

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

**MAY 19, 2014**

A meeting of the Louisville Metro Board of Zoning Adjustment was held at 8:50.A.M. on Monday, May 19, 2014, 514 West Liberty Street, Old Jail Building, Old Jail Court Room, Louisville, Kentucky.

**Members present were:**

David Proffitt, Chairperson  
Mike Allendorf, Vice Chairperson  
Rosalind Fishman, Secretary  
Betty Jarboe  
Dean Tharp  
Paul Bergmann

**Members absent:**

Frederick Liggin

**Staff members present were:**

Emily Liu, Director, Planning & Design Services  
John Carroll, Legal Counsel  
Jessica Wethington, Planning Information Specialist  
Steve Hendrix, Planning Supervisor  
Jon Crumbie, Planner II  
Latondra Yates, Planner II  
Chris Brown, Planner II  
Matthew Doyle, Planner I  
Sherie Long, Landscape Architect  
Lee Wells, Planning Technician  
Beth Stevenson, Management Assistant

The following cases were heard:

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**SWEARING IN PAUL BERGMANN**

John Carroll, Assistant County Attorney, swore in Paul Bergmann as a new member of the Louisville Metro Board of Zoning Adjustment.

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**APPROVAL OF THE MINUTES:**

Approval of the minutes of the meeting held on April 21, 2014.

On a motion by Member Tharp, seconded by Member Fishman, the minutes of the meeting conducted on April 21, 2014 were approved.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Tharp and Proffitt.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: Members Allendorf and Bergmann.**

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**BUSINESS SESSION:**

**NON-HEARING VARIANCE**

**CASE NO. 14VARIANCE1031**

**Applicant:** Inman Home Services, LLC  
Phil Inman  
137 N. Bellaire Avenue, #1  
Louisville, Kentucky 40206

**Owner:** Teresa Greer  
2210 Payne Street  
Louisville, Kentucky 40206

**Subject:** An application for a non-hearing variance from the Land Development Code to allow a residential structure to encroach into the side property line resultant of a rear one story addition to the existing home.

**Premises affected:** On property known as 2210 Payne Street and being in Louisville Metro.

**COUNCIL DISTRICT 9—Tina Ward-Pugh**

**Staff Case Manager: Regina Thomas, Associate Planner**

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

On May 19, 2014, at a meeting of the Board, this case was presented to the Board in open business session pursuant to KRS 100.241 and KRS 100.243. A drawing showing the premises affected and the existing structure was presented to each Board member.

On a motion by Board Member Tharp, seconded by Member Fishman, the following resolution was adopted:

**WHEREAS**, the Board finds based on the file of this case including the staff report and plan that the applicant requests a variance to allow a residential structure to encroach into the west side property line resultant of a rear one story addition to the existing home; and

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**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because a wood privacy fence will be constructed for public safety and privacy; and because the addition will align with the existing home; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity because many other homes in the area have additions to their homes; and because the applicant will use similar construction materials and matching siding as the existing house; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the addition will not be adjacent to exterior windows of the neighboring properties nor will there be side windows on the addition, thus not impeding upon the neighbors privacy; and because a wood privacy fence will be constructed for public safety and privacy; and because the first tier property owners have signed a Non-Hearing Consent form and are not opposed; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because other homes in the area have similar encroachments; and because the addition will follow the existing line of the house; and

**WHEREAS**, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the house was originally built in 1900 per PVA records; and because other homes in the area were built during the same period of time in the same location pattern, which took place prior to the purchase of the new homeowner; and because most additions to homes in this area will violate the Land Development Code because the homes were built closer together than the current regulation allows; 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 have the opportunity to expand the existing home to accommodate an art studio for hobby; and

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**CASE NO. 14VARIANCE1031**

**WHEREAS**, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought because the house was constructed prior to the current adoption of the zoning regulations; and without the variance would not allow the owner to expand her existing living space to accommodate an art studio;

**NOW, THEREFORE, BE IT RESOLVED**, that the variance is hereby **APPROVED** to allow a residential structure to be 1.48 feet from the west property line;

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

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Allendorf, Tharp, Bergmann and Proffitt.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1020**

**Applicant:** Prestige Builders  
Christopher Eldridge  
12488 LaGrange Road  
Louisville, Kentucky 40241

**Owner:** Joe Pepper  
P.O. Box 805  
Prospect, Kentucky 40059

**Representative:** MPSL Group  
Joe Scannell  
3501 Arrow Wood Court  
LaGrange, Kentucky 40031

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

**Premises affected:** On property known as 11801 Woodland Road and being in the City of Anchorage.

**COUNCIL DISTRICT 17—Glen Stuckel  
Staff Case Manager: Sherie Long  
(CONTINUED FROM APRIL 21, 2014)**

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.

The recording of this hearing will be found on the DVD of the May 19, 2014 proceedings.

**DISCUSSION:**

Chair Proffitt announced that this case has been withdrawn by the applicant.

No vote required.

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1028**

**Applicant/Owner:** Chamberlain Crossings  
Jim Calvery, Agent  
6060 Dutchmans Lane  
Louisville, Kentucky 40205

**Representative:** Land Design & Development  
Kevin Young  
503 Washburn Avenue  
Louisville, Kentucky 40222

**Project:** Chamberlain Crossing Business Park

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

**Premises affected:** On property known as 2500 Chamberlain Crossing Drive and being in Louisville Metro.

**COUNCIL DISTRICT 17—Glen Stuckel**  
**Staff Case Manager: Matthew Doyle, Planner I**

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

Jim Calvery, 6060 Dutchmans Lane, Louisville, Kentucky 40205.

