

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

July 24, 2023

A meeting of the Louisville Metro Board of Zoning Adjustment was held on Monday, July 10, 2023, at 9:00 p.m. at the Old Jail Building, located at 514 W. Liberty Street, Louisville, Kentucky, and also via Webex.

Members Present:

Sharon Bond, Chair
Richard Buttorff, Vice Chair
Kim Leanhart, Secretary
Brandt Ford
Jan Horton

Members Absent:

Yani Vozos
Lula Howard

Staff Members Present:

Brian Davis, Assistant Director
Chris French, Planning & Design Supervisor
Joe Haberman, Planning & Design Manager
Laura Ferguson, Legal Counsel
Mary Willis, Management Assistant
Amy Brooks, Planner I
Molly Clark, Planner II

The following cases were heard:

**BOARD OF ZONING ADJUSTMENT
MEETING MINUTES**

July 24, 2023

July 10, 2023, Board of Zoning Adjustment Meeting Minutes

00:04:44 On a motion by Member Ford, seconded by Member Leanhart, the following resolution was adopted:

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the minutes of the July 10th, 2023, Board of Zoning Adjustment meeting.

The vote was as follows:

YES: Members Horton, Leanhart, Ford and Chair Bond

ABSTAIN: Vice Chair Buttorff

ABSENT: Members Howard and Vozos

**BOARD OF ZONING ADJUSTMENT
MEETING MINUTES**

July 24, 2023

Business Session

Case No. 23-MCUP-0006

| | |
|-------------------|---|
| Request: | Modified Conditional Use Permit for a mausoleum expansion |
| Project Name: | Louisville Memorial Gardens East Mausoleum |
| Location: | 11601 Ballardsville Road |
| Owner: | Saber Management Kentucky, LLC |
| Applicant: | Coldspring USA |
| Jurisdiction: | Louisville Metro |
| Council District: | 17 - Markus Winkler |
| Case Manager: | Molly Clark, Planner II |
| Request: | Modified Conditional Use Permit for a mausoleum expansion |

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:

00:06:00 Molly Clark presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

None

Summary of testimony of those in support:

None

The following spoke in opposition to the request:

None

**BOARD OF ZONING ADJUSTMENT
MEETING MINUTES**

July 24, 2023

Business Session

Case No. 23-MCUP-0006

00:07:32 Board Members' discussion

Modified Conditional Use Permit for (LDC 4.2.22)

00:07:35 On a motion by Member Horton, seconded by Vice Chair Buttorff, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS: The modification to the conditional use permit is consistent with land use and development policies of Plan 2040.

WHEREAS: No improvements are being made that reduce compatibility with surrounding land uses or the general character of the area.

WHEREAS: Necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, and emergency services are adequate to serve the proposed use are available.

WHEREAS: The modified conditional use permit remains compliant with the standards required to obtain the conditional use permit and all conditions of approval.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Modified Conditional Use Permit for (LDC 4.2.22)

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond

ABSENT: Member Howard and Member Vozos

BOARD OF ZONING ADJUSTMENT MINUTES
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PUBLIC HEARING

Case No. 22-CUP-0365

Request: Conditional Use Permit to allow an athletic facility in the RR and M2 zoning district
Project Name: Proposed Athletic Facility
Location: 2800 S English Station Road
Owner: Serendipity KY, LLC
Applicant: Dinsmore & Shohl, LLP.
Jurisdiction: Louisville Metro
Council District: 20 - Stuart Benson
Case Manager: Molly Clark, Planner II

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

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

Agency testimony:

00:09:14 Molly Clark presented the case and showed a Power Point presentation. Clark responded to questions from the Board members (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

Cliff Ashburner, Dinmore & Shohl, LLP, 101 S. 5th Street, Louisville, KY 40202

Phil Gambrell, 2309 Watterson Trail, Suite 200, Louisville, KY 40299

Summary of testimony of those in support:

00:13:41 Cliff Ashburner spoke in support of the request and presented a PowerPoint Presentation (see recording for detailed presentation)

00:19:40 Phil Gambrell spoke in support of the request and responded to questions from Board Members (see recording for detailed presentation)

The following spoke in opposition to the request:

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Case No. 22-CUP-0365

No one spoke.

00:38:45 Board Members' discussion

Conditional Use Permit from Land Development Code section 4.2.8 to allow athletic fields in RR and M2 zoning district.

00:38:51 On a motion by Vice Chair Buttorff, seconded by Member Leanhart, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

A. The athletic facilities are located in a suburban form district; and

WHEREAS: Applicant is meeting this requirement.

B. Pedestrian and vehicular circulation patterns, including location of parking lots and driveways, must be designed to safely accommodate recreational users and avoid conflict with truck traffic, as determined by the Director of Works; and

WHEREAS: The applicant is meeting this requirement. Applicant has received preliminary approval from Transportation Planning.

C. The applicant shall submit a lighting plan documenting compliance with Section 4.1.3 (Lighting ordinance); and

WHEREAS: Applicant is not proposing any lights for the outdoor athletic fields at this time

D. No structure, parking area or outdoor recreation facility shall be located within 30 feet of a property line, unless further restricted in accordance with paragraph F below.

WHEREAS: Applicant is meeting this requirement.

E. Signs – Shall be in accordance with the on-premises sign standards of Chapter 8 of the LDC for non-residential uses.

WHEREAS: Applicant is aware of this requirement.

F. Athletic facilities in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, R-5A, R-6, R-7 and R-8A districts shall meet the following compatibility requirements:

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1. No outdoor athletic facility or parking area may be located closer than 100 feet to an adjacent property zoned for residential use.

WHEREAS: Applicant is meeting this requirement

2 No indoor athletic facility may be located closer than 50 feet to an adjacent property zoned for residential use.

WHEREAS: Applicant is meeting this requirement.

3. The minimum tract size for an athletic facility shall be 10 contiguous acres.

WHEREAS: Applicant is meeting this requirement

G. Athletic facilities in the M-1, M-2 and M-3 districts subject to a conditional use permit may serve three purposes:

1. To allow a transitional use of industrially zoned land, while preserving the community's supply of industrially zoned property until such time as market demand justifies use of such property in a manner that will significantly meet the community's economic development needs; or

2 To allow use of parcels for permanent open space or recreational purposes serving employees of an industrial development; or

3. To accommodate greenways or similar open space use of environmentally constrained land, with or without trail systems or other recreational facilities.

