and elevations as presented, and acknowledging no problems with the neighbors.

The vote was as follows:

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

Absent: Member Howard

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PUBLIC HEARING

CASE NUMBER 16DEVPLAN1052

Request:	Two variances from the Land Development Code (LDC) section 5.2.4.C.3.a to allow the proposed building to exceed the maximum setback and 6 design waivers, 1 sign waiver, and 3 landscape waivers.
Project Name:	Thornton's Store
Location:	4900 Brownsboro Rd.
Owner:	Anne Marie Elpers – The Glenview Trust Company
Applicant:	Jode L Ballard – Thornton's Inc.
Representative:	Glen Price – Frost, Brown, and Todd LLC
Jurisdiction:	Northfield
Council District:	7 – Angela Leet
Case Manager:	Ross Allen, Planner I

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

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

Agency Testimony:

00:11:39 Ross Allen presented the case and showed a Powerpoint presentation. Mr. Allen responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in favor of the request:

Jode Ballard, 10101 Linn Station Road, Louisville, KY
Joe Watson, 65 Aberdeen Drive, Glasgow, KY 42141

Summary of testimony of those in favor:

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00:31:51 Jode Ballard spoke in favor of the request and showed a Powerpoint presentation. Mr. Ballard responded to questions from the Board Members (see recording for detailed presentation).

00:53:41 Joe Watson spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

00:56:23 Jode Ballard continued his presentation and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

01:03:14 Board Members' deliberation

01:04:25 On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

Variance #1 from the Land Development Code Section 5.2.4.C.3.a to allow the convenience store to exceed the 15 foot setback from the edge of right of way by 167 feet

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the location of the convenience store to allow for safe vehicular and pedestrian movement, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the site was previously a gas station and has long standing history as a gas station, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public pending the approval of land acquisition from KYTC the proposed layout provides for the safe movement of motor vehicles and pedestrians, having adequate on-site parking and access points to and from the proposed site, and

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WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because convenience stores and accessory structures built in conjunction with gas/convenience facilities must be at a greater setback than typically found in the Town Center Form District, and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the subject site is bounded by interstate ramps on two sides and by US Hwy. 42 and KY-22 on the remaining two sides. The subject site is the only property in the general vicinity having abutting roads in this configuration. As a result of the road configuration, the location of the gas pump/s canopy and buildings are situated to allow the safe movement of vehicular, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the regulation would require the placement of the convenience store and car wash at the front corner of the site, resulting in the gas canopy to be placed to the rear of the principal structure (convenience store), and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the configuration of the site and situation of the structures abut two interstate ramps and fronts two state roads (US Hwy. 42 and KY-22/Brownsboro Rd.), and

WHEREAS, the Board further finds that the variance will enable the appropriate positioning of the car wash building and the convenience store on the site to allow for safe vehicular and pedestrian movement. Neither variance will have any effect on the public health, safety or welfare because the development plan will receive the approval of the Department of Public Works, and

WHEREAS, the Board further finds that the variance would not alter the essential character of the general vicinity because of this site's longstanding history as a gas station, and

WHEREAS, the Board further finds that the variance will not cause a hazard or nuisance to the public because the Louisville Department of Public Works is anticipated to approve the development plan. This approval will indicate, among other things, that the layout of the site is safe for motor vehicles and pedestrians on site, that there are adequate parking facilities on-site and that access points to

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and from the site are safe. Therefore, the variance will not cause a hazard or nuisance to the public, and

WHEREAS, the Board further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because convenience stores and accessory buildings - such as a car wash - built in conjunction with gas/convenience facilities must be set back further than typically found in a Town Center Form District, and

WHEREAS, the Board further finds that the site is bound by interstate ramps on two sides, and by Brownsboro Road and Ky-22 on the remaining two sides. This is the only property in the general vicinity having abutting roads in such a configuration. This configuration requires the location of the gas canopy and buildings at specific locations to allow motor vehicles to enter and exit safely, as well as allowing customers to enter the store for consumables. The configuration as described does not generally apply to land in the general vicinity, and

WHEREAS, the Board further finds that If the variance were not granted, the strict application of the regulation would require the placement of the convenience store and car wash at the front of the site (i.e., so that the gas canopy would be at the rear of the site). Such an alternate site configuration for a gas station use would prevent the use of the site for sales of gas and would create an unnecessary hardship, and

WHEREAS, the Board further finds that the circumstances are the result of the configuration of the site and the fact that it abuts two interstate ramps, and fronts on Brownsboro Road and KY-22; and

Variance #2 from the Land Development Code Section 5.2.4.C.3.a to allow the convenience store to exceed the 15 foot setback from the edge of right of way by 55 feet

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare since the location of the convenience store to allow for safe vehicular and pedestrian movement, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the site was previously a gas station and has long standing history as a gas station, and

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WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public pending the approval of land acquisition from KYTC the proposed layout provides for the safe movement of motor vehicles and pedestrians, having adequate on-site parking and access points to and from the proposed site, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because convenience stores and accessory structures built in conjunction with gas/convenience facilities must be at a greater setback than typically found in the Town Center Form District, and

WHEREAS, the Board further finds that the requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the subject site is bounded by interstate ramps on two sides and by US Hwy. 42 and KY-22 on the remaining two sides. The subject site is the only property in the general vicinity having abutting roads in this configuration. As a result of the road configuration, the location of the gas pump/s canopy and buildings are situated to allow the safe movement of vehicular, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the regulation would require the placement of the convenience store and car wash at the front corner of the site, resulting in the gas canopy to be placed to the rear of the principal structure (convenience store), and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the configuration of the site and situation of the structures abut two interstate ramps and fronts two state roads (US Hwy. 42 and KY-22/Brownsboro Rd.), and

WHEREAS, the Board further finds that the variance will enable the appropriate positioning of the car wash building and the convenience store on the site to allow for safe vehicular and pedestrian movement. Neither variance will have any effect on the public health, safety or welfare because the development plan will receive the approval of the Department of Public Works, and

WHEREAS, the Board further finds that the variance would not alter the essential character of the general vicinity because of this site's longstanding history as a gas station, and

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WHEREAS, the Board further finds that the variance will not cause a hazard or nuisance to the public because the Louisville Department of Public Works is anticipated to approve the development plan. This approval will indicate, among other things, that the layout of the site is safe for motor vehicles and pedestrians on site, that there are adequate parking facilities on-site and that access points to and from the site are safe. Therefore, the variance will not cause a hazard or nuisance to the public, and

WHEREAS, the Board further finds that the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because convenience stores and accessory buildings - such as a car wash - built in conjunction with gas/convenience facilities must be set back further than typically found in a Town Center Form District, and

WHEREAS, the Board further finds that the site is bound by interstate ramps on two sides, and by Brownsboro Road and KY 22 on the remaining two sides. This is the only property in the general vicinity having abutting roads in such a configuration. This configuration requires the location of the gas canopy and buildings at specific locations to allow motor vehicles to enter and exit safely, as well as allowing customers to enter the store for consumables. The configuration as described does not generally apply to land in the general vicinity, and

WHEREAS, the Board further finds that if the variance were not granted, the strict application of the regulation would require the placement of the convenience store and car wash at the front of the site (i.e., so that the gas canopy would be at the rear of the site). Such an alternate site configuration for a gas station use would prevent the use of the site for sales of gas and would create an unnecessary hardship, and

WHEREAS, the Board further finds that the circumstances are the result of the configuration of the site and the fact that it abuts two interstate ramps, and fronts on Brownsboro Road and KY-22; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16DEVPLAN1052, does hereby **APPROVE** Variance #1 from the Land Development Code Section 5.2.4.C.3.a to allow the convenience store to exceed the 15 foot setback from the edge of right of way by 167 feet (**KY-22/Brownsboro Rd., Requirement 15 ft., Request 75.2 ft., Variance 60.2 ft.**), and Variance #2 from the Land Development Code Section 5.2.4.C.3.a to allow the convenience store to exceed the 15 foot setback from the edge of right of way by 55 feet (**US Hwy. 42, Requirement 15 ft., Request 249 ft., Variance**

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234 ft.), based on the presentation, the Staff Report, and the applicant's justification behind Tab 6 in their booklet.

