

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

October 28, 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 (arrived at 1:36 p.m.), Jan Meyer, Branden Gross, and Chad Needham. Absent: Larry Forester. Others present were: Bill Saltee, Division of Planning, Thomas Clements, Division of Engineering, and Tracy Jones and Andrea Brown, Department of Law. Staff members in attendance were: Jim Marx, Barbara Rackers, and Tammy McMullen.

II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the September 30, 2016 meeting would be considered at this time.

Action - A motion was made by Ms. Meyer, seconded by Mr. Needham, and carried unanimously to **approve** the minutes of the September 30, 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.

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.

a. **PLN-BOA-16-00029: CLAYS MILL ROAD BAPTIST CHURCH** - requests a conditional use permit to construct a 52,500 square-foot sanctuary and educational facility in the Agricultural Rural (A-R) zone, at 3440 Versailles Road (Council District 12).

Representation – Stan Lee, attorney on behalf of the applicant, said that they would like to request postponement of their application until the January 27, 2017 hearing.

Action – A motion was made by Mr. Glover, seconded by Mr. Gross and carried 5-0 to **postpone PLN-BOA-16-00029 CLAYS MILL ROAD BAPTIST CHURCH** to the January 27, 2017 meeting.

B. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-16-00023: TTTT INVESTMENT GROUP** - requests a variance to increase the maximum allowable height of a fence in the front and side street side yards from 4 feet to 5 feet in a Neighborhood Business (B-1) zone, within the defined Infill and Redevelopment Area, at 529 Georgetown Street (Council District 2).

The Staff Recommends: Approval of the increase in height for the Michigan Street frontage as it abuts the parking area, for the following reasons:

- a. Granting the variance (with conditions) will not adversely affect the public health, safety, or welfare as the new fence replaces a previously existing chain link fence that had fallen into disrepair.
- b. Restricting the 5' height to the area immediately adjoining the parking lot will help minimize the potential for new fence construction to negatively affect the existing character of the general vicinity.

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

1. The fence surrounding the front and side of the building shall meet the requirement of 4 feet maximum height, but the parking lot shall be permitted to utilize the 5 ft. tall fence to provide extra security.
2. The applicant shall obtain a fence permit from the Division of Building Inspection within 30 days of Board action and prior to completing installation of the fence.
3. The parking area and access apron shall be developed in accordance with an after-the-fact permit issued by the Division of Building Inspection with design details subject to approval by the Division of Traffic Engineering. Any required modifications to the existing parking area and access apron shall be completed concurrent with or prior to completing the fence installation.

Representation – Timothy W. Vaughn, the applicant, spoke on behalf of himself.

Discussion – There was some discussion with regard to the four-foot fence recommendation. Mr. Vaughn indicated that there previously was a five-foot fence on the property, and would like to keep it that height.

The Board asked for a continuance to allow Mr. Vaughn time to provide evidence of the previous 5' fence height.

Action – A motion was made by Mr. Glover, seconded by Mr. Gross and carried unanimously to **continue PLN-BOA-16-00023: TTTT INVESTMENT GROUP** – until the November 18th hearing for more evidence to be presented by the applicant.

2. **PLN-BOA-16-00034: RALEIGH BRUNER (dba WILDCAT MOVING)** - requests a variance to reduce the required 100-foot distance from a residential zone for overhead doors to 62 feet in a Light Industrial (I-1) zone, at 408 Sporting Court (Council District 9).

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

- a. Granting the requested variance will not cause a hazard or nuisance to the public, nor will it alter the character of the vicinity. The properties surrounding the subject property have been developed with either large churches or large commercial and/or recreational facilities. The proposed building will be a one-story commercial building as well, which will be oriented toward the cul-de-sac, with the overhead doors on the front of the building, interior to the property. There should be no disturbance to surrounding properties as a result of the overhead doors.
- b. Granting the variances will not allow a circumvention of the requirements of the Zoning Ordinance. The intent of the overhead door restriction is to minimize potential disruption to surrounding residential properties, the nearest of which is across New Circle Road to the north. A second residential development is across Reynolds Road/Wellington Way to the south. Both are well over 100 feet from the subject property. The nearest residential zoning is immediately to the west and is developed as a parking lot for the adjoining church.
- c. The circumstance that applies to this property that helps to justify the variance is its location next to a church parking lot, which happens to be zoned R-4 from an earlier re-zoning and proposed development.
- d. While it could be said that the request for the variance is due to the actions of the applicant, the layout of the property/location of the building is more or less dictated by the fact that the vehicles that will be coming into/going out of the property are moving vans, which require a greater turning radius and circulation area than most vehicles.