WHEREAS: Applicant is asking for relief from this section. See the attached agenda item under letter of explanation for the conditional use permit.

H. Thus, athletic facilities are permitted only when the applicant indicates which of the three purposes the proposed use will meet, and can demonstrate the following to the satisfaction of the Board of Zoning Adjustment or the Board's designee:

1. If Transitional Use: The proposed athletic facilities do not entail construction of permanent facilities that are inconsistent with industrial use of the site.

2. If Permanent Open Space/Recreation Use: The site is an integral component of a multi-lot business or industrial park, and the recreation facilities primarily benefit persons working at the industrial park.

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Case No. 22-CUP-0365

3. If Greenway or Environmentally Constrained: The site is subject to environmental constraints regulated in Chapter 4 Parts 6, 7, or 8, and is precluded from development by conservation easement or restriction on the development plan.

WHEREAS: Applicant is asking for relief from this section. See the attached agenda item under letter of explanation for the conditional use permit

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Conditional Use Permit from Land Development Code section 4.2.8 to allow athletic fields in RR and M2 zoning district with the relief of Item G and **SUBJECT** to the following Conditions of Approval:

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for a private institutional use until further review and approval by the Board.
3. Prior to constructing any lights for any of the outdoor athletic field(s), the applicant must receive approval of a lighting plan from the Planning Commission and must obtain approval of a modified Conditional Use Permit from the Board of Zoning Adjustment.

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-VARIANCE-0051

Request: A variance to allow a structure to encroach into the required side yard and rear yard setbacks. Continued from the 6/26/2023 BOZA Meeting

Project Name: Big Bar Variance

Location: 1202 Bardstown Rd

Owner: Kevin Bryan, Bigger is Better LLC

Applicant: Nathan Grimes

Jurisdiction: Louisville Metro

Council District: 8- Benjamin Reno-Weber

Case Manager: Amy Brooks, 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:

00:40:33 Amy Brooks presented the case and showed a Power Point presentation. Brooks responded to questions from Board Members (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Nathan Grimes, 1012 S 4th Street, Louisville, KY 40203

David Marcum, 2703 Stonefield Ln., LaGrange, KY 40031

Summary of testimony of those in favor:

00:45:13 Nathan Grimes spoke in favor of the request. Grimes presented a larger print site plan and showed a sign copy of an agreement between the applicant and the neighbor.

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Case No. 23-VARIANCE-0051

00:47:10 David Marcum stated he was present to answer any questions the Board Members may have

The following spoke in neutral of the request:

Herman Praszkie (trustee), 3044 Bardstown Rd, Louisville, KY 40205

Summary of testimony of those in neutral:

00:48:00 Herman Praszkie spoke in neutral to the request and responded to questions from the Board Members (see recording for detail presentation)

The following spoke in opposition to the request:

No one spoke.

00:51:03 Board Deliberation

Variance from the Land Development Code section 5.2.3.D.3.d.ii to allow an addition to encroach into the rear yard setback

Variance from Land Development Code section 5.2.3.D.3.b to allow an addition to encroach into the required side yard setback.

00:51:50 On a motion by Member Ford, seconded by Vice Chair Buttorff, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

(VARIANCE #1) WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes, including fire codes, and the Land Development Code, except where relief is requested; however, staff is concerned that the variance could adversely affect the adjacent property owner because construction and future maintenance of the addition may require encroachment onto the adjacent property.

WHEREAS: The structure will not alter the essential character of the general vicinity as it will be built with material that is in character with the surrounding residential neighborhood. The applicant has gotten approval from the Bardstown Road/Baxter Avenue Corridor Overlay District for the proposed exterior alterations. According to the permit, the proposed changes will have little to no impact on the Corridor because most of the addition will be behind the existing building.

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WHEREAS: 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.

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the structure is compatible with other commercially zoned properties along the Corridor that lack alley access and whose properties have limited depth.

WHEREAS: The requested variance arise from special circumstances which do generally apply to the land in the generally vicinity or the same zone as the lot is not similar in size and shape to the surrounding properties. This property is shallower and lacks rear alley access.

WHEREAS: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the required rear yard setback for structures on this site is 15 ft which would deprive the applicant of buildable area given the property's unusual size constraints.

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant has not begun construction and has applied for a variance.

(VARIANCE #2) WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes, including fire codes, and the Land Development Code, except where relief is requested. However, staff is concerned that the variance could adversely affect the adjacent property owner because construction and future maintenance of the addition may require encroachment onto the adjacent property.

WHEREAS: The encroachment into the side yard alters the essential character of the general vicinity. The applicant has gotten an overlay permit from the Bardstown Road/Baxter Avenue Corridor Overlay District for the proposed addition. According to Overlay report findings, the proposed changes will have little to no impact.

WHEREAS: 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.

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the lot is rather narrow. Additionally, there are examples of other buildings encroaching into the side yard setback.

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WHEREAS: The requested variance does not arise from special circumstances which do generally apply to the land in the generally vicinity or the same zone as the lot is similar in size and shape to the surrounding properties.

WHEREAS: The strict application of the provisions of the regulation would deprive the applicant of reasonable use of the land given the property's size constraints.

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant has not begun construction and has applied for a variance.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested (**Variance #1**) Variance from the Land Development Code section 5.2.3.D.3.d.ii to allow an addition to encroach into the rear yard setback (**Requirement 15ft., Request 0ft., Variance 15ft.**) (**Variance #2**) Variance from Land Development Code section 5.2.3.D.3.b to allow an addition to encroach into the required side yard setback (**Requirement 5ft., Request 0ft., Variance 5ft**)

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-VARIANCE-0060

Request: A variance to allow an accessory structure to encroach into the required street side yard setback. Continued from the 6/26/2023 BOZA Meeting.