The vote was as follows:

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

Absent: Member Howard

01:06:32 On a motion by Member Fishman, seconded by Member Jarboe, the following resolution was adopted:

Waiver #1 from LDC Section 5.5.1.A.1.b to not have a retail building with a customer entrance facing the primary street, Brownsboro Rd. (northeastern property line), or the secondary street, US Hwy. 42 (northeastern property line) or a corner entrance

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that on-site access point locations do not affect adjacent property owners, and

WHEREAS, the Board further finds that the waiver does not violate the Goals, Objectives, Guidelines or Policies of the Comprehensive Plan. The waiver is supported by Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policy 1 because sidewalks will be situated throughout the development, along US Hwy. 42 and KY-22, and surrounding the building, providing for the adequate and appropriate movement of pedestrians, and

WHEREAS, the Board further finds that the intent of the Code is to provide for customer entrances to principal buildings at convenient locations. Having two (2) entrances, one facing the primary street and one facing a secondary roadway, the proposed building substantially fulfills the intent of the Code, and

WHEREAS, the Board further finds that two access points are proposed. One access faces the primary street (US Hwy. 42). The second access point is located on the rear of the building and faces the 1-264 ramp to KY-22. Because two access points are proposed, the extent of the waiver of the regulation is the minimum necessary to afford relief to the Applicant, and

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WHEREAS, the Board further finds that the strict application of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant because the Applicant would otherwise be unable to monitor activities outside the building to ensure customer safety; and

Waiver #2 from LDC Section 5.5.1.A.2 to not build five feet away from both right of ways at the corner of KY-42 and/or KY22 nor to build to the corner that contains frontage along the primary street

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that building placement on this lot will not adversely affect adjacent property owners because this lot is, in effect, an "island" surrounded by (i) US Hwy. 42, (ii) KY-22, (iii) the Interstate-264 ramp to US Hwy. 42, and (iv) the Interstate-264 ramp to KY-22. The nearest residences are across US Hwy. 42 (a 6-lane highway) within Northfield; these residences are too distant to be adversely affected by the waiver, and

WHEREAS, the Board further finds that the waiver does not violate the Goals, Objectives, Guidelines or Policies of the Comprehensive Plan. Centers Guideline 2. The proposal conforms to Centers Guideline 2 and all applicable Policies adopted under Centers Guideline 2, including Policy 4 and 15. As proposed, the development is compact because it provides for fuel for motor vehicles, convenience items in the store and a car wash service with convenient parking on three sides of the building - none of which services would be easily accessible to consumers if the code were strictly followed, and

WHEREAS, the Board further finds that the overriding intent of the Land Development Code is to provide safe environments for the public. On a site providing gas service, retail goods and restroom facilities availability for the public, and an on-site car wash - these numerous activities, conveniently located on a single site are provided safely for the public, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the Applicant because the site must be laid out in this fashion to provide for safe and easy access to the public, and

WHEREAS, the Board further finds that the strict application of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant because it would prevent the Applicant from locating necessary and expected services for the public; and

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Waiver #3 from LDC Section 5.5.1.A.3.a to allow parking between the convenience store and US Hwy. 42 (northwest), KY-22 (northeast), and the I-264 east exit ramp (southeast)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout of the subject site; it has no effect whatsoever on adjacent property owners, and

WHEREAS, the Board further finds that the only provision of the Comprehensive Plan that applies to this request is Transportation Facility Guideline 8. The waiver does not violate Transportation Facility Guideline 8 or Policies 7 and 11 because the proposed building location is compatible with the surrounding development -- both on- and off-site -- and will allow for safe and efficient movement of vehicles and pedestrians on-site. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code to provide for safe and efficient movement of vehicles and pedestrians on-site, and

WHEREAS, the Board further finds that because the universally accepted design of a gas/convenience site requires that the gas canopy and the parking spaces beneath the canopy to be situated at the front of the site where access to the entry of the convenience store is equi-distant from all gas pumps similarly situated, together with the convenience store location being adjacent to the gas canopy, the extent of the waiver is the minimum necessary to afford relief to the applicant, and

WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because it would cause a significant inconvenience to customers coming into the store to purchase consumables; and

Waiver #4 from LDC Section 5.5.1.A.5.a to allow an attached gas station canopy to be between the convenience store (principal structure) and the public street, US Hwy. 42 (northwest)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout of the subject site; it has no effect whatsoever on adjacent property owners, and

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WHEREAS, the Board further finds that the only provision of the Comprehensive Plan that applies to this request is Transportation Facility Guideline 8. The waiver does not violate Transportation Facility Guideline 8 or Policies 7 and 11 because the proposed building location and location of parking spaces are compatible with the surrounding development -- both on- and off-site -- and will allow for safe and efficient movement of vehicles and pedestrians on-site. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code to provide for safe and efficient movement of vehicles and pedestrians on-site, and

WHEREAS, the Board further finds that because the universally accepted design of a gas/convenience site is to situate the gas canopy at the front of the site (i.e., between the street and the convenience store building) the extent of the waiver is the minimum necessary to afford relief to the applicant , and

WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because it would cause a risk to customer safety because otherwise customers pumping gas would not be visible to store personnel; and

Waiver #6 from LDC Section 5.6.1.C.1 to allow the principal structure (convenience store) to have less than 50% of the wall surfaces at street level to not consist of clear windows and doors as found along the I-264 off ramps on the southeastern façade and southwestern façade

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout, including the interior layout, of the convenience store on the subject site; it has no effect whatsoever on nearby property owners because nearby residences and adjacent property owners are too far distant to be affected, and

WHEREAS, the Board further finds that the only provisions of the Comprehensive Plan that apply to this request are Compatibility Guideline 3 and Policy 9. The proposed waiver will not violate Compatibility Guideline 3 and Policy 9. Policy 9 requires developments to avoid adverse visual impacts. Although the southeastern façade of the convenience store will have less than 50% of the wall surface faced with clear glass it will not cause an adverse visual impact. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

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WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code not to be a nuisance for nearby neighbors, and

WHEREAS, the Board further finds that because the convenience store's southeastern frontage must provide for storage and display space within the interior part of the store at that location, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, and

WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because requiring 50% of the store's southeastern frontage to be clear glass would not allow the store to be fully and appropriately utilized; and