**Appearances Interested Party:**  
No one.

**Appearances Against Applicant:**  
No one.

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



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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1028**

On March 31, 2014, Chamberlain Crossings filed an application for a variation from the requirements of the Land Development Code to allow a proposed building to encroach into the required street side yard setback.

On May 19, 2014, 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 May 19, 2014 proceedings.

**SUMMARY OF STAFF PRESENTATION:**

Staff case manager, Matthew Doyle gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing a 78,400 sq. ft. warehouse/office building in the Chamberlain Crossing Business Park. The building requires a variance because it encroaches into the required 25 ft. street side yard setback along Chamberlain Crossing Drive. Mr. Doyle said the variance appears justified based on staff's analysis in the standard of review.

**SUMMARY OF TESTIMONY OF PROPONENTS:**

Kevin Young, the applicant's representative, said it's a minimal encroachment and explained that they will be moving the access for trucks to unload near the railroad tracks.

Jim Calvery, the applicant's agent, said the previous plan was never constructed due to the downturn in the economy. He said they previously had an agreement with the neighbors and planted spruce trees which have matured.

**SUMMARY OF TESTIMONY OF INTERESTED PARTIES:**

No one.

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**CASE NO. 14VARIANCE1028**

**SUMMARY OF TESTIMONY OF OPPONENTS:**

No one.

**BUSINESS SESSION:**

Member Fishman said she likes the change in access; and that they previously landscaped the property.

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance of Section 5.3.4.D.3.a of the Land Development Code to allow a proposed building to encroach into the street-side yard setback; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since safe pedestrian access is provided from Collins Lane to the building entrance; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since the proposed encroachment is located along the private access easement serving the Chamberlain Crossing Business Park; and because the public right-of-way along Collins Lane where the proposed building maintains the required front setback and will be adequately screened; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since the proposed encroachment is located along the private access easement serving the Chamberlain Crossing Business Park; and because the public right-of-way along Collins Lane where the proposed building maintains the required front setback and will be adequately screened; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the proposed encroachment is negligible relative to the footprint of the proposed building that is maintaining the required street-side yard setback; and

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**WHEREAS**, the Board finds that the variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone since the site contains a curvilinear private access easement serving the business park; and

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land since the proposed encroachment is negligible relative to the footprint of the proposed building that is maintaining the required street-side yard setback; 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;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the variance to allow the proposed building to be 10 feet from the street-side property line along Chamberlain Crossing Drive.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Tharp, Allendorf, Bergmann and Proffitt.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1030**

**Applicant/Owner:** Addyworld, LLC  
Andy Blieden  
1201 Story Avenue, Ste. 100  
Louisville, Kentucky 40206

**Representative:** Kelli Jones  
Sabak, Wilson & Lingo  
608 S. Third Street  
Louisville, Kentucky 40202

**Project Name:** Mellow Mushroom

**Subject:** An application for a variance from the Land Development Code to allow the raised seating area to encroach 1.25' into the required 6' side yard to the southeast adjacent to residential use; and a landscape waiver to allow the raised seating area to encroach less than 1' into the required 5' Vehicular Use Area and Landscape Buffer Area (VUA/LBA) between the proposed drive aisle and adjacent 1<sup>st</sup> floor residential use to the southeast; and a landscape waiver to not provide the required VUA and LBA buffer trees between the proposed drive aisle and adjacent 1<sup>st</sup> floor residential use to the southeast.

**Premises affected:** On property known as 1023-1025 Bardstown Road and being in Louisville Metro.

**COUNCIL DISTRICT 8—Tom Owen**

**Staff Case Manager: Christopher Brown, Planner II**

**Appearances for Applicant:**

Kelli Jones, 608 S. Third Street, Louisville, Kentucky 40202; who presented a PowerPoint presentation.

**Appearances Interested Party:**

No one.

**Appearances Against Applicant:**

No one.

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1030**

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

On April 11, 2014, Addyworld, LLC filed an application for a variation from the requirements of the Land Development Code to allow the raised seating area to encroach 1.25' into the required 6' side yard to the southeast adjacent to residential use; and a landscape waiver to allow the raised seating area to encroach less than 1' into the required 5' Vehicular Use Area and Landscape Buffer Area (VUA/LBA) between the proposed drive aisle and adjacent 1<sup>st</sup> floor residential use to the southeast; and a landscape waiver to not provide the required VUA and LBA buffer trees between the proposed drive aisle and adjacent 1<sup>st</sup> floor residential use to the southeast..

On May 19, 2014, 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 May 19, 2014 proceedings.

**SUMMARY OF STAFF PRESENTATION:**

Staff case manager, Chris Brown gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is proposing to construct a 6,400 SF, two-story restaurant on a vacant site along Bardstown Road. He said the second story will include a 627 SF outdoor dining area along the southeast portion of the property incorporating a plant screening. The Bardstown Road Overlay Committee has approved the restaurant and design including the sign. Mr. Brown said the parking will be in the back, where a staff approvable parking waiver is needed since it's less than 5 spaces.

