

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 30, 2016

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, September 30, 2016. Members present were Barry Stumbo (Chair), Thomas Glover, Joan Whitman, Jan Meyer, Larry Forester, and Chad Needham. Absent: Branden Gross. Others present were: Thomas Clements, Division of Engineering and Tracy Jones, Department of Law. Staff members in attendance were: Jim Marx, Barbara Rackers, Stephanie Cunningham and Donna Lewis.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the August 26, 2016 meeting would be considered at this time.

Action - A motion was made by Ms. Whitman, seconded by Mr. Forester, and carried unanimously to **approve** the minutes of the August 26, 2016 meeting.

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.

Staff Comments - Mr. Marx notified the Board and those present in the audience of the recent passing of the younger sister of Staff Member Tammye McMullen. Therefore, Staff Member Donna Lewis was present to run the Granicus program for this meeting in Tammye's absence.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda with regard to any postponements, withdrawals, applicants present and objectors.

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.

There were no postponements or withdrawals; all applicants were present, and no objectors were identified.

B. **Variance Appeals**

1. **PLN-BOA-16-00024: LEXINGTON SELF STORAGE** - requests variances to: 1) reduce the required distance from a residential zone for overhead doors from 100 feet to between 5 feet and 60 feet; 2) eliminate the landscape buffer zones along the north and south property lines; and 3) construct an office building and storage units with a building height not to exceed 22 feet above the finished floor elevation in a Wholesale and Warehouse Business (B-4) zone, at 1089 South Broadway (Council District 11).

The Staff Recommends: Approval of the requested variances, for the following reasons:

- Granting the requested variances will not cause a hazard or nuisance to the public, nor will it alter the character of the vicinity. This portion of the South Broadway corridor is totally commercial, with the exception of the multi-family residential buildings adjoining the subject property. Most, if not all of the properties on the western side of the street (to include the condominiums), have similar side yard setbacks. Granting the landscape variance is a matter of practicality on the northeastern side of the property, as there would not be sufficient light or air to allow plants to survive due to the 4-story residential buildings. The applicant proposes to put the plant material required by Article 18 on the portion of the property as it adjoins the parking lot for the condominiums. On the opposite side of the property, there is already vehicular use area screening along the property line, which can serve as the landscape buffer for the subject property as well, particularly since the applicant will install a 6-foot privacy fence as part of the screening. The existing vehicular use area screening will be maintained by the owner of that property (1093 South Broadway). Regarding the reduction of setback for overhead doors, the overhead doors will be interior to the property and will face the interior of the property, which functionally will make the level of variance less.
- Granting the variances will not allow a circumvention of the requirements of the Zoning Ordinance. The property is a vacant, narrow infill lot, and is sandwiched between an R-4 zone and a B-1 zone. The property that is zoned R-4 is an anomaly on this portion of South Broadway and is the sole reason for the variance on that side of the property.
- The circumstances that apply to this property that help to justify the variances are the long, narrow shape of the property, the presence of residential zoning immediately adjoining two sides of the property, and existing landscaping along the rear and southwestern property lines. The rear property line is well screened, partially with a significant bur oak, and the property owner is making every effort to preserve that tree. This, in itself, is a unique circumstance, as there are very few really significant trees left, particularly in an urban area such as the South Broadway Corridor.
- While it could be said that the request for the variances is due to the actions of the applicant, it is likely that

any development of the subject property would require a landscape variance on its northeastern side, based on zone-to-zone screening requirements. And depending on the use and size of any building placed on the property, a reduction in the side yard on the northeastern side may be needed for any type of development on the property. Developing a B-4 zoned property with mini storage units is a reasonable use that is principally permitted in the zone.

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

1. That the property be developed according to the submitted application and site plan.
2. That any applicable permits (including land disturbance [grading], building and occupancy) be obtained from the Divisions of Engineering and Building Inspection. Prior to obtaining the Certificate of Occupancy from the Division of Building Inspection, a Zoning Compliance Permit shall be obtained from the Division of Planning.
3. That action of the Board be noted on the development plan for the property, submitted for Planning Commission approval (PLN-MJDP-16-00019: Lexington Self Storage).
4. That access to/from the property be subject to the approval of the Urban County Traffic Engineer.
5. That the entry gate be designed as a "click to enter" gate for access by Fire and Emergency Services.
6. That, to mitigate the lack of landscaping on either side of the property, at least one tree must be provided at the front of the property at the northeast corner, near the office. Additionally, landscaping consistent with vehicular use area screening adjacent to the proposed parking spaces, to include one shade tree, shall be provided. All will be subject to approval of the LFUCG Landscape Examiner in order to determine appropriateness of plant material so that no sight lines are compromised.

