

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

June 21, 2021

A meeting of the Louisville Metro Board of Zoning Adjustment was held on June 21, 2021 at 1:00 p.m. online via Cisco Webex Video Teleconferencing.

Members Present:

Lula Howard, Chair
Michael Seale, Vice Chair
Sharon Bond, Secretary
Kimberly Leanhart

Members Absent:

Lindsey Jagoe
Richard Buttorff
Yani Vozos

Staff Members Present:

Joe Reverman, Planning & Design Assistant Director
Brian Davis, Planning & Design Manager
Chris French, Planning & Design Supervisor
Zach Schwager, Planner I
Molly Clark, 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 June 21, 2021 Board of Zoning Adjustment meeting was held online.

The following cases were heard:

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JUNE 7, 2021 BOARD OF ZONING ADJUSTMENT MEETING MINUTES

00:05:50 On a motion by Member Bond, seconded by Vice Chair Seale, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the June 7, 2021 Board of Zoning Adjustment online meeting.

The vote was as follows:

Yes: Members Bond, Leanhart, and Vice Chair Seale

Abstain: Chair Howard

Absent: Members Buttorff, Vozos, and Jagoe

BOARD OF ZONING ADJUSTMENT MINUTES
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BUSINESS SESSION

CASE NUMBER 21-VARIANCE-0050

Request:	Variance to allow an accessory structure to encroach into the required rear yard setback
Project Name:	Bocagrande Drive Variance
Location:	5808 Bocagrande Drive
Owner:	Tamela & Bryan Strong
Applicant:	Timothy Hester – Hester Contracting, LLC
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
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:

00:07:09 Zach Schwager stated this case was continued from the June 7, 2021 Board of Zoning Adjustment meeting because the Board Members wanted clarification as to why the proposed accessory structure was in this location. Mr. Schwager stated the applicant is on the phone and they are ready to answer questions. Mr. Schwager reviewed photographs of the variance area (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Megan Whiteside, 8011 Judge Blvd., Louisville, KY 40219

Summary of testimony of those in favor:

00:10:09 Vice Chair Seale questioned why the applicant is not building to the setback requirement. Megan Whiteside explained there is a garage under the house and the driveway goes back to the back yard and goes into that garage, and they would completely have to tear up that driveway and completely redo the back yard if they moved it up. Ms. Whiteside stated that two feet makes a huge difference. Ms.

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BUSINESS SESSION

CASE NUMBER 21-VARIANCE-0050

Whiteside responded to questions from Vice Chair Seale. Mr. Schwager responded to questions from the Board Members (see recording for detailed presentation).

00:19:16 Ms. Whiteside responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

00:27:00 Board Members' deliberation

00:29:09 On a motion by Member Bond, seconded by Vice Chair Seale, 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 structure 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 because the proposed structure will be at the rear of the property and there is a buffer between the location and the nearest right-of-way to the rear, and

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

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as it is a minor encroachment into the rear yard setback; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0050 does hereby **APPROVE** Variance from Land Development Code Section 5.4.2.C.3.a to allow an accessory structure to encroach into the required rear yard setback (**Rear Yard Requirement 5 ft., Request 3 ft., Variance 2 ft.**).

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BUSINESS SESSION

CASE NUMBER 21-VARIANCE-0050

The vote was as follows:

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

Absent: Members Buttorff, Vozos, and Jagoe

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0060

Request:	Variance to permit a sign to exceed maximum height and area
Project Name:	Krispy Kreme
Location:	3920 7th Street Rd
Owner:	Broadstone KKD Portfolio LLC
Applicant:	Anchor Sign Inc.
Jurisdiction:	Louisville Metro
Council District:	3 – Keisha Dorsey, MPH
Case Manager:	Beth Jones, AICP, Planner II

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: This case was WITHDRAWN by Staff. Therefore, no vote or action was taken. Chris French, Planning & Design Supervisor, called for speakers; no one was present to speak regarding this case.

