MINUTES OF THE MEETING

OF THE

LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT

JUNE 3, 2013

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, June 13, 2013, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

Members present were:
Betty Jarboe, Chairperson
David Proffitt, Vice Chairperson
Michael Allendorf, Secretary
Rosalind Fishman

Members absent:
Carrie Bauer
Janis Carter Miller
Frederick Liggin

Staff members present were:
Phillip Bills, Director
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Steve Hendrix, Planning Supervisor
Jon Crumbie, Planner II
Latondra Yates, Planner II
Chris Brown, Planner I
David Wagner, Planner I
George Pate, Codes and Regulations Plan Review Supervisor
April Robbins, Code Enforcement Supervisor
Regina Thomas, Associate Planner
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

The following cases were heard:

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BUSINESS SESSION:

APPROVAL OF THE MINUTES

Approval of the minutes of the meeting conducted on May 13, 2013.

8:40:25 On a motion by Member Fishman, seconded by Member Allendorf, the minutes of the meeting held on May 13, 2013 were approved.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

MINUTES OF THE MEETING
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JUNE 3, 2013

BUSINESS SESSION:

Case No. B-19259-13

Applicant/Owner: William P. & Mary K. Ridge
2315 Broadmeade Road
Louisville, Kentucky 40205

Subject: An application for a variance from the Land Development Code to allow a proposed garage to encroach into the private yard requirements.

Premises affected: On property known as 1722 Bonnycastle Avenue and being in Louisville Metro.

COUNCIL DISTRICT 8—Tom Owen
Staff Case Manager: Regina Thomas, Associate Planner

On June 3, 2013, at a meeting of the Board, this case was presented to the Board in open business session pursuant to KRS 100.241 and KRS 100.243. A drawing showing the premises affected and the existing structure was presented to each Board member.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

DISCUSSION:
8:41:23 Steve Hendrix, Planning Supervisor, said the applicant would like to replace a garage that was destroyed by a tornado, which will reduce the amount of private yard space. The adjoining property owners have signed the Non-Hearing Variance Consent form and are not opposed.

8:41:52 On a motion by Board Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance to allow a proposed garage to encroach into the private yard requirements; and

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WHEREAS, the Board finds that the requested variance will not alter the essential character of the general vicinity because the garage will be placed in back of the property where a previous structure was prior to tornado which leveled the structure; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because other neighbors have garages in the rear of their properties; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the neighborhood has small lots and does not allow for a reasonable size garage for the yard; and because the garage is the same type and size other lots in this area have; and

WHEREAS, the Board finds that the variances arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the new garage is to replace the structure that was previously destroyed by a tornado; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by not allowing the applicant to replace the garage that was destroyed by a tornado; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought, because the old garage was demolished by a tornado; and because the new garage has not been built yet and no violations have occurred;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the private yard area to be 360 square feet;

BE IT FURTHER RESOLVED, that this action be effective immediately.

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BUSINESS SESSION:

Case No. B-19259-13

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

MINUTES OF THE MEETING
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JUNE 3, 2013

NEW BUSINESS:

Case No. B-14170-10
(CONTINUED FROM MAY 13, 2013)

Applicant/Owner: Michael McMahon
2195 Millvale Road
Louisville, Kentucky 40205

Representative: Bardenwerper Talbott & Roberts, PLLC
Bill Bardenwerper & Nick Pregliasco
1000 N. Hurstbourne Parkway, 2nd floor
Louisville, Kentucky 40223

Project Name: Garage Addition

Zoning District: R-4

Form District: Neighborhood

Subject: A continuance of a variance application to allow an existing structure to encroach into the required Moyle Hill Road front yard. On remand from the Jefferson Circuit Court, BOZA will hear additional testimony and argument before making further findings pursuant to the criteria and considerations outlined in KRS 100.243 (1) (b) that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

Premises affected: On property known as 2195 Millvale Road and being in Louisville Metro.

COUNCIL DISTRICT 8—Tom Owen
Staff Case Manager: Steve Hendrix, Planning Supervisor

Appearances for Applicant:
Nick Pregliasco, Attorney, 1000 N. Hurstbourne Parkway, 2nd floor, Louisville, Kentucky 40223.

Appearances Interested Party:
No one.

MINUTES OF THE MEETING
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JUNE 3, 2013

NEW BUSINESS:

Case No. B-14170-10
(CONTINUED FROM MAY 13, 2013)

Appearances Against Applicant:
Laura Metzger, 2179 Millvale Road, Louisville, Kentucky 40205.

Robert McAllister, 2191 Millvale Road, Louisville, Kentucky 40205.

Appearances Codes and Regulations Staff:

George Pate, Codes and Regulations, Plan Review Supervisor, 444 S. 5th Street, Louisville, Kentucky 40202.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On April 26, 2010, Michael A. McMahon filed an application for a variation from the requirements of the Land Development Code to allow an existing structure to encroach into the required Moyle Hill Road front yard. On remand from the Jefferson Circuit Court (10-CI-4208) additional testimony and argument to be taken before further findings pursuant to the criteria and considerations outlined in KRS 100.243 (1) (b), that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant or would deprive the applicant of the reasonable use of the land.

On May 17, 2010, BOZA denied the variance application to allow an existing detached garage to encroach into the required Moyle Hill Road street side yard.

The case was continued from the May 13, 2013 public hearing to allow Board Members Proffitt, Bauer and Miller to review the DVD.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

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NEW BUSINESS:

Case No. B-14170-10
(CONTINUED FROM MAY 13, 2013)

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
8:42:36 Staff case manager, Steve Hendrix gave a brief presentation of the case to the Board. He said this case was continued from the May 13, 2013 hearing to allow the Board members who were not present to view the cd.

8:43:11 Jon Baker, the Board's legal counsel, said the case was remanded back to the Board from Circuit Court regarding a finding not previously addressed under KRS 100.243. Specifically, under KRS 100.243 (1) (b) that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant." He said applicant's representative argued that the Doctrine of Honest Error occurred since the city erred telling the owner that Moyle Hill Road was a rear yard along an alley. Member Proffitt asked what the original permit was for.

SUMMARY OF TESTIMONY OF CODES AND REGULATIONS STAFF:
8:49:46 George Pate, Codes and Regulations Plan Review Supervisor, said the original permit was for a one story garage. He said the applicant then amended the original permit to include the second story. Member Fishman said the structure was built before the Stop Work Order was issued. Mr. Pate said yes, most of it. The retaining wall was discussed, and Member Proffitt asked what they did to increase the height of the wall. Mr. Pate said the owner built it taller on top of what existed. Mr. Baker said there was damage to the original garage due to water runoff and is when the owner demolished it. Member Allendorf said the last two pages of the staff report are not permits, but applications for permits. He asked if the owner had an engineer design the retaining wall. Mr. Pate said he didn't see anything in the file. Member Proffitt asked Mr. Pate if permits were issued to the owner. Mr. Pate said yes.

SUMMARY OF TESTIMONY OF PROPONENTS:
9:01:29 Nick Pregliasco, the applicant's attorney, said the permits his client received are in the PowerPoint presentation. He said Codes and Regulations and Planning & Design staff determined this was a rear yard next to an alley. He said 311 calls etc. refer to Moyle Hill Road as an alley. Mr. Pregliasco asked his client, Michael McMahon how much he has spent on the garage. Mr. McMahon

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**Case No. B-14170-10
(CONTINUED FROM MAY 13, 2013)**

said $25,000.00; and $75-80,000.00 on legal fees. Member Proffitt said the city made a mistake regarding the yard and setbacks, but the big issue is the 2nd story and the retaining wall which is 8-10 feet taller then if it was a one story garage. He asked how this is an economic hardship on the applicant when he went over and beyond what was allowed. He said from the court case, *Court of Appeals of Kentucky, City of Berea, Kentucky Appellant, v. William Wren*, 818 S.W. 2d 274, that property rights or others must be taken into account. Mr. Pregliasco said there was nothing prohibiting him from building the second story and was told by Codes and Regulations to amend the permit, which he did. Member Proffitt asked Mr. McMahon when he decided to build the second story. Mr. McMahon said not until later and that his contractor was working ahead of schedule. He said he would have never bought a house with three front yards; and that several neighbors in the area are also encroaching into the required 30 ft. setback and not receiving violations. Member Proffitt questioned the retaining wall. Mr. McMahon said the entire retaining wall was included in the first permit. Mr. Pregliasco said that his client relied upon the information from Planning & Design and Codes and Regulations staff, and built it accordingly.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:
9:23:08 Laura Metzger said there are quite a few people here from the neighborhood today. She said the financial hardship affects everyone in their neighborhood if this is allowed, because it will decrease their property values. Member Fishman asked if there was an opportunity to discuss the proposal at a neighborhood meeting. Ms. Metzger said numerous meetings were held but everyone has different timelines as to when things occurred; and more meetings to mediate. Member Proffitt asked if the garage were one story, would she still be opposed. Ms. Metzger said no, and they would not be here today.

