

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

MARCH 5, 2012

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:30.A.M. on Monday, March 5, 2012, 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
Frederick Liggin
*Rosalind Fishman

Members absent:

Paul Grisanti
Don Wagaman

Staff members present were:

Phillip Bills, Director
John Carroll, Legal Counsel
Jonathan Baker, Legal Counsel
Steve Hendrix, Planning Supervisor
Jon Crumby, Planner II
Latondra Yates, Planner II
Chris Brown, Planner I
Lee Wells, Planning Technician
Beth Stevenson, Management Assistant

THE BOARD CHANGED THE ORDER OF THE DOCKET AND HEARD CASE NO. B-17172-12 AFTER CASE NO. B-17082-12.

*Member Fishman left the meeting at 11:34 a.m.

The following cases were heard:

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BUSINESS SESSION:

APPROVAL OF MINUTES

Minutes of the meeting conducted on February 6, 2012.

8:42:03 On a motion by Member Fishman, seconded by Member Liggin, the minutes of the meeting conducted on February 6, 2012 were approved.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf, Proffitt and Fishman.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
and Wagaman.**

ABSTAINING: No one.

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BUSINESS SESSION:

DIRECTOR'S REPORT REGARDING OLD CEMETERIES

8:42:26 Phillip Bills, Director of Planning & Design Services, said he told the Board at a previous hearing that he would research setbacks regarding old cemeteries and report his findings to the Board. Mr. Bills said this issue came up recently over a house that was built over 50 years ago at 1103 S. Chesley Drive into the cemetery setback (Case No. B-17015-12). He said in previous years subdivisions were built without record plats or coming before the Planning Commission for approval, and were categorized as "Wildcat Subdivisions". He said he found a map showing 11,000 appropriately built subdivisions and 8500 wildcat subdivisions and passed the map around for the Board to review. Mr. Bills said he also researched the old zoning regulations and a 25 ft. setback did exist at that time, but the subject house was built pretty much right on the 25 ft. setback; and that the new owners were unaware of this regulation when they bought it. He said he also could not find anything at the Property Valuation Administrator (PVA) with regard to who owns the neighboring cemetery, and that this is common for old cemeteries throughout the city. Chair Jarboe asked who owns the wildcat subdivisions. Mr. Bills said this information can be found on the deed. Member Proffitt asked if there was a map showing all cemeteries in Louisville and that it would be interesting to compare the two maps. Member Fishman asked if there were any other graves found in the area at Chesley Drive. Mr. Bills said he believes people in the nearby apartments were looking into it.

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BUSINESS SESSION:

CASE NO. B-16823-11

Applicant/Owner: Chestco, LLC
Donald W. Blackburn, Member
2708 Frankfort Avenue
Louisville, Kentucky 40206

Attorney: Paul B. Whitty, Esq.
Goldberg Simpson
9301 Dayflower Street
Prospect, Kentucky 40059

Project Name: Upward House II
1700 W. Chestnut Street
Louisville, Kentucky 40203

Subject: An application for the modification of an existing Conditional Use Permit to increase the number of men allowed to reside at the facility from 16 to 32 residents, plus 5-7 on-site managers. There will be no structural changes or expansions to the building or grounds, and no change in the current use as a rehabilitation home for men recovering from drug or alcohol addictions.

Premises Affected: On property known as 1700 West Chestnut Street and being in Louisville Metro.

COUNCIL DISTRICT 4—David Tandy
Staff Case Manager: Jon Crumbie, Planner II

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.

The recording of this hearing will be found on the DVD of the March 5, 2012 proceedings.

On November 23, 2011, the applicant requested a modification of the approved Conditional Use Permit to increase the number of men allowed to reside at the facility from 16 to 32 residents, plus 5-7 on-site managers. There will be no

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structural changes or expansions to the building or grounds, and no change in the current use as a rehabilitation home for men recovering from drug or alcohol addictions. A neighborhood meeting was held. There have been no incidents reported at the site since 2001.

The original hearing on this case was held on June 18, 2001 to allow this property to be used as a youth residential home, ages 13-17, with no more than 12 youths residing at the facility at any given time (Docket No. B-26-01).

On February 6, 2006, the applicant received approval for a Modified CUP which changed the residence from serving youth to men, ages 18 years or older, recovering from drug or alcohol addictions, with no more than 16 men residing at the facility at any given time.

On March 5, 2012, 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.

DISCUSSION:

8:48:42 Steve Hendrix, Planning Supervisor, said he doesn't have anything to add to the information submitted. Chair Jarboe asked if they are just increasing the number of residents. Mr. Hendrix said yes. Member Proffitt asked if there were any neighborhood comments. Jon Crumbie, staff case manager, said the comments are in the information that was sent to the Board. Mr. Crumbie said there have been no incidents reported to the Police since 2001. He said a representative is present if the Board should have any detailed questions. Member Liggin asked if the facility was for youth. Mr. Crumbie said no, for men. They received approval for a Modified CUP previously to change this from youth to men.

8:50:21 A motion was made by Member Proffitt, seconded by Member Liggin and the following resolution was adopted:

WHEREAS, the Board finds that the applicant has requested a modification of an approved Conditional Use Permit to increase the number of men allowed to reside at the facility from 16 to 32 residents, plus 5-7 on-site managers; and because there will be no structural changes or expansions to the building or grounds, and no change in the current use as a rehabilitation home for men

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recovering from drug or alcohol addictions; and because the facility as is, exceeds the living space requirement for each resident per contract provisions with the Department of Corrections; and

WHEREAS, a neighborhood meeting was held and only one citizen showed up, Markham French, the Executive Director of the Plymouth Community Renewal Center, which offers programs for children, teens and adults in the neighborhood such as karate, after school programs and other activities; and because Mr. French said that in the six years the rehabilitation home has been in operation there had been no problems with any of the residents that he was aware of; and stated that men from the facility had helped out at the center doing some plumbing and repair work; and

WHEREAS, the applicant states that currently only 2 of the 16 residents have automobiles; and is believed that very few, if any, of the prospective new residents will be bringing additional automobiles to the site; 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; and it has received preliminary approval from Transportation Review and Louisville and Jefferson County Metropolitan Sewer District;

NOW, THEREFORE, BE IT RESOLVED, that the modification of the existing Conditional Use Permit is hereby **APPROVED ON CONDITION:**

1. The site shall be developed in strict compliance with the approved development plan. No further development shall occur on the site without prior review and approval by the Board.
2. The site shall be landscaped in accordance with the requirements of Article 12 of the Zoning District Regulations.
3. The total number of residents in the facility shall not exceed 32 at any given time.
4. The total number of employees per shift shall be a maximum of 7.

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5. The institution shall not accept any residents that are violent, known arsonists, or with histories of sexual abuse.

6. The Modified 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 Modified Conditional Use Permit is not so exercised, the number of residents shall remain at 12 and the total number of employees per shift shall be no more than 4.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf, Proffitt and Fishman.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti and Wagaman.

ABSTAINING: No one.

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NEW BUSINESS:

**CASE NO. B-16776-11
(CONTINUED FROM DECEMBER 5, 2011)**

Applicants/Owners: Michael & Angela Gorena
604 Rubel Avenue
Louisville, Kentucky 40204

Subject: An application for variances from the Land Development Code to allow a detached garage under construction to encroach into the required side and rear yards.

Premises affected: On property known as 604 Rubel Avenue and being in Louisville Metro.

**COUNCIL DISTRICT 4—David Tandy
Staff Case Manager: Jon Crumbie, Planner II**

This case was continued from the December 5, 2011 Public Hearing to allow the applicant time to resolve the issue of the overhang onto the neighbors' property and if found to be encroaching (by surveyor), can present evidence of the neighbors' approval/acceptance with proper documentation.

Appearances for Applicant:
Mike Gorena, 604 Rubel Avenue, Louisville, Kentucky 40204.

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 November 14, 2011, Michael & Angela Gorena filed an application for a variation from the requirements of the Land Development Code to allow a

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detached garage under construction to encroach into the required side and rear yards.

The case was continued from the December 5, 2011 public hearing.

On March 5, 2012, 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 March 5, 2012 proceedings.

SUMMARY OF STAFF PRESENTATION:

8:51:42 Staff case manager, Jon Crumbie, said this case was continued from the December 5, 2011, to allow the applicant time to resolve the overhang issue with his neighbor. Mr. Crumbie said the applicant submitted the notarized easement agreement with his neighbor, Ms. Wolcott, who is not opposed now. He said the agreement is on pages 30-32 in the staff report.

SUMMARY OF TESTIMONY OF PROPONENTS:

8:52:38 Mike Gorena, the applicant, said he discussed the overhang issue with his neighbor, Ms. Gorena. He said she also asked if he would install a fence between their properties and remove some fill dirt in addition to some other items, which he has agreed to. He said he was unaware of the negative altercation she had with his contractor and that she is now in agreement for him to proceed finishing the garage per the notarized easement agreement.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

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**CASE NO. B-16776-11
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SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

8:55:28 Member Proffitt asked John Carroll, the Board's legal counsel, if he reviewed the easement agreement. Mr. Carroll said no, but he could look it over. Member Proffitt said he was fine with it.

VARIANCE –South Side Property Line:

8:56:12 After the public hearing in open business session, on a motion by Member Liggin, 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 evidence and testimony submitted at the public hearings that the applicant is requesting a variance to allow a new detached garage currently under construction to encroach into the required south side property line; and

WHEREAS, the Board finds that the variance will not adversely affect the public health, safety or welfare because the garage is replacing an older structure; and because the owner was issued a building permit; and most of the garages located along the alley are in poor condition; and

WHEREAS, the Board finds that the requested variance will not alter the essential character of the general vicinity because the materials used are compatible with the surrounding garages; and most of the detached garages along the alley are located in similar positions; and

WHEREAS, the Board finds that the requested variance will not cause a hazard or nuisance to the public because the adjacent neighbor, Ms. Wolcott, signed a notarized easement agreement to allow the applicant's new detached garage to be located in the Easement Area and that the applicant keep the garage in good condition and repair as needed; and

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WHEREAS, the Board finds that the requested variance will not cause an unreasonable circumvention of the zoning regulations because the adjacent neighbor, Ms. Wolcott, signed a notarized easement agreement to allow the applicant's new detached garage to be located in the Easement Area and that the applicant keep the garage in good condition and repair as needed; and because there are numerous other encroachments of this type throughout the general area;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a new detached garage currently under construction to be 0.6 feet from the south property line.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf, Proffitt and Fishman.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti and Wagaman.