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**SUMMARY OF TESTIMONY OF PROPONENTS:**

Kelli Jones, the applicant's representative, said her client has been working on the site since 2009 and was formerly a drycleaners. She said they will be providing a combination of arborvitae hedge plantings and fencing which will buffer the adjacent residential uses. They will also provide a pink tree in the front; and the dumpster will be enclosed with glazed fencing material. Ms. Jones said an adjacent property is 3 ½ feet away and will repair any damage to the sidewalk if this occurs. Member Allendorf asked how people will access the 2<sup>nd</sup> floor. Ms. Jones pointed out the entry and exit areas. Member Allendorf said they should talk to the local fire department because they cannot have a 2<sup>nd</sup> access through the kitchen. Chair Proffitt asked what the maximum capacity is. Ms. Jones said she doesn't know.

**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:**

Chair Proffitt said they need to follow the regulations for the American Disabilities Act since it's a new building.

**VARIANCE:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Chapter 5.2.3.D.3.b of the Land Development Code to allow the raised seating area to encroach 1.25' into the required 6' side yard to the south east adjacent to a residential use; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the access and sidewalk entry to the

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adjacent residential use will not be affected by the proposed encroachment of the raised deck; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity since it will follow a pattern of varying side yard setbacks throughout the corridor with most of the properties being at a 0' side yard setback; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public since proper access to the adjacent residential use will not be impeded by the proposal; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations since the size and shape of the lot existed prior to the current zoning regulations and led to the proposed location of the outdoor dining area; 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 lot is a longer, narrower lot leading to the minimal encroachment of the proposed second story deck; and

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by requiring removal of portions of the second story deck minimizing the space needed to fit the dining area; 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 size and shape of the lot existed prior to the current zoning regulations;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the variance to allow the proposed raised seating area to be 4.75 feet from the southeast property line.

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**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

**WAIVERS:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review; the site plan; the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Chapter 10.2.10 of the Land Development Code to allow the raised seating area to encroach less than 1' into the required 5' Vehicular Use Area and Landscape Buffer Area (VUA LBA) between the proposed drive aisle and adjacent to 1<sup>st</sup> floor residential use to the southeast; and a waiver of Chapter 10.2.11 to not provide the required VUA LBA buffer trees between the proposed drive aisle and adjacent 1<sup>st</sup> floor residential use to the southeast; and

**WHEREAS**, the Board finds that the requested waivers will not adversely affect adjacent property owners since screening and screen plantings will be provided to create a green screen along the southeast property perimeter with sufficient buffering area remaining between the adjacent uses; and

**WHEREAS**, the Board finds that the waivers will not violate Guideline 3, Compatibility, of Cornerstone 2020, which calls for the protection of roadway corridors and public areas from visual intrusions, for mitigation of parking areas so as not to negatively impact nearby residents and pedestrians, and for parking areas adjacent to streets to be screened and buffered; and because the waiver will not violate Guideline 13, Landscape Character, which calls for the protection of parkways through standards for buffers, landscape treatment, lighting which calls for the protection of parkways through standards for buffers, landscape treatment, lighting and signs; and because the purpose of the VUA landscape buffer areas is to improve the appearance of vehicular use areas and property abutting public rights-of-way and residential uses; and because sufficient



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buffering area will remain to mitigate the location of the drive aisle; and because screening will be provided to also protect the adjacent residential use from visual intrusion associated with the proposed commercial restaurant use and its vehicular use area; and

**WHEREAS**, the Board finds that the waivers of the regulation is the minimum necessary to afford relief to the applicant to allow the outdoor dining area to remain as proposed with proper screening provided to mitigate the impact of not providing the required tree plantings; and because tree plantings would have difficulty being provided considering the location of the raised outdoor seating area that continues the street wall concept along Bardstown Road; and

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant by preventing the location of the raised outdoor dining area that continues the street wall concept along Bardstown Road;

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

The waivers allow:

1. The raised seating area to be less than 1' into the required 5' VUA LBA between the proposed drive aisle and adjacent 1<sup>st</sup> floor residential use to the southeast.
2. The applicant to not provide the required VUA LBA buffer trees between the proposed drive aisle and adjacent 1<sup>st</sup> floor residential use to the southeast.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1033**

**Applicant/Owner:** Adrian Batts  
2306 Burrell Drive  
Louisville, Kentucky 40216

**Representative:** Blue Grass Garage  
Joe Willis  
15823 Brush Run Road  
Louisville, Kentucky 40299

**Project Name:** Proposed detached garage

**Subject:** An application for a variance from the Land Development Code to allow a proposed structure (detached garage) to encroach into the side yard (east); and the rear yard (south).

**Premises affected:** On property known as 2306 Burrell Drive and being in the City of Shively

**COUNCIL DISTRICT 3—Mary Woolridge**

**Staff Case Manager: Sherie' Long, Landscape Architect**

**Appearances for Applicant:**

No one.

**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 April 17, 2014, Adrian Batts filed an application for a variation from the requirements of the Land Development Code to allow a proposed detached garage to encroach into the side and rear yard areas.

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On May 19, 2014, 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 May 19, 2014 proceedings.

**SUMMARY OF STAFF PRESENTATION:**

Staff case manager, Sherie' Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the owner is proposing to build a detached garage at the eastern rear corner of Lot 70, Heatherfields Subdivision, Section 9, Plat Book 17, page 8. She said the adjacent property owners are not opposed; and the existing Louisville Gas & Electric easement has been released. She said the proposal is compatible with the home and other similar garages in the area.

