

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

March 15, 2021

A meeting of the Louisville Metro Board of Zoning Adjustment was held on March 15, 2021 at 1:00 p.m. online via Cisco Webex Video Teleconferencing.

Members Present:

Lula Howard, Chair
Michael Seale, Vice Chair
Sharon Bond, Secretary
Richard Buttorff
Kimberly Leanhart
Lindsey Jagoe

Staff Members Present:

Emily Liu, Planning & Design Director
Joe Reverman, Planning & Design Assistant Director
Joe Haberman, Planning & Design Manager
Brian Davis, Planning & Design Manager
Chris French, Planning & Design Supervisor
Zach Schwager, Planner I
Jay Lockett, Planner I
Rachel Mandell, Planner I
Jon Crumbie, Planning & Design Coordinator
Laura Ferguson, Legal Counsel
Sue Reid, Management Assistant

On the recommendation of the Louisville Metro Department of Public Health & Wellness regarding congregate events and social distancing, and as permitted by Commonwealth of Kentucky Senate Bill 150, the March 15, 2021 Board of Zoning Adjustment meeting was held online.

The following cases were heard:

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

MARCH 1, 2021 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

00:06:22 On a motion by Member Buttorff, seconded by Member Bond, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the March 1, 2021 Board of Zoning Adjustment online meeting.

The vote was as follows:

Yes: Members Buttorff, Bond, Leanhart, Vice Chair Seale, and Chair Howard
Abstain: Member Jagoe

00:07:13 Chair Howard called item number 8 and item number 9 on today's agenda since the applicant is requesting to continue these cases. See pages #20-22 of these minutes.

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-CUP-0008

| | |
|-------------------|---|
| Request: | THIS CASE IS BEING CONTINUED TO 3/29/21 Conditional Use Permit to allow a private institutional use |
| Project Name: | St. Elizabeth Ann Seton Church garage addition |
| Location: | 11501 Maple Way |
| Owner/Applicant: | Roman Catholic Bishop of Louisville |
| Jurisdiction: | Louisville Metro |
| Council District: | 23 – James Peden |
| Case Manager: | Jon E. Crumbie, Planning & Design Coordinator |

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

Agency testimony:

00:18:26 Jon Crumbie stated there was a clerical error in noticing this case and the notices went to incorrect addresses, therefore the case is being continued to allow for proper noticing (see staff report and recording for detailed presentation).

00:20:35 On a motion by Vice Chair Seale, seconded by Member Bond, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case Number 21-CUP-0008 to the March 29, 2021 Board of Zoning Adjustment meeting.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0005

| | |
|-------------------|--|
| Request: | Variance to allow a private yard area to be less than the required 30% of the area of the lot and waivers to allow an accessory structure to be in the principal structure area and access from the primary street in a Traditional Neighborhood Form District |
| Project Name: | Mayer Avenue Variance and Waivers |
| Location: | 1014 Mayer Avenue |
| Owner: | Jeffrey & Rebecca Hollkamp |
| Applicant: | Rachel Harman – Concept Architects |
| Jurisdiction: | Louisville Metro |
| Council District: | 10 – Pat Mulvihill |
| Case Manager: | Zach Schwager, 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:

00:21:48 Zach Schwager stated the applicant has withdrawn this case (see staff report and recording for detailed presentation).

THIS CASE WAS WITHDRAWN. THEREFORE, NO VOTE OR ACTION WAS TAKEN.

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-MVARIANCE-0001

| | |
|-------------------|---|
| Request: | Modified variance to allow a proposed deck to reduce the private yard area to less than the required 20% of the area of the lot |
| Project Name: | Baxter Avenue Modified Variance |
| Location: | 437 Baxter Avenue |
| Owner: | ERW Revocable Trust |
| Applicant: | Charles Podgursky – CRP & Associates Inc. |
| Jurisdiction: | Louisville Metro |
| Council District: | 4 – Jecorey Arthur |
| Case Manager: | Zach Schwager, 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:

00:22:26 Zach Schwager presented the case and showed a Powerpoint presentation (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Charles Podgursky, 7321 New LaGrange Rd., #111, Louisville, KY 40222

Summary of testimony of those in favor:

00:26:05 Charles Podgursky spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-MVARIANCE-0001