ABSTAINING: No one.

VARIANCE—Rear Property Line:

8:56:12 After the public hearing in open business session, on a motion by Member Liggin, 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 evidence and testimony submitted at the public hearings that the applicant is requesting a variance to allow a new detached garage currently under construction to encroach into the required rear yard; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the garage is replacing an older structure; and because the owner was issued a building permit and most garages located along the alley are in poor condition; and

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WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity because the materials used are compatible with the surrounding garages; and because most detached garages along the alley are located in similar positions; and

WHEREAS, the Board finds that the variance will not cause a hazard of nuisance to the public because most of the garages along the alley are in poor condition and located near the rear property line; and

WHEREAS, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because there are numerous encroachments of this type throughout the general area; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation will create an unnecessary hardship on the applicant because the garage would have to be torn down and moved;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow the new detached garage currently under construction to be 0.7 feet from the rear property line.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf, Proffitt and Fishman.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti and Wagaman.

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. B-15634-11

Applicants/Owners: Amrutlal & Kusum A. Kanji
4507 Stone Wynde Drive
Louisville, Kentucky 40272

Representative: Richard Tullis, Contractor
9313 Taylorsville Road
Louisville, Kentucky 40299

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

Premises affected: On property known as 4225 Cane Run Road and being in Louisville Metro.

COUNCIL DISTRICT 1—Attica Scott
Staff Case Manager: Latondra Yates, Planner II

Appearances for Applicant:
Amrutlal Kanji, 4507 Stone Wynde Drive, Louisville, Kentucky 40272.

Richard Tullis, Contractor, 9313 Taylorsville Road, Fisherville, Kentucky 40023.

Appearances Interested Party:
No one.

Appearances Against Applicant:
Judy McCore, speaking for Bob Schoen, 3221 Hartlage Court, Louisville, Kentucky 40216.

Bob Schoen, 3221 Hartlage Court, Louisville, Kentucky 40216.

Richard Grasch, 3223 Hartlage Court, Louisville, Kentucky 40216.

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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 18, 2011, Amrutlal & Kusum A. Kanji filed an application for a variation from the requirements of the Land Development Code to allow a proposed retail building to encroach into the required side yard. The variance is associated with a Category 2B plan (Docket No. 2-31-09) for construction of a 3,400 square foot, 16 ft. tall retail building for two separate spaces to lease, 1,700 sf. each and the required parking. The plan indicates that the proposed use is for two restaurants. The variance is required because the owner was unable to work out a crossover agreement with the adjacent daycare, which required revision of the site layout to accomplish the required separation between the daycare and the proposed building. There is a structure shown on the maps that will be removed.

On March 5, 2012, 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 March 5, 2012 proceedings.

SUMMARY OF STAFF PRESENTATION:

8:58:03 Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the variance is associated with a Category 2B plan for construction of a 3,400 sf. retail building for two separate spaces to lease, 1,700 sf. each and the required parking. She said the plan violates two guidelines of the Comprehensive Plan because the proposed development doesn't share an entrance or parking facilities with adjacent uses, though a crossover agreement was attempted.

9:02:36 Member Proffitt said it looks like the building is right on the property line. Ms. Yates said after looking at the plan that it does appear to be a 0 ft. lot

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line, but the applicant requested a 2 ft. encroachment. She said the Board could adjust this. Chair Jarboe asked if the daycare is shown on the plan. Ms. Yates said no. Steve Hendrix, Planning Supervisor, said the daycare is in between the subject site and St. Dennis Church. Ms. Yates told the Board that the access to the site is off Cane Run Road.

SUMMARY OF TESTIMONY OF PROPONENTS:

9:06:56 Amrutlal Kanji, the applicant, said he wants to build a Subway. Chair Jarboe asked if he had parking in the rear. Mr. Kanji said yes. Chair Jarboe asked how they would access the property. Mr. Kanji said from Cane Run Road. Member Proffitt asked if this was the only access point. Mr. Kanji said yes. Ms. Yates interjected and said the contractor is present if the Board has more questions.

9:09:27 Richard Tullis, the applicant's contractor said the owner would like to build a Subway with a future different restaurant. He said there is enough room for two businesses; and that they tried to get the crossover access agreement, but was unsuccessful. Member Proffitt said the building appears to be right on the property line. Mr. Tullis said the plan he looked at was 2 feet off the property line. Member Proffitt asked John Carroll, the Board's legal counsel, if they could approve the request with submittal of a revised plan. Mr. Carroll said yes.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

9:14:00 Judy McCCore said she was speaking for one of the adjacent property owners, Mr. Schoen. She said Mr. Schoen owns the alley way; and that they never reached an agreement on a crossover access easement. She said they would like Mr. Kanji to install a privacy fence to protect cars that are parked at Mr. Schoen's automotive business.

9:15:22 Bob Schoen said that the area has a lot of crime and feels a restaurant will make his business more visible to criminals. Member Liggin asked what size privacy fence does he want. Mr. Schoen said 8-10 feet tall. He said the parking for the proposed restaurant will be right up next to his property. Member Liggin asked if Mr. Kanji could use his alley way. Ms. McCCore said Mr.

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Kanji came to Mr. Schoen with various agreements drawn up by different attorneys and that they never came to an agreement. Member Proffitt asked how he thinks a privacy fence will decrease the crime. Mr. Schoen said he will not be working at his business late to watch for criminal activity. He said they might want to steal rims off some of the nice cars he works on or catalytic converters. Member Liggin agreed with Member Proffitt that the openness would be a better deterrent. Mr. Schoen disagreed, and said out of sight out of mind. Member Proffitt asked Mr. Carroll if they could add a condition of approval to include the privacy fence. Mr. Carroll said yes. Member Proffitt asked if they have talked to Mr. Kanji about installing the privacy fence. Ms. McCore said no.

9:23:08 Richard Grasch said he is the other adjacent property owner, and said this will be encroaching onto his property. He said the alleyway is actually his side yard and that he has also installed a fence which cars bump into all the time. He said Cane Run Road used to be a two lane road and is now 4 lanes with heavy traffic all day long. He said he has found drug paraphernalia along his property and has picked up trash from other businesses for years. He said there's another single family house you cannot see in the PowerPoint slides, and said he put up trees to create a sound and light barrier. Chair Jarboe asked if he would be in favor if a privacy fence was installed. Mr. Grasch said he doesn't even know how this property turned commercial since it's mostly homes. He said this will also land lock his property; and that he wants to build a home for his son who is serving in Iraq. He said he also installed a fence to protect his children from the noise from the traffic which would wake them up. Mr. Grasch said he would like to know if any trees will be taken down or more clarification of this proposal.

9:35:14 Chair Jarboe said the Board would like to ask Mr. Schoen more questions. Member Proffitt said he already has a fence up. Mr. Schoen said there's a metal building but there is a gap of land. Member Proffitt said it will create a space for people to possibly hide in. Mr. Schoen said his entire property is fenced but would like a privacy fence by the alley and said he will build it if he has to. He said cars get broken into all the time in this area, and that he has even had to pay for some cars to be stored inside which has cost him a lot of money. Ms. McCore said they don't want the alley used for access and that a fence would prevent this from happening. Mr. Grasch said if a fence is installed that they need to maintain it too, because cars will bump into it.

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9:42:06 Chair Jarboe said the plan seems inadequate and asked Ms. Yates if any trees would be removed. Ms. Yates said the plan is difficult to read, but said it appears they are asking for a two ft. encroachment. She said there are no landscaping requirements because both properties are zoned commercial.

REBUTTAL:

9:43:13 Mr. Tullis said he understands their concerns but doesn't see how a privacy fence will do any good and that it will block people in. He said he also understands Mr. Grasc'h's concerns about people using the alleyway but said there's a concrete curb that will keep cars off his property. Member Liggin said it appears they might need 140-165 feet worth of fencing and questioned how much that would cost. Mr. Tullis said he doesn't know. Chair Jarboe asked him if he understands why the adjacent property owners want some buffering. He said most everything around it is commercial. Chair Jarboe said the two owners still want protection and would benefit from a privacy fence.

DISCUSSION:

9:47:12 Ms. Yates said it appears some landscaping would be required in the Vehicular Use Area near Mr. Grasc'h's property. Member Proffitt said the plan needs to be more accurate. Chair Jarboe asked Ms. Yates when this property was zoned Commercial. Ms. Yates said it was pre-plan certain.

BUSINESS SESSION:

9:48:43 Member Proffitt felt the Board should continue this case to get some of these issues resolved (privacy fence etc.). Member Allendorf said also the landscaping requirements in the VUA.

9:49:25 After the public hearing in open business session, on a motion by Member Proffitt, seconded by Member Allendorf, the following resolution was adopted:

RESOLVED, that the Board does hereby **CONTINUE** this case to **MARCH 19, 2012** to allow the applicant time to correct the plan dimensions if applicable; to determine if landscaping is required in the VUA and to allow the applicant time to discuss privacy fencing with Mr. Schoen.

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The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf, Proffitt and Fishman.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
and Wagaman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. B-17082-12

Applicant/Owner: Troy Taylor
1460 S. 7th Street
Louisville, Kentucky 40208

Subject: An application for variances from the Land Development Code to allow a reduction in the private yard and extension of the accessory use area.

Premises affected: On property known as 1460 S. 7th Street and being in Louisville Metro.

COUNCIL DISTRICT 6—David James
Staff Case Manager: Christopher Brown, Planner I

Appearances for Applicant:
No one was present.

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 January 30, 2012, Troy Taylor filed an application for a variation from the requirements of the Land Development Code to allow a reduction in the private yard area to 332 SF; and to allow the accessory structure/use area to exceed the 50' maximum depth by 14'.

On March 5, 2012, 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.

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NEW BUSINESS:

CASE NO. B-17082-12

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 March 5, 2012 proceedings.