Member Bergmann asked how they will maintain the space in between the properties. Ms. Long said they will be providing a 4 ft. gutter and will be 12" between the property lines and the building face.

Chair Proffitt questioned where the foundation will be placed and the back wall, stating that they will be building on someone else's property.

**SUMMARY OF TESTIMONY OF PROPONENTS:**

Chair Proffitt called the applicant, but no one responded.

**SUMMARY OF TESTIMONY OF INTERESTED PARTIES:**

No one spoke as an interested party.

**SUMMARY OF TESTIMONY OF OPPONENTS:**

No one spoke in opposition.

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**BUSINESS SESSION:**

Chair Proffitt suggested continuing this case so the applicant can elaborate on the construction and location of the proposal.

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

**RESOLVED**, that the Board does hereby **CONTINUE** Case No. 14VARIANCE1033, to **JUNE 2, 2014** to allow the applicant to explain the location of the detached garage in relation to the back wall.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1034**

**Applicant:** Trent Winlock  
1223 Texas Avenue  
Louisville, Kentucky 40204

**Owner:** Linda Winlock  
2540 Wood Creek Road  
Louisville, Kentucky 40205

**Subject:** An application for a variance from the Land Development Code to allow a proposed pergola to encroach into the required 5 ft. east property line.

**Premises affected:** On property known as 2540 Wood Creek Road and being in Seneca Gardens.

**COUNCIL DISTRICT 8—Tom Owen**  
**Staff Case Manager: Latondra Yates, Planner II**

**Appearances for Applicant:**  
Trent Winlock, 1223 Texas 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 April 21, 2014, Linda Winlock filed an application for a variation from the requirements of the Land Development Code to allow a proposed pergola to encroach into the required 5 ft. east property line.

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**MAY 19, 2014**

**NEW BUSINESS:**

**CASE NO. 14VARIANCE1034**

On May 19, 2014, 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 May 19, 2014 proceedings.

**SUMMARY OF STAFF PRESENTATION:**

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the proposed pergola will replace a carport.

**SUMMARY OF TESTIMONY OF PROPONENTS:**

Trent Winlock said this is his mother's property and wants a pergola to replace the small carport. Member Bergmann asked if the pergola will be built up. Mr. Winlock said there will not be a deck and that the old carport is an eyesore.

**SUMMARY OF TESTIMONY OF INTERESTED PARTIES:**

No one spoke as an interested party.

**SUMMARY OF TESTIMONY OF OPPONENTS:**

No one spoke in opposition.

**BUSINESS SESSION:**

No discussion.

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification, the evidence, testimony

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and discussion at the public hearing that the applicant is requesting a variance of Table 5.3.1 of the Land Development Code to allow a proposed pergola to encroach into the required 5 ft. east side yard; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed pergola will occupy the same footprint as the existing carport; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity because the proposed pergola will occupy the same footprint as the existing carport; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the pergola will replace a carport that is in disrepair and possibly unstable; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the pergola will occupy a similar footprint as the carport; and

**WHEREAS**, the Board finds that the strict provision of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant because of the need to replace an old carport that is in disrepair; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the variance to allow the proposed pergola to be .74 inches from the east property line.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1022**

**Owner/Applicant:** CRL Properties, Inc.  
101 Oxford Place  
Louisville, Kentucky 40207

**Attorney:** Bill Bardenwerper, Esq.  
Bardenwerper, Talbott & Roberts  
1000 N. Hurstbourne Pkwy., 2<sup>nd</sup> Floor  
Louisville, Kentucky 40223

**Representative:** Mark Madison  
Milestone Design Group  
108 Daventry Lane, Suite 300  
Louisville, Kentucky 40223

**Project Name:** Nationwide Insurance

**Subject:** An application for variances from the Land Development Code to allow an existing structure, proposed sign and proposed parking and maneuvering to encroach into the required yards.

**Premises affected:** On property known as 101 Oxford Place and 3550 Frankfort Avenue and being in the City of St. Matthews.

**COUNCIL DISTRICT 9—Tina Ward-Pugh**  
**Staff Case Manager: Latondra Yates, Planner II**

**Appearances for Applicant:**  
Bill Bardenwerper, Attorney, 1000 N. Hurstbourne Pkwy., 2<sup>nd</sup> floor, Louisville, Kentucky 40223; who presented a PowerPoint presentation to the Board and submitted several photographs into the record.

Mark Madison, 108 Daventry Lane, Ste. 300, Louisville, Kentucky 40223.

**Appearances Interested Party:**  
No one.



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**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 March 17, 2014, CRL Properties, Inc. filed an application for a variation from the requirements of the Land Development Code to allow to an existing structure, proposed sign and proposed parking and maneuvering to encroach into the required yards.

On May 19, 2014, 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 May 19, 2014 proceedings.

**SUMMARY OF STAFF PRESENTATION:**

Staff case manager, Latondra Yates gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant is requesting 4 variances for the reuse of the existing office building for a Nationwide Insurance office. She said it was previously a dentist office; and the applicant will be providing more parking. She said the applicant agreed to provide a 3 ft. landscape buffer area along Frankfort Avenue. Ms. Yates said the applicant needs to address the signage and lighting since the property is next to residential property. She said the existing sign and post will not block the sight triangle.