Project Name: Tyler Lane Variance
Location: 2038 Tyler Lane
Owner: Tyler 2038 LLC
Applicant: Kevin Sullivan
Jurisdiction: Louisville Metro
Council District: 8- Benjamin Reno-Weber
Case Manager: Amy Brooks, 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:

00:55:20 Amy Brooks presented the case and showed a Power Point presentation. Brooks responded to questions from the Board members (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Kevin Sullivan, 1602 Sutherland Dr., Louisville, KY 40205

Summary of testimony of those in favor:

00:59:32 Kevin Sullivan spoke in favor of the request and presented a PowerPoint presentation. Sullivan responded to questions from the Board Members (see recording for detailed presentation)

The following spoke in opposition to the request:

Cheri Powell, 2100 Tyler Ln. Louisville, KY 40205

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PUBLIC HEARING

Case No. 23-VARIANCE-0060

Summary of testimony of those in opposition:

01:09:16 Cheri Powell spoke in opposition to the request. Powell stated the garage alters the essential character of the vicinity and the garage is too dominant for the area. Powell stated the most concerning issue is the variance is being requested by residents that do not occupy the home (see recording for a detailed presentation)

Rebuttal:

01:18:52 Kevin Sullivan spoke in rebuttal. Sullivan stated he has reached out to a few neighbors and no one had an issue with the garage. Sullivan mentioned that a parking pad was resurfaced and had reached out to Beth Stuber about the issue. Sullivan responded to questions from Board Members (see recording for detailed presentation)

01:38:12 Board Member Deliberation

Variance from the Land Development Code section 5.1.12.B.2.e.i.1 to allow an accessory structure to encroach into the street side yard setback as established by infill regulations.

01:38:20 On a motion by Member Leanhart, seconded by Member Ford, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested. The garage does not seemingly impact vision clearance for either vehicular traffic or pedestrians traveling along Hoock Avenue.

WHEREAS: The proposed building addition will not alter the essential, visual character of the general vicinity as the garage is in character with the surrounding residential neighborhood. There are other accessory structures near the subject site that also seemingly encroach into the street side yard setback. These include properties at 2840 Whiteway Avenue, 2112 Lancashire Avenue, and 2125 Tyler Lane. Aerial photography of these examples are located under the site photos attachment in the staff report.

WHEREAS: 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.

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Case No. 23-VARIANCE-0060

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations as there are other homes within the surrounding blocks that do not meet the current required infill standards for streetside setbacks. The narrow width of this corner lot makes building an accessory structure that is 25 feet from the property line rather more difficult.

WHEREAS: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the shape of the corner lot is a significant factor that has led to the special circumstances requiring a variance request.

WHEREAS: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because the narrow width of the property makes conforming to infill standards somewhat more difficult.

WHEREAS: The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has completed construction of the garage.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** the requested Variance from Land Development Code, Section 4.4.3 to allow a fence to exceed the maximum height of 4' in the street side yards and be 6' in height to the August 24th, 2023, BOZA Meeting.

The vote was as follows:

YES: Members Horton, Leanhart, Ford, and Chair Bond

NO: Vice Chair Buttorff

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 22-VARIANCE-0119

Request: Variance to allow a private yard area to be less than the required 20% of the area of the lot and a Variance to allow a primary structure to exceed the maximum front yard setback. Continued to a date uncertain from the 4/24/2023 BOZA Meeting.

Project Name: Rear Mulberry Street Variances
Location: 917 R. Mulberry Street
Owner: MBS Remodeling LLC
Applicant: Jamie Barnes
Jurisdiction: Louisville Metro
Council District: 15- Jennifer Chappell
Case Manager: Amy Brooks, 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:

01:39:16 Amy Brooks presented the case and showed a Power Point presentation. Brooks responded to questions from the Board members (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Allen Craven, 557 Wainwright, Louisville, KY 40217

Jamie Barns, 11723 Halifax Dr. Louisville, KY 40245

Summary of testimony of those in favor of the request:

01:44:45 Allen Craven spoke in support of the request and responded to questions from the Board Members (see recording for detailed presentation)

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PUBLIC HEARING

Case No. 22-VARIANCE-0119

The following spoke in opposition of the request:

01:47:30 Board Members' deliberation.

01:49:52 Public Hearing was reopened to allow Mr. Jamie Barns an opportunity to respond to questions from the Board Members (see recording for detailed presentation)

01:53:05 Board Members' deliberation

Variance from the Land Development Code section 5.1.12.A.2.a to allow a principal structure to exceed the established front yard setback.

Variance from Land Development Code section 5.4.1.D.2 to allow a private yard area to be less than the required 20% of the area of the lot.

01:53:20 On a motion by Member Leanhart, seconded by Member Ford, the following resolution, based on the Standard of Review and Staff Analysis and evidence and testimony heard today, was adopted:

(VARIANCE #1) WHEREAS: Staff is concerned that the location of the principal structure may cause a potential safety issue to the public. The applicant is proposing a driveway on the site that will allow for parking beneath the portico shown on the site plan attached to this staff report. However, the adjacent alleyway measures approximately 15 feet, and may not provide sufficient room for vehicular maneuverability.

WHEREAS: The structure will not alter the essential character of the general vicinity as there are other structures on this alleyway that exceed the 8 ft. setback that is required by infill standards.

WHEREAS: 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.

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations as there are other structures on the alleyway that serves Mulberry and Ash streets that appear to have approximately the same setback from the edge of pavement.

WHEREAS: The requested variance does arise from special circumstances which do not generally apply to the land in the general vicinity or the same zone as the lot is not

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Case No. 22-VARIANCE-0119

similar in size and shape to the surrounding properties. This is a rear lot with limited size that fronts an alleyway

WHEREAS: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the structure cannot be moved to become more compliant to the code because of an existing retaining wall at the front of the property

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because construction has not begun, and the applicant is applying for a variance.

(VARIANCE #2) WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes, including fire codes, and the Land Development Code, except where relief is requested.

WHEREAS: The proposed private yard area reduction will not alter the essential character of the general vicinity as many properties in the area seemingly have reduced private yard areas to accommodate for the more compacted urban lots that are common in the Schnitzelburg neighborhood.

WHEREAS: 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.