SUMMARY OF STAFF PRESENTATION:

10:01:45 Staff case manager, Chris Brown gave a brief presentation of the case to the Board, which included a PowerPoint presentation. The applicant is constructing a 24' X 48' one story garage within the private yard. He said a building permit was issued under #315197 for 1152 SF one story detached garage structure on a new concrete slab on December 14, 2011. The permit states no encroachments into the required easements or yards. Mr. Brown said the slab was poured and then realized they needed the variances. He said the lot has double frontage; and that there are other similar encroachments of this type throughout the area. Mr. Brown said the applicant is working with Codes and Regulations regarding the interior and exterior violations.

SUMMARY OF TESTIMONY OF PROPONENTS:

No one was present.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

DISCUSSION:

10:09:41 Chair Jarboe questioned if they should continue the hearing since the applicant is not present. Mr. Brown said it's not a requirement for the applicant to attend. Member Fishman said she would like to ask the applicant about the violations. Mr. Brown said he spoke with April Robbins, Code Enforcement Supervisor, and was told that the violations would have to be resolved before they would issue another permit.

BUSINESS SESSION:

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MARCH 5, 2012

NEW BUSINESS:

CASE NO. B-17082-12

10:11:15 Chair Jarboe said it appears the Board would like to vote on the case, even though the applicant is not present.

10:11:35 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(s) and the evidence and testimony submitted at the public hearing that the applicant is requesting a variance from Chapter 5.4.1.D.3 of the Land Development Code to allow a reduction in the private yard to 332 SF; and a variance from Chapter 5.4.1.E.1 of the Land Development Code to allow the accessory structure/use area to exceed the 50' maximum depth by 14'; and

WHEREAS, the Board finds that the requested variances will not adversely affect the public health, safety or welfare since no impediments to the street frontage will occur with the private yard reduction and accessory use area expansion; and

WHEREAS, the Board finds that the variances will not alter the essential character of the general vicinity since it follows a similar pattern of development that exists along the same block to both the north and south; and

WHEREAS, the Board finds that the variances will not cause a hazard or nuisance to the public since the encroachments will occur within the private yard space and will not affect the public street frontage on either 7th or 8th Street; and

WHEREAS, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations since the size and shape of the lot with double frontage restrict the locations of any principal structures and their associated accessory use are and possible area of private yard; 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 Traditional Form District residential property has double frontage and no alley access, the accessory structure must come from the lower classified street while maintaining the required front yard; and

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CASE NO. B-17082-12

WHEREAS, the Board finds that the strict application of the provisions of the regulations would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by reducing the area that could be built for a garage space to an estimated 20'; 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 foundation was placed following the applicant obtaining a building permit and the size and shape of the lot existed prior to current ownership;

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

The variances allow:

1. The private yard area to be reduced to 332 square feet.
2. The accessory structure/use area to exceed the maximum depth to 64 feet.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf, Proffitt and Fishman.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti and Wagaman.

ABSTAINING: No one.

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MARCH 5, 2012

NEW BUSINESS:

CASE NO. B-17172-12

Applicant/Owner: HOS Properties, LLC
Dr. Todd Hostutler
8701-B Old Bardstown Road
Louisville, Kentucky 40291

Representative: Showtime Signs
Tim Story
803 S. 12th Street
Louisville, Kentucky 40210

Subject: An application for a variance from the Land Development Code to allow a proposed sign to exceed the maximum height within the Bardstown Road Parkway Buffer.

Premises affected: On property known as 8711 Old Bardstown Road and being in Louisville Metro.

COUNCIL DISTRICT 22—Robin Engel
Staff Case Manager: Christopher Brown, Planner I

Appearances for Applicant:
Tim Story, Showtime Signs, 803 S. 12th Street, Louisville, Kentucky 40210.

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 February 16, 2012, HOS properties, LLC filed an application for a variation from the requirements of the Land Development Code to allow a proposed sign to exceed the maximum height.

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On March 5, 2012, 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 March 5, 2012 proceedings.

SUMMARY OF STAFF PRESENTATION:

10:13:02 Staff case manager, Chris Brown gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the site has frontage on Bardstown Road and Old Bardstown Road and pointed out on the PowerPoint slide where the sign would be located. He said other businesses in the area have similar signage and will be an extended distance from Bardstown Road since it is within a recognized parkway. Member Proffitt said signage is allowed in the parkway buffer area. Mr. Brown said yes, and that it's similar to Hurstbourne Lane. He said the proposed sign will be freestanding monument style.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:18:15 Tim Story, with Showtime Signs, said they originally wanted an electronic style sign, but wasn't allowed. He said the sign will be internally illuminated; and never exceeded the 6 ft. in height. Member Proffitt said they got rid of the electronic aspect. Mr. Story said yes.

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:

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CASE NO. B-17172-12

10:19:54 Chair Jarboe said she's happy since it's not an electronic, flashy sign.

10:20:04 After the public hearing in open business session, on a motion by Member Fishman, seconded by Member Liggin, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation(s) and the evidence and testimony submitted at the public hearing that the applicant is requesting a variance from Chapter 8.3.3, Table 8.3.3 of the Land Development Code to allow a proposed sign to exceed the maximum 6' height by 4' within the Bardstown Road Parkway Buffer; and

WHEREAS, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the location of the sign will be an extended distance from the edge of pavement along Bardstown Road; and

WHEREAS, the Board finds that the variance will not alter the essential character of the general vicinity since signage of varying heights exists along the same street frontage; and

WHEREAS, the Board finds that the variance will not cause a hazard or nuisance to the public since the monument style signage will be located at a far distance from the edge of pavement along a sloped area of Bardstown Road; and

WHEREAS, the Board finds that the requested variance will not allow an unreasonable circumvention of the zoning regulations since the proposed signage will be a similar height and style as the previously permitted signage on the property; 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 topography of the property and the double frontage affect visibility for the signage associated with the use; 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

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an unnecessary hardship on the applicant by requiring less visibility for multiple tenants on the one permitted freestanding signage; 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 topography of the land existed prior to current ownership and the previous signage of similar height had received a permit without meeting the parkway buffer signage regulations;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the variance to allow a proposed freestanding monument style sign to be 10 feet in height within the Bardstown Road Parkway Buffer.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf, Proffitt and Fishman.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti and Wagaman.

ABSTAINING: No one.

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MARCH 5, 2012

NEW BUSINESS:

CASE NO. B-16454-11

Applicant: Kelly Drescher
2029 Alta Avenue
Louisville, Kentucky 40205

Owner: Calvary Lutheran Church
James N. Blincoe, Jr., President, Church Council
1838 Bardstown Road
Louisville, Kentucky 40205

Project Name: The Highland Dog

Subject: An application for a Conditional Use Permit to allow a commercial kennel in a C-2 zoning district; and Landscape Waivers.

Premises affected: On property known as 1962 Roanoke Avenue and being in Louisville Metro.

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:

Kelly Drescher, 2029 Alta Avenue, Louisville, Kentucky 40205; who submitted photographs into the record.

Appearances- Interested Parties:

No one.

Appearances --Opposition:

Susan Lonowski, 1969 Richmond Drive, Louisville, Kentucky 40205.

Drew Shryock, 1945 Roanoke Avenue, Louisville, Kentucky 40205.

Susan Linville, 1957 Roanoke Avenue, Louisville, Kentucky 40205.

Fred Crawford, 1953 Roanoke Avenue, Louisville, Kentucky 40205.

Carol Gutterman, 1946 Roanoke Avenue, Louisville, Kentucky 40205.

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Joe Robart, 1960 Roanoke Avenue, Louisville, Kentucky 40205.

Don Erickson, 1952 Roanoke Avenue, Louisville, Kentucky 40205; who submitted a petition of area residents in opposition.

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 January 9, 2012, Kelly Drescher filed an application for a Conditional Use Permit to allow a commercial kennel in a C-2 zoning district; and three landscape waivers.

On March 5, 2012, 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 March 5, 2012 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

10:21:35 Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant, Kelly Drescher, is requesting a CUP for a small commercial kennel and three landscape waivers. He said Ms. Drescher would like to open an upscale kennel with 6-8 suites and a retail store for doggie treats and supplies. He said there will be 2 employees and that the applicant will stay at the kennel most nights. He said web cameras will be set up to monitor the dogs 24 hours a day, 7 days a week. He said plex-glass inserts will be installed in the windows to stop noise to the surrounding properties with 2" foam inserts to be placed in overnight for extra assurance. He said the subject property is zoned C-2, Commercial and the applicant has an easement agreement with the church and allowed three

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parking spaces on the church property. Mr. Crumbie said the tree canopy requirements will be met; and that the sign and privacy fence have been approved by the Bardstown Road/Baxter Avenue Corridor Review Overlay District on January 10, 2012. Mr. Crumbie pointed out other permitted uses allowed in the C-2 zoning district in the staff report. He also said the neighborhood meeting minutes are included in the staff report along with letters of opposition from the Deer Park Neighborhood Association and Councilman Tom Owen.

SUMMARY OF TESTIMONY OF PROPONENTS:

10:29:38 Kelly Drescher, the applicant said there is a big dog loving community in the Highlands; and that people spend a lot of money on their dogs. Ms. Drescher explained how the house will be remodeled inside stating that there will be 8 individual suites divided by insulated drywall and fire resistant material with other insulation to reduce noise. Ms. Drescher submitted photographs into the record and a piece of the insulation material which she said is also used in recording studios. She said there will not be any indoor fencing for separation, but will have solid doors and walls throughout the house which will create less noise and less anxiety for the dogs. She said she will also be installing plexi-glass over the windows and can insert 2' foam at night for further noise reduction. She said the dogs will be able to play for 80 minutes per day and that there will be three areas for them to play in including the basement. She said an 8 ft. tall privacy fence will be installed around the backyard and that only 4 dogs will be allowed to go outside at one time and only from the hours of 9:00 a.m. to 6:00 p.m. The outside playtime will be supervised and if any of the dogs bark too much, they will bring them back inside. She said the dog waste will be picked up, bagged and removed from the property twice a week. There will be no walks outside of the property. Ms. Drescher said she went door to door in the neighborhood to invite neighbors to the neighborhood meeting and explain her proposal. She said one of the neighbors was not against a kennel, but mostly about increased traffic in the area. She said she held her neighborhood meeting on November 17, 2011 and area residents were concerned about the C-2 zoning of the property, traffic and increased alley traffic. She said she met with the Deer Park Neighborhood Association and their biggest concern was the number of dogs allowed, so she reduced it from 16 suites to 8. The Deer Park Neighborhood Association president, Art Cestaro, asked her to do a demonstration of barking dogs inside the house to see how noisy it might be. She said she was hesitant to do this since the insulation hasn't been installed,

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but did it anyway. Mr. Cestaro gave her a CD of barking dogs to play in the house and said most of the area residents who came could not hear the noise. She said the location is good for the dog kennel since it's in a high level business district and there is no kennel like this in the area. Ms. Drescher submitted pictures of other businesses in the area such as a car lot, tattoo parlor and bar. She said MSD stamped the plans for water and animal waste. She said she will take care of the property and that the business will not create noise or odor. She said there are approximately 5,000 dogs in the 40205 zip code and that this is a much needed service for the community.