Waiver #7, from LDC Section 8.2.1.D.6 to allow an existing changing image sign to be closer than 300 feet to a residentially zoned district (Northfield Subdivision)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout of the subject site; it has no effect whatsoever on adjacent property owners because any visibility of the changing image sign to residentially zoned properties would be insignificant, and

WHEREAS, the Board further finds that the only provisions of the Comprehensive Plan that apply to this request are Compatibility Guideline 3 and Policies 9 and 28. The proposed waiver will not violate Compatibility Guideline 3 and Policies 9 and 28. Policy 9 requires developments to avoid adverse visual impacts, including signs that contribute to an adverse visual impact. Policy 28 requires developments to contribute to the visual quality of the surroundings. The proposed changing image sign will be directed to motorists along US Hwy. 42 as opposed to residences across US Hwy. 42 in Northfield. Because there will be little, if any, visibility of the changing image from Northfield residents the proposed waiver does not violate the Guideline and Policies. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code to provide for signage that will not prove to be a nuisance for nearby residential neighbors, and

WHEREAS, the Board further finds that because the sign is to be located on US Hwy. 42 near the US Hwy. 42 entrance to the site, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, and

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WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because permitting a changing image sign at this location would allow for adequate product advertising in a safe manner without adverse impacts on residential neighbors; and

Waiver #8 from LDC Section 10.3.5.A.1 to not provide the required 30 foot setback and 30 foot buffer area with 1 type A tree for each 40 feet of road frontage and a visually continuous berm needed to screen the VUA with an average height of 3 feet and shrub massings on or fronting the berm with at least 1/3 of the frontage length planted along US Hwy. 42 (northwest) and KY-22 (northeast)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout of the subject site; it has no effect whatsoever on nearby property owners because residences are too far distant to be affected, and

WHEREAS, the Board further finds that the only provisions of the Comprehensive Plan that apply to this request are Compatibility Guideline 3 and Policies 9 and 22, and Landscape Character Guideline 13 and Policies 6 and 7. The proposed waiver will not violate Compatibility Guideline 3 and Policies 9 and 22. Policy 9 requires developments to avoid adverse visual impacts, including the protection of sites that are located on designated parkways. Policy 22 generally requires buffers to mitigate uses of differing intensity. Although the full 30-foot buffer area cannot be provided for most of the US Hwy. 42 frontage adequate landscape materials will be planted at this location and will provide acceptable buffering for this business. Policies 6 and 7 of Landscape Character Guideline 13 require screening and buffering to mitigate adjacent incompatible uses and further require the protection of the character of parkways. The location of the site at the confluence of 4 roadways, particularly at the intersection of US Hwy. 42 and the Watterson ramps justifies not providing the full width of buffer. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code to provide for adequate landscaping so that the character of the site will not prove to be a nuisance for nearby residential neighbors, and

WHEREAS, the Board further finds that because the site frontage is to be located on US Hwy. 42 near the US Hwy. 42 entrance to the site, where the site

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frontage on US Hwy. 42 diminishes heading westwardly, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, and

WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because requiring the full 30-foot parkway buffer area would not allow the site to be fully and appropriately utilized; and

Waiver #9 from LDC Section 10.2.4, table 10.2.3 to reduce the 35 landscape foot buffer to 18 feet in width along the southwestern property line adjacent to the I-264 off ramp to US Hwy. 42

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the pass-through lane is strictly an on-site safety and convenience lane benefiting customers. The waiver to allow this pass-through lane will not affect any adjacent property owners because there are no adjacent property owners in the vicinity of this waiver, and

WHEREAS, the Board further finds that the waiver does not violate the Goals, Objectives, Guidelines or Policies of the Comprehensive Plan. Circulation Guideline 7. The only Guideline applicable to this waiver request is Circulation Guideline 7. The proposed waiver conforms to Circulation Guideline 7, its "Intent" and all applicable Policies adopted thereunder, including Policies 6, 11 and 15. The waiver will ensure that internal circulation provides safe and efficient travel movements by allowing for a pass-through lane to enable motorists to exit the car wash lane and thereafter exit the site, and

WHEREAS, the Board further finds that the intent of the Code is to provide for appropriate landscaping and buffering when a non-residential use is adjacent to a roadway. All landscaping required by LDC §10.2.4 will be provided, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the Applicant because the reduction in width is the minimum necessary to accommodate the pass-through lane, and all landscaping and buffering required by LDC §10.2.4 will be provided, and

WHEREAS, the Board further finds that the strict application of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant because it would prevent the Applicant from locating the necessary proposed access-lane to the west of the car wash; and

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Waiver #10 from LDC Section 10.2.4, table 10.2.3 to reduce the 35 foot landscape buffer to 5 feet in width along the southeastern property line adjacent to the I-264 off ramp to KY-22

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the pass-through lane is strictly an on-site safety and convenience lane benefitting customers. The waiver to allow this pass-through lane will not affect any adjacent property owners because there are no adjacent property owners in the vicinity of this waiver, and

WHEREAS, the Board further finds that the waiver does not violate the Goals, Objectives, Guidelines or Policies of the Comprehensive Plan. Circulation Guideline 7. The only Guideline applicable to this waiver request is Circulation Guideline 7. The proposed waiver conforms to Circulation Guideline 7, its "Intent" and all applicable Policies adopted thereunder, including Policies 6, 11 and 15. The waiver will ensure that internal circulation provides safe and efficient travel movements by allowing for a pass-through lane to enable motorists to exit the car wash lane and thereafter exit the site, and

WHEREAS, the Board further finds that the intent of the Code is to provide for appropriate landscaping and buffering when a non-residential use is adjacent to a roadway. All landscaping required by LDC §10.2.4, Table 10.2.3 will be provided, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the Applicant because the reduction in width is the minimum necessary to accommodate the pass-through lane, and all landscaping and buffering required by Table 10.2.3 will be provided, and

WHEREAS, the Board further finds that the strict application of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant because it would prevent the Applicant from locating the necessary proposed access-lane to the west of the car wash; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16DEVPLAN1052, does hereby **APPROVE** Waivers #1, #2, #3, #4, #6, #7, #8, #9 and #10, based on the presentation and the applicant's justification.

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The vote was as follows:

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

Absent: Member Howard

01:09:33 Board Members discussion regarding Waivers

01:13:27 On a motion by Member Fishman, seconded by Vice Chair Jarboe, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16DEVPLAN1052, does hereby **RESCIND** the previous Motion and Approval of Waivers #1, #2, #3, #4, #6, #7, #8, #9 and #10, and a new Motion will be made.