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations as there is not significant open space between the primary structure area and accessory use area that could be counted towards the private yard calculation.

WHEREAS: The requested variance does arise from special circumstances which do not generally apply to the land in the general vicinity or the same zone as the lot is similar in size and shape to the surrounding properties as this is a substandard rear lot.

WHEREAS: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as there is not sufficient open space between the primary structure area and the accessory use area to allow for the required private yard area.

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Case No. 22-VARIANCE-0119

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. The applicant has not commenced building and has applied for a variance.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested (**Variance #1**) Variance from the Land Development Code section 5.1.12.A.2.a to allow a principal structure to exceed the established front yard setback (**Requirement 7ft, Request 8ft, Variance 1ft**) and (**Variance #2**) Variance from Land Development Code section 5.4.1.D.2 to allow a private yard area to be less than the required 20% of the area of the lot (**Requirement 529sq. ft, Request 148sq. ft, Variance 381sq ft**) based on Item A being addressed.

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-VARIANCE-0061

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| Request: | A variance to allow a structure to encroach into the required side yard setback. |
| Project Name: | Portland Avenue Variances |
| Location: | 2722 Portland Ave |
| Owner: | Jeremy Miller |
| Applicant: | Jeremy Miller |
| Jurisdiction: | Louisville Metro |
| Council District: | 5- Donna Purvis |
| Case Manager: | Amy Brooks, 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:

01:55:38 Amy Brooks presented the case and showed a Power Point presentation. (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Jeremy Miller, 2726 Portland Ave, Louisville, KY 40212

Summary of testimony of those in favor of the request:

01:58:28 Jeremy Miller spoke in favor of the request and responded to questions from Board Members (see recording for detailed presentation)

The following spoke in opposition to the request:

No one spoke.

02:02:05 Board Members' deliberation.

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PUBLIC HEARING

Case No. 23-VARIANCE-0061

Variance from the Land Development Code Table 5.2.2 to allow a primary structure to encroach into the side yard setbacks.

02:02:20 On a motion by Vice Chair Buttorff, seconded by Member Leanhart, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested. 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 neighboring property.

WHEREAS: The addition will be built in an area where minimal setbacks from side property lines are commonplace. Neighborhood examples that seemingly encroach into side yard setbacks include several of the adjacent properties along this block of Portland Avenue. The aerial photography of these examples has been included in the staff report's site photos.

WHEREAS: 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.

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations since the proposed request seems compatible with the established pattern of setbacks within the surrounding neighborhood. The encroachment only occurs because the applicant is proposing an addition onto an existing structure that was built prior to the current zoning regulations.

WHEREAS: The requested variance does not arise from special circumstances which do generally apply to the land in the general vicinity or the same zone as the lot is similar in size and shape to the surrounding properties.

WHEREAS: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the existing house is within the required side yard setback line. The proposed construction will not encroach any further into the side setback than the current footprint of the house does.

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Case No. 23-VARIANCE-0061

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance and has not begun construction.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Variance from the Land Development Code Table 5.2.2 to allow a primary structure to encroach into the side yard setbacks (**Requirement 3.0ft, Request 0ft, Variance 3.0ft**)

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-VARIANCE-0074

Request: Variance to allow a structure to exceed the maximum infill front yard setback.
Project Name: Bridwell Drive Variance
Location: 3130 Bridwell Drive
Owner: Prosperity Holdings LLC
Applicant: Angelica Matos
Jurisdiction: Louisville Metro
Council District: 1- Tammy Hawkins
Case Manager: Amy Brooks, 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:

02:03:18 Amy Brooks presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

Angelica Matos, 3130 Bridwell Drive, Louisville, KY 40208

Summary of testimony of those in favor:

02:07:25 Angelica Matos spoke in favor of the request and responded to questions from Board Members (see recording for detailed presentation).

The following spoke in opposition of the request:

Rachelle Williams, 3127 Wilkie Rd, Louisville, KY 40216

Summary of testimony of those in opposition:

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Case No. 23-VARIANCE-0074

02:10:22 Rachelle Williams spoke in opposition to the request. Williams elaborated on how close the Factory Built House would be to her property and how the home will be encroaching into her property. William stated someone came out to her property and surveyed the area before her home was built. Williams responded to questions from Board Members (see recording for detailed presentation)

Rebuttal:

02:21:44 Angelica Matos spoke in rebuttal. Matos stated the survey that was completed in 1994 and the survey that was completed by her match. Matos also stated that the dimensions from the surveys are close in proximity and that they are off by one number. Matos responded to questions from Board Members (see recording for detailed presentation)

02:27:27 Board Members' deliberation.

Variance from the Land Development Code Section 5.1.12.B.2.a to allow a principal structure to exceed the maximum front yard setback as established by infill regulations.

02:48:31 On a motion by Member Leanhart, seconded by Vice Chair Buttorff, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must adhere to the specified Factory Built Housing regulations and the Land Development Code, except where relief is requested.

WHEREAS: The structure will not alter the essential character of the general vicinity as there are seemingly other principal structures that exceed the maximum front yard setbacks. Please see the neighborhood examples of these structures under attachment #4 in the staff report.

WHEREAS: The requested variance will not cause a hazard or nuisance to the public because the structure, which is considered factory-built housing, will need to adhere to the regulations set forth in the Land Development Code.

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations since the subject site is unique. This is a flag lot that was the

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PUBLIC HEARING

Case No. 23-VARIANCE-0074

subject of a minor subdivision plat that created three tracts from one in 1994. As a result, this property only has limited frontage on a public roadway with the only buildable land being located to the rear of the subject lot. As such, any principal structure would exceed the maximum front yard setback.

WHEREAS: The requested variance does arise from special circumstances which do not generally apply to the land in the general vicinity or the same zone because the lot is not similar in size and shape to the surrounding properties. The property was the subject of a minor subdivision plat in 1994. As such, this property has an unusual shape and configuration.

WHEREAS: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land because the only buildable portion of the lot is located to the rear of the property far beyond the maximum setback as determined by infill regulations.