10:42:16 Member Liggin asked how many people came to the demonstration. She said she thinks about 12 people. Member Liggin asked if they were still opposed after that. Ms. Drescher said yes because they're leery about the type of business. She said their biggest concern was the noise. Member Fishman asked if anyone will watch the dogs overnight. Ms. Drescher said no, but that she'll be installing webcams to view the dogs from home. She said she would be at the business till 10:00 p.m. Member Allendorf asked if she has received any certifications from Louisville Metro Animal Services. Ms. Drescher said no. Member Fishman asked how far she lives from the subject property, in case something should happen. Ms. Drescher said she only lives 3 minutes away.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF OPPONENTS:

10:45:24 Susan Lonowski said her property is immediately behind the subject property. She said Vincent Burnett signed a paper that he was not opposed but is now. She said he could not be here today, but wanted to convey his message. She said Ms. Drescher didn't talk with the neighbors prior to the neighborhood meeting or listen to their concerns. She said there are several other commercial options for this property that would be better suited for the neighborhood such as a doctor's office. Ms. Lonowski said to put a dog kennel in the middle of a neighborhood is not appropriate; especially for the people who live behind it. She said Ms. Drescher said the applicant said would use some lime chemical to reduce the odor, which she believes is toxic to animals. She said she is also concerned about safety due to the heavy traffic in the area and the drop off and pick up of dogs. Ms. Lonowski asked what hour the barking

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demonstration was done; and that it would have been much louder at 2:00 a.m. She asked if she could also be guaranteed that when its 98 degrees in the summertime that she won't smell anything; and said the business could attract rodents. Chair Jarboe asked how she felt about the applicant reducing the number of dogs. Ms. Lonowski said a lot of companies go out of business and is concerned with this happening and someone else coming in with the same use.

10:51:21 Drew Shryock another area resident said he doesn't know how this property was zoned commercial and said it should have been down zoned back to residential. He said he is concerned because this is the applicant's first attempt as a business owner and that she's never operated a kennel before. He said he worked for Economic Development for the city and said they would look at the knowledge of the business owner and past history when they'd help small businesses get started. He said the applicant also has a full-time job. Mr. Shryock said he doesn't feel the noise will be contained, even with the insulation. He said the area is busy with noise from EMS, Police and Fire which gets about 6-15 calls per day which will also make the dogs bark, especially in a "pack" environment. He said he is also confused about the number of dogs with the staff report stating 10 dogs but could go up to 18. He asked which is it, 10 or 18? He said he finds it odd that there is no one here from the church today which owns the property. He said the on-street parking is limited in the neighborhood and that the church has numerous activities throughout the week which takes up more of it. He said the church is also letting her use three of their spaces but there are no signs or stripping to define the spaces. He asked where the drop-off and pick-up area will be. He said there are also school busses that come through the area and that one child got hit by a car because someone was double parked. He asked what the applicant will do if the power goes out; and how often the dumpster will be emptied and odor contained. He asked if the dumpster will be screened. He said the Board approved another CUP for a kennel on Barrett Avenue which is now out of business; and challenges the idea of there being 5,000 dog owners in the area. He asked the Board to deny the CUP and said he would work with other agencies to bring a better business here; and that it could be a win-win situation for all. He said the Deer Park Neighborhood Association and Councilman Tom Owen are also in opposition to this request.

11:02:09 Member Liggin asked if he went to the dog barking demonstration. Mr. Shryock said yes and said he didn't think the CD was that loud inside the

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house making it inaudible from the outside. He said the barking sounded more like a dog that wanted a treat instead of a pack of dogs competing for alpha status. Member Allendorf asked what he would think of a paint ball range being there. Mr. Shryock said there are many other uses that would be more compatible with the residential neighborhood.

11:06:13 Susan Linville said she can hear neighborhood dogs barking when any kind of sirens are going off; that they sound like they're right in her front yard. The barking dog CD was not a good representation of what it might really sound like. She said she is also concerned about the additional traffic generated and the way people double park considering the little boy that got hit by a car. She said she has two children herself. Property values will also probably decline with this type of business on their street.

11:08:05 Fred Crawford submitted pictures of parking on the street, which one of the pictures shows two cars parked past the signed no parking area. He said this happens quite often. Mr. Crawford said he also went to the barking dog demonstration and said he could hear the barking if no traffic was going by. He said he grew up in Fern Creek which had a lot of kennels and that they could hear the dogs barking ½ mile away. He said the dogs being taken outside should be addressed; and questioned the number of dogs would be allowed per suite. He said he thought only 3 dogs are allowed outside per ½ acre of land. He said this property has had several businesses in it such as a massage parlor, print shop and even a group of students who rented the house. He said the original structure was built in 1914 and that a family now could move in. The renovation for a dog kennel will be extreme and hard to revert back to a home. Mr. Crawford said the applicant "paints a nice picture" of the business but if it doesn't work for her someone else could take over that might not be as concerned for the residents. He said there is also no guarantee that the dogs going to the business will not use their yards along the way. He said he is also concerned about lack of parking and accidents on their street.

11:13:35 Carol Gutterman said she is the third person from her family to own her house. She said the applicant didn't come to her house to discuss the project; and worries about the smell, flies and maggots. She said the cars speed up and down the alley and that a dog was also killed there. She said there are blind areas and that it's dangerous. Ms. Gutterman said she opposes the request.

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11:16:12 Joe Robart said he lives directly next door to the subject property and that his biggest concern is the noise. He said the dogs bark when sirens go off and is concerned because the dogs will be unattended at night. He asked who he could call if the dogs start barking at 2 a.m.

11:17:38 Don Erickson said the proposal has been a moving target since the onset. He said originally she wanted 20 dogs in the house and is now down to 8 suites with a maximum 12 dogs. He questioned how this would affect the financial feasibility of the business. He said the parking is bad along Roanoke and hard to park on the street in front of your own home, especially when the church has events. He said at the end of Roanoke is a middle school where the busses come off Bardstown Road at a high rate of speed. Mr. Erickson said he's owned dogs for 20 years and knows his dogs get nervous before going to the vet or a kennel and feels the dogs will use their yards because of this. He said he's in the window business and doesn't believe the measures taken will decrease the noise. He said he also has concerns with dogs being allowed to be outside from 9:00 a.m. to 6:00 p.m. and if a roof is built over the outside kennel, will protect the dogs, but magnify the barking. Mr. Erickson said he opposes the use; and submitted a petition of 17 area residents also opposed.

REBUTTAL:

11:28:16 Ms. Drescher said the CD was given to her from the neighborhood association and if it is not a sufficient portrayal, is nothing she can do. She said her business will have 8 suites, with 10 dogs and no outside kennel. She said the inside of the house needs a lot of work and the flooring will just be tacked down. She said the opposition wants it a home, but there are numerous other businesses in the other and that the Highlands wouldn't be the Highlands if it weren't a mix of uses. Ms. Drescher said she has been approved for the lending and that she is a credible business owner. She said she will provide a back-up generator if the electricity should cease. She said she took her dog to the kennel on Baxter and wouldn't bring her dog back there due to the noise and odor. She said her business will be better than that; and feels it will still be a viable business with the reduction in dogs.

11:32:49 Member Liggin asked her if the church owns the property. Ms. Drescher said she is purchasing the property contingent upon this approval. Member Proffitt asked her if this will be her primary business. Ms. Drescher said

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yes. Member Proffitt asked her if she's every owned a kennel. Ms. Drescher said no. Chair Jarboe asked if the dogs can enter through the front or back of the property. Ms. Drescher said yes. Chair Jarboe asked if she would agree to the drop off and pick up area to be in the back. Ms. Drescher said yes. Ms. Drescher added that there is no dumpster, but two garbage cans that will be emptied twice a week. Member Fishman questioned the designated parking from the church. Ms. Drescher said she can have the stripping done.

BUSINESS SESSION:

11:35:44 Chair Jarboe said she's concerned with the use. Member Proffitt said he's concerned that the property is zoned commercial. He said it appears the applicant is trying to mitigate the nuisances, but doesn't feel she can control barking dogs. He said if they approve the CUP and the insulation doesn't work, asked what they could do. Jon Baker, the Board's legal counsel, said the Board could impose conditions and if not met, revoke the CUP. He said normally they are given a chance to remedy the problem, but if conditions are broken again, the applicant would have to come back before the Board to determine the revocation. Member Allendorf feels the applicant has done enough to mitigate the possible nuisances; and that she's been in the service, so she'll probably run the business pretty rigidly. Chair Jarboe asked why the property is zoned commercial. Mr. Crumbie said it was probably zoned C-2 a long time ago. Mr. Baker said the Board needs to look at the compatibility element and impacts created by the use.

11:48:25 After the public hearing in open business session, Member Allendorf moved to approve the CUP for a commercial kennel with the four conditions of approval on page 20 in the staff report with addition of another condition items A., C., D. E. and F on pages 4 and 5 of the staff report based on the site plan, staff report, PowerPoint presentation, testimony and discussion and was seconded by Member Liggin.

DISCUSSION:

11:47:10 Mr. Baker said to include staff's findings under the Standard of Review.

11:50:26 Member Allendorf moved to **amend** his motion to include this, and was seconded by Member Liggin.

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11:50:39 Member Proffitt said a condition of approval should be added to mitigate the noise and odor. Mr. Crumbie said the Board could include a condition regarding the applicant installing plexi-glass inserts and 2 inch foam noted on page 2 of the staff report (2nd paragraph).

11:52:48 Member Allendorf **amended** his motion again to include a condition of approval G to state: “ Plexi-glass inserts will be installed in any or all windows in the rooms where the dogs are to stop additional noise to the surrounding properties along with 2” foam inserts to be placed in overnight for additional noise mitigation” and was seconded by Member Liggin.

11:53:37 Chair Jarboe said she thinks the drop-off and pick-up area should be in the back of the property near the alley.

11:56:52 Member Allendorf then **amended** his motion again to include an additional condition of approval, that the dogs will be dropped off and picked up in the rear of the property; and was seconded by Member Liggin and the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the PowerPoint presentation, the site plan and the evidence and testimony submitted at the public hearing that the applicant is requesting a Conditional Use Permit to allow a commercial kennel in a C-2 zoning district; and

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

WHEREAS, the Board finds that the proposal will not violate specific guidelines of Cornerstone 2020, Community Form/Land Use Guidelines 3: Compatibility, A.1., because the proposal is generally compatible within the scale and site design of nearby existing development and with the form district pattern of development; and because landscaping waivers have been requested and lighting will be code compliant; and signage that is code compliant will be added in the front yard; and

WHEREAS, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area including such factors as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting, appearance

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etc., because the subject site is located in a commercial area that has a mix of residential, business services and restaurants; and because most of the major commercial uses are located along Bardstown Road and have varying bulk and scale, but the proposal has similar bulk, scale, intensity, traffic, noise and lighting with properties to the north, south and west; and

WHEREAS, the Board finds that the proposal complies with 5 of the 6 specific standards required to obtain the conditional use permit where Item B. (Signs) does not apply because the site is located in a C-2 zoning district which allows a 6-foot tall and 40 sq. ft. freestanding sign; and the sign will be 42" tall and 60" wide with the sign face 12.5 square feet; and because Item A. (Facilities Enclosed) complies because the facility, except parking shall be within a totally enclosed building except where it can be demonstrated that a nuisance is not created thereby; and complies with Item C. (Fences) because a continuous fence at least 6 feet high shall be erected around the portion of the site used for the kennel operation; and complies with Item D. (Screening) because the outdoor animal facility shall be screened from view; and complies with Item E. (Noise) because the design of the structure shall include features that acoustically shield any animal noises from surrounding properties; and whereby the bedrooms will be divided in half, with insulated walls for soundproofing, along with heavy doors designed to acoustically shield the noise from adjoining properties; and because plexi-glass inserts will be installed in any or all windows in the house where the dogs are allowed in addition to the inclusion of 2" foam inserts to be placed inside the windows overnight for additional noise mitigation; and complies with Item F. because the applicant will demonstrate adequate provisions to prevent surface water quality impacts due to animal waste; and additional Conditions of Approval will be included that the drop-off and pick-up area will occur only through the rear of the property; and

WHEREAS, the Board finds that the necessary public facilities both on and off site have been reviewed by Metro Public Works and MSD whom have approved the plan; 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;

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NOW, THEREFORE, BE IT RESOLVED, that the Conditional Use Permit is hereby **APPROVED ON CONDITION** the following conditions are added to the listed requirements.

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 commercial kennel without further review and approval by the Board.
3. The maximum number of employees on site at any given time shall be 2.
4. The maximum number of dogs outside at any given time shall be 4.
5. Plexi-glass inserts will be installed in the windows to stop any additional noises to the surrounding properties, along with 2” foam inserts to be placed in overnight for extra assurance.
6. Drop-off and pick-up will occur only through the rear of the property.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

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LANDSCAPE WAIVER –Reduction of the LBA along west property line:

12:01:15 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 that the from the file of this case, the staff report, the findings in the staff report, the PowerPoint presentation, the site plan and the evidence and testimony submitted at the public hearing that the applicant is requesting a landscape waiver to reduce the required Landscape Buffer Area from 15 feet to 0 along the east property line; and

WHEREAS, the Board finds that the requested waiver will not violate specific guidelines of Cornerstone 2020 because no new construction is required and because tree canopy requirements will be met and screening will be provided around the outdoor area; 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 of the physical constraints of the property due to the existing structure; and

WHEREAS, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because of the physical constraints of the property due to the existing 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 and create an unnecessary hardship on the applicant because the applicant would have to revise the site plan which would greatly decrease the rear yard;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the landscape waiver to eliminate the required Landscape Buffer Area along the west property line.

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The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

LANDSCAPE WAIVER –Reduction of the LBA along east property line:

12:01:15 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 that the from the file of this case, the staff report, the findings in the staff report, PowerPoint presentation, the site plan and the evidence and testimony submitted at the public hearing, that the applicant is requesting a landscape waiver to reduce the required Landscape Buffer Area from 15 feet to 0 feet along the east property line; and

WHEREAS, the Board finds that the requested landscape waiver will not adversely affect adjacent property owners since no new construction will take place and the commercial property will be virtually the same; and because an 8-foot tall wood privacy fence will be maintained around the outdoor area; 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 of the physical constraints of the property due to the existing 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 would create an unnecessary hardship on the applicant because it would require the

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the landscape waiver to eliminate the required Landscape Buffer Area along the east property line.

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The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

**LANDSCAPE WAIVER—To eliminate the required VUA along the rear
property line:**

12:01:15 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 that the from the file of this case, the staff report, the findings in the staff report, PowerPoint presentation, the site plan and the evidence and testimony submitted at the public hearing, that the applicant is requesting a landscape waiver to eliminate the required Vehicular Use Area (VUA) along the rear property line; and

WHEREAS, the Board finds that the requested landscape waiver will not adversely affect adjacent property owners since no new construction will take place and the commercial property will be virtually the same; and because the area in the rear of the yard is concrete and has been in place for a number of years; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because no new construction is required; and because the area will be used for handicap parking and code compliant waste enclosure; 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 of the physical constraints of the property; and because the lot is located in a Traditional Neighborhood Form district which features long and narrow lots; and

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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 would create an unnecessary hardship on the applicant because the applicant would have to revise the site plan which would decrease the rear yard;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the landscape waiver to eliminate the required VUA along the rear property line.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. B-16514-11

Applicant/Owners: St. Martin's Brotherhood
James Wiesemann, President
1502 Winter Avenue
Louisville, Kentucky 40204

Representative: Thomas Jones Architect
Thomas Jones
2821 Pindell Avenue
Louisville, Kentucky 40217

Subject: An application for a Conditional Use Permit to allow a private non-profit club in an R-5 zoning district.

Premises affected: On property known as 1502 Winter Avenue and being in Louisville Metro.

COUNCIL DISTRICT 8—Tom Owen

Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:

Thomas Jones, Architect, 2821 Pindell Avenue, Louisville, Kentucky 40217.

Tom Ruxer, 1269 Eastern Parkway, Louisville, Kentucky 40204.

Appearances- Interested Parties:

Geoff & Julie Meehan, 1434 Winter Avenue, Louisville, Kentucky 40204.

Terra Long, Legislative Assistant to Councilman Tom Owen, 601 W. Jefferson Street, Louisville, Kentucky 40202.

Appearances Against Applicant:

Jackie Leslie, President of Original Highlands Neighborhood Association, 1322 Morton Avenue, Louisville, Kentucky 40204.

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.

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CASE NO. B-16514-11

On December 28, 2011, St. Martin's Brotherhood filed an application for a Conditional Use Permit to allow a private non-profit club in an R-5 zoning district.

On March 5, 2012, 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 March 5, 2012 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

12:13:29 Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the Conditional Use Permit request is for a catholic men's social club that was organized in 1872. He said they are proposing to add a 988 sq. ft. addition onto the existing structure. The structure will be used for Christmas, festivals and various meetings. Mr. Crumbie said he received calls from an adjacent property owner concerned about the lack of parking in the area and lighting and a call from Jackie Leslie of the Original Highlands Neighborhood Association. He said the applicant conducted a neighborhood meeting and elevations are included in the staff report. Mr. Crumbie said the new addition will be 3 feet from the street side property line. The Board must decide if the alternative landscape and buffering plan is sufficient.

SUMMARY OF TESTIMONY OF PROPONENTS:

12:19:37 Thomas Jones, the applicant's architect, said this is a non-profit club for both men and women and was established back in 1872. He said the club has family functions which collects money for various charities and used for bereavement functions. He said the lighting and tree canopy requirements have been met and will be adding 5 trees along Rubel and two along Winter Avenue. He said the request will bring the site into compliance and will be handicap accessible. He said they are requesting a modification of requirement A.

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regarding the proposed addition/building to be at least 30 feet from the property line and buffering requirements because it would take away yard space for their functions. He said St. Martin's intends to remain a good neighbor.

Tom Ruxer

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

12:23:45 Geoff & Julie Meehan said they have lived across the street from the club for the last 6 years now. He said they have complained to the club about the lack of parking due to their events and said this request will make it worse. He said the addition will allow for more meeting space with larger events. He said the applicant also qualifies for two parking space reductions because of the bus line; and was told that people could park at the St. Brigid Church parking lot a few blocks away. Mr. Meehan said on a normal day they take up all the parking along Rubel and were told that the club was going to ask the city to leave some of the on-street parking for the residences, but said the city had received no inquiry about this. He said this would be difficult to anyway. Mr. Meehan said since the neighborhood meeting in November, the proposal has doubled in size. He said they are speaking as a neutral party, but concerned with the new request. The site lighting and noise have been a bit of a nuisance issue for them.

12:29:28 Chair Jarboe asked Mr. Meehan if they've asked the club to ask their members to utilize the other church parking lot he mentioned. Mr. Meehan said yes and the parking got better for about a week. Mrs. Meehan said the area is basically residential and that they have a two year old son. She said the club is stating that the addition is just for Christmas events and meetings, but they already have festivities that include drinking and horseshoes.

SUMMARY OF TESTIMONY OF OPPONENTS:

12:31:22 Jackie Leslie, President of Original Highlands Neighborhood Association said she is the new president and the last president didn't inform them of this request. She said she would have brought more people opposed if she just hadn't found out about it. She said their three biggest concerns are the noise, parking and litter this club contributes. She asked that the Board deny the request.

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12:34:22 Member Proffitt questioned the parking requirements. Mr. Crumbie said Public Works reviewed and approved the plan.

REBUTTAL:

12:35:23 Chair Jarboe asked the applicant's representative if he had rebuttal. Mr. Jones said no. Chair Jarboe said she wanted to ask him some questions, so he returned to the podium.

12:35:43 Chair Jarboe asked what the club has done regarding the lack of parking. Mr. Jones said they pursued the off-street parking at the church, but doesn't know specifically since he is only their architect for the addition. He said he feels the organization has been a good neighbor and that they do good things for the community. Chair Jarboe asked about the litter. Mr. Jones said he cannot address this and that he is not a member of the club.

12:37:40 Member Allendorf said it looks like the case was deferred in the minutes from 1990 (page 29 of the staff report). Member Liggin said it appears from the 1990 staff report that staff said if the club has non-conforming use rights, the club would be allowed but could not expand. Member Proffitt asked if they had a CUP. Mr. Crumbie said the minutes conveyed that the Board deferred the case to allow the applicant time to apply for a CUP along with the variance. He said he doesn't know what happened from that point on, but the applicant then is not the present applicant.

BUSINESS SESSION:

12:40:12 Chair Jarboe suggested that the Board continue this case so some of the issues can be addressed by the appropriate person from the club.

BACK INTO PUBLIC HEARING:

SUMMARY OF TESTIMONY OF PROPONENTS:

12:41:54 Tom Ruxer said he's been a member of the club for 4 years and said nothing was ever pursued back in 1990. He said they want to hold more events and is when they discussed enlarging the building. He said they met with the neighbors in November. He said there is no parking along Winter Avenue after 3:00 p.m. and told the neighbors across the street that they would be glad to tell people to move their cars off the street. Chair Jarboe asked if the club has a Board. Mr. Ruxer said yes. Chair Jarboe asked if he was a Board member of

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the club. Mr. Ruxer said no. Member Liggin asked Mr. Ruxer what type of charity work they do. Mr. Ruxer said they give tuition assistance for Catholic high schools and raise money for different organizations.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

Terra Long, Legislative Assistant to Councilman Tom Owen, said they would like to know about the every day activities of the club, who will pick up the trash, how often the dumpster will be emptied and address the parking issue considering there will be more people at the club with the proposed expansion.

BACK INTO BUSINESS SESSION:

12:46:30 Chair Jarboe said a member of the Board for the club needs to be present to answer questions before they make a motion. Member Allendorf said if they never obtained a CUP, they've been in violation since 1990. John Baker, the Board's legal counsel said there was a lapse in the regulations so they could still consider the historical use of the property. Member Proffitt said whether they obtained a CUP or not, they are asking for one now. He said the plan does not show a place for the dumpster. Mr. Baker said the Board might need more information about what goes on at the club from day to day, so they could continue. Member Proffitt said they should be clear in the motion what they want at the next hearing. Chair Jarboe said to ask someone from the club to be present who handles the operational issues (trash, parking etc.).

12:50:36 After the public hearing in open business session, Member Allendorf moved to continue the public hearing to March 19, 2012 so someone from the organization could be present to address the parking issue, picking up litter, trash collection pick up, hours of operation and what goes on daily at the club; and was seconded by Member Proffitt for discussion.

DISCUSSION:

12:51:11 Member Proffitt said Member Allendorf should request an officer or chairman of the Board of the club to attend.

12:51:23 Member Allendorf then **amended** his motion that an officer, chairman, CEO of the club be present to address the issues he previously stated and was seconded by Member Proffitt and the following resolution was adopted:

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RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby **CONTINUE** Case No. B-16514-11 to **MARCH 19, 2012** to allow an officer, chairman or CEO of the club to be present to address issues pertaining to lack of parking, picking up liter, trash collection pick up, hours of operation and what goes on at the club on a day to day basis.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

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NEW BUSINESS:

CASE NO. B-16515-11

Applicant(s): Houchens Industries
Donald McCombs
700 Church Street
Bowling Green, Kentucky 42101

Owner(s): EPI Investments, LLC
Robert Loeffler, Managing Member
229 Sequoya Road
Louisville, Kentucky 40207

Attorney: Bill Bardenwerper
Bardenwerper, Talbott & Roberts, PLLC
1000 N. Hurstbourne Pkwy., Suite 200
Louisville, Kentucky 40223

Subject: An application for a Conditional Use Permit and Category 3 Review to allow off-street parking in an R-4 zoning district; and landscape waivers.

Premises affected: On property known as 301 Shelby Station Drive and being in Louisville Metro.

COUNCIL DISTRICT 19—Jerry Miller
Staff Case Manager: Jon Crumbie, Planner II

Appearances for Applicant:
Bill Bardenwerper, Attorney, 1000 N. Hurstbourne Parkway, Suite 200, Louisville, Kentucky 40223; who submitted a booklet with various pictures and exhibits prior to the public hearing.

John Addington, BTM Engineering, 3001 Taylor Springs Drive, Louisville, Kentucky 40220.

Appearances- Interested Parties:
Councilman Jerry Miller, 601 W. Jefferson Street, Louisville, Kentucky 40202.

Appearances Against Applicant:
No one.

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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 & Design Services, located at 444 South Fifth Street, Suite 300, Louisville, Kentucky.

On November 21, 2011, Houchens Industries filed an application for a Conditional Use Permit and Category 3 Review to allow off-street parking in an R-4 zoning district; with three landscape waivers.

On March 5, 2012, 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 March 5, 2012 proceedings available in the Planning and Design Services Office.

SUMMARY OF STAFF PRESENTATION:

12:58:06 Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said there are related cases to the subject site listed on page 2 and 3 of the staff report; and that the request meets the standard of review. He said the request will be compatible and blend with the area.

SUMMARY OF TESTIMONY OF PROPONENTS:

1:04:26 Bill Bardenwerper, the applicant's attorney, said the corner of the property is pre-plan certain and that this has been a highly desirable site for years. He said there are nursing facilities with patio homes, a Thornton's and Papa Johns Pizza nearby. He said Councilman Miller is here today to support the proposal and make sure there's connectivity. He said they held a neighborhood meeting and some wanted to know if the tree buffer will be retained, which, he said most of it will. He said they previously proposed a 40,000 sq. ft. grocery store, but this fell through. The current applicant, Houchens Industries, is a large company throughout the United States and is

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planning on building more than 20 more grocery stores over the next several years. He said their grocery stores are not as large as others, but people can still buy most everything without paying convenient store prices. He said a restaurant is also proposed, but not sure who yet. They will also be making improvements along US 60 adding a dedicated left turn lane with nice screening. The sidewalk will be along the inside so they won't disrupt the tree buffer area. He said the building materials and color scheme is similar to what's in the area.

1:16:29 John Addington, the applicant's other representative, discussed the waiver requests. He said the requests are necessary due to some parking which encroaches into the VUA/LBA areas along Shelby Station Drive. He said they will be saving most of the large tree mass and the trees along Shelbyville Road. The dumpster will be screened with a wall with additional plantings done on Shelby Station Drive and Beckley Station Road.

1:21:37 Member Proffitt asked how the water runoff will be contained so it doesn't flow into the lakes. Mr. Bardenwerper said there's already an independent detention basin in place from the nursing home development; and the silt basin has to be maintained until another is built. Member Proffitt questioned why they just didn't rezone the property. Mr. Bardenwerper said they considered this and were pursuing the change in zoning with the previous larger grocery store. He said the current proposed grocery stores are smaller in scale and seller has been waiting a long time to sell. Chair Jarboe said she remembers the area residents being concerned with silt going into the lakes for a previous case. Mr. Bardenwerper said that applicant contributed money to maintain the lake; and that MSD have approved their plan. Member Liggin said it still seems to make more sense to rezone the property. Mr. Bardenwerper said acquiring a CUP is a shorter process and very precise, so anything else they might do would have to come back before the Board.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

1:29:29 Councilman Jerry Miller, said they addressed the drainage and that he walked the property and saw how the drainage basin was rebuilt. He said he walked back to the lake which looked healthier and that the sediment had built up over many years. He said MSD is aware of this but didn't have any concerns. Councilman Miller said Houchens Industries is a good company and looks forward to them being part of the 19th district. He said he visited one of their stores in Bowling Green and said they build quality stores that fit well within the

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community. He said the stores have a rural feel and people won't have to drive as far for groceries or have to pay convenient store prices. He said he is also happy they have agreed to put in the turn lane since there's a popular water park nearby which has increased the traffic in the area. He said this will be a positive addition to the area.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

BUSINESS SESSION:

1:34:19 Member Proffitt said he used to shop at Houchens a long time ago and that they are an excellent company and a huge part of the Bowling Green community. He said he was concerned about the water runoff, but appears this has been addressed. Member Proffitt said it's nice that they're preserving the trees with the interior sidewalk.