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0038

Request:	Variance to allow a principal structure to encroach into the required side yard setback
Project Name:	E. Burnett Avenue Variance
Location:	635 E. Burnett Avenue
Owner:	Habitat for Humanity of Metro Louisville
Applicant:	Emma Whitaker – Habitat for Humanity of Metro Louisville
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:

00:32:55 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:

Emma Whitaker, Habitat for Humanity, 1620 Bank Street, Louisville, KY 40203

Summary of testimony of those in favor:

00:36:16 Emma Whitaker spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0038

00:41:30 Board Members' deliberation

00:41:55 On a motion by Member Leanhart, seconded by Vice Chair Seale, 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 structure 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 structure will have similar setbacks as surrounding properties, and

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

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the subject property is only 25 ft. in width; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0038 does hereby **APPROVE** Variance from Land Development Code Section 5.1.10.F to allow a new principal structure to encroach into the required side yard setback (**Ease Side Yard Requirement 2 ft. 6 in., Request 7 in., Variance 1 ft. 11 in.**).

The vote was as follows:

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

Absent: Members Buttorff, Vozos, and Jagoe

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0042

Request:	Variance to allow an addition to an existing principal structure to encroach into the required side yard setback
Project Name:	Mulberry Street Variance
Location:	1138 Mulberry Street
Owner/Applicant:	Richard Burnette
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:

00:44:49 Zach Schwager presented the case and showed a Powerpoint presentation. Mr. Schwager responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in favor of the request:

Richard Burnette, 11200 Sewell Drive, Louisville, KY 40291

Summary of testimony of those in favor:

00:52:29 Richard Burnette 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.

01:00:57 Board Members' deliberation

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0042

01:12:07 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:

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; however, staff is concerned that the variance could adversely affect the adjacent property owner because construction and maintenance of the structure may require encroachment onto the property, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the addition will encroach the same distance as the existing structure, and

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

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the subject property is only 20 ft. in width and the addition will not encroach any further than the existing structure; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0042 does hereby **APPROVE** Variance from Land Development Code Section 5.1.10.F to allow an addition to a principal structure to encroach into the required side yard setback, with **RELIEF** from Standard A because the Board finds that as long as the construction and maintenance of the addition complies with the law and ordinances that is acceptable (**Side Yard Requirement 2 ft., Request 0.2 ft., Variance 1.8 ft.**).

The vote was as follows:

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

Absent: Members Buttorff, Vozos, and Jagoe

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0047

Request:	Variance to allow a fence in the street side yard setback to exceed 48 inches in height in the Neighborhood Form District
Project Name:	Cooper Chapel Road Variance
Location:	6118 Cooper Chapel Road
Owner/Applicant:	Uziel Aguilar & Yudelquis Ramirez
Jurisdiction:	Louisville Metro
Council District:	23 – James Peden
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:

01:15:15 Zach Schwager presented the case and showed a Powerpoint presentation. Mr. Schwager responded to questions from the Board Members (see staff report and recording for detailed presentation).

The follow spoke in favor of the request:

Yudelquis Ramirez, 6118 Cooper Chapel Road, Louisville, KY 40229
Uziel Aguilar, 6118 Cooper Chapel Road, Louisville, KY 40229

Summary of testimony of those in favor:

01:21:01 Chair Howard swore in Ms. Ramirez and Mr. Aguilar at the same time. Yudelquis Ramirez spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

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CASE NUMBER 21-VARIANCE-0047

01:28:48 Uziel Aguilar spoke in favor of the request. Mr. Aguilar and Ms. Ramirez responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

01:33:07 Board Members' deliberation

01:37:50 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 as the fence does not obstruct vision clearance along Yellow Pine Drive and the driveway as it is setback 13 ft. from the edge of pavement, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as there are other privacy fences that exceed the maximum height in street side yard setbacks in the subdivision, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public as the fence does not obstruct vision clearance for motorists or pedestrians along Yellow Pine Drive and the driveway as it is setback 13 ft. from the edge of pavement, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as there are other fences in the subdivision that exceed the maximum height in street side yard setbacks; now, therefore be it

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0047

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0047 does hereby **APPROVE** Variance from Land Development Code Section 4.4.3.A.1.a.i to allow a fence in the street side yard setback in a Neighborhood Form District to exceed 48 inches in height (**Street Side Yard Requirement 48 in., Request 72 in., Variance 24 in.**).