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because seeking both a variance and approval under a FBH before moving the home onto the lot.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the request Variance from the Land Development Code Section 5.1.12.B.2.a to allow a principal structure to exceed the maximum front yard setback as established by infill regulations (**Requirement 50ft, Request 200.21ft, Variance 150.21ft**)

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-VARIANCE-0077

Request: Variance to allow a parking pad to encroach into the side yard setback from section 9.1.4 of the LDC
Project Name: Aylesbury Drive Variance
Location: 9219 Aylesbury Drive
Owner: Olivia Wise
Applicant: Scott Rudd
Jurisdiction: Louisville Metro
Council District: 7 - Paula McCraney
Case Manager: Molly Clark, Planner II

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

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

Agency testimony:

02:51:42 Molly Clark presented the case and showed a Power Point presentation. (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

None

The following spoke in opposition to the request:

None

02:55:19 Board Members' deliberation.

Variance from Land Development Code section 9.1.4 to allow a proposed driveway to encroach into the required 5 ft side yard setback.

02:55:26 On a motion by Member Horton, seconded by Member Ford, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

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Case No. 23-VARIANCE-0077

WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested.

WHEREAS: The proposed driveway and surrounding driveways are built to similar setbacks from side property lines.

WHEREAS: The addition will not cause a hazard or nuisance to the public since it is required to meet all applicable requirements of the building code.

WHEREAS: The proposed setback would not be an unreasonable circumvention of the zoning regulations because the proposed setback is consistent with other driveways in the immediate area.

WHEREAS: The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is the same size and shape in comparison to the surrounding properties.

WHEREAS: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the applicant only has a limited area where they can expand the existing driveway.

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not begun construction.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Variance from Land Development Code section 9.1.4 to allow a proposed driveway to encroach into the required 5 ft side yard setback (**Requirement 5ft, Request 1ft, Variance 4ft**)

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-VARIANCE-0081

Request: Variance to allow a fence to exceed the maximum height of 48 inches.
Project Name: Woolrich Road Variance
Location: 7108 Woolrich Road
Owner: Elizabeth Yuh
Applicant: Elizabeth Yuh
Jurisdiction: Louisville Metro
Council District: 7 - Paula McCraney
Case Manager: Molly Clark, Planner II

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

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

Agency testimony:

02:57:00 Molly Clark presented the case on behalf of Mark Pinto. Clark presented a Power Point presentation and responded to questions from the Board members (see staff report and recording for detailed presentation and discussion.)

The following spoke in support of the request:

Elizabeth Yue, 7108 Woolrich Rd, Louisville, KY 40222

Summary of testimony of those in favor:

03:00:46 Elizabeth Yue spoke in favor of the request and responded to questions from Board Members (see recording for detailed presentation)

The following spoke in opposition to the request:

Bruce Raque, 1313 Abbeywood Rd, Louisville, KY 40222

Patricia Raque, 1313 Abbeywood Rd, Louisville, KY 40222

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Case No. 23-VARIANCE-0081

Linda Fitzgerald, 7209 Woolrich Rd, Louisville, KY 40222

Summary of testimony of those in opposition:

03:03:14 Bruce Raque spoke in opposition to the request. Raque stated the 6ft wooden fence does not correspond with other fences in the neighborhood and that the fence would be too tall. Raque responded to questions from Board Members (see recording for detailed presentation)

03:12:29 Linda Fitzgerald spoke in opposition to the request. Fitzgerald stated the footage of the fence would be too tall and non-see through. Fitzgerald states having a metal fence would be fine for the yard and for the dog.

03:15:28 Patricia Raque spoke in opposition to the request. Raque states the drawings that were presented doesn't show the true measurements of the property. Raque states that the fence would be only be 23ft from the building to the road instead of 35ft. (see recording for detailed presentation)

Rebuttal:

03:17:33 Elizabeth Yue spoke in rebuttal. Yue stated that the dimensions for the location of the fence were taken from logic and measurement from the program. Yue mentioned that she was open to a 6ft see through metal fence. Yue responded to questions from Board Members (see recording for detailed presentation).

03:21:05 Board Members' deliberation.

03:23:55 On a motion by Vice Chair Buttorff, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested.

WHEREAS: The existing home will be maintaining the existing mature trees that will be buffering the proposed 6-foot fence.

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Case No. 23-VARIANCE-0081

WHEREAS: The addition will not cause a hazard or nuisance to the public since it is required to meet all applicable requirements of the building code.

WHEREAS: The proposed setback would not be an unreasonable circumvention of the zoning regulations because the applicant is providing mature landscaping as mitigation. The current lot configuration does not allow for a backyard for the existing home.

WHEREAS: The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone because the lot is the same size and shape in comparison to the surrounding properties.

WHEREAS: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the applicant is constructing the proposed fence behind 3 existing mature trees that will create an adequate landscape buffer. The applicant does not have a backyard to fence in.

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not begun construction.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the requested Variance from Graymoor-Devondale Land Development Code section 4.4.3.A.1.a.i to allow a fence to exceed the 48-inch maximum by 24 inches **(Requirement 48in, Request 72in, Variance 24in)**

The vote was as follows:

YES: Members Horton, Leanhart, Vice Chair Buttorff and Chair Bond

NO: Member Ford

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-VARIANCE-0096

Request: Variance to allow a structure to exceed the maximum infill front yard setback.
Project Name: Tucker Station Road Variance
Location: 221 Tucker Station Road
Owner: William Bond
Applicant: Alex Marsh
Jurisdiction: City of Middletown
Council District: 19- Anthony Piagentini
Case Manager: Amy Brooks, 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:

03:25:05 Amy Brooks presented the case and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in favor of the request:

Alex Marsh, 7113 Creek Stone Blvd, Louisville, KY 40228

Summary of testimony of those in favor:

03:27:55 Alex Marsh spoke in favor of the request and responded to questions from Board Members (see recording for detailed presentation)

The following spoke in opposition to the request:

No one spoke.

03:30:38 Board members' deliberation.

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PUBLIC HEARING

Case No. 23-VARIANCE-0096

Variance from the Middletown Land Development Code section 5.3.1.C.1.a to allow a structure to exceed the maximum setback as established by infill regulations.