1:36:51 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, the PowerPoint presentations and the evidence and testimony submitted at the public hearing that the applicant is requesting a Conditional Use Permit to allow off-street parking in an R-4 zoning district; and

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

WHEREAS, the Board finds that the proposal complies with Guideline 1-Community Form because this property is Suburban Neighborhood, which is characterized by predominantly residential uses, yet may contain, all appropriate locations, neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services; Guideline 1 says that these neighborhood centers should be at a scale that is appropriate for nearby neighborhoods; and

WHEREAS, the Board finds that the proposal complies with Guideline 1 because this is a retail center very small in size, actually containing only 26,170 square feet of building area, which is smaller than the original grocery store originally

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planned for this site; total parking is between the minimum and maximum allowed by the Land Development Code (LDC); and all of the uses mentioned are ones that are appropriate for neighborhood retail centers because they are the type of uses frequented on a daily basis by residential customers; and

WHEREAS, the Board finds that this site is surrounded by a variety of residential neighborhoods, including English Station, Copperfield, the larger community that is generally known as Landis Lakes, Lake Forest, Beckley Woods and others; in fact, there is a significant residential population with all forms of housing – standard single family, condominiums and apartments – located within the immediate vicinity that will support this proposed retail center; and

WHEREAS, the Board finds that as stated, this is a pre-“Plan Certain” site, long ago zoned to the C-1 zoning district, the only discretionary approval requested is for a Conditional Use Permit for parking that will serve the proposed retail center; and because the proposed retail center can only be evaluated in the context of the LDC, because it is a Pre-Plan Certain site; consequently, the Comprehensive Plan does not apply to the already zoned portion of the property; but the Comprehensive Plan does apply to the Conditional Use Permit being requested and is referenced in the context of the overall development to understand how the parking lots relate to the retail center where C-1 zoning already exists; the parking lots will remain R-4 with a Conditional Use Permit; further, because there is direct access off US 60 into the C-1 portion of the site, C-1 zoning is not required for the parking lot portion of the site where alternative accessed and much of the parking will be located; and again, the R-5 CUP area is the only portion of the site that is subject to discretionary Comprehensive Plan review, but it makes sense to discuss the overall site when speaking to the Comprehensive Plan for contextual purposes; and

WHEREAS, the Board finds that the proposal complies with Guideline 2— Centers which promote an efficient use of the land and investment in existing infrastructure, to lower utility costs by reducing the need for extensions; to reduce commuting time and transportation related air pollution; to provide an opportunity for neighborhood centers and marketplaces that includes a diversity of goods and services; to encourage vitality and a sense of place; and to restrict individual or isolated commercial uses from developing; the proposed retail center complies with all of these Intents of this Guideline for these, among other, reasons set forth below; first, utilities already exist in the area and can be extended to this site

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without significant cost and effort; second, because as stated above, lots of residential housing exist in the immediate vicinity, these residents will be able to purchase these goods and services, particularly grocery related that are not presently available east of the Snyder Freeway, in close proximity to their homes, thus reducing commuting time and transportation-related air pollution; third, this is a neighborhood center that includes, as described above, a diversity of goods and services; fourth, the design of this center, which is already zoned C-1 commercial, is one that has all of the attributes of a neighborhood center; the buildings are small and are located all over the site; they will relate well one as to the other; although there is a lot of activity included within this six-acre site, parking and circulation have been designed to move traffic throughout the center safely and efficiently; and

WHEREAS, the Board finds that Policies 1, 2, 3, 4 and 5 of this Guideline address the location of the activity centers and the desirability that they be compact and include a mixture of uses; this proposed retail center complies with these Policies of this Guideline because this is a Suburban Neighborhood which, as explained above, expressly permits retail centers in locations of this kind; this is already an activity center by virtue of the fact that retail exists across from this site along US 60 and immediately west of this site as well all the way to the Snyder Freeway; again, it is a pre-“Plan Certain” site, meaning that it was rezoned decades ago to C-1 zoning district; as shown on the detailed district development plan and explained above, the proposed retail buildings are scattered around this small site, yet compact, largely because of the small amount of acreage involved; and the mixture of uses are, as described, diverse; and

WHEREAS, the Board finds that the proposal complies with Policies 7, 8, 9 and 10 of this Guideline pertaining to the types of uses in residential areas and how parking relates to those uses; the proposed retail center complies with these Policies of this Guideline because, as stated, all of the specified uses are very desirable for a neighborhood; they will serve the day to day needs of nearby residents; this center is located at an intersection of a major arterial and significant collector level road (US 60 and South Beckley Station Road); and the parking lot is designed to address all of the parking needs of the proposed use, yet not result in too much parking or so little as to require a parking waiver; and

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WHEREAS, the Board finds that the proposal complies with Policies 11, 12, 13, 15 and 16 of this Guideline pertaining to the design of centers, including shared parking and access and accommodation of alternative transportation modes; as shown on the detailed district development plan, parking is shared throughout the development by the various users described; parking will also be adequate under provisions of the LDC; the main focal point will be the corner of Beckley Station Road and US 60, which is where the main entrance to the grocery store will be; and the grocery store, which is the main tenant of this site, will be set back significantly distances from US 60, which will be nicely landscaped in accordance with the LDC and from South Beckley Station Road where an existing tree buffer will remain; and

WHEREAS, the Board finds that the proposal complies with Guideline 3—Compatibility, because the intent is to allow a mixture of land uses near each other as long as they are designed to be compatible with each other; to prohibit the location of sensitive land uses in areas where accepted standard for noise, lighting, odors or similar nuisances are violated or visual quality is significantly diminished; and to preserve the character of existing neighborhoods; this proposal complies with all of these Intents of this Guideline because, as stated, what is proposed area a mixture of neighborhood serving land uses, all of which are designed in conformance with the LDC which itself addresses many of the nuisance and visual quality issues described in this Guideline; and for reasons described above and as shown on the detailed district development plan, this center will not only preserve, but also enhance, nearby neighborhoods; and

WHEREAS, the Board finds that the proposal complies with Policies 1 and 2 of this Guideline pertaining to design and compatibility, including a consideration of building materials; elevation renderings for the principle structure, the grocery store, are included with this application; the designs of the other buildings will be determined at future points in time; but it is important again to remember that the already C-1 zoned pre-“Plan Certain” portion of the site only has to satisfy the requirements of the LDC, not of the Comprehensive Plan, because it is already zoned and not subject to Comprehensive Plan review; all of the buildings, as stated, will be LDC compliant; and

WHEREAS, the Board finds that the proposal complies with Policies 4, 5, 6, 7, 8, 9 and 21 of this Guideline pertaining to impacts and the means of mitigating any adverse consequences of those impacts; the LDC addresses most impacts

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nowadays, such as lighting which were never addressed prior to the new Cornerstone 2020 LDC; likewise, visual impacts are addressed by virtue of the LDC design standards; the parking lot itself, which, as stated above, is the only portion of this application that is actually subject to Comprehensive Plan review, is designed with lots of interior and perimeter landscaping, all minimally in compliance with the LDC and probably even in excess thereof; and this will be an attractive looking center, including the parking lots within the Conditional Use Permit area; and

WHEREAS, the Board finds that the proposal complies with Polices 21, 22, 23, and 24 of this Guideline pertaining to issues of transition, buffers, screening, setbacks and impacts of parking, loading and delivery; this retail center complies with all of these Policies of this Guideline for all of the reasons set forth above, including the very evident parkway buffer setback along US 60, the retention of existing trees along a stretch of South Beckley Station Road, and lots of internal landscaping included in all parking areas, especially the parking areas that are part of the Conditional Use Permit application permit subject to discretionary review; and the Elmcroft Senior Living facility and Copperfield neighborhood are the residential uses that are especially affected, and they will be protected by the screening, buffering and landscaping described on the plan and set forth hereinabove; and

WHEREAS, the Board finds that the proposal complies with Guidelines 4 and 5 – Open Space and Natural Areas/Scenic and Historic Resources because these two guidelines are not particularly relevant to this site because it is small, just under 6 acres, and because most of the site is already zoned commercial and not subject to Comprehensive Plan discretionary review; consequently, the Conditional Use Permit portion of the site, which is where parking and several points of access are located, are even smaller in size than the balance of the site and would not be the subject of open space requirements; they do not contain natural areas or historic resources; nevertheless, it is worth of note that US 60 is a “parkway”, where the LDC “parkway” setbacks are provided; additionally, South Beckley Station Road has a significant tree buffer along a major portion of its west side, and that will be retained in part as a way of screening residents in the Copperfield neighborhood; and on Shelby Station Road, lots of landscaping will exist along the perimeters of the proposed parking lots and within landscape islands within the parking lots themselves; and

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WHEREAS, the Board finds that the proposal complies with Guideline 6— Economic Growth and Sustainability which are to insure the availability of necessary usable land to facilitate commercial development, and to reduce public and private costs for land development; and because this proposed retail center complies with these Intents of this Guideline because this land was long ago rezoned to the C-1 zoning district and thereby set aside as an appropriate location for a neighborhood retail center; the less than three acres adjacent to this already C-1 zoned site necessary for parking is adjoined on two sides by US 60 (a major arterial) and South Beckley Station (a significant collector level road) and on the other two sides by the existing Oaklawn facility; this is a good site for a neighborhood retail center; and most infrastructure is already located nearby, including sanitary sewers and lots of good road access; and

WHEREAS, the Board finds that the proposal complies with Policies 2 and 6 of this Guideline pertaining to the provision of adequate access between employment centers and population centers and the appropriate place to locate activity centers; as stated, this proposed retail center complies with these Policies of this Guideline because there are multiple points of access, including off US 60 and off the internal Shelby Station Drive, and this already mostly C-1 zoned property was long ago designated an activity center when the rezoning took place; additionally, as stated, this is the eastern most location of retail that starts at the Snyder Freeway and travels east to Beckley Station Road to serve a significant residential population in this growing east Jefferson County area; and

WHEREAS, the Board finds that the proposal complies with Guideline 7 and 8— Circulation and Transportation Facility Design because the intent is to provide for safe and proper functioning street networks; to insure that new developments do not exceed the carrying capacity of streets; to insure that internal and external circulation of all new developments provide safe and efficient travel movements by all types of transportation; to address congestion and air quality issues; to insure that transportation facilities are compatible with the form district; to provide for safe and convenient accommodation of the special mobility requirements of the elderly and physically challenged; to protect parkways and streetscapes; and to provide safe and efficient accommodations for transit, pedestrians and bicyclists; this proposed retail center complies with the Intents of Guideline 7 and 8 because the overall design of this center, and especially points of access, have taken into account inputs from the Metro Department of Public Works and KTC; this is especially true of the right turn in off of US 60, which has undergone

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considerable discussion and redesign with Metro Works and KTC involvement; furthermore, BTM Engineering, the land planning, engineering and traffic consultant on this retail center, was engaged in traffic engineering studies along the US 60 corridor for years; BTM has consulted its own studies to assure that this proposed retail center, which will capture traffic already existing on the referenced street systems (US 60 and Beckley Station Road), does not exceed road capacities; the internal traffic movements have been reviewed by Metro Works and KTC; also, as stated above, locating this retail center in close proximity to such a large support population will reduce commuter time and traffic related air pollution; as always, accommodations are made for the special mobility requirements of elderly and physically challenged populations; US 60, as a parkway, has been respected in terms of setback and landscape design; and transit, bicyclists and pedestrians area accommodated with sidewalks, bike racks and the ability for transit to circulate in and out if it is available in this area; and Policies 1 and 2 of Guideline 7 pertain to the traffic impacts of new development; again, because the already C-1 zoned corner location is pre-“Plan Certain” site, it is not the subject of discretionary, Comprehensive Plan review; however, because the Conditional Use Permit portion of the site is the subject of Comprehensive Plan Review, once again everything is being looked at in the context of overall retail center for purposes of this Compliance Statement; in that regard not only has BTM Engineering served as traffic consultant for many projects, including for KTC with respect to traffic all up and down the US 60 corridor and within the Snyder Freeway interchange, BTM has also looked at this overall project in relation to other traffic consulting work that it has done for the larger area; and it has done specific trip generation and distribution numbers for this particular proposed retail center which have been submitted to Public Works and KTC for review in the context of the larger traffic situation and prior BTM traffic studies; Metro Works has give this application and detailed district development plan its preliminary stamp of approval; and