Representation – Morgan Dye with Palmer Engineering was present on behalf of the applicant. He indicated they had reviewed the six (6) recommended conditions and agreed to abide by them.

Board and Staff Discussion – Chairman Stumbo mentioned there were three variances relevant to this case, and asked Mr. Marx if all three could be approved at the same time. Mr. Marx stated they could.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-16-00024: LEXINGTON SELF STORAGE** – a request for variances to: 1) reduce the required distance from a residential zone for overhead doors from 100 feet to between 5 feet and 60 feet; 2) eliminate the landscape buffer zones along the north and south property lines; and 3) construct an office building and storage units with a building height not to exceed 22 feet above the finished floor elevation in a Wholesale and Warehouse Business (B-4) zone, at 1089 South Broadway (Council District 11), based on the findings proposed by the Staff and subject to the six (6) conditions as recommended by the Staff.

2. **PLN-BOA-16-00025: PAUL GARDNER/TKD CONSTRUCTION** - requests a variance to reduce the required 20-foot side street side yard along N. Martin Luther King to 13 feet to construct an addition to the existing duplex in a Planned Neighborhood Residential (R-3) zone within the defined Infill & Redevelopment Area, at 173 E. Sixth Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor negatively alter the character of the general vicinity. The addition will have a slightly larger setback than the existing building, and will result in an overall building appearance that is comparable to that of other nearby corner lots.
- b. A setback reduction in this particular case is justified by the narrow width of the corner lot, which greatly reduces the buildable area due to having two front yard requirements.
- c. Strict application of the Zoning Ordinance would allow a smaller addition than what is proposed, but one that would not meet the intended purpose of the addition and would be marginally functional. Such an outcome could be considered as unnecessarily restrictive given the special circumstances relating to the narrow width of the lot and the location of the existing duplex building.

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

1. The addition shall be constructed in accordance with the submitted site plan and permit issued by the Division of Building Inspection, with minor revisions allowed for permitting purposes.

Representation – Paul Gardner, the applicant, spoke on his own behalf. He indicated he had reviewed the recommended condition and agreed to abide by it.

Action - A motion was made by Mr. Forester, seconded by Mr. Needham and carried unanimously, to **approve PLN-BOA-16-00025: PAUL GARDNER/TKD CONSTRUCTION** – a request for a variance to reduce the required 20-foot side street side yard along N. Martin Luther King to 13 feet to construct an addition to the existing duplex in a Planned Neighborhood Residential (R-3) zone within the defined Infill & Redevelopment Area, at 173 E. Sixth

Street (Council District 1), based on the findings proposed by the Staff and subject to the condition as recommended by the Staff. .

3. **PLN-BOA-16-00026: PATTY SPARKS** - requests variances to: 1) reduce the required front setback from 300 feet to 100 feet; and 2) reduce the required side yard on each side of the property from 25 feet to 5 feet in order to build a home in the Agricultural Rural (A-R) zone, at 3595 Maddox Lane (Council District 12).

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

- a. Granting the requested variances will not adversely affect public health, safety or welfare, nor will it alter the character of the vicinity. The property is non-conforming with regard to size and frontage, as are many of the lots in the Maddoxtown Rural Settlement.
- b. The size and shape of the lot create a special circumstance that contributes to justifying the reduction in the front and side setbacks.
- c. Strict application of the Zoning Ordinance would actually set the property apart with regard to character, as opposed to blending with the surrounding area. This would be contrary to the recommendation of the Rural Land Management Plan, which is that the land be used in a manner consistent with the historic nature of the Maddoxtown Rural Settlement. Additionally, it would create an unnecessary and unreasonable hardship for the applicant.

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

1. That the property be developed according to the submitted application and site plan.
2. That building and paving permits be obtained from the Division of Building Inspection; and, if necessary, a Land Disturbance Permit from the Division of Engineering, prior to construction of either the residence or the driveway. Additionally, any permits applicable to erection of the greenhouse and construction of a pergola be obtained from the Division of Building Inspection.
3. That the septic system be evaluated and approved by the Fayette County Board of Health prior to occupancy of the residence.