00:30:48 **Board Members' deliberation**

00:31:41 On a motion by Member Leanhart, seconded by Member Bond, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare, because the proposed addition must be constructed to comply with all building codes, including fire codes, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the single-family uses on the block all have reduced private yard areas. Also, the subject property is in a predominantly commercial area with a variety of site designs, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the addition must be constructed to comply with all building codes, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the single-family uses on the block all have reduced private yard areas. Also, the subject property is in a predominantly commercial area with a variety of site designs; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-MVARIANCE-0001 does hereby **APPROVE** Modified Variance from Land Development Code Section 5.4.1.D.3 to allow a private yard area to be less than the required 20% of the area of the lot (**Private Yard Area Requirement 551 sq. ft., Request 253.5 sq. ft., Variance 297.5 sq. ft.**).

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0011

| | |
|-------------------|---|
| Request: | Variance and waivers to exceed the maximum setback on a corner lot, allow surface parking to be in front of the building façade and to allow VUA to encroach into the scenic corridor buffer area |
| Project Name: | Scooters Coffee |
| Location: | 11506 Shelbyville Rd |
| Owner/Applicant: | 3B Properties II LLC/Alex Rosenberg |
| Jurisdiction: | Middletown |
| Council District: | 19 – Anthony Piagentini |
| Case Manager: | Rachel Mandell, 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:

00:34:21 Rachel Mandell presented the case and showed a Powerpoint presentation. Ms. Mandell responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Alex Rosenberg, 13000 Middletown Industrial Blvd., Suite A, Louisville, KY 40223
Kimberly Williford, 13664 Plaster Circle, Broomfield, CO 80023

Summary of testimony of those in favor:

00:41:40 Alex Rosenberg spoke in favor of the request and showed a Powerpoint presentation (see recording for detailed presentation).

00:50:54 Kimberly Williford spoke in favor of the request (see recording for detailed presentation).

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0011

The following spoke in opposition of the request:

No one spoke.

00:52:30 Board Members' deliberation

00:56:30 On a motion by Vice Chair Seale, seconded by Member Bond, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

Variance from Middletown Land Development Code Section 5.5.1.A.2 to allow a structure to exceed the maximum setback:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety, or welfare. The building will sit further back from the intersection of Shelbyville Road and North Watterson Trail than what the site design standards require, however this will allow for greater vision clearance, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity since the surrounding properties are also subject to the scenic corridor buffer, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public. The development proposal must comply with all building codes, including fire codes, and will also require a landscape plan prior to the issuance of building permits, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the scenic corridor buffer requirements restricted the placement of the building; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-00011 does hereby **APPROVE** Variance from Land Development Code Section 5.5.1.A.2 to allow a structure to exceed the maximum setback (**Street Side Yard Requirement 0 ft., Request 87.80 ft., Variance 87.80 ft.**).

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0011

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

00:58:10 On a motion by Vice Chair Seale, seconded by Member Bond, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

Waiver from Middletown Land Development Code Section 5.5.1A.3.c to allow surface parking to be located between the public right-of-way and the building façade:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners because the parking is adjacent to North Watterson Trail and does not share a property line with any adjoining lots, and

WHEREAS, the Board further finds that Guideline 1, Policy 4 strives to ensure new development and redevelopment are compatible with scale and site design of nearby existing development with the desired pattern of development within the Form district. The waiver will not violate specific guidelines of Cornerstone 2040 as the proposal will allow for the development of the site in a manner that is appropriate for the form district. The Town Center form district encourages uses that are located in close proximity to major thoroughfares with the intensity of uses gradually declining toward the adjacent neighborhoods. The waiver will not allow an unreasonable circumvention of the regulations or cause a hazard to 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. Given the width, depth, and intended use of the lot, the waiver is needed in order to provide the required parking. The scenic corridor areas of the site will provide landscaping which will serve as an aesthetic barrier to the parking located between the front and street side facades of the building and the public right of way, 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 because the applicant is intending to comply with the scenic corridor requirements to the best of their ability while also complying with the site design standards for a corner lot in a traditional form district. The location of the parking is needed to accommodate vehicular

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0011

connections to adjacent lots, a screened dumpster area and adequate space for the required plantings along the scenic corridor; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0011 (21-WAIVER-0016) does hereby **RECOMMEND FOR APPROVAL** to the City of Middletown Waiver from Middletown Land Development Code Section 5.5.1A.3.c to allow surface parking to be located between the public right-of-way and the building façade.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