REBUTTAL:
9:25:26 Mr. Pregliasco said at the last meeting, they showed the rendering created by Jim Mims, Codes & Regulations Director, in 2009 and said they would still be willing to add a guard rail and plant trees to conceal the garage. He said the opposition didn't agree and is why they appealed this case to Circuit Court. Mr. McMahon said before the variance was denied, he asked his neighbors if

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(CONTINUED FROM MAY 13, 2013)**

they would like a one story garage with dormers, but the neighbors wanted the new garage placed in the old footprint without dormers. He said he then retained Mr. Bardenwerper as his attorney, who also couldn't get the neighbors to agree to anything. He said he and his family have suffered; and said he will tear it down if his neighbors tear down their encroachments. He said one of his neighbors built a garage in his front yard and planted shrubs and bushes, so it's not visible. He said he knows his neighbors have an issue with the second story and said he agreed to take out the dormers. He said he wants to get a long with his neighbors.

OPPONENTS AGAIN:
9:37:01 Robert McAllister, said he lives next door to Mr. McMahon; and said the applicant or his attorney never spoke to him about any mitigation efforts; and that Mr. McMahon put the retaining wall up on his property. He said he never saw the renderings from 2009 to conceal the garage either.

REBUTTAL:
9:39:09 Mr. Pregliasco said he was incorrect when the renderings were submitted and said Mr. Mims created them around December 2010. He said the opponents' attorney, Michael Tigue, refused to tell him who his clients were, so they probably didn't see them.

BUSINESS SESSION:
9:40:02 Member Proffitt asked if the height would be allowed per code. Mr. Baker said it would be appropriate for a two-story garage, if not taking into account the setback regulations. He said former staff member Ed Mellet told Mr. McMahon that Moyle Hill Road was used as an alley so this was his rear yard. Member Proffitt said with this information he could have built the second story. Mr. Hendrix said yes. Member Proffitt said he believes there were mistakes made by Codes and Regulations and Planning & Design staff. Member Allendorf said the applicant built the second story without getting a permit and had it amended after the Stop Work Order was issued. He said it's both the city and the applicant's fault. Chair Jarboe agreed. Member Proffitt said he doesn't agree with the way it looks and thinks the retaining wall drop off is dangerous. Chair Jarboe asked Mr. Baker if they conclude that the doctrine of "honest error" occurred, that denial of the variance would create an unnecessary hardship on the applicant, and then the Board would be essentially granting the variance. Mr.

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(CONTINUED FROM MAY 13, 2013)**

Baker said yes and that the Board could add conditions of approval to mitigate visual impacts. Chair Jarboe asked if this would end the case. Mr. Baker said no, that the opposition could appeal the Board's decision to Circuit Court. Mr. Baker asked Mr. Hendrix if the steps were included in the variance request. Mr. Hendrix said he doesn't think so.

10:01:58 After the public hearing in open business session, on a motion by Member Proffitt, seconded by Member Allendorf, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff reports, original findings excluding KRS 100.243 (1) (b) that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant, because the two-story garage is almost completely constructed; and because the owner would have to remove or reconfigure the garage; and because the Board finds that the "Honest Error Doctrine" occurred cited in the *City of Berea v. Wren*, 818 S.W.2d 274, (Ky. App., 1991), because city officials, under good faith, concluded that the location of the garage was considered the applicant's rear yard next to an alley, when legally, it is considered the front yard and should have followed the required setback of 30 to 68 feet; and due to this information received by city officials, the applicant built the two-story garage under "good faith"; also based on the PowerPoint presentations, the evidence, testimony and discussion at the public hearing;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow an existing two-story garage and retaining wall to be 5.4 feet from Moyle Hill Road with the following **conditions of approval**:

1. The owner will remove the stairs and door at the end of the structure facing Moyle Hill Road.

2. The owner will include animating features such as window(s) on the second story of the garage.

3. The owner will work with staff's landscape architect regarding plantings and evergreen trees along the full length of the property along Moyle Hill Road in addition to a guard rail for safety reasons.

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NEW BUSINESS:

Case No. B-14170-10
(CONTINUED FROM MAY 13, 2013)

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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NEW BUSINESS:

Case No. B-18804-13

Applicant/Owner: HEH, LLC
George Hoffman
713 Waterford Road
Louisville, Kentucky 40207

Representative: Frost Brown Todd, LLC
Glenn Price, Attorney
400 West Market Street, Suite 3200
Louisville, Kentucky 40202

Project Name: Thornton's Norwood

Subject: An application for variances from the Land Development Code to allow encroachments into the required side yard setback along the north property line.

Premises affected: On property known as 7515 Shelbyville Road and being in the City of Norwood.

COUNCIL DISTRICT 7—Ken Fleming
Staff Case Manager: David Wagner, Planner II

Appearances for Applicant:
Glenn Price, Attorney, 400 West Market Street, Suite 3200, Louisville, Kentucky 40202; who submitted a condition of approval.

Jode Ballard, 10101 Linn Station Road #200, Louisville, Kentucky 40222.

Ann Richard, Land Design & Development, 503 Washburn Avenue, Suite 101, Louisville, Kentucky 40222.

Appearances Interested Party:
Cassandra Culin, 185 N. Bellaire Avenue, Louisville, Kentucky 40206.

Appearances Against Applicant:
No one.

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NEW BUSINESS:

Case No. B-18804-13

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 11, 2013, Thornton's filed an application for a variation from the requirements of the Land Development Code to allow encroachments into the required side yard setback along the north property line.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
10:17:48 Staff case manager, David Wagner gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is requesting approval of 5 variances to construct a 4,500 SF Thornton's gas station and convenience store. He said the lot is 150' deep and therefore loses one-third of its usable area with the required side yard setback. The Revised Detailed District Development Plan and an amendment to the binding elements and waivers were approved by the Development Review Committee on April 17, 2013, contingent upon the approval today.

SUMMARY OF TESTIMONY OF PROPONENTS:
10:23:53 Glenn Price, attorney for the applicant, said there is a vacant gas station there now with surrounding businesses and a condominium complex behind it. He said they've agreed to plantings and a privacy fence along the common property line; and that an adjacent property owner is not opposed. Mr. Price said he would work with the City of Norwood regarding traffic and agreed to a condition of approval to install and maintain a sign at the northeast corner of the property advising customers that it is illegal to make a left hand turn onto

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Case No. B-18804-13

Norwood Drive when exiting the site. He said they will also work with the neighbors regarding the lighting which will be pointed down and away from adjacent property owners. Mr. Price said the variances are justified due to the narrow lot for an infill site. Chair Jarboe asked about trash pick up times.

10:38:27 Jode Ballard, the applicant, said the garbage trucks will enter along the north property line; and said they will be installing an 8 ft. tall wood privacy fence. Chair Jarboe asked if it would be less noisy with a highway noise wall. Mr. Ballard said no, because of the way the noise travels. Mr. Price said these hours are limited. Member Proffitt asked if the island is big enough; and how wide the entry way is.

10:40:50 Ann Richard, the applicant's other representative, said it's about 18 feet on both sides. She said a curb island wouldn't last with trucks coming in to supply gas. She said they designed it to get people to exit onto Shelbyville Road.

10:48:55 Member Proffitt asked if they would agree to change the binding element regarding trash pick up times. Mr. Price agreed; and said they would have to go back to DRC to amend this.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
10:52:43 Cassandra Culin, said she is Co-Chair of the Neighborhood Bicycle and Pedestrian Access Committee; and has concerns with pedestrian connectivity. She said people will have to walk through a grassy area to get to the convenience store. Mr. Price said there are no sidewalks north of the site. Ms. Richard said they had to angle the sidewalk down to hit the cross walk, but agreed to add a stub with the approval of Public Works.

SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

BUSINESS SESSION:
10:59:22 Jon Carroll, the Board's legal counsel, said the Board could vote on all five variances together and to include the additional conditions of approval.