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 access to/from the property be subject to the approval of the Urban County Traffic Engineer.
4. That landscaping consistent with Article 18 zone-to-zone screening requirements be provided in the space between the fence and the building on the subject property; and that vehicular use area screening/ landscaping also be provided, in compliance with Article 18.

Representation – Jason Banks with Banks Engineering was present on behalf of the applicant. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action - A motion was made by Ms. Meyer, seconded by Mr. Glover and carried unanimously, to **approve PLN-BOA-16-00034: RALEIGH BRUNER (dba WILDCAT MOVING)** – a request for a variance to reduce the required 100-foot distance from a residential zone for overhead doors to 62 feet in a Light Industrial (I-1) zone, at 408 Sporting Court, for the reasons recommended by the staff and subject to the four conditions.

3. **PLN-BOA-16-00032: NANCY COPPINGER** - requests an administrative review to allow an increase in the height of an accessory structure (30" above the height of the principal structure) in a Single Family Residential (R-1C) zone, at 898 Maywick Drive (Council District 11).

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

- a. The height of the proposed garage, as it relates to the height of the residence, is not likely to be noticeable since the property slopes upward from front to rear. Because of the upward slope of the property, the garage will be higher in elevation than the residence, whether taller or not.
- b. The roof of the residence has a very shallow pitch. If required to match that pitch on the garage, the applicant would not be able to use the upper level for storage, which is one of the reasons cited for its increased height.

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

1. The garage shall be located and constructed in accordance with the submitted site plan.
2. The garage shall be used only for parking of vehicles and storage.
3. All necessary permits, including building, paving and occupancy permits shall be obtained from the Division of Building Inspection prior to construction and use of the garage.

Representation – Gene Coppinger was present on behalf of the applicant. 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 Mr. Needham and carried unanimously to **approve PLN-BOA-16-00032: NANCY COPPINGER** – a request for an administrative review to allow an increase in the height of an accessory structure (30" above the height of the principal structure) in a Single Family Residential (R-1C) zone, at 898 Maywick Drive, based upon the recommendations of the staff and subject to the conditions set forth by the staff.

C. **Conditional Use Appeals**

1. **PLN-BOA-16-00031: DENISE EDMONDS** - requests a conditional use permit to re-establish a previously approved child care facility for up to 60 children and a variance to reduce the required front yard from 30 feet to 0 feet to accommodate parking in a Single Family Residential (R-1C) zone, at 3580 Caulder Road and 1228 Hot Springs Court (Council District 8).

The Staff Recommends: **Approval of the requested conditional use**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as a child care center operated at this location for many years, having been approved by the Board of Adjustment for a conditional use, limited to 60 children. The applicant wishes only to re-open the facility, eventually with the same number of children as had been approved and accommodated previously. However, until the parking is provided on the Hot Springs Court property, the applicant will be limited to only 24 children.
- b. All necessary public facilities are available and adequate for continued use of the property as a child care center.

The Staff Recommends: **Approval of a variance to 6 feet on Hot Springs Court**, for the following reasons:

- a. Granting the variance to 6 feet to allow parking on the Hot Springs Court property will not adversely affect the subject or surrounding properties, will not cause a hazard or nuisance to the public, and will not alter the character of the vicinity. Granting a variance to 6 feet will actually benefit public safety, as it will allow a safer parking situation for employees, parents and neighborhood traffic because vehicles will not be forced to back into traffic as they are now. Additionally, the 6-space parking area will be screened as required by Article 18 of the Zoning Ordinance.
- b. Granting the requested variance will not allow a circumvention of the requirements of the Zoning Ordinance. Parking for six vehicles was required by the Board of Adjustment when the use was first approved for a child care facility to allow the applicant(s) at the time to provide child care for up to 60 children. Although required, only four spaces were ever provided. A parking layout for the six spaces was approved by the Urban County Traffic Engineer for the Hot Springs Court property but was never implemented. Granting the variance will allow that parking to be put in place.
- c. The circumstance that justifies granting the variance is the condition imposed by the Board in the 1970s when the child care was first approved for up to 60 children. The only logical (and safe) place for the parking area is on the Hot Springs Court property once it is consolidated with the property on Caulder Road.
- d. The requested variance is not the result of a willful violation of the Zoning Ordinance on the part of the applicant. The applicant wishes to re-open the child care and operate it as it was previously operated. The only way it can be done and be in compliance with the requirements of the Zoning Ordinance is to provide the additional parking. The only way to provide the additional parking, while providing a safe play area toward the rear of the lot, is to obtain a variance.

