

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

July 29, 2016

I. **ATTENDANCE** – The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, July 29, 2016. Members present were Chairman Barry Stumbo, Thomas Glover, Joan Whitman, Chad Needham, and Branden Gross. Absent: Larry Forester and Jan Meyer. Others present were: Casey Kaucher, Division of Traffic Engineering; Thomas Clements, Division of Engineering; Bill Sallee, Planning Services; Tracy Jones and Andrea Brown, Department of Law. Staff members in attendance were: Jim Marx, Barbara Rackers, and Tammye McMullen.

II. **APPROVAL OF MINUTES** – The Chair announced that the minutes of the April 29, May 20, and June 24, 2016 meetings would be considered at this time.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman, and carried unanimously (Forester and Meyer absent) to **approve** the minutes of the April 29, May 20, and June 24, 2016 meetings.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time to several staff members and other persons in the audience.

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. Postponement or Withdrawal of any Scheduled Business Item - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
2. No Discussion Items - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s); (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record; (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board would proceed to take action.

ABBREVIATED HEARINGS:

1. **PLN-BOA-16-00004: MICHAEL A. BLEVINS** - requests a variance to reduce the required front yard from 20 feet to 0 feet in order to provide a parking space in the front yard in a Single Family Residential (R-1E) zone, at 523 Maryland Ave. (Council District 2).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance will not cause a hazard or nuisance to the subject or surrounding properties; it will not negatively affect public health, safety or welfare; and will not alter the character of the vicinity. There are properties on Maryland Avenue that already have driveways in the required front yard that were constructed when the residences were built, long before the current regulations were in place.
- b. Granting the variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the property is too narrow to allow an off-street parking place or driveway anywhere other than where it is proposed.
- c. The special circumstance that applies to this property is its width and the size and location of the historic residence, which preclude location of a driveway anywhere else on the property. Maryland Avenue was developed as a residential street with long, narrow lots long before individual parking spaces were prevalent or even required. Additionally, the recent commercial development of Jefferson Street and Newtown Pike has created a situation where on-street parking is at a premium and often prevents the homeowners on the street from using the on-street spaces.
- d. Strict application of the Zoning Ordinance would prevent the applicant from providing a parking space on his property, which is a reasonable expectation of any property owner. Further, parking in the area is becoming more and more a valued commodity due to new commercial development that has either already occurred; or is planned to occur, on either end of the street (Newtown Pike and Jefferson Street).
- e. The requested variance, although it is because of the desire of the applicant to construct a driveway on his property, is not the result of his actions. No construction of the driveway has yet occurred; and it is only because of the new commercial developments on either end of Maryland Avenue that have made on-street parking a valued commodity, that this variance is being requested.

This recommendation of approval is made subject to the following conditions:

1. That the driveway be constructed according to the submitted application and site plan, leaving the remainder of the front yard as green space.
2. That a paving permit be obtained from the Division of Building Inspection.
3. That the driveway/curb cut be subject to the approval of the Urban County Traffic Engineer.
4. This variance is granted only for the purpose of constructing a 10-foot wide driveway and parking space, and may not be used for any other construction or building purposes.

Representation – Mr. Michael Blevins, appellant, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Gross, seconded by Mr. Glover and carried unanimously (Forester and Meyer absent) to **approve PLN-BOA-16-00004: MICHAEL A. BLEVINS** – a request for a variance to reduce the required front yard from 20 feet to 0 feet in order to provide a parking space in the front yard in a Single Family Residential (R-1E) zone, at 523 Maryland Ave., based upon the staff's recommendation of approval and subject to the conditions set forth in the staff report.

2. **PLN-BOA-16-00007: MIROSLAVA DOROCHENKO** - requests a variance to reduce the required front yard from 20 feet to 0 feet to provide a parking space in the front yard in a Single Family Residential (R-1E) zone, at 521 Maryland Ave. (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not cause a hazard or nuisance to the subject or surrounding properties; it will not negatively affect public health, safety or welfare; and will not alter the character of the vicinity. There are properties on Maryland Avenue that already have driveways in the required front yard that were constructed when the residences were built, long before the current regulations were in place.
- b. Granting the variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the property is too narrow to allow an off-street parking place or driveway similar to other driveways on the larger properties in the area.
- c. The special circumstance that applies to this property is its width and the size and location of the historic residence on the lot, which preclude location of a typical driveway. Maryland Avenue was developed as a residential street with long, narrow lots long before individual parking spaces were prevalent or even required. Additionally, the recent commercial development of Jefferson Street and Newtown Pike has created a situation where on-street parking is at a premium and often prevents the homeowners on the street from using the on-street spaces.
- d. Strict application of the Zoning Ordinance would prevent the applicant from providing a parking space on her property, which is a reasonable expectation of any property owner. Further, parking in the area is becoming more and more a valued commodity due to new commercial development that has either already occurred, or is planned to occur, on either end of the street (Newtown Pike and Jefferson Street).
- e. The requested variance, although it is because of the desire of the applicant to construct a driveway on her property, is not the result of her actions. No construction of the driveway has yet occurred, and this variance is only being requested because of the new commercial developments on either end of Maryland Avenue that have made on-street parking a valued commodity.