**SUMMARY OF TESTIMONY OF PROPONENTS:**

Bill Bardenwerper, the applicant's attorney, said the property is across the street from the Masonic Homes property; and that they have to meet with Jack Ruf,

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Code Enforcement officer for the City of St. Matthews. Mr. Bardenwerper showed the sign that will be placed on the existing pole; and said the neighbors are not opposed to any of the requests. Chair Proffitt asked if one of the signs is temporary. Mr. Bardenwerper said yes.

Mark Madison, the applicant's representative, explained the signage and said part of the property will be resurfaced to provide more parking. Member Bergmann said the applicant should install landscaping around the base of the sign pole; and the handicapped parking spot should be angled to allow more room for landscaping. Mr. Madison said the site is unique and that the City of St. Matthews wanted to minimize parking. Chair Proffitt asked if they would be willing to install a sign "No Parking" on one of the spaces. Mr. Madison agreed. Member Allendorf said one of the figures in the applicant's booklet is incorrect under Tab 6.

Mr. Bardenwerper submitted photographs showing other signs in the area. Member Bergmann asked if they would be adding more landscaping along Frankfort Avenue. Mr. Bardenwerper 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:**

Chair Proffitt said they need to add a condition of approval that a "No Parking" sign will be placed in the turning area. Member Bergmann said they need conditions of approval for adding landscaping around the base of the pole sign and more landscaping along Frankfort Avenue.

**VARIANCES—Building and Parking and Maneuvering encroachments:**

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

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**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance of Sections 9.2.C. and 5.2.C.2. of the Development Code to allow the existing building to encroach into the required 25-ft. street side yard; and a variance of Section 5.2.C.2 of the Development Code to allow parking and maneuvering to encroach into the required 25-ft. street side yard; and

**WHEREAS**, the Board finds that the requested variances will not adversely affect the public health, safety or welfare because the proposed reuse of the existing office building will include proposed landscaping and other improvements to the site; and

**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity because the building will be reused as an office; and

**WHEREAS**, the Board finds that the variances will not cause a hazard or nuisance to the public because the encroachments are built conditions where the neighbors and the City of St. Matthews have not complained to the best information and belief of this new property owner; and because improvements will be made to the overall site; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the building is existing; and

**WHEREAS**, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity because this property exists at the corner of Oxford Place with significant frontage along Frankfort Avenue, where other businesses proliferate; and because others used for similar commercial purposes may involve similar encroachments; and because this office use has long existed with parking and access as presently shown; 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 they could no longer

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utilize the property as it has been in accordance with the office zoning; and because without approval of the variances, would reduce the buildable area below what is allowed by Section 9.2.C. of the Development Code; and

**WHEREAS**, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought, because of the existing conditions the applicant inherited when the property was purchased;

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

**The variances allow:**

1. The existing building to be 11.76 feet from the street side yard.
2. The existing building to be 2.22 feet from the street side yard.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

**VARIANCE—Parking and Maneuvering Encroachment:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.C.2. of the Development Code to allow parking and maneuvering to encroach into the required 25 ft. front yard; and

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**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare because the proposed reuse of the existing office building will include proposed landscaping and other improvements to the site; and

**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity because the building will be reused as an office; and

**WHEREAS**, the Board finds that the variances will not cause a hazard or nuisance to the public because the encroachments are built conditions where the neighbors and the City of St. Matthews have not complained to the best information and belief of this new property owner; and because improvements will be made to the overall site; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the building is existing; and because the encroachments are built conditions; and

**WHEREAS**, the Board finds that the variances arise from special circumstances which do not generally apply to land in the general vicinity because this property exists at the corner of Oxford Place with significant frontage along Frankfort Avenue, where other businesses proliferate; and because others used for similar commercial purposes may involve similar encroachments; and because this office use has long existed with parking and access as presently shown; 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 they could no longer utilize the property as it has been in accordance with the office zoning; and because without approval of the variances, would reduce the buildable area below what is allowed by Section 9.2.C. of the Development Code; and

**WHEREAS**, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought, because of the existing conditions the applicant inherited when the property was purchased;

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**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the variance to allow parking and maneuvering to be 5 feet from the front property line **ON CONDITION** that the applicant install a “NO PARKING” sign in the turning area of the site and submit a Revised Detailed District Development Plan to reflect this change.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

**VARIANCES—Signage:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant’s justification; the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.C.2. of the Development Code to allow a sign to be installed on an existing pole in the required 25-ft. front yard; and the setbacks are 4.4 feet from the Oxford Place right-of-way line a variance of 20.6 feet, and 1.26 feet from the Frankfort Avenue right-of-way line, a variance of 23.74 feet; and

**WHEREAS**, the Board finds that the requested variances will not adversely affect the public health safety or welfare because though it appears to be located within the 30 ft. sight triangle, it will be placed on an existing post with dimensions that should not impede sight distance; and

**WHEREAS**, the Board finds that the variances will not alter the essential character of the general vicinity because the sign is replacing a previous one; and

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**WHEREAS**, the Board finds that the variances will not cause a hazard or nuisance to the public because though it appears to be located within the 30-ft. sight triangle, it will be placed on an existing post with dimensions that should not impede sight distance; and

**WHEREAS**, the Board finds that the variances will not allow an unreasonable circumvention of the zoning regulations because the sign will replace a previous one; 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 because a sign has hung on the existing pole for many years, so this sign is not new, but rather represents a long standing, pre-existing situation; 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 lose valuable freestanding signage that was part of its expectation upon purchasing the property; and

**WHEREAS**, the Board finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought, because the condition is existing and was inherited by the new owner upon purchasing the property;

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

1. The applicant shall install landscaping around the base of the sign pole; **and** along Frankfort Avenue for beautification.
2. The signage will look substantially the same as presented in the applicant's exhibit book.