The vote was as follows:

Yes: Members Bond, Leanhart, and Chair Howard

No: Vice Chair Seale

Absent: Members Buttorff, Vozos, and Jagoe

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0048

Request:	Variance to allow an addition to an existing principal structure to encroach into the required side yard setback
Project Name:	Trevilian Way Variance
Location:	1624 Trevilian Way
Owner/Applicant:	Maria Whitley & Gregg Rochman
Jurisdiction:	Louisville Metro
Council District:	8 – Cassie Chambers Armstrong
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:

01:40:40 Zach Schwager presented the case and showed a Powerpoint presentation. Mr. Schwager responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Maria Whitley, 1624 Trevilian Way, Louisville, KY 40205
Gregg Rochman, 1624 Trevilian Way, Louisville, KY 40205
Denise Olding (was called to speak but was unable to provide testimony due to technical difficulties)

Summary of testimony of those in favor:

01:45:51 Chair Howard swore in Maria Whitley and Gregg Rochman at the same time. Ms. Whitley spoke in favor of the request. Ms. Whitley and Mr. Rochman responded to questions from the Board Members (see recording for detailed presentation).

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CASE NUMBER 21-VARIANCE-0048

The following spoke in opposition of the request:

B. Kenneth Faust, 1626 Trevilian Way, Louisville, KY 40205

Margaret Faust, 1626 Trevilian Way, Louisville, KY 40205

Summary of testimony of those in opposition:

01:58:36 B. Kenneth Faust spoke in opposition of the request. Mr. Faust stated they have not received a survey of the changes that are to take place and he would like to see that. Mrs. Faust provided her email address for Mr. Schwager to forward a copy of the plan. Mrs. Faust stated she had received the email but did not see the attachment. Mr. Schwager explained how to view attachments through the public portal. Mr. Faust repeated that they have not seen the survey. Mrs. Faust stated the porch is over on their property by about two feet. Chair Howard stated the Board would need evidence of that.

02:07:56 Mr. Schwager showed the survey which showed the porch is one foot from the property line. The Board Members and staff discussed the survey. Gregg Rochman took a copy of the survey next door to Mr. and Mrs. Faust (see recording for detailed presentation).

02:18:00 Meeting was recessed.

02:28:41 Meeting was reconvened.

02:28:55 Mr. Faust responded to questions from the Board Members. Mr. Faust stated drainage is a big concern. Mr. Faust stated they constantly have water coming from the applicant's yard. Mr. Faust stated the applicant wants to remove shrubs that are on their property. Mr. Schwager showed a picture of the shrubs. Mrs. Faust stated the applicant's fence will need to come down as well and they have a dog, so she doesn't know how they are going to contain the dog while workers are there. Mrs. Faust said this is a historic neighborhood. Zach Schwager stated this is a National Register Historic District but Planning & Design Services does not review development in National Register Districts, just Local Preservation Districts (see recording for detailed presentation).

02:37:05 Member Leanhart asked to see the survey again and Mr. Schwager showed it. Staff and Board Members discussed the survey and the existing landscaping (see recording for detailed presentation).

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CASE NUMBER 21-VARIANCE-0048

02:40:20 Chris French stated Ms. Olding had advised her microphone was now working and requested to speak in support. Mr. French unmuted Ms. Olding but she was still unable to speak (see recording for detailed presentation).