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Case No. B-18804-13

11:00:16 After the public hearing in open business session, on a motion by Member Proffitt, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting five variances from Section 5.3.3.C.2. b of the Land Development Code to allow various encroachments into the north property line; and

WHEREAS the Board finds that the requested variances will not adversely affect the public health, safety or welfare as the Planning Commission previously approved variances for similar encroachments into the side yard; and because while the encroachments will be closer to the property line than the previously approved encroachments; and because an 8 ft. tall privacy fence will be installed to promote the public health safety and welfare; and per the applicant the proposed building encroachment will exceed the encroachment of the existing building by only about 9 feet; and because the proposed canopy will exceed the encroachment of the existing building by about 1 foot; and the proposed pavement will be located in an area that is presently graveled; and because all changes are minimal; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity since the proposal was previously utilized as a gas station and the addition of the 8 ft. tall privacy fence will provide a better buffer for the condominiums to the north than what currently exists; and per the applicant the variances are minimal in nature and because the prior use of the subject property was a suburban gas station; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public since the site layout promotes safe and efficient use of the gas station and its amenities; and because the site will have adequate maneuverability and improved entrances from abutting streets and will mitigate nuisances to the condominiums with the inclusion of the privacy fence; and per the applicant, is anticipating that the plan, the location of the building and the canopy and paved areas will be approved by the Division of Transportation

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Review; and with the approval of Transportation Review will indicate that the variances and site layout are safe and efficient for the movement of pedestrians and vehicles on the site; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the requirements of the zoning regulations because the requests are the minimum necessary for the adequate and safe functioning of the site; and

WHEREAS, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity or the same zone since the property does not have much space between Shelbyville Road and the residential property, effectively rendering one-third of the site unusable; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land because it would disallow the use of a substantial portion of the property; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the site existed with its current restraints prior to the adoption of the zoning regulation;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variances **ON CONDITION:**

1. The applicant will provide a physical barrier on the Norwood Drive entrance to prevent a left turn north onto Norwood Drive.

2. The applicant shall erect and maintain a sign at the northeast corner of the property advising customer in motor vehicles it is illegal to make a left turn onto Norwood Drive when exiting the site.

3. The applicant will go back to DRC to amend the binding element to limit the hours of trash pick-up from 9:00 a.m. to 7:00 p.m.

4. The applicant will extend the sidewalk north to the condominium pavement; and east to Norwood Drive per Public Works approval.

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The variances allow:

1. The convenience store to be 30 feet from the north side property line.

2. The gas pump canopy to be 38 feet from the north side property line.

3. The pavement to be 4.5 feet from the north property line.

4. The dumpster enclosure to be 4.5 feet from the north side property line.

5. The service island to be 13 feet from the north side property line.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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NEW BUSINESS:

Case No. B-19015-13

Applicant: Poe Companies
Steve Poe, CEO
1250 River Road
Louisville, Kentucky 40206

Owner: REI Real Estate Services, LLC
Jeffrey S. Sporleder, CFO
11711 Pennsylvania Street, Ste. 200
Carmel, Indiana 46032-6931

Representative: Land Design & Development
Kevin Young
503 Washburn Avenue, Ste. 101
Louisville, Kentucky 40222

Project Name: The Woods of Lexington Road

Subject: An application for a variance from the Land Development Code to allow the proposed building to exceed the 25 maximum front yard setback by 97 feet.

Premises affected: On property known as 2100 Liebert Lane and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Christopher Brown, Planner I

Appearances for Applicant:
Kevin Young, 503 Washburn Avenue, Ste. 101, Louisville, Kentucky 40222.

Steve Poe, 1250 River Road, Louisville, Kentucky 40206.

Appearances Interested Party:
Lisa Santos, 1318 Hull Street, Louisville, Kentucky 40204.

Jill Maurey, 2549 Seneca Drive, Louisville, Kentucky 40205.

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NEW BUSINESS:

Case No. B-19015-13

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 20, 2013, REI Real Estate Services, LLC filed an application for a variation from the requirements of the Land Development Code to allow the proposed building to exceed the 25' maximum front yard setback by 97'.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
11:03:37 Staff case manager, Christopher Brown gave a brief presentation of the case to the Board, which included a PowerPoint presentation. The applicant is proposing to construct a three-story, 72 unit multi-family residential structure. He said the Land Development and Transportation Committee (LD&T) approved a Category 3 Plan and associated Land Development Code waivers for the location of the parking area with conditions of approval to place bioswales and pervious pavement on the site with enhanced landscaping around the parking area. Mr. Brown said the standard of review is not met for items (b) and (d), on pages 2 and 3 in the staff report; but meets the additional considerations. He said he received a letter from Councilmember Tina Ward-Pugh that she would like to see a reduction of parking in the front. Member Fishman asked Mr. Brown about the proposal not meeting items (b) and (d). Mr. Brown said yes; and that the newest Girl Scout building since the LDC changed was built close to the street with a walkway.

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Case No. B-19015-13

SUMMARY OF TESTIMONY OF PROPONENTS:
11:17:53 Kevin Young, the applicant's representative, said in 2008 the property was approved for the construction of 3 buildings, which were never built. He said Mr. Poe bought the property and tried to hold the building limit line, but wants to do something different than what was previously approved. He said the property drops off Lexington Road to Beargrass Creek. He said this is a 4.2 acre site where the previous plan was to disturb 2.8 acres and their plan will only disturb ½ of that in addition to ½ less impervious areas. He said they are pulling the building away from Beargrass Creek which has a walking path; and the plan provides 3 to 4 times more of tree canopy area.

11:24:44 Steve Poe, the applicant, said he has spent a lot of time with engineers and architects to develop the property with minimal impacts. He said they didn't want to light up the parking area or encroach into the park by the creek. He said this plan minimizes the site footprint and is a great infill site considering the topography. Chair Jarboe said there are 44 parking spaces. Mr. Poe said there were originally 109 surface parking spots. Member Allendorf asked when this site flooded last. Mr. Young said a small portion of it flooded but said once constructed, will be 100% out of the floodplain. He said they are working with the Parks Department to create a multi-use trail closer to Lexington Road with a guard rail at his client's expense.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
11:32:43 Lisa Santos said she is a member of the Irish Hill Neighborhood Association and supports the variance with conditions of approval. Mr. Brown said the conditions of approval are attached to the waivers. Ms. Santos said she is also concerned with the bio-swales at the rear of the property and in the parking lot. She said they want as much pervious material as possible; with enhanced landscaping. Ms. Santos said they would also like the riparian buffers to remain at 25 feet and said it doesn't look defined at this point.

11:36:20 Jill Maurey said she is a member of the Beargrass Creek Alliance, said the proposed location of the building will be healthier for the creek. She the bio-swale at the rear of the property will leave more tree canopy. She said they would like native species planted near the creek.

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SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

REBUTTAL:
11:38:15 Mr. Young said they have good suggestions and said they will plant native species. Mr. Young explained the pervious pavers and said the water will be directed that way. Member Proffitt said they will have to be cleaned regularly or they won't work. Mr. Young said they are aware of this. Mr. Young said he would look into putting a bio-cell in another location.

BUSINESS SESSION:
No discussion.

11:43:33 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, and the applicant's justification for Items (b) and (d), where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5, Section 2.2.C, Table 5.2.2 of the Land Development Code to allow the proposed building to exceed the 25' maximum front yard setback by 97'; and

WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare since the location of the building will not create a visual nuisance or impediments to vehicular and pedestrian traffic along the street frontage; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because there are a number of existing trees on the subject site's frontage adjacent to Lexington Road which will be preserved to maintain the essential character of the general vicinity; and because the tract's lot shape and position on a curve on Lexington Road creates a unique circumstance compared to the tracts in the general vicinity, which have a greater road frontage relative to the area of the tract; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the location of the building will not create a visual nuisance or impediments to vehicular and pedestrian traffic along the street frontage; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the most appropriate location for the building area is being utilized and site disturbance along Lexington Road is minimized; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the size, shape and environmental constraints of the site are unique to this specific property; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the lot was created in its current shape and size prior to the adoption of the zoning regulations;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed building to be 122 feet from the Lexington Road front yard property line at its closest point.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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NEW BUSINESS:

Case No. B-18807-13

Applicant: Hogan Development, Co.
Michael Leonard
420 W. Liberty Street
Louisville, Kentucky 40202

Owner: The Estate of Paul A. Payne
Chris Meinhart, Administrator
222 E. Witherspoon Street, Ste. 401
Louisville, Kentucky 40202

Representative: Land Design & Development, Inc.
Kevin Young, ASLA
503 Washburn Avenue, Ste. 100
Louisville, Kentucky 40202

Subject: An application for variances from the Land Development Code to allow parking and drive lanes to be located within the required 20' rear yard.

Premises affected: On property known as 1105 Dorsey Lane and being in the City of Lyndon.

COUNCIL DISTRICT 18—Marilyn Parker
Staff Case Manager: Christopher Brown, Planner I

Appearances for Applicant:
Kevin Young, 503 Washburn Avenue, Ste. 100, Louisville, Kentucky 40202; who submitted a plan into the record.

Appearances Interested Party:
Cassandra Culin, 185 N. Bellaire Avenue, Louisville, Kentucky 40206.