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**The variances allow:**

1. The proposed sign to be 4.4 feet from the Oxford Place right-of-way line.
2. The proposed sign to be 1.26 feet from the Frankfort Avenue right-of-way line.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**



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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1027**

**Owner/Applicant:** Holiday Manor Associates, LTD  
Mark Blieden  
6100 Dutchmans Lane  
Louisville, Kentucky 40205

**Representative:** Sabak, Wilson & Lingo, Inc.  
Matt Wolff  
608 S. Third Street  
Louisville, Kentucky 40202

**Project Name:** Holiday Manor Retail Shops

**Subject:** An application for a variance from the Land Development Code to allow a proposed building(s) to exceed the maximum building setback from US Highway 42; and waivers to allow proposed parking in front of the building; to allow parking to encroach into the Parkway; and to allow a masonry wall in place of the required berm.

**Premises affected:** On property known as 4942 US Highway 42 and being in Louisville Metro.

**COUNCIL DISTRICT 7—Ken Fleming**  
**Staff Case Manager: Sherie' Long**

**Appearances for Applicant:**  
Matt Wolff, 608 S. Third Street, Louisville, Kentucky 40202.

**Appearances Interested Party:**  
No one.

**Appearances Against Applicant:**  
No one.

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

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On March 26, 2014, Mark Blieden filed an application for a variation from the requirements of the Land Development Code to allow a proposed building(s) to exceed the maximum building setback from US Highway 42; and waivers to allow proposed parking in front of the building; to allow parking to encroach into the Parkway; and to allow a masonry wall in place of the required berm.

On May 19, 2014, 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 May 19, 2014 proceedings.

**SUMMARY OF STAFF PRESENTATION:**

Staff case manager, Sherie' Long gave a brief presentation of the case to the Board, which included a PowerPoint presentation. She said the applicant is proposing to demolish two existing buildings in Holiday Manor and construct one building which will include a 9,278 sq. ft. retail space, a 1,968 sq. ft. coffee shop and a 264 sq. ft. outdoor patio and drive-thru. The site is located in the Town Center Form District and due to the existing utility easement locations, the lot configuration and the new entrance into the development off of US Highway 42, the proposed building location exceeds the allowed setback for an infill development. Member Bergmann asked if there will be any landscaping in front of the wall. Chair Proffitt asked if they had a landscape plan yet. Ms. Long said no. Chair Proffitt wanted to know why they would want a wall instead of landscaping.

**SUMMARY OF TESTIMONY OF PROPONENTS:**

Matt Wolff, the applicant's representative, said the wall will be setback in alignment with the bank. He said they will plant smaller, Type C trees, since they are confined with overhead electric lines. Chair Proffitt and Member Bergmann said they think a berm would look better than a wall. Ms. Long showed the Board

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various renderings. Ms. Long said she or Julia Williams will review and approve the landscape plan.

**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:**

The Board discussed the wall vs. a berm in detail. Member Bergmann said the landscape plan should be done prior to the meetings and part of their approvals.

**VARIANCE:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review and additional considerations, where the four standard of review requirements control over the additional considerations; the site plan; the PowerPoint presentations; the applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a variance from Section 5.2.4.C.3 (b) of the Land Development Code to allow a proposed infill structure to exceed the setback/build-to line range of the nearest two constructed properties; and

**WHEREAS**, the Board finds that the requested variance will not adversely affect the public health, safety or welfare since the proposed location of the structure will be setback from the street similar to the structure to the west; and because the new entrance to the site will be aligned with Glenview Avenue which creates safer access and visibility into and through the site; plus, the circulation into and through the adjacent shopping center will be improved greatly; and

**WHEREAS**, the Board finds that the variance will not alter the essential character of the general vicinity because the proposal is compatible with the surrounding development; the existing structures in the development have varying setbacks from the street, and there is parking located in front of the buildings; and because

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additional green space and plantings along with the proposed 3' masonry wall provided in the 30' Parkway Buffer will mitigate any negative impact; and

**WHEREAS**, the Board finds that the variance will not cause a hazard or nuisance to the public because the layout of the development provides safe pedestrian and vehicular access to US Highway 42 and the surrounding shopping center; and because the parkway buffer planting and the 3' masonry wall will mitigate any negative impact; and

**WHEREAS**, the Board finds that the variance will not allow an unreasonable circumvention of the zoning regulations because the applicant is providing the required 30' Parkway Buffer with tree and shrub plantings; a 3' masonry wall (screening) along the entire frontage separating the parking from the street; additional interior green space with tree plantings; and a pedestrian connection from the structure to the street sidewalk; and

**WHEREAS**, the Board finds that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone because the subject site has limited area of development due to the existing utilities located along the north, east and west property lines; and because the area is even more limited because of the shape and configuration of the lot which narrows at the street frontage; also because the existing internal circulation pattern and access is also restrictive and limiting as to the location and size of any proposed structure; and

**WHEREAS**, the Board finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the proposal would lose 7 to 9 parking spaces; 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 due to the site being a previously developed site which is heavily constrained by its narrowing lot dimensions as it approaches US Highway 42, an existing one way vehicle access drive from the core of the shopping center to the east and the existing utilities along the north, east and west property lines;