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

1. The child care center, when expanded to accommodate more than 24 children, shall be operated in accordance with the submitted application and a revised site plan, indicating: a) design requirements as specified by condition #3; and b) a fenced and screened play area of at least 1,500 square feet on the Hot Springs Court property.
2. All necessary permits, including a Zoning Compliance Permit, Land Disturbance and Paving Permits, and a Certificate of Occupancy shall be obtained from the Divisions of Planning (Zoning Compliance), Engineering (Land Disturbance) and Building Inspection (Paving and Occupancy), as appropriate. The Occupancy Permit shall be obtained prior to opening the child care facility.
3. The number of children to be cared for shall be limited to 24 until parking, as recommended by the Urban County Traffic Engineer, is provided (i.e., two spaces with room for turnaround purposes on the Caulder Road property and six spaces with room for turnaround on the Hot Springs Court property). Should the child care facility not expand in the future to accommodate any more than 24 children, the space in the front yard of Caulder Road may continue to be used as parking for up to four vehicles.
4. The curb cut for the existing parking on Caulder Road shall be designed, extended and paved with concrete, subject to approval of the Urban County Traffic Engineer.
5. No freestanding signs and only one wall sign, not to exceed two square feet, shall be permitted.
6. The two properties (3580 Caulder Road and 1228 Hot Springs Court) shall be consolidated prior to occupancy of the property for care of more than 24 children.
7. The conditional use permit shall become null and void should the appellant cease to own or occupy the property

as a child care facility.

Representation – Denise Edmonds, the applicant, was present. She indicated she had reviewed the recommended conditions and agreed to abide by them.

Board and Staff Discussion – Ms. Rackers explained the history of the childcare center and indicated that the applicant was willing to reduce the number of children cared for to 42. A discussion between the staff and Board members followed, including comments by Casey Kaucher related to parking issues.

Opposition – Chris Clendenen, attorney, presented a PowerPoint presentation and spoke in opposition to the proposed use.

At this time there was discussion between the Board and staff as to whether or not the proposed use is a legal non-conforming use, to include comments by Ms. Jones related to the current and past uses.

Staff and Applicant Rebuttal/Discussion – Ms. Rackers addressed the concerns of Mr. Clendenen with regard to the current conditional use, the status of the property, as well as what qualifies the property to have a childcare facility. Mr. Marx confirmed Ms. Jones' statement with regard to the conditional use on the property. A discussion between the staff, Board members, and the applicant followed.

Ms. Edmonds discussed her proposed use for the facility as well as the proposed business hours. At this time, there was further discussion between the staff and the Board members. For safety reasons, Mr. Glover suggested that there be a circular driveway in order to prevent having to back out. Discussion between the staff and Board members followed. Ms. Rackers also presented a photo on the overhead projector and briefly discussed the proposed parking by Traffic Engineering.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously to **continue PLN-BOA-16-00031: DENISE EDMONDS** until the November 18th hearing.

C. **Administrative Reviews**

1. **PLN-BOA-16-00033: BILL and KIM READ** - a third party appeal of the Division of Planning's decision that four unrelated persons and up to four handicapped persons can legally occupy a dwelling in a Single Family Residential (R-1C) zone, at 1617 Versailles Road (Council District 11).

Representation – Bill and Kim Read, the applicants, were present.

Staff Report – Mr. Marx explained to the Board why the decision was made to consider the proposed occupancy of the residence as a legal use.

Board and Staff Discussion – At this time, there was discussion as to what type of facility is being run at the subject property.

Applicant Comments – Mr. and Mrs. Read discussed their concerns about the nature of how people would be committed to the program. Discussion between the applicant and Board members followed.

Paula Singer, who lives at 117 Hamilton Park (about one block from the facility), discussed her concerns of the current use at the subject property. Ms. Singer also presented documentation to the Board to be put into the record. Further discussion with the Board followed.

Peggy Henson, District 11 Council Member, stated that she felt that this was a very difficult case and discussed her concerns. Ms. Henson noted that she was looking into reducing the number of handicapped people allowed to reside in one house.

Ms. Singer stated that it wasn't a matter that they did not this particular use in their neighborhood, but that they did not want another one in the neighborhood. Further discussion followed.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried 5-1 (Gross opposed) to **deny PLN-BOA-16-00033: BILL and KIM READ** – a third party appeal of the Division of Planning's decision that four unrelated persons and up to four handicapped persons can legally occupy a dwelling in a Single Family Residential (R-1C) zone, at 1617 Versailles Road, for the reasons primarily of the testimony at today's hearing.

IV. **BOARD ITEMS** – There were none.

- V. **STAFF ITEMS** – Mr. Marx announced that a new Board of Adjustment Senior Planner, Autumn Goderwis, had been hired.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be November 18, 2016. Mr. Glover noted that he may not be in attendance for the next month's hearing due to a conflict.
- VII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 3:31 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary

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