The vote was as follows:

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

Absent: Member Howard

01:15:07 On a motion by Member Fishman, seconded by Vice Chair Jarboe, the following resolution was adopted:

Waiver #1 from LDC Section 5.5.1.A.1.b to not have a retail building with a customer entrance facing the primary street, Brownsboro Rd. (northeastern property line), or the secondary street, US Hwy. 42 (northeastern property line) or a corner entrance

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that on-site access point locations do not affect adjacent property owners, and

WHEREAS, the Board further finds that the waiver does not violate the Goals, Objectives, Guidelines or Policies of the Comprehensive Plan. The waiver is supported by Bicycle, Pedestrian and Transit Guideline 9 and all applicable Policies adopted thereunder, including Policy 1 because sidewalks will be

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situated throughout the development, along US Hwy. 42 and KY-22, and surrounding the building, providing for the adequate and appropriate movement of pedestrians, and

WHEREAS, the Board further finds that the intent of the Code is to provide for customer entrances to principal buildings at convenient locations. Having two (2) entrances, one facing the primary street and one facing a secondary roadway, the proposed building substantially fulfills the intent of the Code, and

WHEREAS, the Board further finds that two access points are proposed. One access faces the primary street (US Hwy. 42). The second access point is located on the rear of the building and faces the 1- 264 ramp to KY-22. Because two access points are proposed, the extent of the waiver of the regulation is the minimum necessary to afford relief to the Applicant, and

WHEREAS, the Board further finds that the strict application of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant because the Applicant would otherwise be unable to monitor activities outside the building to ensure customer safety; and

Waiver #2 from LDC Section 5.5.1.A.2 to not build five feet away from both right of ways at the corner of KY-42 and/or KY22 nor to build to the corner that contains frontage along the primary street

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that building placement on this lot will not adversely affect adjacent property owners because this lot is, in effect, an "island" surrounded by (i) US Hwy. 42, (ii) KY-22, (iii) the Interstate-264 ramp to US Hwy. 42, and (iv) the Interstate-264 ramp to KY-22. The nearest residences are across US Hwy. 42 (a 6-lane highway) within Northfield; these residences are too distant to be adversely affected by the waiver, and

WHEREAS, the Board further finds that the waiver does not violate the Goals, Objectives, Guidelines or Policies of the Comprehensive Plan. Centers Guideline 2. The proposal conforms to Centers Guideline 2 and all applicable Policies adopted under Centers Guideline 2, including Policy 4 and 15. As proposed, the development is compact because it provides for fuel for motor vehicles, convenience items in the store and a car wash service with convenient parking on three sides of the building - none of which services would be easily accessible to consumers if the code were strictly followed, and

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WHEREAS, the Board further finds that the overriding intent of the Land Development Code is to provide safe environments for the public. On a site providing gas service, retail goods and restroom facilities availability for the public, and an on-site car wash - these numerous activities, conveniently located on a single site are provided safely for the public, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the Applicant because the site must be laid out in this fashion to provide for safe and easy access to the public, and

WHEREAS, the Board further finds that the strict application of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant because it would prevent the Applicant from locating necessary and expected services for the public; and

Waiver #3 from LDC Section 5.5.1.A.3.a to allow parking between the convenience store and US Hwy. 42 (northwest), KY-22 (northeast), and the I-264 east exit ramp (southeast)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout of the subject site; it has no effect whatsoever on adjacent property owners, and

WHEREAS, the Board further finds that the only provision of the Comprehensive Plan that applies to this request is Transportation Facility Guideline 8. The waiver does not violate Transportation Facility Guideline 8 or Policies 7 and 11 because the proposed building location is compatible with the surrounding development -- both on- and off-site -- and will allow for safe and efficient movement of vehicles and pedestrians on-site. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code to provide for safe and efficient movement of vehicles and pedestrians on-site, and

WHEREAS, the Board further finds that because the universally accepted design of a gas/convenience site requires that the gas canopy and the parking spaces beneath the canopy to be situated at the front of the site where access to the entry of the convenience store is equi-distant from all gas pumps similarly situated, together with the convenience store location being adjacent to the gas canopy, the extent of the waiver is the minimum necessary to afford relief to the applicant, and

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WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because it would cause a significant inconvenience to customers coming into the store to purchase consumables; and

Waiver #4 from LDC Section 5.5.1.A.5.a to allow an attached gas station canopy to be between the convenience store (principal structure) and the public street, US Hwy. 42 (northwest)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout of the subject site; it has no effect whatsoever on adjacent property owners, and

WHEREAS, the Board further finds that the only provision of the Comprehensive Plan that applies to this request is Transportation Facility Guideline 8. The waiver does not violate Transportation Facility Guideline 8 or Policies 7 and 11 because the proposed building location and location of parking spaces are compatible with the surrounding development -- both on- and off-site -- and will allow for safe and efficient movement of vehicles and pedestrians on-site. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code to provide for safe and efficient movement of vehicles and pedestrians on-site, and

WHEREAS, the Board further finds that because the universally accepted design of a gas/convenience site is to situate the gas canopy at the front of the site (i.e., between the street and the convenience store building) the extent of the waiver is the minimum necessary to afford relief to the applicant , and

WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because it would cause a risk to customer safety because otherwise customers pumping gas would not be visible to store personnel; and

Waiver #5 from LDC Section 5.6.1.A.1 to allow the principal structure (convenience store) to have less than 75% of their length to have blank walls facing public streets and sidewalks along KY-22 (northeast), and the I-264 West exit ramp towards US Hwy. 42 (southwest)

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WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout, including the interior layout, of the convenience store on the subject site; it has no effect whatsoever on nearby property owners because residences and adjacent property owners are too far distant to be affected, and

WHEREAS, the Board further finds that the only provisions of the Comprehensive Plan that apply to this request are Compatibility Guideline 3 and Policy 9. The proposed waiver will not violate Compatibility Guideline 3 and Policy 9. Policy 9 requires developments to avoid adverse visual impacts. Although the US Hwy. 42 façade of the convenience store will have less than 75% windows and animating features it will not cause an adverse visual impact. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code not to be a nuisance for nearby residential neighbors; and

Waiver #7, from LDC Section 8.2.1.D.6 to allow an existing changing image sign to be closer than 300 feet to a residentially zoned district (Northfield Subdivision)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout of the subject site; it has no effect whatsoever on adjacent property owners because any visibility of the changing image sign to residentially zoned properties would be insignificant, and

WHEREAS, the Board further finds that the only provisions of the Comprehensive Plan that apply to this request are Compatibility Guideline 3 and Policies 9 and 28. The proposed waiver will not violate Compatibility Guideline 3 and Policies 9 and 28. Policy 9 requires developments to avoid adverse visual impacts, including signs that contribute to an adverse visual impact. Policy 28 requires developments to contribute to the visual quality of the surroundings. The proposed changing image sign will be directed to motorists along US Hwy. 42 as opposed to residences across US Hwy. 42 in Northfield. Because there will be little, if any, visibility of the changing image from Northfield residents the proposed waiver does not violate the Guideline and Policies. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

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WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code to provide for signage that will not prove to be a nuisance for nearby residential neighbors, and

WHEREAS, the Board further finds that because the sign is to be located on US Hwy. 42 near the US Hwy. 42 entrance to the site, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, and

WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because permitting a changing image sign at this location would allow for adequate product advertising in a safe manner without adverse impacts on residential neighbors; and

Waiver #8 from LDC Section 10.3.5.A.1 to not provide the required 30 foot setback and 30 foot buffer area with 1 type A tree for each 40 feet of road frontage and a visually continuous berm needed to screen the VUA with an average height of 3 feet and shrub massings on or fronting the berm with at least 1/3 of the frontage length planted along US Hwy. 42 (northwest) and KY-22 (northeast)

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout of the subject site; it has no effect whatsoever on nearby property owners because residences are too far distant to be affected, and