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**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the variance to allow a proposed building to be 107 feet from the front setback/build-to line along the northern perimeter.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

**WAIVER—To allow parking in front of the building:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review; the site plan; the PowerPoint presentations; the applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver of Section 10.3.5A.1 of the Land Development Code to allow parking in front of the building within the Town Center Form District; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners because the proposed location of the parking will be similar to the existing parking on the adjacent property to the west and other locations within the development; and because the alignment of the new entrance with Glenview Avenue greatly improves the internal site circulation; and because views will be screened by the 3' masonry wall and the parkway plantings which will lessen the visual impact of the residences across US Highway 42 and the surrounding commercial properties; and

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the proposal meets Guideline 3.9 since the 3' masonry wall and additional green space in the parkway buffer will protect the character of the area and lessen the visual impact of the parking adjacent to the street; and

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**WHEREAS**, the Board finds that the waiver of the regulation is the minimum necessary to afford relief to the applicant by allowing the majority of the proposed parking to be located next to the front door of both the retail and coffee shop; and

**WHEREAS**, the Board finds that the extent of the waiver of the regulation is the applicant is providing a net benefit by providing both the 30' Parkway Buffer planted with trees and shrubs and the 3' masonry screen wall which reduces the impact of the parking being located between the proposed building and the street;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the waiver to allow parking in front of a building within the Town Center Form District.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

**WAIVER—Parking lot pavement encroachment:**

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

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review the site plan; the PowerPoint presentations; the applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.3.5A.1 of the Land Development Code to allow parking lot pavement to encroach 255 sq. ft. into the required 30' Parkway Buffer and setback; and

**WHEREAS**, the Board finds that the waiver will not adversely affect adjacent property owners because the encroachment is only into a small portion, 255 SF of the total 30' Parkway Buffer; and because the required plantings will be provided along with a mitigation area of an additional 262 SF of green space to

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compensate for the encroachment; and because the applicant is providing a 3' tall masonry wall to screen the view of the parking from the residences across US Highway 42 and the street; and

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the proposal meets Guideline 3.1 and 3.9; because the development is compatible with the surrounding development; and because the required 30' Parkway Buffer and plantings along with the additional 3' tall masonry screen wall reduces the visual impact of the parking from the street and the residences across US Highway 42; and

**WHEREAS**, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because only a small portion, 255 SF, of the 30' Parkway Buffer is being encroached upon; and because additional green space, 262 SF, is being provided to mitigate the encroachment; and

**WHEREAS**, the Board finds that the applicant is providing a 'net benefit' by providing the 30' Parkway Buffer tree and shrub plantings along with a 3' tall masonry screen wall; and because the applicant is providing an additional 262 SF of green space to mitigate the small encroachment;

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the waiver to allow parking lot pavement to encroach 255 SF into the required 30' Parkway Buffer and setback.

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggins.**

**ABSTAINING: No one.**

**WAIVER—Replace berm with a 3' tall masonry wall:**

After the public hearing, in open business session, on a motion by Member Allendorf, seconded by Member Tharp and the following resolution was adopted:

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

**MAY 19, 2014**

**NEW BUSINESS:**

**CASE NO. 14VARIANCE1027**

**WHEREAS**, the Board finds from the file of this case, the staff report including the standard of review the site plan; the PowerPoint presentations; the applicant's justification, the evidence, testimony and discussion at the public hearing that the applicant is requesting a waiver from Section 10.3.5A.1 of the Land Development Code to replace the required 3' continuous berm with a 3' tall masonry wall along the property frontage within the 30' Parkway Buffer; and

**WHEREAS**, the Board finds that the requested waiver will not adversely affect adjacent property owners because the 3 ft. tall masonry wall will screen the proposed parking from the street view and the residences across US Highway 42; and because the wall provides the architecture along the street edge which reflects the intent of the Town Center concept of buildings fronting the street; and because there are currently no other berms along this portion of the existing shopping center, therefore, no visible impact will occur by not providing a berm; and

**WHEREAS**, the Board finds that the waiver will not violate specific guidelines of Cornerstone 2020 because the proposal complies with the Land Development Code and Guidelines 3.9 since the required 30' Parkway Buffer and plantings are being provided along the street frontage; and because the 3' tall berm requirement will be fulfilled by the addition of the 3' tall masonry screen wall; and

**WHEREAS**, the Board finds that the extent of the waiver is the minimum necessary to afford relief to the applicant because a continuous berm does not reflect the existing character of the current development; and by allowing a 3' tall masonry wall will allow the Town Center concept to be reflected along the street frontage while still screening the parking from the street view and the residences across US Highway 42; and

**WHEREAS**, the Board finds that the applicant has incorporated other design measures that exceed the minimum by providing a 3' tall masonry screen wall along the entire frontage in addition to the required 30' Parkway Buffer plantings; and because the wall will provide an architectural element which reflects the character of the proposed building and because the wall will reflect the Town Center concept of buildings fronting the street therefore, the proposed wall is an improvement over the required 3' tall berm;



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**NEW BUSINESS:**

**CASE NO. 14VARIANCE1027**

**NOW, THEREFORE, BE IT RESOLVED**, that the Board does hereby **GRANT** the waiver to replace the required 3' tall continuous berm with a 3' tall masonry wall along the front property line within the 30' Parkway Buffer.