Appearances Against Applicant:
No one.

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Case No. B-18807-13

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On April 9, 2013, Hogan Development Company filed an application for a variation from the requirements of the Land Development Code to allow parking and drive lanes to be located within the required 20' rear yard.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
11:47:39 Staff case manager, Christopher Brown gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing a three tract development known as Dorsey Commons along the intersection of Dorsey Lane and Hurstbourne Parkway. He said they are proposing an 11,000 SF daycare on Tract 1; and a mixed use development on Tract 2 including a restaurant, retail and dry cleaner. He said parking areas located along Tract 2 and 3 will allow internal access along the eastern property perimeter; and that the internal lot lines of the three tracts necessitate the requested variance. Mr. Brown pointed out the access points for the Board to see. He said the request meets the standard of review.

SUMMARY OF TESTIMONY OF PROPONENTS:
11:53:08 Kevin Young, the applicant's representative, submitted a highlighted plan into the record showing the various tracts. He pointed out where the parking would be near the daycare. Mr. Young said they conducted a neighborhood meeting and a meeting with the City of Lyndon and that the attendees were not opposed. He said there are two access points and as the

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property develops, all the tracts will come together. Member Proffitt asked why he didn't add 4 more spaces, move the drive aisle and reduce the parking to the west to eliminate the need for the variance. Mr. Young said they didn't do this because of the daycare layout and that the entrance alignment. He said he would have to change the plan; and that a lot of people were involved creating it.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
11:58:40 Cassandra Culin, said she is on the Tree Policy Committee, but not speaking for them today, but as an interested party. She said there's a whole line of trees that she would like preserved, even if they have to change their parking arrangement a bit.

12:00:30 Mr. Young said the hatched area on the plan are the trees; and said they are not on this property. Member Proffitt asked if the ILA's will have trees. Mr. Young said yes.

SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

BUSINESS SESSION:
No discussion

12:01:46 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5, Section 5.3.5.C.3.c of the 2006 Land Development Code to allow parking and drive lanes to be located within the required 20' rear yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the encroachments will be internal to the Dorsey Commons proposal; and

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WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since it follows a similar built pattern of other office and mixed use developments within the area; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the encroachments will not cause a visual nuisance or impediments to vehicular and pedestrian traffic; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the encroachment allows an internal access to all three lots to be established on the site and future cross access to be provided as required by the Land Development Code; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the property has ROW on all three surrounding lots with the exception of the east property perimeter; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since it would restrict the ability to provide internal access across the lots and cross connection points to the east as well as an adequate amount of parking for the proposed uses; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the site existed with its current restraints prior to the adoption of the zoning regulation;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow parking and drive lanes to be located within the required 20' rear yard.

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The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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JUNE 3, 2013

NEW BUSINESS:

Case No. B-19072-13

Applicant/Owner: Margaret Walker
1829 Eastern Parkway
Louisville, Kentucky 40204

Representative: Kentucky Masonry, Inc.
Robert J. Smithson
1518 Riverside Drive
Prospect, Kentucky 40059

Project Name: Garage

Subject: An application for a variance from the Land Development Code to allow a proposed garage to encroach into the required side yard.

Premises affected: On property known as 1829 Eastern Parkway and being in Louisville Metro.

COUNCIL DISTRICT 8—Tom Owen
Staff Case Manager: Maria Scheitz, Planner I

Appearances for Applicant:
Robert J. Smithson, 1518 Riverside Drive, Prospect, Kentucky 40059; who submitted a photograph into the record.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

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NEW BUSINESS:

Case No. B-19072-13

On April 8, 2013, Margaret Walker filed an application for a variation from the requirements of the Land Development Code to allow a 2' encroachment into the required 2' yard setback.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
12:55:41 Staff case manager, Maria Scheitz gave a brief presentation of the case to the Board, which included a PowerPoint presentation. The applicant is proposing a 20' X 24' garage to encroach 2' into the required 2' setback. It will be constructed on an existing concrete pad in the location of the previous garage. She said the variance meets all the standards of review requirements; and are several garages in the area that are constructed at 0' side yard setbacks. Ms. Scheitz submitted a letter of support from an adjacent property owner into the record.

SUMMARY OF TESTIMONY OF PROPONENTS:
1:01:54 Robert Smithson, the applicant's builder, submitted a photograph into the record. He said his client wants to enlarge the garage which will have masonry in the gable with one hour fire protection material used. He said it will be a lot safer than what was there.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

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NEW BUSINESS:

Case No. B-19072-13

BUSINESS SESSION:
No discussion.

1:04:00 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.4.1.E.6 of the Land Development Code to allow a 2' encroachment into the required 2' side yard setback; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety of welfare since the proposed structure will not obstruct the view of motorists and will not encroach into any easements; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since there are several garages in the immediate vicinity constructed at 0' side yard setbacks; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the proposed structure will not obstruct the view of motorists and will not encroach into any easements; and because the garage will be farther from the adjacent alley than is required (5') and will match the setback of the adjacent garage at approximately 8'; and because the variance will allow greater maneuverability for vehicles utilizing the alley; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the previous garage existed in a similar location and the requested setback is the minimum necessary to allow a parking pad adjacent to the garage; additionally, the adjacent property owner utilized the previous garage to complete the fence enclosure for the rear yard; and because the new garage will be attached to the existing fence on the adjacent property; and

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WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since parking is not permitted in the front of the lot along Eastern Parkway; and in order to provide parking for guests, the property owner must utilize the space adjacent the garage in the accessory structure; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since parking is an issue on the site and the variance will allow additional parking on the lot; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the lot was developed prior to the adoption of the Land Development Code;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed 20' X 24' garage to be 0 feet from the side yard setback.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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NEW BUSINESS:

Case No. B-19226-13

Applicant/Owner: Ryan Moreno
7008 Ethan Allen Way
Louisville, Kentucky 40272

Subject: An application for a variance from the Land Development Code to allow a proposed addition to encroach into the required infill front yard setback.

Premises affected: On property known as 7008 Ethan Allen Way and being in Louisville Metro.

COUNCIL DISTRICT 14—Cindy Fowler
Staff Case Manager: Maria Scheitz, Planner I

Appearances for Applicant:
Ryan Moreno, 7008 Ethan Allen Way, Louisville, Kentucky 40272.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On May 1, 2013, Ryan Moreno filed an application for a variation from the requirements of the Land Development Code to allow a 6'5.25" encroachment into the required infill front yard setback.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in

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advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
1:04:47 Staff case manager, Maria Scheitz gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the request is to allow a two room addition to the front of the house and close the existing carport. She said the enclosed structure has been built and doesn't think they've been cited. Member Proffitt asked if there are any deed restrictions that might prohibit this. Ms. Scheitz said she doesn't know. Member Allendorf asked if they received a building permit. Ms. Scheitz said the applicant must have approval for the variance first.

SUMMARY OF TESTIMONY OF PROPONENTS:
1:08:34 Ryan Moreno, the owner of the property, said he didn't know he needed a permit to build the addition; and had a friend help him. He said there are 8 people living in his house and that he is taking care of his ailing mother and needs more room. Member Proffitt asked if there are any deed restrictions. Mr. Moreno said he doesn't know, but the deed is in the file. Mr. Moreno submitted pictures of other encroachments in the neighborhood. He said he will extend the gable out toward the front door to match the house.

DISCUSSION:
1:11:46 Chair Jarboe questioned the possible deed restrictions. Jon Baker, the Board's legal counsel, said the Board does not get involved with these issues. He said if the subdivision has deed restrictions, could still take him to court. Mr. Moreno said he spoke with some of the neighbors who were not opposed, but could send a letter to the president of the subdivision to get approval.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
No one spoke as an interested party.

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SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

BUSINESS SESSION:
1:14:11 Member Proffitt said he thinks its an honest mistake, but that he might be building something contrary to the deed restrictions; and that other property owners might want to do the same thing. He said it doesn't appear too confining on each side.

1:15:46 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.4.2.C1 of the Land Development Code to allow a 6'5.25" encroachment into the required infill front yard setback; and

WHEREAS, the Board finds that the required variance will not adversely affect the public health, safety or welfare since the proposed addition will not obstruct the view of motorists; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the roofline, building height and architecture of the addition mimic the existing structure and other structures in the general vicinity; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the proposed structure will not obstruct the view of motorists and will not be in close proximity to any neighboring properties; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the protrusion does not exceed the permitted setback for an unenclosed porch and will mimic the setback of existing structures in the subdivision; and

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WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the applicant would like to enclose an existing carport to create two additional rooms to accommodate 8 family members; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since they would not be able to comfortably accommodate 8 family members in the existing structure and an addition to the home in an alternative location would require more extensive construction;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a two room addition to encroach 6'5.25 into the 40' infill front yard setback **ON CONDITION:**

1. The applicant shall receive a minor plat to shift the building limit line along the front yard.

2. The applicant shall apply and receive all building and electrical permits.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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NEW BUSINESS:

Case No. B/DP-18917-13

Applicant: White Castle
555 W. Goodale Street
Columbus, Ohio 43215

Owner: Eline Realty Co.
S. W. Eline Jr.
111 S. Hubbards Lane
Louisville, Kentucky 40207

Representative: MS Consultants
Jeffrey Shetler
2221 Schrock Road
Columbus, Ohio 43229

Project Name: White Castle

Subject: An application for variances from the Land Development Code to allow the dumpster and parking/maneuvering areas to encroach into the required rear yard and for the building to not be placed at the right-of-way lines; and design waivers.

Premises affected: On property known as 4020 Shelbyville Road and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Maria Scheitz, Planner I

Appearances for Applicant:
Craig Eilers, White Castle, 555 W. Goodale Street, Columbus, Ohio 43215.

Appearances Interested Party:
Cassandra Culin, 185 N. Bellaire Avenue, Louisville, Kentucky 40206.

Appearances Against Applicant:
No one.

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NEW BUSINESS:

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An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On March 22, 2013, White Castle filed an application for a variation from the requirements of the Land Development Code to allow the dumpster and parking/maneuvering areas to encroach into the required rear yard and for the building to not be placed at the right-of-way lines; and design waivers.

On June 3, 2013 at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
1:17:38 Staff case manager, Maria Scheitz gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant is requesting 3 variances and 6 waivers to build a White Castle Restaurant where a vacant KFC building sits. She said the request meets the standard of review and staff analysis.

SUMMARY OF TESTIMONY OF PROPONENTS:
1:24:23 Craig Eilers said this location is close to the old White Castle that was closed in 2002. He said they have been looking for a new location to support a drive-thru for a long time. He said he realizes there are numerous variances and waivers, but did the best they could with this lot. Chair Jarboe asked if will be on the same footprint. Mr. Eilers said yes; and that they will screen along the property lines and include a masonry wall.

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SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
1:28:01 Cassandra Culin said she is chair of the Clifton Bicycle and Access Committee and concerned where pedestrian access is to the proposed White Castle. Ms. Culin looked at the plan showing the pedestrian access and was satisfied.

SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

BUSINESS SESSION:
1:31:02 Member Fishman asked Jon Baker, the Board's legal counsel if they could vote on the variances and waivers all at once. Mr. Baker said yes, if they agree with and adopt the findings of fact in the staff report.

Variance Item #1—Dumpster Encroachment:

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.2.4.c.3f. to allow the proposed dumpster enclosure to encroach 5' into the required 5' rear yard setback from the rear property line (west property line along alley); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the proposed expansion of the existing dumpster enclosure area will not obstruct the view of motorists; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since a dumpster enclosure currently exists in this location on the site; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the proposed structure will not obstruct the view of motorists; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since multiple structures exist at a 0' setback along the alley; and

WHEREAS, the Board finds that the variance does arise from special circumstances which do not generally apply to land in the general vicinity since multiple structures exist at a 0' setback along the alley; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since expansion of the existing dumpster enclosure is necessary to accommodate the site; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant took subsequent to the adoption of the zoning regulation from which relief is sought since the dumpster existed in this location prior to the adoption of the Land Development Code;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the proposed dumpster enclosure to be 0 feet from the west property line along the alley.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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Variance Item #2—Existing parking encroachment:

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.2.4.c.3f to allow the existing parking to encroach 1.5' into the required 5' rear yard setback from the rear property line (west property line along the alley); and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the encroachment will not interfere with traffic or obstruct the view of motorists utilizing the adjacent alley; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the encroachment currently exists and since the encroachment will not interfere with the applicant's ability to plant in the property perimeter Landscape Buffer Areas; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the encroachment will not interfere with traffic or obstruct the view of motorists utilizing the adjacent alley; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the encroachment currently exists and since the encroachment will not interfere with the applicant's ability to plant in the property perimeter Landscape Buffer Areas; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity since the parking area currently exists in the proposed location on the site; and

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

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observing the setback the applicant would be required to remove existing pavement and the width of the drive aisle for the drive-thru would then be reduced less than 24' required by the Land Development Code; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the site was developed prior to the adoption of the Land Development Code;

NOW, THEREFORE, BE IT RESOLVED, the Board does hereby **GRANT** the variance to allow the existing parking to be 3.50' from the west property line along the alley.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

<u>Variance Item #3—Location of Building:</u>

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.2.4.c.3.c. refers to 5.5.1A2, to not require the building to be constructed at the right-of-way line along both of the streets; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since a drive-thru restaurant could not be

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safely accessed from Fairfax Avenue and Shelbyville Road if the structure is constructed at the right-of-way line along both streets; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since the proposed layout includes a patio area in the front of the site adjacent to the roadway creating a presence along Shelbyville Road establishing a pedestrian scale and encouraging foot traffic from the nearby school, church and commercial area; and since a 3 ft. masonry, stone or concrete wall that makes reference to a similar design within the surrounding area is also required along Fairfax Avenue; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the proposed layout has received preliminary approval from transportation review staff, Kentucky Transportation Cabinet and the City of St. Matthews; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since an outdoor seating area will be provided at the property line along Shelbyville Road and to construct a drive-thru restaurant at the corner would severely limit the ability to utilize the site; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity since constructing a drive-thru restaurant at the corner would severely limit the ability to utilize the site; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant since to construct a drive-thru restaurant at the corner would severely limit the ability to utilize the site; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought since the site was developed prior to the adoption of the Land Development Code;

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NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to not require the building to be constructed at the right-of-way line along both of the streets.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

WAIVER Item #4—Allow parking in front of the building:

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Chapter 5.5.1.3a to allow parking in front of the building; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since an Internal Landscape Area (ILA) and associated screening will obscure the parking area from the view of motorists and pedestrians and since an existing commercial structure on the site will continue the street wall along Fairfax Avenue for a portion of the site and since parking exists in front of the adjacent commercial structures along Fairfax Avenue; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 since the site layout mitigates the negative impacts of parking for a drive-thru restaurant by orienting the restaurant to the primary street, Shelbyville Road, by providing pedestrian access through and around the site, and by providing a landscaped area to buffer the parking area from Fairfax Avenue; and because the proposed design provides additional ILA area in the location of the parking and reduces the exiting parking along Fairfax Avenue from 6 spots to 3 spots; and

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WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the applicant is attempting to utilize an existing paved area and will reduce the number of parking spaces in the front of the structure to three (3); and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant because without the waiver, the applicant would be unable to construct the new building within the same building footprint;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to allow parking in front of the building.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

WAIVER Item #5—Design

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Chapter 5.6.1.C.1 to not provide 50% of the wall surfaces at street level consisting of clear windows and doors for a commercial use; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the wall surfaces at the anterior of the structure serving customers will consist of clear windows, since the rear of the structure contains the food preparation areas and if the code were followed these areas

would be visible to the public, and since a portion of the façade will be screened by the required 3 ft. masonry wall and shrubbery; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the type of building materials may be considered as a mitigation measure and may also be considered in circumstances specified in the Land Development Code; and when assessing compatibility, it is appropriate to consider the choice of building materials in the following circumstances: (1) projects involving residential infill (2) projects involving non-residential uses; and (3) when specified in the Land Development Code; and because the proposal is for a non-residential ; the Land Development Code provides building design standards for non-residential and mixed use buildings; and because the purpose of the regulation is to provide visual interest and a human scale that are representative of the form district through the use of windows, columns, plasters, piers, variation of material, entrances, storefront windows, and other animating features along no less than 50% of the building façade; and because the proposed design utilizes variations in materials, variations in roof height, awnings and other architectural features to provide visual interest and to scale the design to the pedestrian; and because portions of the east façade elevation will be screened by the required 3 ft. masonry wall and shrubbery; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the reduction in LBA will allow the new structure to be placed in the footprint of the existing structure and the setback will match the adjacent multi-family building; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) because the applicant has provided an outdoor seating area along Shelbyville Road in addition to landscaping and sidewalks which will invite pedestrian traffic to the anterior of the building and around the site while keeping pedestrians safe from vehicular traffic at the drive-thru area;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to not provide 50% of the wall surfaces at street-level consisting of clear windows and doors for a commercial use.