This recommendation of approval is made subject to the following conditions:

1. That the 10-foot wide driveway be built according to the submitted application and site plan, or at a 0-foot setback along the eastern property line, leaving the remainder of the front yard as green space.
2. That a paving permit be obtained from the Division of Building Inspection.
3. That the driveway/curb cut be subject to approval of the Urban County Traffic Engineer.
4. This variance is granted only for the purpose of constructing a 10-foot wide driveway and parking space, and may not be used for any other construction or building purposes.

Representation – Ms. Mirosława Dorochenko, appellant, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Needham, seconded by Mr. Gross and carried unanimously (Forester and Meyer absent) to **approve PLN-BOA-16-00007: MIROSLAVA DOROCHENKO** – a request for a variance to reduce the required front yard from 20 feet to 0 feet to provide a parking space in the front yard in a Single Family Residential (R-1E) zone within the Infill & Redevelopment Area, at 521 Maryland Ave., based on the staff's recommendations and subject to the conditions.

3. **PLN-BOA-16-00001: TERESA P. JOHNSON** - requests a conditional use permit to establish a home occupation (producing natural products - soaps, lotions, etc.) in a Single Family Residential (R-1E) zone, at 836 Revere Run Rd. (Council District 6).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. No significant increase in neighborhood traffic is expected (only occasional deliveries of raw materials/ingredients by the standard carrier services). The activity does not involve the use of noisy or harmful equipment of any kind, and the applicant is able to do all work in her kitchen; therefore, the potential of disturbing other property owners is minimal.
- b. All necessary public facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. This home occupation shall be established in accordance with the submitted application and site plan, and operated by the applicant within the residence in an area of no greater than 300 square feet.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to operating this home occupation.
3. The activity shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.
4. The conditional use permit shall become null and void should the appellant cease to either own or reside at the subject property.

Representation – Ms. Teresa P. Johnson, appellant, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried unanimously (Forester and Meyer absent) to **approve PLN-BOA-16-00001: TERESA P. JOHNSON** – a request for a conditional use permit to establish a home occupation (producing natural products - soaps, lotions, etc.) in a Single Family Residential (R-1E) zone, at 836 Revere Run Rd., for the reason recommended by the staff and subject to the four conditions.

4. **PLN-BOA-16-00002: MARK AND KARLA DINARDO** - request a conditional use permit to establish an athletic club facility in a Light Industrial (I-1) zone, at 801 Winchester Rd (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

- a. Adverse impacts to surrounding properties are not anticipated, as fitness training is not an inherently disturbing activity and will be confined to the interior of an existing building.
- b. Surrounding properties are exclusively commercial in nature, which should greatly limit the potential for any disturbances from indoor fitness training activities.
- c. Adequate parking will be provided on site, and all other necessary public facilities and services (roads, sewers, garbage collection) are already in place.

This recommendation of approval is made subject to the following conditions:

1. The athletic club shall be confined to the interior of the existing building and shall be established in accordance with the submitted application and site plan.
2. The total number of participants at any given time (for the entire building) shall not exceed 30.
3. Off-street parking shall be managed to ensure that a minimum of 28 conveniently located and safely usable spaces are provided.
4. Parking and/or storage of semi-trailers or other similar equipment within the area labeled as "existing parking" on the submitted site plan shall be strictly prohibited.
5. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy from the Divisions of Planning and Building Inspection, shall be obtained prior to opening the facility.

Representation – Ms. Karla and Mr. Mark DiNardo, appellants, were present. They indicated that they had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried unanimously (Forester and Meyer absent) to **approve PLN-BOA-16-00002: MARK AND KARLA DINARDO** – a request for a conditional use permit to establish an athletic club facility in a Light Industrial (I-1) zone, at 801 Winchester Rd., based upon the recommendations of staff and subject to the conditions set forth in the staff report.

3. **PLN-BOA-16-00003: MB2 RACEWAY, INC.** - requests a conditional use permit to establish an indoor recreational facility (Indoor Electric Go-Carts) in a Light Industrial (I-1) zone at 2040 Creative Dr. (Council District 5).

The Staff Recommends: **Approval**, for the following reasons:

- a. Adverse impacts to surrounding properties are not anticipated, as the primary activity (electric go-kart racing)

- will not be noisy nor will it generate disturbing fumes, and will be confined to the interior of an existing building.
- b. Surrounding properties are almost exclusively commercial in nature, which should greatly limit the potential for any disturbances from indoor recreational activities.
- c. Adequate parking will be provided on site, and all other necessary public facilities and services (roads, sewers, garbage collection) are already in place.

This recommendation of approval is made subject to the following conditions:

1. The recreational facility shall be limited to the interior of the existing building and shall be established in accordance with the submitted application and site plan, with only electric go-karts to be used.
2. Events, meetings, parties and any other special occasions shall not include any live entertainment.
3. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy from the Divisions of Planning and Building Inspection, shall be obtained prior to opening the facility.