WHEREAS, the Board further finds that the only provisions of the Comprehensive Plan that apply to this request are Compatibility Guideline 3 and Policies 9 and 22, and Landscape Character Guideline 13 and Policies 6 and 7. The proposed waiver will not violate Compatibility Guideline 3 and Policies 9 and 22. Policy 9 requires developments to avoid adverse visual impacts, including the protection of sites that are located on designated parkways. Policy 22 generally requires buffers to mitigate uses of differing intensity. Although the full 30-foot buffer area cannot be provided for most of the US Hwy. 42 frontage adequate landscape materials will be planted at this location and will provide acceptable buffering for this business. Policies 6 and 7 of Landscape Character Guideline 13 require screening and buffering to mitigate adjacent incompatible uses and further require the protection of the character of parkways. The location of the site at the confluence of 4 roadways, particularly at the intersection of US Hwy. 42 and the Watterson ramps justifies not providing the full width of buffer. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

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WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code to provide for adequate landscaping so that the character of the site will not prove to be a nuisance for nearby residential neighbors, and

WHEREAS, the Board further finds that because the site frontage is to be located on US Hwy. 42 near the US Hwy. 42 entrance to the site, where the site frontage on US Hwy. 42 diminishes heading westwardly, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, and

WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because requiring the full 30-foot parkway buffer area would not allow the site to be fully and appropriately utilized; and

Waiver #9 from LDC Section 10.2.4, table 10.2.3 to reduce the 35 landscape foot buffer to 18 feet in width along the southwestern property line adjacent to the I-264 off ramp to US Hwy. 42

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the pass-through lane is strictly an on-site safety and convenience lane benefiting customers. The waiver to allow this pass-through lane will not affect any adjacent property owners because there are no adjacent property owners in the vicinity of this waiver, and

WHEREAS, the Board further finds that the waiver does not violate the Goals, Objectives, Guidelines or Policies of the Comprehensive Plan. Circulation Guideline 7. The only Guideline applicable to this waiver request is Circulation Guideline 7. The proposed waiver conforms to Circulation Guideline 7, its "Intent" and all applicable Policies adopted thereunder, including Policies 6, 11 and 15. The waiver will ensure that internal circulation provides safe and efficient travel movements by allowing for a pass-through lane to enable motorists to exit the car wash lane and thereafter exit the site, and

WHEREAS, the Board further finds that the intent of the Code is to provide for appropriate landscaping and buffering when a non-residential use is adjacent to a roadway. All landscaping required by LDC §10.2.4 will be provided, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the Applicant because the reduction in width is the minimum necessary to accommodate the pass-through lane, and all landscaping and buffering required by LDC §10.2.4 will be provided, and

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WHEREAS, the Board further finds that the strict application of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant because it would prevent the Applicant from locating the necessary proposed access-lane to the west of the car wash; and

Waiver #10 from LDC Section 10.2.4, table 10.2.3 to reduce the 35 foot landscape buffer to 5 feet in width along the southeastern property line adjacent to the I-264 off ramp to KY-22

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the pass-through lane is strictly an on-site safety and convenience lane benefitting customers. The waiver to allow this pass-through lane will not affect any adjacent property owners because there are no adjacent property owners in the vicinity of this waiver, and

WHEREAS, the Board further finds that the waiver does not violate the Goals, Objectives, Guidelines or Policies of the Comprehensive Plan. Circulation Guideline 7. The only Guideline applicable to this waiver request is Circulation Guideline 7. The proposed waiver conforms to Circulation Guideline 7, its "Intent" and all applicable Policies adopted thereunder, including Policies 6, 11 and 15. The waiver will ensure that internal circulation provides safe and efficient travel movements by allowing for a pass-through lane to enable motorists to exit the car wash lane and thereafter exit the site, and

WHEREAS, the Board further finds that the intent of the Code is to provide for appropriate landscaping and buffering when a non-residential use is adjacent to a roadway. All landscaping required by LDC §10.2.4, Table 10.2.3 will be provided, and

WHEREAS, the Board further finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the Applicant because the reduction in width is the minimum necessary to accommodate the pass-through lane, and all landscaping and buffering required by Table 10.2.3 will be provided, and

WHEREAS, the Board further finds that the strict application of the regulation would deprive the Applicant of the reasonable use of the land and would create an unnecessary hardship on the Applicant because it would prevent the Applicant from locating the necessary proposed access-lane to the west of the car wash; now, therefore be it

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RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16DEVPLAN1052, does hereby **APPROVE** Waivers #1, #2, #3, #4, #5, #7, #8, #9, and #10, based on the presentation and the applicant's justification.

The vote was as follows:

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

Absent: Member Howard

01:16:02 On a motion by Member Fishman, seconded by Member Bergmann, the following resolution was adopted:

WAIVER #6 from LDC Section 5.6.1.C.1 to allow the principal structure (convenience store) to have less than 50% of the wall surfaces at street level to not consist of clear windows and doors as found along the I-264 off ramps on the southeastern façade and southwestern façade

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver creates a design which only affects the layout, including the interior layout, of the convenience store on the subject site; it has no effect whatsoever on nearby property owners because nearby residences and adjacent property owners are too far distant to be affected, and

WHEREAS, the Board further finds that the only provisions of the Comprehensive Plan that apply to this request are Compatibility Guideline 3 and Policy 9. The proposed waiver will not violate Compatibility Guideline 3 and Policy 9. Policy 9 requires developments to avoid adverse visual impacts. Although the southeastern façade of the convenience store will have less than 50% of the wall surface faced with clear glass it will not cause an adverse visual impact. The waiver violates none of the Goals, Objectives, Guidelines and Policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that the waiver conforms to the intent of the Land Development Code not to be a nuisance for nearby neighbors, and

WHEREAS, the Board further finds that because the convenience store's southeastern frontage must provide for storage and display space within the

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interior part of the store at that location, the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant, and

WHEREAS, the Board further finds that the strict application of the regulation would create an unnecessary hardship on the applicant because requiring 50% of the store's southeastern frontage to be clear glass would not allow the store to be fully and appropriately utilized; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16DEVPLAN1052, does hereby **APPROVE** Waiver #6, based on the presentation and the applicant's justification.

The vote was as follows:

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

No: Member Tharp

Absent: Member Howard

01:16:50 Meeting was recessed.

01:17:28 Meeting was reconvened.

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CASE NUMBER 16VARIANCE1093

Request:	Variance from the Land Development Code section 4.8.4.B to allow a proposed Bojangles Restaurant parking lot to encroach approximately 5,492 sf. into the stream side buffer of Big Run Creek.
Project Name:	Bojangles
Location:	7304 Dixie Highway
Owner:	Barnie and Susan Elder – BASU Properties LLC.
Applicant:	Claude Clark – Bojangles' Restaurants Inc.
Representative:	Ann Richard – Land Development and Design Inc.
Jurisdiction:	Louisville Metro
Council District:	12 – Rick Blackwell
Case Manager:	Ross Allen, Planner I

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

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

Agency Testimony:

01:17:58 Ross Allen presented the case and showed a Powerpoint presentation. Mr. Allen responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Kevin Young, 503 Washburn Avenue, Louisville, KY 40222

Summary of testimony of those in favor:

01:27:56 Kevin Young spoke in favor of the request and showed a Powerpoint presentation. Mr. Young responded to questions from the Board Members (see recording for detailed presentation).

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The following spoke in opposition of the request:

No one spoke.

01:35:26 Board Members' deliberation

01:36:02 Kevin Young responded to further questions from the Board Members

01:36:52 Board Members' deliberation

01:38:14 On a motion by Vice Chair Jarboe, seconded by Member Tharp, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect public health safety or welfare since MSD has approved the best management practices for onsite storm water management prior to storm water entering the Big Run Creek. Sediment, hydrocarbons, and debris will be cleaned from the storm water entering Big Run Creek by MSD approved storm interceptors installed in the catch basins in the Bojangles' parking lot, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the neighboring commercially zoned properties are and have been encroaching into the 100 ft. Stream side buffer zones. The 100 ft. streamside buffer zone complies with the established commercial development pattern in the general vicinity. The existing commercial structures predate the current LDC requirements and thus section 4.8.4.B, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since MSD best management practices will be implemented for onsite storm water management prior to climatic occurrences and development on site, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations since the applicant is applying the best management practices as defined by MSD to provide onsite cleaning of the developments storm water run-off, and

WHEREAS, the Board further finds that the requested variance does not arise from special circumstances which that generally apply to land in the general

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vicinity or the same zone since the property was platted and originally commercially developed prior to the adoption of the Land Development Code's stream side buffer zone requirements. The location of the proposed development on Dixie Highway and Proximity to Big Run Creek do not provide sufficient area to continue use on site as a commercial property without encroachment into the stream side buffer, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land since the subject site is 1.2 acres and the stream side buffer areas encompass approximately 7,520 sf. or 15% of the site. The area of land encompassed by the buffer minimizes the amount of developable area, and

WHEREAS, the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the proposed development is an adaptive re-use of two sites that area existing commercial land uses and both sites have large areas of impervious surface, and

WHEREAS, the Board further finds that the subject site is zoned M-2 and is located in a Suburban Marketplace Corridor Form District. Adjacent to the subject site MSD has re-located big Run Creek into a concrete channel and is not located on the subject site but near to the site diminishing the amount of developable area resulting from the stream side buffer middle and outer zones. The subject site is located approximately 254 feet north of the intersection of Greenwood Rd., a minor arterial, and Dixie Highway, a major arterial, providing a suitable location for the proposed commercial retail development and is an adaptive re-use of two developed sites. The property was platted prior to the adoption of the current Land Development Code and the inclusion of the stream side buffers zone regulations. The loss of developable land to provide for the stream side buffer was not considered when the tract was created and is considered an extreme hardship and reduces the site's developable land area resulting in the site potential and economic use or re-use . The subject site has 1.2 acres and the encroachment of the streamside buffer consumes approximately 7,520 sf. or 15% of the site area. A 10 ft. landscape buffer area (LBA) is required within the streams side buffer area and is provided as are the required landscaping. There is not sufficient land area to provide the 100 ft. stream side buffer area and the amount of parking spaces that the Bojangles' restaurant is required to have per Chapter 9 of the LDC, and

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WHEREAS, the Board further finds that additional criteria per LDC Section 4.8.4.B, item (b) is not applicable since the proposed development is not a single family detached dwelling unit, and

WHEREAS, the Board further finds that the proposed encroachment into the stream side buffer area is the minimum necessary to accommodate the proposed Bojangles' parking. Louisville-Jefferson County Government's Chapter 157: Floodplain Management Ordinance requires a 25 ft. Vegetative Buffer Area be provided along the side of the creek. MSD enforces the provision and protection of the 25 ft. Vegetative Buffer and will be provided, free of any encroachments, and

WHEREAS, the Board further finds that a building permit will be required prior to any land disturbance activity on site. MSD will review and approve the proposed civil construction plans prior to the issuance of a building permit by the Louisville Metro Construction review Dept. MSD will review and approve an Erosion Prevention and Sediment Control Plan (EPSC) as a part of the review of the civil construction plans. MSD's review and approval of the proposed development's storm water management system and EPSC plan will assure that no adverse impacts shall occur as a result of the proposed development/encroachment into the stream side buffer area/zones, and

WHEREAS, the Board further finds that The approval of the variance will not result in the reduction in water quality since the applicant is proposing to install a Storm Water Quality Unit (SWQU) at the proposed development's point of discharge. The Storm Water Quality Unit will clean the storm water of debris, oils, sediment, and hydrocarbons before the storm water enters Big run Creek. The proposed parking lot will have a curb ensuring the storm water will be diverted to the Storm Water Quality Unit prior to entering Big Run Creek. The existing development has been discharging storm waters without any cleansing into Big Run Creek and the proposed development is amicable to providing a Storm Water Quality Unit in helping to prevent pollution and maintaining the water quality of Big Run Creek. The proposed vehicular use area (VUA) is approximately 40 ft. from the Big run Creek edge of bank, where grass is and will be retained to help further mitigate any impact of an encroachment into the 100 ft. stream side buffer area/zone. The MSD 25 ft. vegetative buffer area provides more green space that will not be encroached upon by the proposed development; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1093, does hereby **APPROVE** Variance from the Land

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PUBLIC HEARING

CASE NUMBER 16VARIANCE1093

Development Code Section 4.8.4.B to allow a proposed Bojangles' Restaurant parking lot to encroach approximately 1,724 sf. Into the Big Run Creek (Blueline Stream) 50 foot middle buffer and to encroach 3,768 sf. Into the 25 foot outer buffer for a combined total of 5,492 sf. Into the stream side buffer of Big Run Creek as found in the northwestern edge of the parcel (Middle Stream Side Buffer [50' width]), **(Requirement 0 sf./0 ft., Request 1,724 sf./41.5 ft. [max. encroachment into the stream side buffer], Variance 1,724 sf./41.5 ft.)**, (Outer Stream Side Buffer [25' width]), **(Requirement 0 sf./0 ft., Request 3,768 sf./25 ft. [max. encroachment into the stream side buffer], Variance 3,768 sf./25 ft.)**, (Total Stream Buffer Encroachment), **(Requirement 0 sf./0 ft., Request 5,492 sf./66.5 ft., Variance 5,492 sf./66.5 ft.)**, based on the Standard of Review and Staff Analysis for Variance, the applicant's testimony that there are adequate filtrations and MSD requirements to protect the water flow in Big Run Creek.

The vote was as follows:

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

Absent: Member Howard

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PUBLIC HEARING

CASE NUMBER 17VARIANCE1003

Request:	Reduction of Private Yard Area and Side Yard Setback
Project Name:	1942 Payne Street Addition
Location:	1942 Payne Street
Owner:	Monica Mahoney
Applicant:	Architectural Artisans
Representative:	Jeff Rawlins – Architectural Artisans
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
Case Manager:	Dante St. Germain, Planner I

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

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

Agency Testimony:

01:40:58 Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Jeff Rawlins, 748 East Market Street, Louisville, KY
George Hanratty, 1 Angora Court, Louisville, KY 40206

Summary of testimony of those in favor:

01:49:36 Jeff Rawlins spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

02:00:42 George Hanratty spoke in favor of the request (see recording for detailed presentation).