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The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

WAIVER Item #6—Interior Landscape Area (ILA) in parking area:

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver of Chapter 10.2.12 to not provide the required ILA in the parking area along the west portion of the building; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the total square footage for ILA's will be met on the site; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 since the purpose of ILA's is to break up large impervious areas and allow for a greater distribution of tree canopy coverage and since the lot is surrounded on three sides by right-of-ways and landscape buffer areas and property perimeter plantings are required adjacent to the right-of-way so the intent of the guidelines has been met on site; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the ILA would obstruct access to the sanitary sewer grease trap on site; and

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

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applicant is providing the required square footage of interior landscaped areas and the location of the required interior landscape area would obstruct access to the sanitary sewer grease trap on site;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to not provide the required Interior Landscape Area in the parking area along the west portion of the building.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

<u>WAIVER Item #7—Patio Encroachment:</u>

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Chapter 10.2.10, Table 10.2.6 to allow the proposed patio to encroach into the required 10' Landscape Buffer Area (LBA) along the west property line; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since the proposed fence will separate seating areas from traffic along Shelbyville Road; and

WHEREAS, the Board finds that the waiver will not violate the specific guidelines of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions since the applicant will provide the required 3 ft. decorative wall or fence that is required by the Land Development Code along Shelbyville Road for the length of the site and the Landscape Buffer requirement

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of 10 feet will be met along the remainder of the site along Shelbyville Road and since the proposed seating area will mimic the street wall proscribed by the setbacks of the form district; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the reduction in LBA will permit an outdoor seating area; and

WHEREAS, the Board finds that the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) since the applicant is providing a seating area which will provide visual interest and encourage pedestrian traffic along Shelbyville Road;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to allow the proposed patio to encroach into the required 10' LBA along the north property line.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

<u>WAIVER Item #8—Parking encroachment:</u>

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Chapter 10.2.10, Table 10.2.6 to allow the existing parking to encroach into the required 10' Landscape Buffer Area (LBA) along the west property line; and

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WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since structures are constructed at the property line and parking areas exist along the majority of the length of the alleyway and the applicant will be required to provide a 3 foot screen along the alleyway; and

WHEREAS, the Board finds that the waiver will not violate the specific guidelines of Cornerstone 2020 since the encroachment into the LBA will allow the applicant to provide the required parking on site while providing safe access through the drive-thru area; and because a 3-ft. screen will be provided per the Land Development Code and since structures are constructed at the property line and parking areas exist along the majority of the length of the alley way the proposed encroachment will be compatible with the pattern of development; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because observing the setback, the applicant would be required to remove existing pavement and the width of the drive aisle for the drive-thru would be reduced to less than 24' required by code; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since to observe the setback, the applicant would be required to remove existing pavement and the width of the drive aisle for the drive-thru would be reduced to less than 24' required by code

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to allow the existing parking to encroach into the required 10' LBA along the west property line.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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WAIVER Item #9—Dumpster Enclosure Encroachment:

1:31:29 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver of Chapter 10.2.10, Table 10.2.6 to allow the proposed dumpster enclosure to encroach into the required 10' Landscape Buffer Area along the west property line; and

WHEREAS, the Board finds that the requested waiver will not adversely affect adjacent property owners since structures are constructed at the property line and parking areas exist along the majority of the length of the alleyway and since the proposed dumpster location will provide easy access to the dumpster from the alleyway without disturbing nearby businesses; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 since structures are constructed at the property line and parking areas exist along the majority of the length of the alleyway; and because the proposed encroachment will be compatible with the pattern of development; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant since the reduction in LBA will permit a larger dumpster enclosure to accommodate the restaurant and the commercial property on site; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would create an unnecessary hardship on the applicant since a dumpster currently exists in this location and the expansion of the dumpster enclosure will not cause harm to the surrounding property owners;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waiver to allow the proposed dumpster enclosure to encroach into the required 10' LBA along the west property line.

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The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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NEW BUSINESS:

Case No. B-18377-12

Applicants/Owners: Jennifer Bowman & David Goodman
180 Vernon Avenue
Louisville, Kentucky 40206

Representative: Studio Kremer Architects
Scott Kremer
3258 Ruckriegel Parkway
Louisville, Kentucky 40299

Project Name: Goodman/Bowman residential garage replacement and tree preservation

Subject: An application for variances from the Land Development Code to allow a proposed detached garage to encroach into the required side yard and reduction in the private yard area.

Premises affected: On property known as 180 Vernon Avenue and being in Louisville Metro.

COUNCIL DISTRICT 9—Tina Ward-Pugh
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Jennifer Bowman, 180 Vernon Avenue, Louisville, Kentucky 40206.

Cassandra Culin, 185 N. Bellaire Avenue, Louisville, Kentucky 40206.

Appearances Interested Party:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning and Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

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NEW BUSINESS:

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On November 6, 2012, Jennifer Bowman and David Goodman filed an application for a variation from the requirements of the Land Development Code to allow a proposed detached garage to encroach into the required side yard and reduction in the private yard area.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
1:35:27 Staff case manager, Jon Crumbie gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant wants to demolish a two-car garage and replace with a new garage, workshop and renovation of the house. He said the original garage has sustained severe water damage that has rotted the walls. He said the garage will be the same size and shape of other garages in the area; and that the applicant is saving two large trees on the property. He said he doesn't know if they're including gutters and needs to know if they'll be extending over the property line. Mr. Crumbie said the applicant received a Certificate of Appropriateness from the Clifton Architectural Review Committee with conditions of approval.

SUMMARY OF TESTIMONY OF PROPONENTS:
1:39:48 Jennifer Bowman, the owner, said she wants to make sure the variance figures are correct from her architect and staff. Member Proffitt said if the overhang is 1.6' that it needs to be pulled back 1.11'. Ms. Bowman agreed to shift the garage over, which will leave less yard area, but seems reasonable. She said she is eager to replace the dilapidated structure. Mr. Crumbie said he would recalculate the variances.

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1:46:18 Cassandra Culin said she lives in the area and said there are mature trees and a very steep drop off to the neighbors property. Ms. Culin said she supports how the owner is designing it because it would be impractical to do anything else.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

BUSINESS SESSION:
No discussion.

VARIANCE—South Side Yard:

1:49:16 The applicant withdrew this request.

VARIANCE—Private Yard Area:

1:49:16 After the public hearing, in open business session, on a motion by Member Proffitt, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the PowerPoint presentation(s) and the evidence submitted and testimony at the public hearing that the applicant is requesting a variance to allow a reduction in the private yard area; and

WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare because the existing tree canopy will be preserved and there will still be an open area; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because all the lots in the area have private yard areas of varying size and shape; and

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WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public because the private yard area will remain although the area will be smaller; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the encroachment will not be noticeable from Vermont Avenue; and

WHEREAS, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because most lots in the area are long and narrow and without alley access; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship by causing the removal of mature trees along the rear of the property at a huge expense to the applicant; and

WHEREAS, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the lot is narrow and the placement of the new garage will be in the same place as the old garage;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the private yard area to be 1900 square feet.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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NEW BUSINESS:

Case No. B-16608-11

Applicant/Owner: Vermillion Shelton
3941 Northwestern Parkway
Louisville, Kentucky 40212

Subject: An application for a Conditional Use Permit to allow a day care facility in an R-7 zoning district.

Premises affected: On property known as 3201 West Broadway and being in Louisville Metro.

COUNCIL DISTRICT 5—Cheri Bryant Hamilton
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Vermillion Shelton, 3941 Northwestern Parkway, Louisville, Kentucky 40212.

Appearances- Interested Parties:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On April 1, 2013, Vermillion Shelton filed an application for a Conditional Use Permit to allow a day care facility in an R-7 zoning district.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

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NEW BUSINESS:

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The audio/visual recording of this hearing will be found on the DVD of the June 3, 2013 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:
1:51:08 Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. Mr. Crumbie said the applicant is proposing to open a day care facility which will have a maximum of 23 kids on site at any given time. The hours of operation will be from 6:00 a.m. to 10:00 p.m., Monday through Friday. There will be 4 employees; and the drop-off/pick-up area will be provided on South 32nd Street with employee parking in the garage and driveway. Mr. Crumbie said the applicant held a neighborhood meeting, where no one was opposed. Chair Jarboe asked if that is the appropriate amount of kids considering the size of the structure. Mr. Crumbie said there are state requirements which must be met. Member Proffitt asked if it is currently being used as a daycare. Mr. Crumbie said he doesn't think so.