**The vote was as follows:**

**YES: Members Jarboe, Tharp, Allendorf and Bergmann.**

**NO: Members Proffitt and Fishman.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

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**MAY 19, 2014**

**NEW BUSINESS:**

**CASE NO. 14CUP1005**

**Applicant/Owner:** Faulkner Real Estate Corp.  
Lee Hasken  
9625 Ormsby Station Road  
Louisville, Kentucky 40223

**Attorney:** Bill Bardenwerper  
Bardenwerper Talbott & Roberts  
1000 N. Hurstbourne Parkway, 2<sup>nd</sup> floor  
Louisville, Kentucky 40223

**Subject:** An application for a Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district.

**Premises affected:** On property known as 133 South English Station Road and being in Louisville Metro.

**COUNCIL DISTRICT 20—Stuart Benson**  
**Staff Case Manager: Jon Crumbie, Planner II**

**Appearances for Applicant:**  
Bill Bardenwerper, Attorney, 1000 N. Hurstbourne Parkway, 2<sup>nd</sup> floor, Louisville, Kentucky 40223.

Lee Hasken, 9625 Ormsby Station Road, Louisville, Kentucky 40223.

**Appearances- Interested Parties:**  
No one.

**Appearances Against Applicant:**  
No one.

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

On March 31, 2014, Lee Hasken filed an application for a Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district.

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**MAY 19, 2014**

**NEW BUSINESS:**

**CASE NO. 14CUP1005**

On May 19, 2014, 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 May19, 2014 proceedings available in the Planning and Design Services Office.

**SUMMARY OF STAFF PRESENTATION:**

Staff case manager, Jon Crumbie, gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said the applicant is requesting approval for a Conditional Use Permit (CUP) to allow the sale and consumption of alcohol beverages in an existing patio area adjacent to the existing Fiesta Time Mexican Grill. The outdoor area will be 1,564 SF and allow a maximum of 32 patrons; and the landscaping will remain as is. The existing structure that is to remain is part of the Landis Lakes Town Center that includes various retail, restaurant, general office and medical office uses. He said the Board approved a CUP for the Wild Eggs Restaurant in the same plaza. Mr. Crumbie said the applicant will need to obtain the liquor license. Member Bergmann said they need to abide by the Louisville Noise Ordinance and have a closing time for the outdoor patio. Mr. Crumbie explained that the outdoor patio will close at 1:00 a.m. and is part of the requirements.

**SUMMARY OF TESTIMONY OF PROPONENTS:**

Bill Bardenwerper, the applicant's attorney, said a lot of restaurants are building outside patios due to the smoking ordinance. He said no one showed up for the neighborhood meeting. Mr. Bardenwerper said his client is in the process of obtaining the liquor license.

Chair Proffitt said the Board should add a condition of approval that the applicant needs to receive the liquor license and submit it to staff for the file.

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**NEW BUSINESS:**

**CASE NO. 14CUP1005**

Lee Hasken said there will be piped music outside, but no bands. Chair Proffitt said the outdoor speakers need to be faced away from the residential properties. Mr. Hasken agreed.

**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:**

Chair Proffitt mentioned the additional conditions of approval to be included in the motion

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

**WHEREAS**, the Board finds, from the file of this case, the staff report, the PowerPoint presentation, the testimony and evidence submitted at the public hearing that the applicant is requesting a Conditional Use Permit to allow outdoor alcohol sales and consumption in a C-1 zoning district; and

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

**WHEREAS**, the Board finds that the proposal meets all applicable policies of the Comprehensive Plan because signage will be replaced and no new lighting will be added; and because a landscape plan has been approved and implemented; and

**WHEREAS**, the Board finds that the proposal is compatible with surrounding land uses and the general character of the area because the subject site is located in a commercial area that has a mix of business services, retail, restaurants and medical offices and is a focal point for several surrounding neighborhoods; and because all the commercial uses in the area have similar scale, intensity, traffic, noise and lighting; and

**WHEREAS**, the Board finds that the proposal has been reviewed by Public Works, MSD and the Middletown Fire Department have approved the plan; and

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**WHEREAS**, the Board finds that the proposal complies with specific standards to obtain the Conditional Use Permit where the applicant will obtain and submit the ABC licenses to staff for the file; and

**WHEREAS**, the Board finds that the use of the outdoor dining area(s) for the sale and consumption of alcohol shall cease by 1:00 A.M.; and there will be no outdoor bands and piped outdoor music equipment will be directed away from the neighbors; and because the applicant will abide by the Louisville Metro Noise Ordinance; and because the applicant will obtain the appropriate Alcoholic Beverage Control (ABC) Licenses and submit copies to staff for the file; and

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

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

**The conditions are as follows:**

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be “exercised” as described in KRS 100.237 within two years of the Board’s vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for outdoor alcohol sales and consumption without further review and approval by the Board.
3. The applicant will obtain the ABC License(s) and submit copies to staff for the file.
4. The outdoor piped music speakers will be pointed away from neighbors.

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**CASE NO. 14CUP1005**

**The vote was as follows:**

**YES: Members Jarboe, Fishman, Proffitt, Tharp, Allendorf and Bergmann.**

**NO: No one.**

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Member Liggin.**

**ABSTAINING: No one.**

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**The meeting adjourned at approximately 12:35 p.m.**

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**CHAIRPERSON**

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**SECRETARY**