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The following spoke in opposition of the request:

No one spoke.

02:02:30 Board Members' deliberation

02:03:16 On a motion by Member Fishman, seconded by Member Turner, the following resolution was adopted:

Variance from Land Development Code Section 5.4.1.D.2 to allow the private yard area to be less than the required 30% of the overall lot size in the Traditional Neighborhood Form District

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the private yard area reduction is necessitated by the location of the garage, which is placed so as to preserve an existing large mature tree, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the removal of the existing large tree would have a greater impact on the general vicinity than reducing the private yard area, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the reduction in private yard area will not impact the public, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the variance is needed in order to preserve an existing large tree. Preservation of tree canopy is encouraged by the Land Development Code, and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the variance is requested in order to preserve an existing large tree, and

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

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requiring the applicant to build the garage closer to the alley and remove the existing large tree, and

WHEREAS, the Board further finds that the circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not yet constructed the proposed new garage; and

Variance from Land Development Code Section 5.2.2 to allow a structure to encroach into the 3' required side yard setback

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare as the side yard into which the house addition will encroach abuts an alley, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the house addition is proposed to be in-line with an existing side stair, which is in-character for houses of a similar style, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the side yard into which the house addition is proposed to encroach abuts an alley, and

WHEREAS, the Board further finds that the requested variance will allow an unreasonable circumvention of the zoning regulations as there are no topographic or architectural concerns that require an encroachment into the side yard, and

WHEREAS, the Board further finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the side yard abuts an alley, a circumstance which is not present for most homes in the vicinity, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant as the applicant could reduce the size of the house addition or relocate the addition to provide the full side yard, and

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

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 17VARIANCE1003, does hereby **APPROVE** Variance from Land Development Code Section 5.4.1.D.2 to allow the private yard area to be less than the required 30% of the overall lot size in the Traditional Neighborhood Form District (**Requirement 2015 sq. ft. [30%], Request 1,469.5 sq. ft. [22%], Variance 545.5 sq. ft. [8%]**), and Variance from Land Development Code Section 5.2.2 to allow a structure to encroach into the 3' required side yard setback (**Requirement 3 ft., Request 1.5 ft., Variance 1.5 ft.**), based on the presentation, the Standard of Review and Staff Analysis for Variances and Additional Considerations and the discussion.

The vote was as follows:

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

Absent: Member Howard

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CASE NUMBER 17VARIANCE1000

Request:	To allow a fence in the required yard to exceed 8' in height
Project Name:	5305 Pendleton Road Fence
Location:	5305 Pendleton Road
Owner:	Eric Bennett
Applicant:	Eric Bennett
Representative:	Eric Bennett
Jurisdiction:	Louisville Metro
Council District:	14 – Cindi Fowler
Case Manager:	Dante St. Germain, Planner I

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

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

Agency Testimony:

02:05:47 Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Eric Bennett, 5305 Pendleton Road, Louisville, KY 40272

Summary of testimony of those in favor:

02:17:33 Eric Bennett spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

Donald Carver, Jr. 174 Knights Court, Taylorsville, KY 40071

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Summary of Testimony of those in opposition:

02:38:42 Donald Carver, Jr. spoke in opposition of the request and provided handouts to the Board Members. Mr. Carver responded to questions from the Board Members (see recording for detailed presentation).

03:07:05 The Board Members, by general consensus, postponed action on this case to allow the applicant an opportunity to review the information presented by Mr. Carver.

NOTE: The last agenda item was heard at this time (see page 44 of these minutes).

03:30:08 The Board Members returned to Case Number 17VARIANCE1000 to hear rebuttal testimony from the applicant.

03:30:43 Eric Bennett spoke in rebuttal (see recording for detailed presentation).

03:42:12 John Carroll, Legal Counsel, reminded the Board Members that the legality of the construction is not their issue and that the issue before the Board is the height variance. Member Bergmann asked about the status of the citation. Mr. Carroll stated that once the case comes before the Board with this Variance request, then the citation is on hold. Vice Chair Jarboe asked if there is a citation and what are the parameters of the citation (see recording for detailed presentation).

03:44:31 Joe Haberman, Planning & Design Manager, stated there is a violation that has been issued and it is on hold pending the decision of BOZA regarding the height; that is what the violation is about is the height, it is not about the location or the material (see recording for detailed presentation).

03:44:57 Vice Chair Jarboe asked if the citation allowed a specific amount of time.

03:45:04 Mr. Haberman stated the citation is being handled by Planning & Design Services Zoning Enforcement, and they typically hold items that are pending approval by BOZA or the Planning Commission (see recording for detailed presentation).

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03:45:46 Vice Chair Jarboe asked the applicant if that was clear to the applicant that if he puts the case on hold no action will be taken against him until the case comes before the Board again. Mr. Bennett said "certainly" (see recording for detailed presentation).

03:46:06 Mr. Haberman stated assuming he comes back within a reasonable time frame as determined. Mr. Haberman stated he wouldn't say that it's on hold indefinitely; if he doesn't come back before BOZA for a very, very long time they might decide they have to act on it (see recording for detailed presentation).

03:46:33 Vice Chair Jarboe asked the applicant how much time he thinks he would need before he brings the case back (see recording for detailed presentation).

03:46:35 Mr. Bennett said several months, he would have to hire a lawyer, he would have to find someone who could handle the case (see recording for detailed presentation).

03:46:49 Mr. Carroll asked the applicant if this attorney was going to come in and give an opinion on the Variance height (see recording for detailed presentation).

03:46:54 Mr. Bennett stated that would be the main subject, but he feels like he has been put on trial for the fence location, but he's been granted a permit. Mr. Bennett stated he feels like the actual location is in question, but the permit has been granted, so if the permit has been granted then he needs a lawyer to say this is where the fence location was granted to be put up and defend his standpoint from there (see recording for detailed presentation).

03:47:26 Board Members discussed the location and height of the fence (see recording for detailed presentation).

03:50:19 Board Members' deliberation

03:52:12 On a motion by Member Bergman, seconded by Vice Chair Jarboe, the following resolution was adopted:

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WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will alter the essential character of the general vicinity as the area is residential and agricultural in nature and fences of the proposed height are not characteristic of the area, and

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because the fence could be reduced in height to 8 feet and would not need a variance at that height; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16VARIANCE1000, does hereby **DENY** Variance from the Land Development Code Section 4.4.3.A.1.a to allow a fence in the required side yard to exceed 8 feet in height, based on the fact that the applicant has not presented enough information to satisfy a Variance to the Code Standards of 8 feet as maximum height in the side and rear yards, and the Staff Report.

The vote was as follows:

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

No: Chair Allendorf

Absent: Members Howard and Fishman

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CASE NUMBER 16CUP1078

Request:	Conditional Use Permit to allow a dog kennel in a C-1 zoning district
Project Name:	Dogtopia
Location:	219 South Hurstbourne Parkway
Owner:	Frank and Jane Schmitt
Applicant:	Sirius Holdings, LLC
Representative:	Nicholas R. Pregliasco
Jurisdiction:	Louisville Metro
Council District:	18 – Marilyn Parker
Case Manager:	Jon E. Crumby, Planning and Design Coordinator

NOTE: Member Fishman left at approximately 11:35 a.m.