Representation – Mr. Jerrod Sheff was present representing the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried unanimously (Forester and Meyer absent) to **approve PLN-BOA-16-00003: MB2 RACEWAY, INC.** – a request for a conditional use permit to establish an indoor recreational facility (Indoor Electric Go-Carts) in a Light Industrial (I-1) zone at 2040 Creative Dr., based upon the staff's recommendations and subject to the conditions set forth in the staff report.

- B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) 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; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **PLN-BOA-16-00006: SIDNEY O. LIZER** - requests a variance to reduce the required side yard from 8 feet to 2 feet to construct an attached garage in a Single Family Residential (R-1C) zone, at 2412 Eastway Drive (Council District 10).

The Staff Recommends: **Disapproval**, for the following reasons:

- a. Attached garages are not a characteristic feature of this well-established neighborhood. Building such a structure just 2' from the side property line would be noticeably out of character, and could (over time in conjunction with similar construction activities on other properties) significantly alter the character of the general vicinity.
- b. There are no special circumstances unique to this particular property sufficient to justify a significant reduction in the required side yard from 8' to 2'.
- c. This property already has two accessory buildings situated very close to the side property line where the attached garage is proposed. The addition of a third structure very close to that same side property line could adversely impact the adjoining property in that area, whether from risk of fire or from general disturbances (e.g., maintenance activities).
- d. Other options for construction of a garage, not requiring a variance, are available to the applicants. In particular, a detached two-car garage could be constructed to the rear of the residence (as is customary for this neighborhood), or a one-car attached garage could be built in the general area where a carport previously existed.

Representation – Mr. Sidney Lizer, appellant, was present. Mr. Lizer presented the Board with photos and discussed his disagreement with the staff with regard to the attached garage changing the character of the neighborhood.

Board Questions/Comments – Mr. Stumbo inquired about the neighbor who agreed to transfer 2 feet of his property, asking if it was part of the 2 feet that was being requested. Mr. Lizer responded no. Mr. Glover asked what the transfer

of the two feet would do. Mr. Lizer said that it would make a 3-foot space and still leave a 10-foot gap between the neighbor's home and the new structure (garage).

Mr. Glover noted that one of the reasons that the staff recommended disapproval was because there were two additional out-buildings on the property and asked if these would stay. Mr. Lizer responded that one was just a portable storage building and the other was in-law quarters. It would not be feasible to change that structure back to a garage - it was a garage over 30+ years ago.

At this time, there was discussion with regard to the options of the already existing out-buildings on the property and whether or not the one could be converted into a detached garage.

Staff Comments – At this time, Mr. Marx presented photos on the overhead projector and explained the staff's reasons for the recommendation of disapproval, referencing the staff report.

Board/Staff Discussion – Mr. Glover asked about the property on the other side, noting that there was no garage. In response to Mr. Glover's question, Mr. Marx said that was correct and that several properties do not have garages. At this time, there was further discussion with regard to other residents in the neighborhood and whether there were any other options for Mr. Lizer besides the two-car garage.

Applicant Rebuttal/Discussion – Mr. Lizer said that he believed that it would be detrimental to the property value if they did a one-car garage. He discussed that the in-law's quarters is still fully functional, but is currently being used as storage. Mr. Lizer addressed the side yard concern regarding his neighbor (Mr. Green).

Mr. Glover asked about the carport that was there in the past. Mr. Lizer explained that it was destroyed over the years by the weather and caused over \$25,000 worth of damage to the residence. He said there was no option with regard to fixing the carport. It had been repaired four times since 1991.

At this time, there was further discussion between the Board members, the staff, and the applicant with regard to other possible options regarding building a feasible garage that meets the requirements. Mr. Lizer noted that the attached two-garage that he is requesting is the exact dimensions of the previous carport.

Action – A motion was made by Mr. Needham, seconded by Mr. Gross and carried unanimously (Forester and Meyer absent) to **disapprove (V-2016-43) PLN-BOA-16-00006: SIDNEY O. LIZER** – a request for a variance to reduce the required side yard from 8 feet to 2 feet to construct an attached garage in a Single Family Residential (R-1C) zone, at 2412 Eastway Drive, for the reasons found by the staff.

D. Conditional Use Appeals

There were none remaining

E. Administrative Review

There were none remaining

IV. BOARD ITEMS

None were presented.

V. STAFF ITEMS

*Note – The following item was acted on prior to the sounding of the agenda.

- A. A motion to adopt revised conditions for case # **V-2015-36: Leah Taylor**. Conditions that do not apply to property were adopted in error, and wording should be as follows:

1. ~~The addition to the existing~~ house shall be constructed in accordance with the submitted application and site plan.
2. A building permit shall be obtained by the applicant from the Division of Building Inspection prior to construction of the ~~addition~~ house, and an occupancy permit shall be obtained once the construction has been completed.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 5-0 (Forester and Meyer absent) to **adopt** the change in the conditions for case # **V-2015-36: Leah Taylor**

VI. NEXT MEETING DATE – Mr. Stumbo confirmed that the Board's next meeting date would be August 26, 2016.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 2:28 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary