# MINUTES OF THE MEETING

# OF THE

# LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT

## May 15, 2017

A meeting of the Louisville Metro Board of Zoning Adjustment was held on May 15, 2017 at 8:30 a.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky.

**Members Present:**
Mike Allendorf, Chair
Betty Jarboe, Vice Chair (arrived at approximately 8:35 a.m.)
Rosalind Fishman, Secretary
Lester Turner
Dean Tharp
Lula Howard (arrived at approximately 8:38 a.m.)

**Members Absent:**
Paul Bergmann

**Staff Members Present:**
Emily Liu, Planning & Design Director
Brian Mabry, Planning & Design Supervisor
Joe Haberman, Planning & Design Manager
Jon Crumbie, Planning & Design Coordinator
Dante St. Germain, Planner I
Beth Jones, Planner II
Paul Whitty, Legal Counsel
Sue Reid, Management Assistant

The following cases were heard:

## APPROVAL OF MINUTES

## MAY 1, 2017 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

**00:02:14** On a motion by Member Tharp, 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 May 1, 2017.

**The vote was as follows:**

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

**NOTE: Member Howard and Vice Chair Jarboe arrived after voting on the Approval of Minutes.**

## PUBLIC HEARING

## CASE NUMBER 16CUP1072

| | |
|---|---|
| Request: | Modification of an existing Conditional Use Permit and landscape waivers to allow improvements to a nursing home located in an R-6 zoning district |
| Project Name: | Essex Nursing and Rehabilitation Center |
| Location: | 9600 Lamborne Boulevard |
| Owner: | Hillco, Ltd. |
| Applicant: | CMW, Inc. |
| Representative: | Adam Bender-Saunders |
| Jurisdiction: | Louisville Metro |
| Council District: | 25 – David Yates |
| Case Manager: | Jon E. Crumbie, Planning and Design Coordinator |

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

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

**Agency Testimony:**

**00:03:03** Jon Crumbie presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

**The following spoke in favor of the request:**
Adam Bender, 400 East Vine Street, Lexington, KY 40507

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

**00:07:18** Adam Bender spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**00:09:33** Mr. Crumbie responded to questions from the Board Members (see recording for detailed presentation).

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**00:10:43** Mr. Bender responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the request:**
No one spoke.

**00:12:12 Board Members' deliberation**

**00:16:21** On a motion by Member Fishman, seconded by Member Howard, the following resolution was adopted:

**Modified Conditional Use Permit to allow an addition to an existing nursing home and reconfigure the parking in the R-6 zoning district:**

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

**WHEREAS,** the Board further finds that the proposal is compatible with the surrounding land uses with respect to height, bulk, scale, intensity, traffic, noise, lighting, and appearance, and

**WHEREAS,** the Board further finds that the Metropolitan Sewer District and Transportation Planning have approved the proposal. The Pleasure Ridge Park Fire Protection District did not comment on the proposal, and

**WHEREAS,** the Board further finds that all buildings shall be located at least 30 feet from any property line, and

**WHEREAS,** the Board further finds that one sign, not to exceed 60 square feet and six feet in height, may be placed at each of the major entrances, except in districts where larger signs are allowed; now, therefore be it

**RESOLVED,** the Louisville Metro Board of Zoning Adjustment in Case Number 16CUP1072 does hereby **APPROVE** Modified Conditional Use Permit to allow an addition to an existing nursing home and reconfigure the parking in the R-6

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zoning district, based upon the presentation and the Staff Report, and **SUBJECT** to the following Condition of Approval:

**Condition 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.

**The vote was as follows:**

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

**00:18:09** On a motion by Member Fishman, seconded by Member Howard, the following resolution was adopted:

**Waiver to allow the required landscape buffer area along the north and south property line to be reduced:**

**WHEREAS,** the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners since the existing location of the drive along the north property line will not change. The church on the adjacent property to the north is approximately 600 feet from the property line. The south property line is adjacent to a rail road track. The north and south property lines will be screened by an 8 feet tall privacy fence as well as large and medium trees, and

**WHEREAS,** the Board further finds that Guideline 3, Policy 9 of Cornerstone 2020 calls for protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigation when appropriate. Guideline 3, Policies 21 and 22 call for appropriate transitions between uses that are substantially different in scale and intensity or density, and mitigation of the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline

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3, Policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, Policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter airborne and waterborne pollutants, 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 since the reduced landscape buffer area along the north property line is an existing condition. The new design will allow parking near the building for accessibility. The reduced landscape buffer area along the south property line will allow for a looped drive around the site as well as improve an area were parking is already in use, but not paved or maintained, and

**WHEREAS,** the Board further finds that the applicant has incorporated other design measures that exceed the minimum. The required 15 feet landscape buffer area along the west property line will be increased to 35 feet. Open space is nearly double the required amount. Strict application of the regulation would create an unnecessary hardship. The site is locked between a rail road, a floodplain and an existing ballfield. Expansion is limited by these existing conditions; now, therefore be it

**RESOLVED,** the Louisville Metro Board of Zoning Adjustment in Case Number 16CUP1072 does hereby **APPROVE** Waiver to allow the required landscape buffer area long the north and south property line to be reduced **(North Property Line Requirement 15', Request 7', Waiver 8'); (South Property Line Requirement 15', Request 5', Waiver 10')**, based upon the presentation, the discussion and the Staff Report.