01:01:12 Board Members' deliberation

01:07:57 On a motion by Member Bond, seconded by Member Buttorff, the following resolution, based upon the applicant's justification and the testimony heard today, was adopted:

Waiver from Middletown Land Development Code 10.3.6.A.9 to allow vehicular use area to encroach into the Scenic Corridor Buffer:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect the adjacent properties because in this case, allowing the VUA to encroach into the Scenic Corridor buffer is the same as the entrance encroaching into the VUA which is allowed, and

WHEREAS, the Board further finds that the waiver will not violate the Comprehensive Plan because the plan follows the recommendations of the Streetscape Study founded on the Comprehensive Plan, and

WHEREAS, the Board further finds that the requested waiver allows the development to maintain the essential character of the area and in fact follows the recommendations of the Middletown Streetscape Study, and

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0011

WHEREAS, the Board further finds that the encroachment does not affect the required plantings within the Scenic Corridor Buffer; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0011 (21-WAIVER-0017) does hereby **RECOMMEND FOR APPROVAL** to the City of Middletown Waiver from Middletown Land Development Code 10.3.6.A.9 to allow vehicular use area to encroach into the Scenic Corridor Buffer.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0018

| | |
|-------------------|---|
| Request: | Variance to allow an accessory structure to encroach into the side yard setback |
| Project Name: | Kitty Hawk Way Variance |
| Location: | 4710 Kitty Hawk Way |
| Owner/Applicant: | Kristin & Lance Jackson/Kristin Jackson |
| Jurisdiction: | Windy Hills |
| Council District: | 7 – Paula McCraney |
| Case Manager: | Rachel Mandell, 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:

01:11:00 Rachel Mandell presented the case and showed a Powerpoint presentation. Ms. Mandell responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Cliff Ashburner, 101 S. Fifth St., Suite 2500, Louisville, KY 40202
Donna Dusel, 705 Rudy Lane, Louisville, KY 40207
William Norton, 421 Kaelin Drive, Louisville, KY 40207

Summary of testimony of those in favor:

01:14:47 Cliff Ashburner spoke in favor of the request and showed a Powerpoint presentation (see recording for detailed presentation).

01:29:36 Donna Dusel spoke in favor of the request (see recording for detailed presentation).

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0018

01:31:10 Cliff Ashburner concluded his presentation (see recording for detailed presentation).

01:34:42 William Norton spoke in favor of the request (see recording for detailed presentation).

The following spoke in opposition of the request:

David Spenard, 239 S. 5th St., Suite 917, Louisville, KY 40202

Helen Davis, Mayor of Windy Hills, 732 Wicklow Rd., Louisville, KY 40207

Brenna Gray, 4712 Kitty Hawk Way, Louisville, KY 40207

01:37:00 David Spenard spoke in opposition of the request on behalf of the City of Windy Hills and responded to questions from the Board Members (see recording for detailed presentation).

01:42:10 Helen Davis spoke in opposition of the request. Ms. Davis stated Windy Hills does not have their own zoning board so when someone contacts them, they are told they have to file the proper permits and so forth and make sure they meet Metro code. Ms. Davis stated that in effect they didn't really give an okay, they're just saying this is what you need to do to proceed. Ms. Davis stated she opposes this variance because it is not in character with their neighborhood. Ms. Davis responded to questions from the Board Members (see recording for detailed presentation).

01:47:49 Brenna Gray spoke in opposition of the request. Ms. Gray stated she is the neighbor most affected by this, and the Jacksons have not been interested in any compromise. Ms. Gray responded to questions from the Board Members (see recording for detailed presentation).

01:59:04 Helen Davis provided additional testimony regarding moving the stairs and the impact that would have on other neighbors. Ms. Davis responded to questions from the Board Members (see recording for detailed presentation).

REBUTTAL:

02:01:35 Cliff Ashburner spoke in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

02:07:19 Donna Dusel stated providing plantings would restrict access for performing future maintenance (see recording for detailed presentation).

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0018

02:08:48 **Board Members' deliberation**

02:22:00 On a motion by Vice Chair Seale, seconded by Member Leanhart, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect the public health, safety or welfare. The structure will comply with all building codes, including fire codes, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the proposed addition will be conforming with the design of other structures on the same block, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the height of the structure is in compliance with the Land Development Code, and the applicant has provided testimony that construction and maintenance can be achieved within the property boundaries. The applicant has also worked to eliminate the privacy nuisance by not adding windows on the side of the adjoining property owner and installing a solid panel at the top entrance, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the second story addition will share the same setback as the existing accessory structure; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0018 does hereby **APPROVE** Variance from Land Development Code Section 5.4.2.3.a to allow an accessory structure to encroach into the required side yard setback (**Northeast Side Yard Requirement 2 ft., Request 1.3 ft., Variance 0.7 ft.**).