SUMMARY OF TESTIMONY OF PROPONENTS:
1:56:02 Vermillion Shelton, the owner, said the state told her she needed the Conditional Use Permit since it wasn't zoned for this. She said the Health Department told her she could have 31 children; and the State told her she could only have 23. Member Fishman asked if it's jut one floor. Ms. Shelton said there is a basement, but doesn't have two exits. She said there will be different rooms for different age groups; and said she could open once she receives this approval and the state inspects the property again. The children would be there before and after school and have various things to do, even work on computers. Member Fishman asked how many computers she has. Ms. Shelton said she has MAC computers and small computers for the little kids. Chair Jarboe asked her if she had any experience running a daycare. Ms. Shelton said she has taught kindergarten through high school with the Jefferson County Public School system.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

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BUSINESS SESSION:
No discussion.

2:03:26 After the public hearing in open business session, on a motion by Member Allendorf, seconded by Member Proffitt, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation and the evidence and testimony submitted at the public hearing that the applicant is requesting a Conditional Use Permit to allow a day care facility in an R-7 zoning district; and

WHEREAS, the Board finds that the property is within a Traditional Neighborhood Form District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan and is consistent with the prior use as being neighborhood serving; and because the proposal preserves and renovates the existing structures and is consistent with the predominate neighborhood building design; and because no new lighting or landscaping will be added; and

WHEREAS, the Board finds that the proposal is compatible with the surrounding land uses and general character of the area including such factors as height, bulk, scale, intensity, odor, drainage, dust, lighting and appearance since an existing structure is being used that was formally a doctor's office; and

WHEREAS, the Board finds that MSD and Transportation Planning reviewed and approved the proposal; and

WHEREAS, the Board finds that the proposal complies with 9 of the 10 specific standards to obtain the conditional use permit, where item J. does not apply;

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

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NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION.**

The conditions are as follows:

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 daycare center without further review and approval by the Board.

3. Proposal is subject to full construction plans being submitted to the Department of Public Works for traffic and MSD for storm water approvals. Once those have been approved, the plan is subject to Codes and Regulations for building/parking permits.

4. The daycare shall be open Monday through Friday, 6:00 a.m. to 10:00 p.m.

5. The maximum number of employees on site at any given time shall be 4.

6. The maximum number of kids on site at any given time shall be 23.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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

JUNE 3, 2013

NEW BUSINESS:

Case No. B-18461-12

Applicant(s): Jeffrey & Carole Weber
12812 Westport Road
Louisville, Kentucky 40245

Owner(s): Hull Street Condominium Developers, Inc.
Matthew Elder
800 Stone Creek Parkway, Suite 200
Louisville, Kentucky 40222

Attorney: Glenn Price
Frost Brown Todd, LLC
400 West Market Street, Ste. 3200
Louisville, Kentucky 40202

Representative: Suburban Design Group
Jason Sams
830 East Main Street, Ste. 105
Louisville, Kentucky 40206

Subject: An application for a Conditional Use Permit with Land Development Code waivers to allow a nursing home (skilled care/assisted living services, memory care services and ambulatory residences) in an R-4 zoning district.

Premises affected: On properties known as 12812, 12904 and 12908 Westport Road and being in Louisville Metro.

COUNCIL DISTRICT 17—Glen Stuckel
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Glenn Price, Attorney, 400 West Market Street, Ste. 3200, Louisville, Kentucky 40202; who submitted a condition of approval into the record.

Jason Sams, 830 East Main Street, Ste. 105, Louisville, Kentucky 40206.

MINUTES OF THE MEETING
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NEW BUSINESS:

Case No. B-18461-12

Peter Massey, 303 N. Hurstbourne Parkway, Ste. 200, Louisville, Kentucky 40222.

Appearances- Interested Parties:
No one.

Appearances Against Applicant:
No one.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On February 11, 2013, Jeffrey & Carole Weber filed an application for a Conditional Use Permit and Land Development Code waivers to allow a nursing home (skilled care/assisted living services, memory care services and ambulatory residences) in an R-4 zoning district.

On June 3, 2013, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The audio/visual recording of this hearing will be found on the DVD of the June 3, 2013 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:
2:11:11 Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. Mr. Crumbie said Trilogy Health Services is proposing a Conditional Use Permit for a nursing home for the infirm or aged. He said there will be 95 beds for skilled care/assisted living; 30 beds for memory care services; and 6 duplex living units (total of 12 units) for ambulatory residents, together with a clubhouse for recreational use.

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Mr. Crumbie said that TARC is requesting that the applicant construct a boarding area and maintain it.

SUMMARY OF TESTIMONY OF PROPONENTS:
2:19:09 Glenn Price, the applicant's attorney, presented a PowerPoint presentation to the Board. He said the site is mostly undeveloped with some single family homes nearby.

2:23:07 Peter Massey said some are duplexes and two units in one building. He said they added driveways and garages. He said Trilogy is the best in the industry for this type of housing. He said they will prevent light from the site to disturb people that live on Maxey Lane; and submitted a condition of approval for this into the record. He said they will also provide a TARC boarding area on a 32 sq. ft. concrete pad. Mr. Massey said they tagged the trees to be saved.

2:31:07 Jason Sams, the applicant's other representative, pointed out the side walks along Old LaGrange Road.

2:31:49 Mr. Price said they will cut the grass around the TARC boarding area. He said he would like the condition of approval stating no more than 33 employees to be deleted; since they might need more employees later. He said more employees will not negatively impact the neighborhood. He said he would also like requirement A. to be modified to allow: The proposed skilled nursing/assisted living building to be located 22 feet from the south property line. As mitigation, the required 15-foot landscape buffer area at this location will be implemented and planted pursuant to the requirements of the LDC Chapter 10.

2:43:41 Chair Jarboe asked how many dwelling units will be removed. Mr. Sams said one house will be demolished.

2:45:13 Mr. Massey explained that the facility is not something anyone buys into; and no obligation to residents.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
No one spoke as an interested party.

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SUMMARY OF TESTIMONY OF OPPONENTS:
No one spoke in opposition.

BUSINESS SESSION:
No discussion

WAIVERS –Landscape Buffer Areas along the North, South and East property lines:

2:47:45 After the public hearing in open business session, on a motion by Member Proffitt, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the PowerPoint presentation(s) and the evidence submitted and testimony at the public hearing that the applicant is requesting a waiver to reduce the required LBA to 6 feet along the north property line along Westport Road; and a waiver to reduce the required landscape buffer to 7 feet along the south property line; and a waiver to reduce the LBA to 5 feet along the East property line along Old LaGrange Road; and

WHEREAS, the Board finds that the requested waivers will not adversely affect the adjacent property owners because all planting requirements will be implemented and because all trees and evergreens required by Chapter 10 will be planted and maintained; and

WHEREAS, the Board finds that the waivers will not violate specific guidelines of Cornerstone 2020; the applicable guidelines are compatibility Guideline 3 and Policies 3.1, 3.9 and 3.22; and

WHEREAS, the Board finds that the extent of the waivers of the regulation is the minimum necessary to afford relief to the applicant because the applicant would have to design a new layout which may reduce the total number of units; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land because it would require additional perimeter landscape buffer areas which are not

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needed because all landscaping materials otherwise, required by the Land Development Code, Chapter 10 will be provided;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waivers.

The waivers allow:

1. The Landscape Buffer Area along Westport Road (north) to be 6 feet.

2. The Landscape Buffer Area along the south property line to be 7 feet.

3. The Landscape Buffer Area along Old LaGrange Road (east) to be 6 feet.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

<u>WAIVERS—Easement encroachments:</u>

2:47:45 After the public hearing, in open business session, on a motion by Member Proffitt, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report including the standard of review, the PowerPoint presentation(s) and the evidence submitted and testimony at the public hearing that the applicant is requesting a waiver to allow a variable width sanitary sewer, drainage and waterline easement to encroach more than 50% into the required LBA along Westport Road; and a waiver to allow multiple easements to encroach more than 50% into the required LBA along the south property line; and

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WHEREAS, the Board finds that the waivers will not adversely affect adjacent property owners because all planting requirements will be implemented; and because all trees and evergreens required by Chapter 10 will be planted and maintained; and

WHEREAS, the Board finds that the waivers will not violate specific guidelines of Cornerstone 2020 because the applicable guidelines are compatibility Guideline 3 and Policies 3.1, 3.9 and 3.22; and

WHEREAS, the Board finds that the extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant because the applicant would have to design a new layout which may reduce the total number of units; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land because the application of the requirement would require additional perimeter landscape buffer areas which are not needed because all landscaping materials otherwise required by the Land Development Code Chapter 10 will be provided;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the waivers.

The waivers allow:

1. A variable width sanitary sewer, drainage, and waterline easement to encroach more than 50% into the required LBA along Westport Road.