WHEREAS, the Board finds that the proposal complies with Policy 9 of Guideline 7 pertaining to the dedication of additional right-of-way, which the detailed district development plan shows will be added to Beckley Station Road; ad there appears to be adequate right-of-way already existing along US 60; and

WHEREAS, the Board finds that the proposal complies with Policies 10, 11, 12, 13, 14, 15 and 16 of Guideline 7 pertaining to the adequacy of parking, various access issues, turning movements, connectivity and so on; Metro Public Works

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has reviewed this plan already and stamped it for preliminary approval prior to docketing for BOZA review; that assures that what BTM Engineering already knows and has included in this plan will comply with all Metro Public Works design standards as well as these particular Policies of this Guideline; BTM Engineering has designed hundreds, probably thousands, of sites and knows these regulations as well as the requirements of Metro Public Works; and it has taken into account all of these requirements in the design of this retail center, thus, demonstrating compliance with these Policies of this Guideline; and

WHEREAS, the Board finds that the proposal complies with Policy 6 to Parkways, once again, US 60 is a Parkway, and the setback and landscape requirements for Parkways has been satisfied; and

WHEREAS, the Board finds that the proposal complies with Policies 8, 9, 10 and 11 of Guideline 8 all address many of the same Policies already mentioned in Guideline 7, notably stub access, site distances and internal circulation; and the detailed district development plan filed with this application assures good connectivity to the Oaklawn facility, good connectivity from one retail use to the other, safe internal access, adequate site distances and so on, again all in compliance with these Policies of this Guideline; and

WHEREAS, the Board finds that the proposal complies with Guideline 9—Bicycle, Pedestrian and Transit which pertain to the accommodation of alternative modes of transportation – notably transit, pedestrian and bicyclists; as required by the LDC, sidewalks and bike racks are provided; if TARC service is available to the area, it probably is already stopping somewhere in this area long US 60 or along Shelby Station Drive and probably will continue to do so; however, transit service is not widely used in these outlying suburban areas; and

WHEREAS, the Board finds that the proposal complies with Guideline 10—Flooding and Stormwater which are applicable to this proposed retail center pertaining to stormwater management; the proposed retail center and accompanying parking comply with these Intents and Policies because the detention will be provided within an existing basin located within the Oaklawn facility; drainage patterns are shown on the detailed district development plan filed with the application showing which way drainage will move into newly designed storm pipes; and catch basins will be included in the parking lots of this site, which will accept drainage which will then flow into the new pipe system to

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the existing Oaklawn detention basin before it outlets from the overall larger site into the larger drainage system; and

WHEREAS, the Board finds that the proposal complies with Guideline 11—Water Quality because it addresses the need to assure continued water quality; the Intents and Policies are addressed, as with all new projects, through construction plan review against MSD’s Soil Erosion and Sedimentation Control Guidelines; and construction on this site will comply with those requirements; and

WHEREAS, the Board finds that the proposal complies with Guideline 12—Air Quality because a development of this kind, to minimize transportation related negative impacts on air quality; that is accomplished, as stated above, by way of reducing vehicle miles traveled and commuting times and distances; by locating a retail activity center such as this next to existing retail centers and in close proximity to a burgeoning residential population, transportation related air quality is not made worse; and if anything, it might be made better because people residing in the area will not need to travel through the congested Snyder Freeway Interchange for as many goods and services as they must currently travel through that interchange to access; and

WHEREAS, the Board finds that the proposal complies with Guideline 13—Landscape Character because it assures that adequate landscaping is provided throughout new developments; the LDC includes tree canopy protection requirements and landscaping requirements for both perimeter landscape areas and internal parking lot landscape areas; the LDC requirements relating to these things are fully shown on the detailed district development plan; and interior landscape areas (ILA’s) are provided in excess of LDC requirements; and

WHEREAS, the Board finds that the proposal complies with Guidelines 14 and 15—Infrastructure and Community Facilities because they assure that road systems, water supplies, sewer treatment plants, fire stations, schools and other public infrastructure and facilities are adequate to serve a given land use proposal; once again, most of this application is not even subject to discretionary Comprehensive Plan review; as stated above, only the Conditional Use Permit portion of the application which includes some of the necessary parking is subject to discretionary Comprehensive Plan review; however, as stated, for purposes of this Compliance Statement, the entire retail center is reviewed contextually; in that regard, as discussed above, adequate roads already serve

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this site; to the extent that additional road improvements are needed along Beckley Station Road, they will be provided as shown on the detailed district development plan submitted with this application; widening will occur along South Beckley Station Road so that for traffic moving south to north, an additional lane will be provided; that way vehicles turning south to west will have a dedicated left-hand turning lane, if finally decided by Metro Works; the right hand lane will be reserved for through and right turn movements; road improvements will also be made along US 60 – some as part of what Councilman Jerry Miller plans to add in terms of a right turning lane from eastbound US 60 onto South Beckley Station Road and some by this applicant in order to provide access into the site; fire protection is available via the Eastwood Fire District and/or the Middletown Fire Department, s this site is located approximately equal distance of their fire stations along US 60 and along Urton Lane at US 60; and new public schools have been built or expanded in this area, most notably, this area is especially served by an abundance of popular private schools; Christian Academy and St. Patrick Catholic parish school; and

WHEREAS, the Board finds that the proposal complies with all of the specific standards A-F to obtain the Conditional Use Permit requested

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.

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2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for off-street parking without further review and approval by the Board.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

LANDSCAPE WAIVER—EAST PROPERTY LINE:

1:39:28 After the public hearing, in open business session, on a motion by Member Proffitt, seconded by Member Liggin, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations, the site plan and the evidence and testimony submitted at the public hearing that the applicant is requesting a landscape waiver to reduce the required Landscape Buffer Area (LBA) along the east property line from the required 25 ft. to 20 ft; and

WHEREAS, the Board finds that the requested landscape waiver will not adversely affect adjacent property owners because the area is along South Beckley Station Road and the nearest residential uses are to the east at least 100 feet away; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020, Community Form/Land Use Guideline 3: Compatibility A.1. because the proposal is generally compatible within the scale and site design of nearby existing development and with the form district pattern of development; and

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WHEREAS, the Boar finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because ample landscaping will be provided on site that will meet or exceed the Land Development Code; 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 applicant would not be able to construct the parking as shown and would have to submit a new plan that would reduce parking; and

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the landscape waiver to reduce the Landscape Buffer Area along the east property line to 20 feet.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

LANDSCAPE WAIVER –Between the C-1 and R-4 zoning boundaries:

1:39:28 After the public hearing, in open business session, on a motion by Member Proffitt, seconded by Member Liggin, the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations, the site plan and the evidence and testimony submitted at the public hearing that the applicant is requesting a landscape waiver to eliminate the required Landscape Buffer Area between the C-1 and R-4 zoning boundaries; and

WHEREAS, the Board finds that the requested landscape waiver will not adversely affect adjacent property owners because the area is along the internal private road known as Shelby Station Drive; and

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WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020, Community Form/Land Use Guideline 3: Compatibility, A.1, because the proposal is generally compatible within the scale and site design of nearby existing development and with the form district 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 ample landscaping will be provided on site that will meet or exceed the Land Development Code; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant reasonable use of the land because the applicant would have to revise the parking arrangement and submit a new plan;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **GRANT** the landscape waiver to eliminate the required Landscape Buffer Area between the C-1 and R-4 zoning boundaries.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

LANDSCAPE WAIVER—PARKING AND DUMPSTER

1:40:48 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, the PowerPoint presentations, the site plan and the evidence and testimony submitted at the public hearing that the applicant is requesting a landscape

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waiver to allow proposed parking and dumpster to encroach into the required Vehicular Use Area (VUA): and

WHEREAS, the Board finds that the requested landscape waiver will not adversely affect adjacent property owners because the dumpster has been placed in an area that is accessible; and because the proposed round-a-bout will also help mitigate the location on the dumpster; and

WHEREAS, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020, Community Form/Land Use Guideline 3: Compatibility, A.1., because the proposal is generally compatible within the scale and site design of nearby existing development and with the form district 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 ample landscaping will be provided on site that will meet or exceed the Land Development Code; and

WHEREAS, the Board finds that the strict application of the provisions of the regulation would deprive the applicant reasonable use of the land; and because the applicant would not be able to construct the parking/dumpster enclosure as shown and would have to submit a new plan;

NOW, THEREFORE, BE IT RESOLVED, the Board does hereby **GRANT** the landscape waiver to allow the proposed parking and dumpster to be 0 feet into the required VUA/LBA.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING:
Fishman and Wagaman.

Members Grisanti

ABSTAINING: No one.

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CATEGORY 3 REVIEW:

1:42:01 After the public hearing, in open business session, on a motion by Member Proffitt, seconded by Member Liggin, the following resolution was adopted:

WHEREAS, the Board finds, from the file of this case, the staff report, the site plan, the PowerPoint presentation(s); the renderings, the evidence and testimony submitted at the public hearing, that the applicant is requesting a Category 3 Review for the construction of a 10,500 sq. ft. grocery store with drive-thru on the east side for an interior restaurant, a combined retail and pharmacy building, a freestanding branch bank and freestanding restaurant and that all four buildings are anticipated to include drive-thru facilities;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **APPROVE** the Category 3 plan.

The vote was as follows:

YES: Members Liggin, Jarboe, Allendorf and Proffitt.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
Fishman and Wagaman.**

ABSTAINING: No one.

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The meeting adjourned at 1:43 p.m.

CHAIRPERSON

SECRETARY