REBUTTAL:

02:42:01 Maria Whitley spoke in rebuttal. Ms. Whitley stated it seems the main concern is drainage, and that's typical moving of the water to the drain, which is in the front of their yard, it does not go into their driveway. Ms. Whitley stated they do live in a valley, and many of the houses on Ashwood Road above them have taken away a lot of the vegetation and they get a lot of water that comes down from Ashwood. Ms. Whitley stated since they dug their rain garden, they have had no issues with water entering their basement or water pooling in the yard for significant amounts of time. Ms. Whitley stated she spoke with Mrs. Faust about the shrubs and she does not think they will have to be dug up, but she did offer to replace them if anything occurred that inhibited them. Ms. Whitley stated they have a dog who is very obedient, and they will just keep him in the house whenever workers are there. Ms. Whitley stated they do not have to take down the fence for construction. Ms. Whitley stated she had assured Mrs. Faust that they would make sure their workers don't do any damage to their property, their trucks will not be parked in their driveway or block their driveway. Ms. Whitley responded to questions from the Board Members (see recording for detailed presentation).

02:46:36 Board Members' deliberation

02:52:25 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:

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; however, staff is concerned that the variance could adversely affect the adjacent property owner because construction and maintenance of the structure may require encroachment onto the property, and

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CASE NUMBER 21-VARIANCE-0048

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity as the footprint of the structure will not change and there is a variety of structural designs in the area, and

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

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposed addition will be the same distance from the side property line as the existing structure; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0048 does hereby **APPROVE** Variance from Land Development Code Table 5.3.1 to allow an addition to a principal structure to encroach into the required side yard setback, with **RELIEF** from Standard A based on the consideration of the applicant to deal with all the matters that may come up during the construction phase with the adjacent owner regarding the shrubs and drainage (**Side Yard Requirement 5 ft., Request 1 ft., Variance 4 ft.**).

The vote was as follows:

Yes: Member Bond, Vice Chair Seale, and Chair Howard

No: Member Leanhart

Absent: Members Buttorff, Vozos, and Jagoe

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0069

Request:	Variances to permit setback encroachments and a private yard reduction
Project Name:	920 Dandridge Ave
Location:	920 Dandridge Avenue, 900-904 Charles Street
Owner:	Douglas Peters and Stephen Duncan
Applicant:	Douglas Peters and Stephen Duncan
Representative:	LJB Inc.
Jurisdiction:	Louisville Metro
Council District:	10- Pat Mulvihill
Case Manager:	Molly Clark, 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:

02:55:37 Molly Clark presented the case and showed a Powerpoint presentation. Ms. Clark responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Karl Lentz, 4010 Dupont Circle, Louisville, KY 40207

Summary of testimony of those in favor:

03:02:24 Karl Lentz spoke in favor of the request and showed a Powerpoint presentation. Mr. Lentz responded to questions from the Board Members (see recording for detailed presentation).

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PUBLIC HEARING

CASE NUMBER 21-VARIANCE-0069

The following spoke in opposition of the request:

No one spoke.

03:09:15 Board Members' deliberation

03:10:04 On a motion by Member Bond, seconded by Vice Chair Seale, 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 variance will not adversely affect the public health, safety or welfare because the proposed building will be located in line with the other surrounding single family homes, and

WHEREAS, the Board further finds that the requested variance will not alter the essential character of the general vicinity because the proposed houses will meet the residential design guidelines and will be in character with the neighborhood, and

WHEREAS, the Board further finds that the requested variance will not cause a hazard or nuisance to the public because the proposed houses will be located in the same general area of the proposed lots as the surrounding existing homes/lots, and

WHEREAS, the Board further finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations because the applicant is trying to use the vacant lot for redevelopment. There is also a private access easement in the rear of the property that does not allow the applicant to provide the full private yard area required; now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-VARIANCE-0069 does hereby **APPROVE** Variance from Land Development Code Section 5.4.1.D.3 to not provide the required 20% private yard area for lots less than 6,000 square feet (**Private Yard Requirement for 902 Charles Street 20% (482.2 sf), Request 5.5% (131.6 sf), Variance 14.5% (350.6 sf); Private Yard Requirement for 904 Charles Street 20% (479 sf), Request 14% (335 sf), Variance 6% (144 sf)**).