03:31:03 On a motion by Member Ford, seconded by Vice Chair Buttorff, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The requested variance will not adversely affect public health, safety, or welfare. While the principal structure will sit further back from Tucker Station Road than the site design standards allow, the house must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested.

WHEREAS: The requested variance will not alter the essential character of the general vicinity since there are other properties within the surrounding area that also exceed the maximum front yard setback to this degree. Examples include properties located at 220, 230, and 260 Clarland Drive that also are setback from the front property line more than 200 feet. Please see aerial photography of the cited examples under attachment #4 in the staff report.

WHEREAS: The requested variance will not cause a hazard or nuisance to the public because the principal structure must be developed to comply with all applicable building codes. Additionally, the site itself will be subjected to erosion and sediment control measures that are required by MSD to ensure positive-flow in the public through-drainage that bisects the property.

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations. Because the required setback on this site is determined by infill development standards, which is intended to preserve the basic feel of the streetscape by requiring new development to complement existing construction, this request does not to be out of character with the established pattern of front yard setbacks.

WHEREAS: The requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or in the same zone. There is a stormwater drainage that runs across the property parcel.

WHEREAS: The strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant as the applicant could move the location of the home forward to be more in line with the established pattern of front yard setbacks.

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Case No. 23-VARIANCE-0096

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance prior to beginning construction.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **RECOMMEND** to the City of Middletown to **APPROVE** the requested Variance from the Middletown Land Development Code section 5.3.1.C.1.a to allow a structure to exceed the maximum setback as established by infill regulations (**Requirement 35ft, Request 249.28ft, Variance 214.28ft**)

The vote was as follows:

YES: Members Horton, Ford, Vice Chair Buttorff and Chair Bond

NO: Member Leanhart

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-NONCONFORM-0014

| | |
|-------------------|--|
| Request: | Nonconforming rights for a nail salon. |
| Project Name: | Nonconforming Rights. |
| Location: | 1216 Belmar Dr |
| Owner: | Nicole Nguyen |
| Applicant: | Nicole Nguyen |
| Jurisdiction: | Louisville Metro |
| Council District: | Betsy Ruhe- Council District 21 |
| Presenter | Amy Brooks, Planner II |
| Case Manager: | Mark Pinto, Associate Planner |

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:

03:32:54 Amy Brooks, presented the case on behalf of Mark Pinto and showed a Power Point presentation (see staff report and recording for detailed presentation.)

The following spoke in support of the request:

Tiffany Tucker, 4917 Manslick Rd, Louisville, KY 40216

Raberta Vitatow, 1542 Cardinal Dr., Louisville, KY 40213

Summary of testimony of those in favor:

03:39:41 Tiffany Tucker spoke in favor of the request. Tucker stated her family has been in the nail business for multiple years and would like to start the nail salon in the small area.

03:42:53 Raberta Vitatow spoke in favor of the request and responded to questions from Board Members (see recording for detail presentation)

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Case No. 23-NONCONFORM-0014

The following spoke in opposition of the request:
None

03:45:34 Board Members' deliberation

To recognize nonconforming rights for a confectionary.

03:45:44 On a motion by Vice Chair Buttorff, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond
ABSENT: Member Howard and Member Vozos

Granting a change in nonconformance to a manicurist (nail salon)

03:46:48 On a motion by Vice Chair Buttorff, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond
ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-MCUP-0003

| | |
|-------------------|---|
| Request: | Modified Conditional Use Permit for Underground Space |
| Project Name: | Louisville Underground |
| Location: | 1841 Taylor Avenue |
| Owner: | Louisville Underground, LLC |
| Applicant: | Bardenwerper, Talbott & Roberts, PLLC. |
| Jurisdiction: | Louisville Metro |
| Council District: | 10 - Pat Mulvihill |
| Case Manager: | Molly Clark, Planner II |

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

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

Agency testimony:

03:48:07 Molly Clark presented the case and showed a PowerPoint presentation. Clark responded to questions from the Board members (see staff report and recording for detailed presentation)

The following spoke in favor of the request:

Nick Pregliasco, Bardenwerper, Talbott & Roberts, 1000 N. Hurstbourne Parkway, Louisville, KY 40223

Jim Lowry, 1841 Taylor Ave, Louisville, KY 40213

Summary of testimony of those in favor:

03:55:47 Nick Pregliasco spoke in favor of the request and presented a PowerPoint presentation. Pregliasco responded to questions from Board Members (see recording for detail presentation).

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Case No. 23-MCUP-0003

04:14:17 Jim Lowry spoke in favor of the request and responded to questions from Board Members (see recording for detailed presentation)

The following spoke in opposition to the request:

Linda Fitzgerald, 3928 Illinois Ave, Louisville, KY 40213

Summary of testimony of those in favor:

04:20:47 Linda Fitzgerald spoke in opposition to the request. Fitzgerald stated the traffic is going to be a major concern especially during the Christmas Light Show. Fitzgerald stated that a sink hole is close by and could cause a few issues for the area.

Rebuttal:

04:23:13 Nick Pregliasco spoke in rebuttal. Pregliasco elaborated on the Christmas Light Show traffic and mentioned there will not be any type of expansion to the property. Pregliasco stated the main focus of the project is to have more warehouse space.

04:24:38 Board Members' deliberation

Modified Conditional Use Permit from section 4.2.52 of the Land Development Code for Underground Space

04:25:09 On a motion by Vice Chair Buttorff, seconded by Member Leanhart, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The applicant has furnished to the Board of Zoning Adjustment proof of subsurface ownership rights at the time of application.

WHEREAS: The applicant has stated any materials stored or operations conducted therein will be in accordance with all applicable governmental regulations, including Metropolitan Sewer District, Air Pollution Control District, Kentucky Cabinet for Natural Resources and Environmental Protection, or the Federal Environmental Protection Agency.

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Case No. 23-MCUP-0003

WHEREAS: The applicant will develop a written or site plan for vehicle cleaning facilities to prevent the tracking of mud, dirt, or other debris onto any public roadway shall be reviewed and approved by the Jefferson County Engineer or City of Louisville Department of Public Works prior to the public hearing.