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

02:25:10 **Meeting was recessed.**

02:35:37 **Meeting was reconvened.**

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 20-VARIANCE-0172

| | |
|-------------------|--|
| Request: | Variance to allow a proposed gas station to exceed the maximum front and street side setbacks. Waivers to reduce ILA requirements, buffer requirements and cross-connection with adjacent properties |
| Project Name: | Pandher |
| Location: | 6804 Shepherdsville Rd |
| Owner: | GSD Petroleum |
| Applicant: | Sanjit Pandher |
| Jurisdiction: | Louisville Metro |
| Council District: | 2 – Barbara Shanklin |
| Case Manager: | Jay Lockett, AICP, 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:

02:36:19 Jay Lockett presented the case and showed a Powerpoint presentation. Mr. Lockett stated staff did not find that either of the landscape waivers were adequately justified. However, in the time since the staff report was published, the applicant has provided information that shows that KYTC will allow them to install plantings in the right of way that would be the required screening. Mr. Lockett stated in light of that information that would take care of his concerns for the screening and buffering part, but staff does still not support the reduction of ILA requirements. Mr. Lockett responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Mike Hill, 503 Washburn Ave., Suite 101, Louisville, KY 40222

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 20-VARIANCE-0172

Summary of testimony of those in favor:

02:46:21 Mike Hill spoke in favor of the request and showed a Powerpoint presentation (see recording for detailed presentation).

03:04:06 Mr. Lockett and Mr. Hill responded to a question from Joe Reverman, Planning & Design Assistant Director, regarding the cross walk on the side street being on the property rather than in the right-of-way (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

03:06:02 Board Members' deliberation

03:08:12 On a motion by Vice Chair Seale, seconded by Member Bond, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

Variance from Land Development Code Section 5.1.12 to exceed the approximately 30-foot infill setback along Mile of Sunshine by up to 50 feet as shown on the proposed development plan; Variance from Land Development Code Section 5.1.12 to exceed the approximately 73-foot infill maximum setback by up to 36 feet as shown on the proposed development plan:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the requested variance will not adversely affect public health safety or welfare since provisions for safe vehicular and pedestrian traffic will be provided. The development will meet all building and safety codes, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the area has a varied commercial development pattern with a mix of setbacks, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public since safe vehicular and pedestrian circulation in and around the site will be provided, and

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 20-VARIANCE-0172

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of zoning regulations since the development is in keeping with the development pattern in the area and allows for the redevelopment of an existing vacant commercial site; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 20-VARIANCE-0172 does hereby **APPROVE** Variance from Land Development Code Section 5.1.12 to exceed the approximately 30-foot infill setback along Mile of Sunshine by up to 50 feet as shown on the proposed development plan, and Variance from Land Development Code Section 5.1.12 to exceed the approximately 73-foot infill maximum setback by up to 36 feet as shown on the proposed development plan.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

03:09:46 On a motion by Vice Chair Seale, seconded by Member Bond, the following resolution, based upon the Standard of Review and Staff Analysis, and the testimony heard today, was adopted:

Waiver from Land Development Code Sections 5.5.2.B.1.a and 5.9.2.A.1.b to not provide direct pedestrian and vehicular connections to adjacent commercial development:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners, as the adjacent sites are already developed commercial sites and do not have cross connection with the subject site, and

WHEREAS, the Board further finds that the waiver will not violate the comprehensive plan, as it will allow the redevelopment of an existing commercial site within an established activity center. The waiver will not allow an unreasonable circumvention of the regulations or cause a hazard to the public. Adequate pedestrian circulation between the sites is served via the public sidewalk network, 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, and

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 20-VARIANCE-0172

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, as it would require significant redesign of the site to accommodate drive-thru, dumpsters, compressed air and other accessory services; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 20-VARIANCE-0172 (20-WAIVER-0134) does hereby **APPROVE** Waiver from Land Development Code sections 5.5.2.B.1.a and 5.9.2.A.1.b to not provide direct pedestrian and vehicular connections to adjacent commercial development.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

03:12:17 On a motion by Vice Chair Seale, seconded by Member Bond, the following resolution, based upon the Standard of Review and Staff Analysis (as updated by staff in today's presentation), and the testimony heard today, was adopted:

Waiver from Land Development Code Section 10.2.10 to allow a parking lot to encroach into the required Vehicle Use Area Landscape Buffer Area as shown on the proposed development plan:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that the waiver will not adversely affect adjacent property owners, as adequate buffering and screening would be provided around the development site, and

WHEREAS, the Board further finds that the waiver will not violate the comprehensive plan, specifically Community Form Goal 1, Policy 12 which states in part "Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots...", 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, and

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 20-VARIANCE-0172

WHEREAS, the Board further finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 20-VARIANCE-0172 (20-WAIVER-0135) does hereby **APPROVE** Waiver from Land Development Code Section 10.2.10 allow a parking lot to encroach into the required Vehicle Use Area Landscape Buffer Areas as shown on the proposed development plan.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

03:16:57 On a motion by Member Bond, seconded by Vice Chair Seale, the following resolution, based upon the testimony heard today, and the fact that there are three smaller internal landscape areas that in total do meet the requirement, was adopted:

Waiver from Land Development Code Section 10.2.12 to not provide all required Vehicle Use Area Internal Landscape Areas as shown on the proposed development plan:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that there are three smaller internal landscape areas that in total, when considering the acreage, do meet the 1,833 square foot requirement; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment, in Case Number 20-VARIANCE-0172 (20-WAIVER-0135) does hereby **APPROVE** Waiver from Land Development Code Section 10.2.12 to not provide all required Vehicle Use Area Internal Landscape Areas as shown on the proposed development plan.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, Vice Chair Seale, and Chair Howard

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 20-NONCONFORM-0022

| | |
|-------------------|---|
| Request: | Nonconforming rights determination to allow a private non-profit club to operate in a single-family zoning district |
| Project Name: | River Road Nonconforming Rights |
| Location: | 6603 River Road |
| Owner/Applicant: | Mark Mercurio and Lora Mercurio |
| Jurisdiction: | Louisville Metro |
| Council District: | 16 – Scott Reed |
| Case Manager: | Zach Schwager, 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:

00:08:09 Zach Schwager stated the applicant is requesting a continuance for this case and the next case on the agenda to the April 19, 2021 Board of Zoning Adjustment meeting (see staff report and recording for detailed presentation).

Applicant testimony:

00:10:27 Mark Mercurio (6603 River Rd., Prospect, KY 40059) stated they were requesting a continuance because they thought they could obtain more proof that the nonconforming rights had not been abandoned. Robert Herre (2809 Rivers Edge Rd., Louisville, KY 40222) stated they were able to interview the former owner of the property and in that interview they learned of this, and that's the reason they had not heretofore researched this (see recording for detailed presentation).

00:16:23 On a motion by Member Buttorff, seconded by Vice Chair Seale, the following resolution was adopted:

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 20-NONCONFORM-0022

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case Numbers 20-NONCONFORM-0022 and 21-NONCONFORM-0004 to the April 19, 2021 Board of Zoning Adjustment meeting.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, and Vice Chair Seale
Abstain: Chair Howard

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-NONCONFORM-0004

| | |
|-------------------|--|
| Request: | Change in nonconforming rights from a private non-profit club to a professional office |
| Project Name: | River Road Nonconforming Rights |
| Location: | 6603 River Road |
| Owner/Applicant: | Mark Mercurio and Lora Mercurio |
| Jurisdiction: | Louisville Metro |
| Council District: | 16 – Scott Reed |
| Case Manager: | Zach Schwager, 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.

NOTE: Testimony for this case was heard with testimony for 20-NONCONFORM-0022. See Pages 20-21 of these minutes for testimony, motion and vote.

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-APPEAL-0001

| | |
|-------------------|--|
| Request: | Appeal of a Notice of Violation concerning the conditions of approval not being met for an approved Conditional Use Permit |
| Project Name: | Limestone Bay Yacht Club |
| Location: | 5801 Upper River Road |
| Owner(s): | Limestone Bay Yacht Club, LLC |
| Appellant: | Limestone Bay Yacht Club, LLC |
| Jurisdiction: | Louisville Metro |
| Council District: | 16 – Scott Reed |
| Case Manager: | Jon E. Crumbie, Planning & 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:

03:20:15 Jon Crumbie presented the case and showed a Powerpoint presentation. (see staff report and recording for detailed presentation).