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CASE NUMBER 21-VARIANCE-0069

The vote was as follows:

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

Absent: Members Buttorff, Vozos, and Jagoe

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PUBLIC HEARING

CASE NUMBER 21-CUP-0034

Request:	Conditional Use Permit to allow the construction of an inpatient rehabilitation hospital
Project Name:	Kindred Louisville Rehabilitation Hospital
Location:	5000 Chamberlain Lane
Owner:	KND Real Estate 33, LLC
Applicant:	KND Real Estate 33, LLC.
Representative:	Tanner Nichols, Frost Brown Todd, LLC
Jurisdiction:	Louisville Metro
Council District:	16 – Scott Reed
Case Manager:	Jon E. Crumby, 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:

03:12:42 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:

Tanner Nichols, 400 W. Market Street, Louisville, KY 40202
Alice Gunnison, 7849 Wolf Pen Branch Rd., Prospect, KY 40059

Summary of testimony of those in favor:

03:16:16 Tanner Nichols spoke in favor of the request and showed a Powerpoint presentation. Mr. Nichols responded to questions from the Board Members (see recording for detailed presentation).

03:22:07 Alice Gunnison spoke in favor of the request (see recording for detailed presentation).

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CASE NUMBER 21-CUP-0034

The following spoke in opposition of the request:

Mark Worley, 8517 Wolf Pen Branch Rd., Prospect, KY 40059

Summary of testimony of those in opposition:

03:23:23 Mark Worley spoke in opposition of the request. Mr. Worley stated since the Board of Zoning Adjustment recently approved an office complex on the other side of the highway, he has a concern of traffic (see recording for detailed presentation).

REBUTTAL:

03:25:58 Tanner Nichols spoke in rebuttal. Mr. Nichols stated this development did not trigger a traffic study. Mr. Nichols stated he thinks with the size of Chamberlain Lane, they are going to have to do some road improvements for some turning lanes. Mr. Nichols stated there is a secondary route that will allow some traffic to flow through Brownsboro Crossing development. Mr. Nichols responded to questions from the Board Members (see recording for detailed presentation).

03:28:31 Board Members' deliberation

03:29:54 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 proposal meets all applicable policies of the Comprehensive Plan, and

WHEREAS, the Board further finds that when appropriately managed, the proposed use is compatible with surrounding development and land uses, and

WHEREAS, the Board further finds that the subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed and approved the proposal, and

WHEREAS, the Board further finds that:

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CASE NUMBER 21-CUP-0034

4.2.29 Hospitals and Medical Clinics

Hospitals and medical clinics may be allowed in any district upon the granting of a Conditional Use Permit and compliance with the listed requirements:

- A. In form districts where nonresidential freestanding signs are not permitted, a single freestanding on- premise sign, not exceeding 80 square feet in area and not exceeding 10 feet in height, may be placed at each major entrance. Attached signs shall be designed in accordance with form district requirements, but the Board reserves the right to approve the size and location of all attached signs. **A single monument style sign will be located adjacent to Chamberlain Lane on the property that will not exceed 80 square feet in area and 10 feet in height. The Board may discuss the attached signage if necessary.**
- B. All buildings and structures shall be at least 30 feet from any property line. **All buildings and structures will be located at least 30 feet from any property line.**
- C. Medical clinics shall provide an indoor waiting area(s) for clients. The waiting area shall be large enough to accommodate the clients arriving for services. **The proposal is not a medical clinic, but a waiting area will be provided to accommodate clients arriving for services.**
- D. Parking for medical clinics shall be adequate to accommodate the maximum number of clients expected to be at the site at one time. **The proposal is not a medical clinic, but Transportation Planning has reviewed and approved the parking layout.**
- E. Such facilities shall be located on or near a collector or arterial street with reasonable access to public transportation. **Chamberlain Lane is considered a collector level street with reasonable access to public transportation;** now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-CUP-0034 does hereby **APPROVE** Conditional Use Permit to allow a hospital, **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.

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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 hospital until further review and approval by the Board.