WHEREAS: The applicant has provided certification of adequate surface support to prevent cave-ins and subsidence from a professional engineer registered in Kentucky.

WHEREAS: The applicant will obtain a building permit to develop a habitable underground building and to qualify for a certificate of occupancy.

WHEREAS: The entrances to all Underground Space sites will be through property owned or controlled by the owners or operators of the underground space.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the request Modified Conditional Use Permit from section 4.2.52 of the Land Development Code for Underground Space **SUBJECT** to the following Conditions of Approval:

1. The development shall not exceed the following:
 - a) 225,000 square feet of gross floor area in office use on the surface.
 - b) 20,000 square feet of gross floor area in retail use of the surface.
 - c) 275,000 square feet of gross floor area in general warehousing and light industrial use on the surface.
 - d) 2,700,000 square feet of gross floor area of all uses permitted in underground pursuant to LDC Chapter 4, Part 2.53.

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond
ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-CUP-0075

| | |
|-------------------|---|
| Request: | Conditional Use Permit for a proposed crematorium |
| Project Name: | Proposed Crematorium |
| Location: | 2727 S 3rd Street |
| Owner: | White & Sons Louisville, INC |
| Applicant: | Dinsmore & Shohl, LLP. |
| Jurisdiction: | Louisville Metro |
| Council District: | 15 - Jennifer Chappell |
| Case Manager: | Molly Clark, Planner II |

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

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

Agency testimony:

04:27:32 Molly Clark presented the case and showed a Power Point presentation. Clark 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, Dinsmore & Shohl, 101 S. 5th Street, Louisville, KY 40202

Michael Burwell, 6601 Darin Way, Cypress, CA 90630

Summary of testimony of those in favor:

04:31:29 Cliff Ashburner spoke in favor of the request and presented a PowerPoint presentation. Ashburner responded to questions from Board Members (see recording for detailed presentation)

04:40:38 Michael Burwell spoke in favor of the request. Burwell elaborated on the equipment that is used for the crematorium and discussed the break down of cremation.

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Case No. 23-CUP-0075

Burwell responded to questions from Board Members (see recording for detailed presentation)

04:43.26 Cliff Ashburner continued the presentation.

The following spoke in opposition to the request:

04:45:21 Board Members' deliberation

Conditional Use Permit from section 4.2.59 of the Land Development Code for a proposed Crematorium (23-CUP-0075)

04:45:31 On a motion by Member Leanhart, seconded by Member Ford, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: According to the applicant crematorium technology has advanced to where they are “fully automated, scrubbed regularly and any smoke goes under the crematory” as well as no longer “needs an air permit in Kentucky as there is no odor or smoke.” The applicant also cited that there are 2 other crematoriums in NULU neighborhood, another traditional neighborhood area. IN Addition, APCD as part of interagency review was notified of this case and did not have any issues with the application.

WHEREAS: The applicant will need relief from this section. The applicant is closer than 200 feet to another residential use. The applicant justifications can be found in the conditional use permit letter of explanation. Based on current technology for cremation and the fact that no emissions will take place from the site, staff recommends granting relief to this standard.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the Conditional Use Permit from section 4.2.59 of the Land Development Code for a proposed Crematorium (23-CUP-0075), relief from standard B, and **SUBJECT** to the following Conditions of Approval:

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

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Case No. 23-CUP-0075

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 crematorium until further review and approval by the Board.

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond
ABSENT: Member Howard and Member Vozos

Variance from section 5.5.1.A.2 to exceed the maximum setback of 5 feet for corner lots by 77 feet (23-VARIANCE-0033)

04:47:39 On a motion by Member Leanhart, seconded by Member Ford, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The requested variance will not adversely affect the public health, safety or welfare, because the structure must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested.

WHEREAS: The proposed addition will not alter the essential character of the general vicinity as there is an existing funeral home on the lot that has existed in the neighborhood for over 30 years. The addition will be located next to the existing funeral home.

WHEREAS: 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.

WHEREAS: The requested variance will not allow an unreasonable circumvention of the zoning regulations as this site has an existing funeral home and the proposed addition will be located right next to the existing building. Locating the proposed addition at the corner would disrupt the existing parking lot and ingress/egress of the site.

WHEREAS: The requested variance does arise from special circumstances which do generally apply to the land in the generally vicinity as this lot has had an existing funeral

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PUBLIC HEARING

Case No. 23-CUP-0075

home on the site for over 30 years and locating the addition on the corner would disrupt the ingress and egress of the existing parking lot.

WHEREAS: The strict application of the provisions of the regulation would create an unnecessary hardship on the applicant as the current configuration of the land and buildings only allows the applicant to build a detached structure on the corner without a variance. The addition will be built with the existing funeral home on the site.

WHEREAS: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant has not begun construction.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Variance from section 5.5.1.A.2 to exceed the maximum setback of 5 feet for corner lots by 77 feet (23-VARIANCE-0033)

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond
ABSENT: Member Howard and Member Vozos

Waiver from section 10.2. of the Land Development Code to allow existing parking to encroach into the required VUA/LBA along M street. (23-WAIVER-0044)

04:48:32 On a motion by Member Leanhart, seconded by Member Ford, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The waiver will not adversely affect adjacent property owners since the subject site has had an existing funeral home for over 30 years. The site is also primarily surrounded by commercial, manufacturing, and mixed-use properties. The applicant is still providing landscaping in other areas of the site.

WHEREAS: Community Form Goal 1, Policy 4 calls for the proposal to ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects.

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WHEREAS: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant has a parking area that has existed with the funeral home for over 30 years. The applicant is also providing a sidewalk with the VUA/LBA area along M Street which encroaches into the landscape buffer area.

WHEREAS: The strict application of the provisions of the regulations would deprive the applicant of the reasonable use of the land because it would prevent the applicant from constructing an adequate pedestrian connection from the street to the entrance of the building.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **APPROVE** the requested Waiver from section 10.2. of the Land Development Code to allow existing parking to encroach into the required VUA/LBA along M street. (23-WAIVER-0044)

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond

ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-CUP-0060

Request: Conditional Use Permit for Short Term Rental of a Dwelling Unit That is Not the Primary Residence of the Host.
Continued from the 6/26/2023 BOZA Meeting

Project Name: 326 Northwestern Parkway Short Term Rental

Location: 326 Northwestern Parkway

Owner: Lotus Property Group LLC

Applicant: Angela Hite

Jurisdiction: Louisville Metro

Council District: 5- Donna Purvis

Case Manager: Amy Brooks, 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:

04:50:26 Amy Brooks presented the case and showed a Power Point presentation. Brooks responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Angela Hite, 2003 Silver Moon Dr., Missouri City, TX 77459

Summary of testimony of those in favor:

04:56:26 Angela Hite spoke in favor of the request and responded to questions from Board Members (see recording for detailed presentation)

The following spoke in opposition to the request:

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Martina Nichols Kunnecke, 311 Northwestern Pkwy, Louisville, KY 40212

Wyeth Akeley, 129 Northwestern Pkwy, Louisville, KY 40212

Summary of testimony of those in opposition:

05:11:57 Martina Kunnecke spoke in opposition to the request. Kunnecke stated she is concerned that if Short Term Rentals begin to show up in the surrounding neighborhoods then it will become an issue for residents looking for affordable housing. Kunnecke stated the short-term rentals will take away homes from young families who are starting out in life.

05:22:54 Wyeth Akeley spoke in opposition to the request. Akeley elaborated on the finances that pertains to the property in question. Akeley stated that property in question how been sold between multiple times and feels Hite is not the owner of the property.

Rebuttal:

05:28:40 Angela Hite spoke in rebuttal. Hite stated the neighborhood meetings were held at different times and days however the location of the meetings were similar. Hite stated address 326 Northwestern Pkwy is update on its taxes and has been refinanced under Lotus Property Group name.

05:34:53 Board Members' deliberation

Conditional Use Permit to allow short term rental of dwelling unit that is not the primary residence of the host in the R-5 Single-Family Residential zone and Traditional Neighborhood form district.

05:37:54 On a motion by Member Leanhart, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The proposal does not conflict with Comprehensive Plan policies.

WHEREAS: When appropriately managed, the proposed use is compatible with surrounding development and land uses.

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WHEREAS: The subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site.

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 number of bedrooms plus six individuals. The subject property is smaller than two acres. The applicant states that the residence has three bedrooms that will allow a maximum number of eight 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, within 600' of the subject property, there are no properties with an approved conditional use permit allowing short term rentals that is not the primary residence of the host.
- 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

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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 applicant has been informed of this requirement.

- 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. There is a driveway that can seemingly accommodate three vehicles. There appears to be no parking on Northwestern Parkway.
- 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.

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- 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.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the Conditional Use Permit to allow short term rental of dwelling unit that is not the primary residence of the host in the R-5 Single-Family Residential zone and Traditional Neighborhood form district.

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond
ABSENT: Member Howard and Member Vozos

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PUBLIC HEARING

Case No. 23-CUP-0061

Request: Conditional Use Permit for Short Term Rental of a Dwelling Unit That is Not the Primary Residence of the Host.
Continued from the 6/26/2023 BOZA Meeting.

Project Name: 125 Northwestern Parkway Short Term Rental
Location: 125 Northwestern Parkway
Owner: Lotus Property Group LLC
Applicant: Angela Hite
Jurisdiction: Louisville Metro
Council District: 5- Donna Purvis
Case Manager: Amy Brooks, 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:

05:40:06 Amy Brooks presented the case and showed a Power Point presentation. Brooks responded to questions from the Board Members (see staff report and recording for detailed presentation).

The following spoke in favor of the request:

Angela Hite, 2003 Silver Moon Dr., Missouri City, TX 77459

Summary of testimony of those in favor:

05:42:12 Angela Hite spoke in favor of the request and responded to questions from Board Members (see recording for detailed presentation)

The following spoke in opposition to the request:

Martina Nichols Kunnecke, 311 Northwestern Pkwy, Louisville, KY 40212

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Wyeth Akeley, 129 Northwestern Pkwy, Louisville, KY 40212

Summary of testimony of those in opposition:

05:43:04 Martina Nichols Kunnecke spoke in opposition to the request. Kunnecke stated she has the same feelings about this property as she does for property located at 326 Northwestern Pkwy.

05:44:37 Wyeth Akeley spoke in opposition to the request. Akeley elaborated on the finances in connection to the property and broke down the chain of ownership (see recording for detailed presentation)

Rebuttal:

05:50:32 Angela Hite spoke in rebuttal. Hite states the property is still under renovation due to trying to finish the property located at 326 Northwestern Pkwy.

05:51:41 Board Members' deliberation

Conditional Use Permit to allow short term rental of dwelling unit that is not the primary residence of the host in the R-5 Single-Family Residential zone and Traditional Neighborhood form district.

05:52:00 On a motion by Member Ford, seconded by Member Horton, the following resolution, based on the Standard of Review and Staff Analysis, and evidence and testimony heard today, was adopted:

WHEREAS: The proposal does not conflict with Comprehensive Plan policies.

WHEREAS: When appropriately managed, the proposed use is compatible with surrounding development and land uses.

WHEREAS: The subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site.

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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 number of bedrooms plus six individuals. The subject property is smaller than two acres. The applicant states that the residence has three bedrooms that will allow a maximum number of eight 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, within 600' of the subject property, there are no properties with an approved conditional use permit allowing short term rentals that is not the primary residence of the host.

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

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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 applicant has been informed of this requirement.

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. There is a driveway that can seemingly accommodate three vehicles. There appears to be no parking on Northwestern Parkway.

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

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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.

RESOLVED, the Louisville Metro Board of Zoning Adjustment does hereby **DENY** the Conditional Use Permit to allow short term rental of dwelling unit that is not the primary residence of the host in the R-5 Single-Family Residential zone and Traditional Neighborhood form district.

The vote was as follows:

YES: Members Horton, Leanhart, Ford, Vice Chair Buttorff and Chair Bond
ABSENT: Member Howard and Member Vozos

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The meeting adjourned at approximately 07:10 p.m.

Chair

Secretary