The following spoke in opposition of the appeal:

Owen Ronald, 1201 Story Ave., Suite 215, Louisville, KY 40206
Meme Sweets-Runyon, CEO & President River Fields, Inc., 1202 Story Ave., Louisville, KY 40206

Summary of testimony of those in opposition of the appeal:

03:25:58 Owen Ronald, attorney with River Fields, Inc., spoke in opposition of the appeal. Mr. Ronald stated they dug into Bearno's online presence and their public filings to see if they were operating a private club or restaurant. Mr. Ronald stated they found one hundred fifty or so reviews online and not a single one mentioned even being charged the membership fee. Mr. Ronald stated neither Bearno's website nor its

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-APPEAL-0001

Facebook page mentioned that it's a private restaurant or that they are engaged in private club management not a public restaurant. Mr. Ronald stated the annual filings by Good Old Buoys LLC. with the Kentucky Secretary of State also lists the business as pizza restaurant and bar or restaurant, but not private club management (see recording for detailed presentation).

03:29:07 Meme Sweets-Runyon spoke in opposition of the appeal. Ms. Sweets-Runyon stated this has been an issue that River Fields has been following for thirty-three years and there have been many, many efforts to commercialize this area. Ms. Sweets-Runyon stated River Road is a scenic by-way, and all of the plans have asked that there are only three nodes of commercial activity; one at Zorn Avenue, one at Prospect, and the little historic village of Harrod's Creek. Ms. Sweets-Runyon stated over the decades, the Planning Commission and this Board have always protected the scenic by-way from advanced commercialization. Ms. Sweets-Runyon stated she noted on Mr. Crumbie's presentation they did not meet their thirty day deadline to request an appeal. Mr. Haberman clarified that while the application didn't come in within thirty days, that doesn't account for time in the mail; it's thirty days from the date that the applicant received the notice. Mr. Haberman stated they did the math and they believe that the applicant filed a timely appeal within thirty days of receiving the citation. Mr. Crumbie stated it is noted in the staff report that the appellant stated they received the citation on December 23, 2020 (see recording for detailed presentation).

The following spoke in favor of the appeal:

Richard Bush, 2950 Breckenridge Lane, Louisville, KY 40207

Charles Ochsner, 2910 Tremont Dr., Louisville, KY 40205 (was sworn in, but did not speak)

Brian Bruenderman, 1129 Everett Ave., Louisville, KY 40204 (was sworn in, but did not speak)

George Timmering, 2362 Carlton Terrace, Louisville, KY 40205

Phil Bills, 8508 Nottingham Pkwy., Louisville, KY 40222

John Talbott, 521 Country Lane, Louisville, KY 40207

Summary of testimony of those in favor of the appeal:

03:37:12 Chair Howard swore in all speakers on behalf of the appellant. Richard Bush asked if the Board Members had received documentation that was sent to Mr. Crumbie. Chair Howard stated they had received the information via email. Mr. Bush spoke on behalf of the Limestone Bay Yacht Club. Mr. Bush stated the LDYC is a Kentucky corporation which owns the marina, the grounds and clubhouse. Mr. Bush

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-APPEAL-0001

stated that is private property and is not open to the general public. Mr. Bush stated access to that property is permitted only to the members and their guests. Mr. Bush stated the original Conditional Use Permit was granted in 1960 and has been in place ever since. Mr. Bush stated in 1984 a variance was granted to allow construction and operation of a clubhouse, restaurant and pub. Mr. Bush stated in 1996 the variance was increased to permit construction of two outdoor dining pavilions, which are still in operation today. Mr. Bush stated that pertinent to this notice of violation, the Limestone Bay Yacht Club entered into a Clubhouse Management Agreement in 2016 with an LLC called Good Old Buoys who were to manage the clubhouse and parking areas as a private club within the rules and regulations of the Conditional Use Permit granted to Limestone Bay Yacht Club. Mr. Bush stated under the agreement there are no sales to the general public, and all patrons must either be a member or a guest of a member. Mr. Bush stated the Good Old Buoys staff are instructed to ask for membership identification prior to being served at the clubhouse. Mr. Bush stated Good Old Buoys is controlled by the same membership as owners of a Bearno's franchise here in Louisville, although the Club House Management Agreement is with Good Old Buoys, not with Bearno's. Mr. Bush read into the record affidavits from Mr. Ochsner and Mr. Timmering. Mr. Bush stated Mr. Ochsner and Mr. Timmering are both available for questions. Mr. Bush discussed Limestone Bay Yacht Club membership. Mr. Bush responded to questions from the Board Members (see recording for detailed presentation).

03:59:20 Phil Bills spoke in favor of the appeal. Mr. Bills stated he wanted to make clear that the operators of the club do inquire and verify your membership (see recording for detailed presentation).

04:00:08 Mr. Bush continued his testimony. Mr. Bush stated no one is allowed to order online from this location (see recording for detailed presentation).

04:03:47 George Timmering stated the general Bearno's website goes to a landing page that is Bearno's By The Bay (Limestone Bay), but when you go to try to order you cannot order and they have never, ever turned it on so no one has ever ordered online from Bearno's By The Bay at that location and it says they serve the members there (see recording for detailed presentation).

04:04:30 Mr. Bush and Mr. Timmering responded to questions from the Board Members (see recording for detailed presentation).

04:09:18 Laura Ferguson, Legal Counsel, and Joe Haberman responded to a question from Chair Howard (see recording for detailed presentation).

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-APPEAL-0001

04:12:47 Mr. Bush continued his testimony. Mr. Bush stated the term restaurant is not a restaurant that is open to the public, and at no time has Limestone Bay ever operated a restaurant that is open to the public and does not intend to operate a restaurant that is open to the public. Mr. Bush stated they use the term restaurant as simply a place that serves food (see recording for detailed presentation).

04:14:56 Joe Haberman stated the signage is a separate issue and if the Board agrees with the appellant, we may still need to look at modifying the conditions of approval that simply says there shall be no signage (see recording for detailed presentation).

04:16:21 Mr. Bush concluded his testimony (see recording for detailed presentation).

04:19:27 John Talbott spoke in favor of the appeal (see recording for detailed presentation).

REBUTTAL:

04:26:48 Owen Ronald spoke in rebuttal and Mr. Bush responded to his questions (see recording for detailed presentation).

04:33:24 Jon Crumbie spoke in rebuttal and responded to questions from the Board Members (see recording for detailed presentation).

04:35:14 Joe Haberman responded to a question from Chair Howard regarding the notice of violation (see recording for detailed presentation).

04:37:40 Jon Crumbie responded to questions from the Board Members (see recording for detailed presentation).

04:41:00 Joe Haberman and Laura Ferguson responded to questions regarding membership (see recording for detailed presentation).

04:43:59 Board Members' deliberation

04:52:58 Mr. Bush stated they would fully agree to remove the sign. Laura Ferguson stated the sign is a separate issue, but it sounds like the sign is what the Board is struggling with in terms of what gives rise to it looking more like a restaurant

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

PUBLIC HEARING

CASE NUMBER 21-APPEAL-0001

than a private club. Ms. Ferguson stated the CUP evolves over time, so the 1996 doesn't obliterate the prior CUP's, it just tweaks and evolves. Ms. Ferguson stated she wouldn't say just because in 1996 it doesn't specifically reference the restaurant that the restaurant referred to in the prior CUP is no longer part of the CUP. Ms. Ferguson stated even then the restaurant was modified to be for the club members and guests (see recording for detailed presentation).

04:54:22 On a motion by Vice Chair Seale, seconded by Member Leanhart, the following resolution, based upon the testimony of the appellant, was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 20-APPEAL-0001 does hereby **OVERTURN IN WHOLE** the decision that subject property is in violation of the zoning requirements for the R-4 zoning district and the provisions of the approved Conditional Use Permit and **APPROVE** the Appeal. It is also stipulated that the owner has agreed to remove the signage indicating it is a Bearno's restaurant.

The vote was as follows:

Yes: Members Buttorff, Bond, Jagoe, Leanhart, and Vice Chair Seale

No: Chair Howard

04:56:56 Joe Haberman stated if they do in fact remove the signage that will address the other separate Notice of Violation, so that would resolve enforcement issues (see recording for detailed presentation).

BOARD OF ZONING ADJUSTMENT MINUTES
March 15, 2021

The meeting adjourned at approximately 6:00 p.m.

DocuSigned by:

Lula Howard

Chair

DocuSigned by:

Sharon Bond

Secretary