Representation – Patty Sparks, the applicant, spoke on her own behalf.

Board and Staff Discussion – The Chair asked if a letter that he had been presented was relative to the case. Mr. Marx stated one letter had been received, not really objecting to, but stating an opinion about the project. It's by someone who is not really affected by the project. The Chair asked Ms. Sparks if she would give the Board a minute to review and discuss the letter and she indicated her agreement.

After reviewing the letter, Chairman Stumbo asked Ms. Sparks if she was willing to abide by the conditions recommended by the Staff. She said she didn't know what the conditions were. Mr. Marx stated she should have received a packet in the mail, which included a copy of the conditions. He gave Ms. Sparks a copy of the conditions to review and asked the Board to give her a minute to read the conditions. The Board agreed to do so and the Chair asked her if she agreed to abide by the three (3) recommended conditions. Ms. Sparks stated that she did.

The Chair asked the Board if anyone had any questions for Ms. Sparks. Ms. Meyer asked about the old septic system on the property, which was referenced in the letter given to the Board. Ms. Meyer asked if the old septic system was going to be inspected. Ms. Rackers stated that if Ms. Sparks was not going to be using the old system, she didn't think there would be any need to have it inspected. Ms. Sparks said the Health Department had been out and plotted the property, but didn't say anything about an old septic system. Ms. Sparks stated the Health Department has approved the location of the new septic system that will be installed. There was no further discussion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-16-00026: PATTY SPARKS** – a request for variances to: 1) reduce the required front setback from 300 feet to 100 feet; and 2) reduce the required side yard on each side of the property from 25 feet to 5 feet in order to build a home in the Agricultural Rural (A-R) zone, at 3595 Maddox Lane (Council District 12), based on the findings proposed by the Staff and subject to the three (3) conditions as recommended by the Staff.

4. **PLN-BOA-16-00027: VALERIE HOWLETT & FORREST DAY** - request a variance to allow an encroachment into the required 43-foot rear yard by 15 feet in order to build an elevated screened porch and deck at the rear of the residence in a Two Family Residential (R-2) zone, at 3470 Bates Creek Lane (Council District 8).

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

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor negatively alter the character of the general vicinity. The porch and deck additions will not be highly visible from either Bates Creek Road or Bates Creek Lane, and will be situated over 200' away (buffered by an area of wooded open space) from the nearest residential properties to the east.
- b. A modest reduction in the required rear yard setback is reasonable in this particular case, due to the unusual depth and layout of the lot. Also, the porch and deck additions proposed, customary for a residential property, are not out of scale with other residential properties in the immediate area.
- c. Strict application of the Zoning Ordinance would only allow a very small deck or porch addition at the northerly rear corner of the home, which could easily be construed as overly restrictive and not necessary given the special circumstances relating to the lot size and configuration.

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

1. The porch and deck additions shall be done in accordance with the submitted site plan and permit issued by the Division of Building Inspection, with minor revisions allowed for permitting purposes.
2. Should any portion of the porch and deck additions encroach into the sanitary sewer and utility easement at the rear of the property, all necessary encroachment agreements shall be obtained prior to construction.

Representation – Valerie Howlett, the applicant, represented herself and Mr. Day. She indicated she had reviewed the two (2) recommended conditions and agreed to abide by them.

Board and Staff Discussion – Mr. Marx stated there was one letter of support. The Board reviewed the letter.

Action – A motion was made by Mr. Needham, seconded by Mr. Forester, and carried unanimously to **approve PLN-BOA-16-00027: VALERIE HOWLETT & FORREST DAY** – a request for a variance to allow an encroachment into the required 43-foot rear yard by 15 feet in order to build an elevated screened porch and deck at the rear of the residence in a Two Family Residential (R-2) zone, at 3470 Bates Creek Lane (Council District 8), based on the findings proposed by the Staff and subject to the two (2) conditions as recommended by the Staff.