2. Multiple easements to encroach more than 50% into the required LBA along the south property line.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

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CONDITIONAL USE PERMIT:

2:51:15 After the public hearing, in open business session, on a motion by Member Proffitt, seconded by Member Fishman, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation(s) and the testimony and evidence submitted at the public hearing, that the applicant s requesting a Conditional Use Permit to allow a nursing home/home for the infirm or aged in an R-5 zoning district; and

WHEREAS, the Board finds that the property is within a Neighborhood Form District; and

WHEREAS, the Board finds that the proposal is consistent with the applicable policies of the Comprehensive Plan because it will be compatible with residential uses in the immediate area; and because it will feature one story buildings in a very low intensity environment; and because the facility is a low generator of traffic and is not a source of noise or excessive lighting; and because there will be no adverse visual impacts; and because adequate buffering and screening will be provided throughout the campus; and because parking, loading and delivery have been situated to cause minimal disturbance to the adjacent property owners; and because signs will be in accordance with the Land Development Code requirements; and

WHEREAS, the Board finds that the proposal will be compatible with residential uses in the immediate area because it will feature one story buildings in a very low intensity environment; and because the height, traffic, noise, odor, drainage, dust and lighting will be compatible; and

WHEREAS, the Board finds that the proposal has been reviewed by Transportation Planning and MSD and both have approved the plan; and

WHEREAS, the Board finds that the proposal complies with specific standards to obtain the conditional use permit where Item B will be met; and the Board will modify Item A. to: "The proposed skilled nursing/assisted living building to be located 22 feet from the south property line. As mitigation the required 15-foot Landscape Buffer Area at this location will be implemented and planted pursuant

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to the requirements of the LDC Chapter 10; and because the applicant has agreed to a lighting condition of approval; and to install a TARC boarding area; and

WHEREAS, the Board finds the proposal to be in conformance with the Comprehensive Plan because it complies with all applicable guidelines, principles and objectives of the Comprehensive Plan, as it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION.**

The conditions are as follows:

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 nursing home without further review and approval by the Board.

3. The owner/developer will construct a 5-foot wide ADA compliant boarding area near the side of the proposed driveway from the curb/edge of pavement of Westport Road to the proposed sidewalk.

4. Each freestanding light within the roadway in front of the duplex units shall be fitted with *(i)* a faceted downlight reflector to ensure that the light source is not visible horizontally, and *(ii)* a "cap" which will prevent light from shining vertically.

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The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

MINUTES OF THE MEETING
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JUNE 3, 2013

NEW BUSINESS:

Case No. B-19198-13

Appellant: Mark Hatch
3527 Linden Berry
Charlotte, North Carolina 28269

Representative: Putney Architecture
Mose Putney, AIA
1860 Mellwood Avenue
Louisville, Kentucky 40206

Subject: An Appeal of a determination by the Department of Codes and Regulations concerning non-conforming use rights; and the change from one non-conforming use (beauty salon) to another non-conforming use (grocery store).

Premises affected: On property known as 2201 Garland Avenue and being in Louisville Metro.

COUNCIL DISTRICT 6—David James
Staff Case Manager: Steve Hendrix, Planning Supervisor

Appearances Opposing the Appeal:
Rodger Spicer, 2201 Garland Avenue, Louisville, Kentucky 40211.

Appearances Interested Party:
No one

Appearances in Support of the Appeal:
Mose Putney, 1860 Mellwood Avenue, Louisville, Kentucky 40206.

Mark Hatch, 3527 Linden Berry, Charlotte, North Carolina 28269.

Flora Brown, 2213 Garland Avenue, Louisville, Kentucky 40211.

Garry Sloan, 3319 Pacific Court, Louisville, Kentucky 40211.

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Case No. B-19198-13

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Louisville, Kentucky.

On April 18, 2013, a letter was issued by the Department of Codes and Regulations stating that non-conforming use rights for a grocery store had not been established.

On April 25, 2013, an Appeal application was submitted, claiming non-conforming rights for a grocery store. Previous research shows that the site has been listed as various commercial businesses from the mid-1920's to 1996. The site has the appearance of a neighborhood corner commercial use.

On June 3, 2013, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the June 3, 2013 proceedings.

SUMMARY OF STAFF PRESENTATION:
2:55:12 Staff case manager, Steve Hendrix gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said research shows that the site has been listed as various commercial businesses from the mid-1920's to 1996. The site has the appearance of a neighborhood corner commercial use. According to information submitted by the Appellant, the structure was originally constructed as a grocery store and "Honest Abe's" meeting hall in or around the 1920's. In 1996, the site obtained non-conforming rights for a beauty salon. The last use was a tavern which closed about four years ago. Mr. Hendrix said it appears that the property owner has tried to find some type of commercial use for the building and now intends to re-establish the grocery store use; therefore, the abandonment issue has been avoided. This type of grocery store would be no more odious or offensive to surrounding

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properties than a beauty salon. Chair Jarboe asked how long the property has been owned by Mr. Hatch.

SUMMARY OF TESTIMONY OF APPELLANT(S):
3:01:38 Mose Putney, the appellant's architect, was swore in.

3:01:57 Mark Hatch the owner was swore in and said he purchased this property back in the 80's. He said he has a master's degree and works on this property when he can. He said his first tenant opened a bar; and then received the CUP for the beauty salon which never opened. He said it was previously a grocery store for over 20 years, but that tenant became ill and couldn't work anymore. He said neighbors have told them, they would really like another grocery store here again for convenience. Mr. Hatch said he hired Mr. Putney, so he can remodel it to make it fit the neighborhood. Mr. Hatch said Mike Miles, from Codes and Regulations told him he could build the fence.

3:12:31 Mr. Putney said he will be putting back some of the large windows and use a portion of the front for an ATM machine.

SUMMARY OF TESTIMONY OF OPPONENTS:
3:14:30 Rodger Spicer said he's lived in the area since 1988. He said the subject property has never been kept up and harbors rats, birds and opossums that he has to kill. He said he's had to cut the trees back so the animals wouldn't get on to his property. He said the whole structure is dilapidated, gutters and all.

3:17:38 Member Proffitt said the appellant wants to renovate it to make it look better and bring in a good use, so is unsure why Mr. Spicer is opposed. Mr. Spicer said if he's going to fix it up as a nice grocery store, then he is not opposed to it.

3:24:06 Flora Brown said she's lived two doors down from the subject property for 51 years. She said the previous owner of the grocery store, used to let her run a tab; and would love another grocery store here. She said it was dangerous when it was a bar.

3:30:00 Garry Sloan said he grew up in this neighborhood and remembers when it was a grocery store and a bingo hall. He said he is in support of the

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grocery store; and that they could put something positive for the community upstairs above the grocery store.

3:35:01 Member Proffitt asked Mr. Hatch what he is planning on doing to improve the property. Mr. Putney said they will start with the exterior, so it will look nice; and completely remodel the inside. He said if there was an animal problem, they were unaware of it and will take care of this problem.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:
No one spoke as an interested party.

REBUTTAL:
3:44:08 Mr. Hendrix said he had nothing further to add.

BUSINESS SESSION:
3:44:13 Member Proffitt said he's unsure about the non-conforming use being abandoned. Mr. Hendrix said per the research and testimony, appears the owner has tried to find some type of commercial use for the building.

3:46:18 After the public hearing in open business session, on a motion by Member Proffitt, seconded by Member Allendorf, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report and the testimony and evidence submitted at the public hearing that this appeal concerns the owner claiming non-conforming use rights have existed for the subject property; and requesting a change from one non-conforming use (beauty salon) to another non-conforming use (grocery store);and

WHEREAS, the Board finds that the non-conforming use rights have not been abandoned since the owner has tried to find some type of commercial use for the building and now intends to re-establish the old use—a grocery store; and because the neighbor's wrote letters and testified that a grocery store would be a good use and very convenient for the elderly that live in the neighborhood; and because the property has the appearance of a corner commercial use; and because a beauty salon and grocery store are both permitted uses within a C-1, Commercial District; and because the grocery store use would be no more

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odious or offensive to surrounding properties than a beauty salon due to its size and since the same type of land use has been at this location in earlier years; and because once the beauty salon never transpired, the owner tried to sell the property; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **ACKNOWLEDGE** that non-conforming rights exist for a beauty salon; and

THE BOARD FURTHER FINDS , that the change from one non-conforming use, a beauty salon, to another being a grocery store is in the same or a more restrictive classification; and

THE BOARD FURTHER FINDS, that the grocery store use is no more odious of offensive to surrounding properties than a beauty salon; and

THE BOARD FURTHER FINDS, that the determination letter issued by the Department of Codes and Regulations was proper.

The vote was as follows:

YES: Members Allendorf, Proffitt, Fishman and Jarboe.
NO: No one.
NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Bauer, Miller and Liggin.
ABSTAINING: No one.

MINUTES OF THE MEETING
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The meeting adjourned at 3:50 p.m.

_____
CHAIRPERSON

_____
SECRETARY