**The vote was as follows:**

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

## PUBLIC HEARING

## CASE NUMBER 17VARIANCE1010

| | |
|---|---|
| Request: | Variances from the required 5' side yard setbacks |
| Project Name: | 11018 Booker Road |
| Location: | 11018 Booker Road |
| Owner: | Commercial Management Group LLC |
| Applicant: | Commercial Management Group LLC |
| Representative: | Scott Howe |
| Jurisdiction: | Louisville Metro |
| Council District: | 19 – Julie Denton |
| 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:

**00:19:39** Dante St. Germain presented the case and showed a Powerpoint presentation. Ms. St. Germain provided the Board Members with an interested party comment in opposition that had been received by staff after preparation of the Staff Report. 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:

Scott Howe, 10943 Old Harrods Woods Circle, Louisville, KY 40223

### Summary of testimony of those in favor:

**00:27:31** Scott Howe spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

**00:30:32** Ms. St. Germain responded to a question from Vice Chair Jarboe (see recording for detailed presentation).

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**The following spoke in opposition of the request:**
No one spoke.

**00:31:40 Board Members' deliberation**

**00:32:15** Ms. St. Germain responded to a questions from Member Turner and Vice Chair Jarboe (see recording for detailed presentation).

**00:33:04 Board Members' deliberation**

**00:34:14** Ms. St. Germain responded to a question from Member Tharp (see recording for detailed presentation).

**00:34:33 Board Members' deliberation**

**00:35:52** 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 variances will not adversely affect the public health, safety or welfare as the encroachments are negligible, at less than 1 foot and the house will be required to comply with building codes to protect the safety of the neighbors, and

**WHEREAS,** the Board further finds that the requested variances will not alter the essential character of the general vicinity as most of the Cherokee Court subdivision was platted with 30' lot widths and many houses in the subdivision have little to no side yard setback, and

**WHEREAS,** the Board further finds that the requested variances will not cause a hazard or nuisance to the public as the proposed house will have to comply with building code, and

**WHEREAS,** the Board further finds that the requested variances will not allow an unreasonable circumvention of the zoning regulations as the subdivision was recorded in 1942 and the property owner must work within the confines of the existing lot, and

**WHEREAS,** the Board further finds that the requested variances arise from special circumstances which do not generally apply to land in the general vicinity

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or the same zone because an R-5 zoned lot in the current Land Development Code must be a minimum of 50' wide, whereas this lot is only 30' wide, and

**WHEREAS,** the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant by requiring the applicant to build an extremely narrow house to fit on the lot, and

**WHEREAS,** the Board further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the lot was recorded in 1942 at 30' in width, considerably narrower than the current regulations would permit; now, therefore be it

**RESOLVED,** the Louisville Metro Board of Zoning Adjustment in Case Number 17VARIANCE1010 does **APPROVE** Variances from Land Development Code Table 5.3.1 for a structure to encroach into the required side yards **(Side Yard Setback – Requirement 5 ft., Request 4.5 ft., Variance 0.5 ft.); (Side Yard Setback – Requirement 5 ft., Request 4.5 ft., Variance 0.5 ft.)**, based upon the Staff Report, the site plan and the applicant's justification statement.

**The vote was as follows:**

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

## PUBLIC HEARING

## CASE NUMBER 17CUP1019

| | |
|---|---|
| Request: | Conditional Use Permit to allow short term rental of a single-family dwelling unit not the primary residence of the owner |
| Project Name: | Short Term Rental |
| Location: | 272 Saunders Avenue |
| Owner: | Lee Gutterman III |
| Applicant: | Lee Gutterman III |
| Representative: | Lee Gutterman III |
| Jurisdiction: | Louisville Metro |
| Council District: | 9 – Bill Hollander |
| Case Manager: | Beth Jones, AICP, Planner II |

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

**00:38:27** Beth Jones presented the case and showed a Powerpoint presentation. Ms. Jones responded to questions from the Board Members (see staff report and recording for detailed presentation).

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

Lee Gutterman, 2847 Cleveland Blvd., Louisville, KY 40206

### Summary of testimony of those in favor:

**00:43:20** Lee Gutterman spoke in favor of the request and 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.

**00:46:47 Board Members' deliberation**

**00:47:36** 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 proposal does not conflict with Comprehensive Plan policies, and

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

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

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

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

A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental.

B. The dwelling unit shall be limited to a single short term rental contract at a time.

C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus four individuals. ***The dwelling contains one bedroom; the maximum number of persons permitted is six.***

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D. The dwelling unit shall be a single-family residence, duplex or condominium. This provision shall not be waived or adjusted. ***The dwelling unit is a single-family residence.***

E. Food and alcoholic beverages shall not be served or otherwise provided by the host to any guest.

F. Outdoor signage which identifies the short term rental is prohibited.

G. There shall be a sufficient amount of parking available for the host and guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. Any parking surface that is added to accommodate the short term rental use shall be removed when the short term rental use is terminated. ***On-street parking appears to be the only option.***

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

I. If the property is subject to two (2) or more substantiated civil and/or criminal complaints, the Board of Zoning Adjustment may revoke the approval pursuant to LDC 11.5A.6; now, therefore be it

**RESOLVED,** the Louisville Metro Board of Zoning Adjustment in Case Number 17CUP1019, does hereby **APPROVE** Conditional Use Permit to allow short term rental of a single-family dwelling unit that is not the primary residence of the owner, based upon the Staff Report, the applicant's justification, the applicant's testimony, and **SUBJECT** to the following Condition of Approval:

**Condition of Approval:**

1. Prior to commencement of any short term rental on the subject property, the short term rental and host shall meet all additional provisions set forth in the Louisville Metro Code of Ordinances, including the requirements to register annually with Develop Louisville and to register with the Louisville Metro Revenue Commission.

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The vote was as follows:

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

## ADJOURNMENT

The meeting adjourned at approximately 9:23 a.m.

**Chair**

**Secretary**