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

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

Agency Testimony:

03:12:34 Jon Crumby presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Nick Pregliasco, 1000 N. Hurstbourne Parkway, Louisville, KY 40223
Ben Carter, 2005 Blairmore Road, Lexington, KY 40502

Summary of testimony of those in favor:

03:16:24 Nick Pregliasco spoke in favor of the request and referred to a Powerpoint presentation. Mr. Pregliasco responded to questions from the Board Members (see recording for detailed presentation).

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03:25:46 Ben Carter spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition to the request:

No one spoke.

03:27:43 Board Members' deliberation

03:28:22 On a motion by Vice Chair Jarboe, seconded by Member Bergmann, the following resolution was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the proposal meets all applicable policies of the Comprehensive Plan. Landscaping was approved under prior development plans, and

WHEREAS, the Board further finds that the subject site will be compatible with the surrounding land uses with respect to scale, height, drainage, and appearance, and

WHEREAS, the Board further finds that the proposal has been reviewed by Public Works and MSD and both have approved the plan, and

WHEREAS, the Board further finds that all facilities, except parking, shall be at least thirty feet from any property line, and

WHEREAS, the Board further finds that all facilities, except parking, shall be within a totally enclosed building except where it can be demonstrated that a nuisance is not created thereby, and

WHEREAS, the Board further finds that except in districts where signs are allowed, there shall be no more than one non-illuminated sign not to exceed twelve square feet in area and not to exceed six feet in height, and

WHEREAS, the Board further finds that all roads and parking areas shall be surfaced with a hard and durable material and properly drained, and

WHEREAS, the Board further finds that off-street parking spaces shall be provided in the ratio of one space for every 1 1/2 employees plus six spaces for visitors, and

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WHEREAS, the Board further finds that; Guideline 1 – Community Form: This site is located in the Suburban Marketplace Corridor Form Area/Form District, which is a suburban shopping retail/office corridor usually located along a major

thoroughfare, Hurstbourne Parkway. The Suburban Marketplace Corridor Form Area form typically encourages marketplace corridors for businesses such as this one with a compact mixture of a variety of medium to high intensity uses, with buildings generally oriented toward and located near the primary street. This application complies with this Guideline because no changes to the existing retail center or the existing building are proposed other than the addition of a small outdoor fenced in area. The existing center already conforms to most, if not all, of the Suburban Marketplace Corridor Form characteristics, some as enumerated, and

WHEREAS, the Board further finds that; Guideline 2 – Centers: The Intents and Policies 1, 3, 4, 5, 7, 10, 11, 13 and 14 of this Guideline all pertain to how a specific land use in a given Form Area/District should be designed in terms of the specific context and site. This application complies with this Guideline, its Intents and Policies because it is located in the Suburban Marketplace Corridor Form with no change to the existing retail center proposed, other than a small fenced in area. If not for the small portion of the business that offers overnight indoor boarding of dogs, this applicant would not need the CUP and could open for business. The CUP development plan filed with this application and land use map demonstrate, demonstrates this use fits within its compact setting surrounded by a mixture of compatible uses. Access to and parking serving the center are shared, and

WHEREAS, the Board further finds that; Guideline 3 – Compatibility: The Intents and Policies of 1, 2, 5, 6, 7, 8, 9, 12, 22, 23, 24, and 28 all pertain to the mitigation of various impacts, such as design, considering building materials, odors, traffic, noise ,lighting, screening and buffering and signage. Again, because there are no proposed changes to the existing retail center and design, there will be no design or building material issues. The applicant's use will not adversely impact other retail tenants due to the very significant soundproofing installed in the walls during construction to completely mitigate noise impacts. The only nearby residential is the District at Hurstbourne, which is one of the few dog friendly apartment communities without any weight limitation that advertises to prospective tenants with pets. The manager of the District at Hurstbourne has indicated they support the application as it would offer needed dog daycare next door that the owners can use instead of having to leave the dog at home when at work. Dogs are only allowed in the outdoor area at various times during the day and will not be kept outside and no dogs will be kenneled

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outside. As such, it is not intending to introduce new impacts to an area that do not already exist. And because the use will be largely fully enclosed and further because access, parking, lighting and signage will not really change, once again new impacts are not created. Therefore this application complies with this Guideline and its applicable Intents and Policies as enumerated above and for reasons set forth above, on the development plan and in testimony presented at the Board of Zoning Adjustment Public Hearing, and

WHEREAS, the Board further finds that; Guideline 4 and 5 – Open Space and Natural Areas and Historic Resources: The Intents and Policies of Guideline 4 and 5 do not apply as there are no changes to the open space of the existing retail center and the existing center does not have any scenic or historic resources, and

WHEREAS, the Board further finds that; Guideline 6 – Economic Growth and Sustainability: The Intents and Policies 1, 2, 5, 6 and 11 of this Guideline all pertain to ensuring viable successful businesses, especially those that seek to enter the local market. This application complies with this Guideline, its Intents and Policies because it represents precisely what is largely encouraged through this Guideline, which is an adaptive reuse of an existing facilities in order to attract new businesses to the area, and

WHEREAS, the Board further finds that; Guidelines 7, 8, and 9 – Circulation: Transportation Facility Design, and Bicycle, Pedestrian and Transit: The Intents and Policies of these Guidelines all pertain to transportation, whether that be vehicular, transit, pedestrian or bicycle. Because this is an existing retail center with existing points of access, circulation and parking, nothing really changes from what has previously been deemed to be acceptable. Consequently, with the anticipated preliminary stamp of approval from Metro Works, all of the Intents and applicable Policies of these Guidelines are fully satisfied. If not, the existing use would already be out of compliance with the Comprehensive Plan, as would most, if not all, similarly situated uses in this same area, and

WHEREAS, the Board further finds that; Guideline 10 – Flooding and Stormwater: The Intents and Policies 3, 4, 6, 10 and 11 of this Guideline all pertain to MSD's concerns about stormwater management. This application complies with the Intent and these Policies of this Guideline because it does not increase the impervious surface and it will have received, by the time of official Board of Zoning Adjustment review, the preliminary stamp of approval from MSD, thus assuring no adverse consequences of stormwater run-off on nearby properties, and

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WHEREAS, the Board further finds that; Guideline 11 and 13 – Water Quality, Air Quality and Landscape Character: This application complies with the Intent and Policies of these Guidelines to the maximum extent that it can as an as-built building and retail center on an as-built site; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 16CUP1078, does hereby **APPROVE** Conditional Use Permit to allow a commercial kennel in a C-1 zoning district, based on the Staff Report Standard of Review and Staff Analysis for Conditional Use Permits, the applicant's justification statement, and the obvious compatibility with the neighborhood, and **SUBJECT** to the following Conditions of Approval:

Conditions of Approval:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
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 and approval by the Board.

The vote was as follows:

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

Absent: Members Howard and Fishman

03:29:45 Meeting was recessed.

03:30:07 Meeting was reconvened.

NOTE: At this time the Board Members returned to Item #6 on the agenda to complete action on that case (see page 41 of these minutes).

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ADJOURNMENT

The meeting adjourned at approximately 12:45 p.m.



Chair



Secretary