The vote was as follows:

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

Absent: Members Buttorff, Vozos, and Jagoe

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CASE NUMBER 21-CUP-0047

Request:	Conditional Use Permit to allow a short term rental of a dwelling unit that is not the primary residence of the host
Project Name:	Garvin Place Short Term Rental
Location:	1229 Garvin Place
Owner/Applicant:	Megan McLain
Jurisdiction:	Louisville Metro
Council District:	6 – David James
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:

03:32:07 Zach Schwager presented the case and showed a Powerpoint presentation. Mr. Schwager responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Megan McLain, 1229 Garvin Place, Louisville, KY 40203

Summary of testimony of those in favor:

03:35:33 Megan McLain spoke in favor of the request and responded to questions from the Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

No one spoke.

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03:39:10 Board Members' deliberation

03:39:46 On a motion by Member Bond, seconded by Vice Chair Seale, 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 proposal is consistent with Comprehensive Plan policies, and

WHEREAS, the Board further finds that when appropriately managed, the proposed use is compatible with surrounding development and land uses. No exterior construction or alterations to the building or the site are required, and

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

WHEREAS, the Board further finds that:

4.2.63 Short Term Rental Term Rental of a dwelling unit that is not the primary residence of the host or the Short Term Rental of a condominium unit that is the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and Short Term Rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit.

In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental. **The applicant has been informed of this requirement.**
- B. The dwelling unit shall be limited to a single short term rental contract at a time. **The applicant has been informed of this requirement.**
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is in excess of two acres in which case the occupancy limit shall be two times the

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number of bedrooms plus six individuals. **According to the applicant, there are two bedrooms; LDC regulations permit up to six guests.**

- D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to the nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. The provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host. **As of the date of this report, there are seven properties with an approved conditional use permit for a short term rental within 600 ft. of the subject property (see Attachment 3).**
- E. The building in which the dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. The evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board where in all condominium would be discussed and a majority of the board members voted in favor of permitting/allowing the short term rental of the subject condominium. In addition to notification required by Chapter 11 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted. **The dwelling unit is a single-family residence.**
- F. Food and alcoholic beverages shall not be served by the host to any guest. **The applicant has been informed of this requirement.**
- G. Outdoor signage which identifies the short term rental is prohibited in residential zoning districts. **The applicant has been informed of this requirement.**
- H. There shall be a sufficient amount of parking available for 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. **LDC standards credit the site with one on-street parking space and there is a garage that can accommodate two cars. In addition, there appears to be available parking in the area.**

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- I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances. **The applicant has been informed of this requirement.**
- J. If the property is subject to two (2) or more substantiated civil and/or criminal complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief. **The applicant has been informed of this requirement.**
- K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void. **The applicant has been informed of this requirement.**
- L. An active registration for the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code. **The applicant has been informed of this requirement;** now, therefore be it

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-CUP-0047 does hereby **APPROVE** Conditional Use Permit to allow short term rental of a dwelling unit in the Traditional Neighborhood Zoning District (LDC 4.2.63), **SUBJECT** to the following Conditions of Approval. The applicant clarified that she will reside in the structure.

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Conditions of Approval:

1. The conditional use permit approval for this short term rental shall be allowed up to two bedrooms. A modification of the conditional use permit shall be required to allow additional bedrooms.
2. The host of record for the short term rental shall maintain their primary residence in the dwelling unit on the subject property. In the event a primary residence is established on another property, short term rentals on the subject property must cease.

The vote was as follows:

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

Absent: Members Buttorff, Vozos, and Jagoe

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CASE NUMBER 21-CUP-0049

Request:	Conditional Use Permit to allow a new private institutional use on a property that is zoned R-4 Residential Single Family
Project Name:	Ivybrook Academy
Location:	13715 Reamers Road
Owner:	Momman McKay & Sharon McKay
Applicant:	Kathy Linares – Mindel Scott
Jurisdiction:	Louisville Metro
Council District:	17 – Markus Winkler
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:

03:42:17 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:

Paul Whitty, 1000 N. Hurstbourne Pkwy., Suite 200, Louisville, KY 40223
Nima Mahmoodi, 7725 Oxmoor Lane, Louisville, KY
David Mindel, 5151 Jefferson Blvd., Louisville, KY 40219
Kathy Linares, 5151 Jefferson Blvd., Louisville, KY 40219

Summary of testimony of those in favor:

03:48:41 Paul Whitty spoke in favor of the request and showed a Powerpoint presentation (see recording for detailed presentation).

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03:59:10 Nima Mahmoodi discussed the traffic study (see recording for detailed presentation).

04:01:42 David Mindel stated the traffic counts were taken during school hours (see recording for detailed presentation).

04:02:41 Paul Whitty responded to questions from the Board Members regarding the hours of operation (see recording for detailed presentation).

04:05:06 Mr. Mindel responded to questions from the Board Members (see recording for detailed presentation).

04:07:32 Mr. Whitty and Mr. Mahmoodi further explained the traffic numbers and responded to questions from the Board Members (see recording for detailed presentation).

04:12:38 Kathy Linares responded to questions from the Board Members (see recording for detailed presentation).

04:15:58 Paul Whitty responded to questions from the Board Members (see recording for detailed presentation).

04:19:25 Mr. Schwager stated he had received a phone call from someone who was going to try to call in. Mr. Schwager stated she wasn't opposed, she was concerned about the turn lane. Mr. Whitty stated he had spoken with her, and she was concerned that they would have to make improvements that would encroach into her property (see recording for detailed presentation).

The following spoke in opposition of the request:

Colleen Hester, 8901 Adriane Way, Louisville, KY 40245

Tina Coleman, 13709 Reamers Road, Louisville, KY 40245

Paul Coleman, 13709 Reamers Road, Louisville, KY 40245

Summary of testimony of those in opposition:

04:21:12 Colleen Hester spoke in opposition of the request. Ms. Hester stated she lives in Stonehurst Neighborhood and they had a HOA meeting about this proposed change. Ms. Hester stated ten of their eleven properties are in strong opposition to the changes, primarily due to the increased traffic it would place on Reamers Road. Ms.

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Hester stated they were not notified. Chair Howard informed Ms. Hester how their Neighborhood Association could sign up for notifications (see recording for detailed presentation).

04:25:03 Tina and Paul Coleman spoke in opposition of the request. Mrs. Coleman stated she is concerned about traffic. Mr. Coleman asked if they were planning to expand Reamers Road. Chair Howard stated she would let the applicant respond in rebuttal. Mr. Coleman spoke about traffic issues (see recording for detailed presentation).

04:31:29 Colleen Hester stated Reamers Road is very dangerous, people travel at a high rate of speed and it is a narrow road with a blind turn at the entrance where the school would be (see recording for detailed presentation).

REBUTTAL:

04:33:18 Paul Whitty spoke in rebuttal. Mr. Whitty stated with respect to the dedicated right-of-way, that's required of every case that abuts any right-of-way, they ask for additional right-of-way to be dedicated. Mr. Whitty stated this is simply a standard procedure, it does not mean this road will be widened at any time. Mr. Whitty stated as far as they know there are no plans to do that, and the analysis shows that the left turn lane really wasn't warranted. Mr. Mahmoodi stated to expand that road would be a discussion to have with Metro, but there are no current plans with Metro to expand that section. Mr. Mahmoodi discussed statistics for accidents as well as the trip generation. Mr. Mindel stated the traffic count was done on April 29 after JCPS had opened schools. Mr. Whitty stated there will be no buses utilized (see recording for detailed presentation).

04:40:06 Board Members' deliberation

04:42:51 On a motion by Member Leanhart, seconded by Vice Chair Seale, the following resolution, based upon the testimony heard today, was adopted:

WHEREAS, the Louisville Metro Board of Zoning Adjustment finds that Standard 4B has not been met, and that the applicant has failed to demonstrate how the traffic impact will be mitigated; now, therefore be it

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CASE NUMBER 21-CUP-0049

RESOLVED, the Louisville Metro Board of Zoning Adjustment in Case Number 21-CUP-0049 does hereby **DENY** Conditional Use Permit to allow a new private institutional use on a property that is zoned R-4 Residential Single Family.

The vote was as follows:

Yes: Members Bond, Leanhart, and Vice Chair Seale

No: Chair Howard

Absent: Members Buttorff, Vozos, and Jagoe

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PUBLIC HEARING

CASE NUMBER 21-CUP-0067

Request:	Conditional Use Permit to allow a short term rental of a dwelling unit that is not the primary residence of the host
Project Name:	Malcolm Avenue Short Term Rental
Location:	508 Malcolm Avenue
Owner/Applicant:	Barrett Goff – 502 Renters, LLC
Jurisdiction:	Louisville Metro
Council District:	19 – Anthony Piagentini
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:

04:46:44 Zach Schwager stated Jon Crumbie was at the Old Jail in case people showed up, and there were a number of people who showed up in opposition and stated they did not receive notification. Mr. Schwager stated he looked into it and found there were a few adjoining property owners where notices were sent to the property address, and not the property owner mailing address. Mr. Schwager stated the notification was not one hundred percent accurate, so it seems the case will need to be continued in order to send out corrected notices (see recording for detailed presentation).

04:47:29 Laura Ferguson, Legal Counsel, stated the better course would be to continue the hearing and get the notices correct so everyone who should have gotten notice does get notice (see recording for detailed presentation).

04:47:42 Staff and Board Members discussed continuing the case (see recording for detailed presentation).

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CASE NUMBER 21-CUP-0067

Applicant testimony:

04:50:48 Barrett Goff (7901 Sunberry Lane, Louisville, KY 40220) stated he has waited all day long for his chance to go through this process and went through the proper channels all the way from start to finish only to find out moments before this part of the process that a couple of notices did not go to the owner. Mr. Goff stated they had several people attend the meeting that were not part of his tier one or tier two mailers that he was required to send to, and they were a part of that meeting because neighbors told them about it. Chair Howard swore in Mr. Goff before continuing to provide testimony. Mr. Goff stated this information was found out a couple of minutes ago and he thinks that's just inappropriate because he has waited all day. Chair Howard stated what has occurred appears to be a legal issue and we cannot hear the case until the correct people are notified. Chair Howard asked Mr. Goff if he had gone to the PVA office to obtain the addresses for his notices. Mr. Schwager stated since you have to have an account for PVA it is recommended using the Jefferson County Sherriff's website because that information is free. Mr. Goff stated he did this over a month ago and he does not remember what websites he used. Mr. Goff stated he's asking what names or what addresses are incorrect because this is all news to him. Chair Howard advised Mr. Goff that Mr. Schwager can identify the names and the addresses that need to be notified. Mr. Goff stated a lot of people attended the neighborhood meeting and he does not understand why this is being brought up now and wasn't brought up then. Chair Howard stated she was going to have to ask Attorney Ferguson to cut in because we're not going to be able to debate back and forth whether we can proceed or not (see recording for detailed presentation).

04:56:59 Laura Ferguson stated KRS100 requires certain notices to be provided and how the by-laws and policies and procedures work if you comply with certain things and put it in the mail the notice is deemed met, but right now we're having a problem showing that the step that what was provided to Zach matches up with what is required, so we're going to have to continue in order to provide the Statutory required notice (see recording for detailed presentation).

04:57:56 Mr. Goff stated to him this is a stall tactic. Mr. Goff expressed his frustration and stated he put a lot of time aside today so he could be here at this meeting and he has waited all day. Mr. Goff stated he doesn't think it is fair and it is not an appropriate plan of action (see recording for detailed presentation).

04:59:54 The Board Member and Staff discussed continuing the case (see recording for detailed presentation).

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CASE NUMBER 21-CUP-0067

05:03:23 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-0067 to the July 12, 2021 Board of Zoning Adjustment meeting.

The vote was as follows:

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

Absent: Member Buttorff, Vozos, and Jagoe

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05:06:57 Joe Reverman, Planning & Design Assistant Director, stated there is nothing official on returning to in person meetings, but it would tentatively be the first part of August (see recording for detailed presentation).

The meeting adjourned at approximately 6:15 p.m.

DocuSigned by:

Lula Howard

Chair

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DocuSigned by:

Sharon Bond

Secretary

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