C. Conditional Use Appeals

1. **PLN-BOA-16-00019: KELLY NURSERY** - requests a conditional use permit to operate a plant nursery with wholesale sales on a property that is split zoned Agricultural Rural (A-R) and Neighborhood Business (B-1), at 4182 Leestown Rd. (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. A plant nursery is a use that is well suited to, and is typical of, the A-R zone and will be compatible with surrounding uses. In this instance, the property is split-zoned A-R/B-1, and the office for plant sales is located in the B-1 zone, where the retail sale of merchandise is principally permitted. Additionally, the applicant is merely replacing a similar use that is no longer in business on the property.
- b. Granting the requested conditional use will not adversely affect the subject or surrounding properties. This is primarily a wholesale establishment, with a very limited amount of retail sales to the public. Much of the traffic associated with the use will be generated by nursery employees delivering plant material off site or landscape contractors picking up plant material to install off site, which should somewhat reduce the number of vehicle trips to/from the property. Although existing, the access, parking and internal circulation will be subject to approval by the Urban County Traffic Engineer, and the septic system will be subject to approval of the Fayette County Board of Health. Trash pick-up will be privately provided, and police and fire protection are available and adequate.

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

1. The plant nursery shall be established according to the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to opening the nursery.
3. The septic system shall be subject to approval by the Fayette County Board of Health.
4. Any pole lighting to be used for the parking and/or loading areas (or any other outdoor areas) shall have a maximum height of 12 feet and shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing nearby agricultural or residential properties.
5. Any signage shall comply with Article 17 of the Zoning Ordinance and shall not be internally illuminated.

Representation – Todd Kelly, applicant, spoke on behalf of Kelly Nursery. He indicated they had reviewed the recommended five (5) conditions and agreed to abide by them.

Board and Staff Discussion – Chairman Stumbo asked Mr. Marx if he was correct in his understanding that the

applicant will be moving their nursery to a location on Leestown Rd. that had previously been a plant nursery prior to. Ms. Rackers stated that is correct and that no new buildings will be erected.

Action – A motion was made by Ms. Meyer, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-16-00019: KELLY NURSERY** – a request for a conditional use permit to operate a plant nursery with wholesale sales on a property that is split zoned Agricultural Rural (A-R) and Neighborhood Business (B-1), at 4182 Leestown Rd. (Council District 12), based on the findings proposed by the Staff and subject to the five (5) conditions as recommended by the Staff.

D. Administrative Reviews

1. **PLN-BOA-16-00018: DAVID A. HELLARD** - an administrative review to determine if construction of porches with storage closets on the rear of the 4-plex for each of the four units is an expansion of a non-conforming use in a Two Family Residential (R-2) zone, at 188 N. Hanover Ave. (Council District 3).

The Staff Recommends: Approval for the following reasons:

- a. The nonconforming use will not be increased in scope or area of its operation because no expansion of the number of dwelling units or of any living space will occur. The proposed porches will not alter the fundamental aspect of the nonconforming use, and will not intensify the nonconforming activities on the subject property.
- b. The proposed porch additions should have a positive impact on the future development of the property and the surrounding area. Such improvements are customary for residential properties, and could easily take place at this location, at the same scale as what is proposed, if the building was a conforming duplex (with two large living units) rather than four smaller apartments.

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

1. The porches shall not be walled in or otherwise used in any way as additional living units.
2. All necessary permits, including a building permit issued by the Division of Building Inspection, shall be obtained prior to construction.

Representation – David A. Hellard, the applicant, spoke on his own behalf. He indicated he had reviewed the two (2) recommended conditions and agreed to abide by them.

Board and Staff Discussion – Chairman Stumbo informed Mr. Hellard of the receipt of some correspondence concerning his application for this project. Mr. Hellard explained that he and a new neighbor had recently had a conflict over some tree trimming on their properties. At the current time there is no litigation pending or anything of the sort. None of the members of the Board had any questions for the applicant.

Action – Mr. Glover made a motion, which was seconded by Ms. Whitman and carried unanimously, to **approve PLN-BOA-16-00018: DAVID A. HELLARD** - an administrative review, determining that construction of porches with storage closets on the rear of the 4-plex for each of the four units is not an expansion of a non-conforming use in a Two Family Residential (R-2) zone, at 188 N. Hanover Ave. (Council District 3), based upon testimony heard today, the Staff Review and subject to the two (2) conditions listed in the Staff Report.

- IV. **BOARD ITEMS** - The Chair announced that if there were any items a Board member wished to present, they could be heard at this time. There were none.
- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present could be heard at this time. Mr. Marx mentioned a training opportunity on November 11, 2016 to be presented by David Pike. This would be a good opportunity to obtain training credits. The Chair asked Mr. Marx or Ms. Rackers if it would be possible to compile a list of training credits the Board Members have and still need. Mr. Marx stated that would be done.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be October 28, 2016.
- VII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:11 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary