

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

November 18, 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, Branden Gross, Chad Needham, and Larry Forester (arrived at 2:11 pm). Others present were: Thomas Clements, Division of Engineering; Tracy Jones, Department of Law; and Casey Kaucher, Traffic Engineering. Staff members in attendance were: Jim Marx, Barbara Rackers, Autumn Midyett and Tammye McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the October 28, 2016 meeting would be considered at this time.

Action - A motion was made by Mr. Gross, seconded by Mr. Glover, and carried 6-0 (Forester absent) to **approve** the minutes of the October 28, 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-16-0038: FIRST CORBIN, LLC.** - an administrative appeal to transfer 42½ square feet of unused wall signage to a freestanding sign; and a variance to increase the allowable height of the freestanding sign from 10' to 18' in a Professional Office (P-1) zone, at 2404 Sir Barton Way (Council District 6).

Representation – Jacob Walbourn, attorney on behalf of the applicant, said that they would like to withdraw their variance request portion of their application; however, would like to proceed with their administrative appeal.

*Note – Mr. Gross noted that he would be recusing himself from this case due to a conflict of interest.

- b. **PLN-BOA-16-00039: SOCCER TRAINING CENTER** – requests a conditional use permit for an indoor recreational facility (soccer training) in a Light Industrial (I-1) zone, at 700 Allenridge Point (Council District 12),

Staff Comments – Mr. Marx notified the Board that staff had received a letter from the applicant advising of withdrawal of their application.

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).

Revised finding and conditions for approval were presented by the staff as follows:

The Staff Recommends: **Approval of the increase in height for the fence**, 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 and exceeded the limitation of 4 feet by 6" to 12".

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

1. The fence to be installed shall not exceed the height of the fence that has been installed at the parking lot (shown in photos to be 5'11.5" to the top of the fence post) and shall be chain link fencing or similar; solid privacy fencing is not permitted.
2. The sight triangle where Michigan Street intersects Georgetown Street must be maintained. Landscape elements in the sight triangle shall be maintained at a height not to exceed 3 feet.

3. 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.
4. 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, applicant, was present.

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 at that height.

Action – A motion was made by Mr. Gross, seconded by Ms. Meyer and carried 6-0 (Forester absent) to **approve PLN-BOA-16-00023: TTTT INVESTMENT GROUP** – a request for 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, based upon the recommendations of the staff and subject to the revised findings and conditions that were distributed at the hearing.

2. **PLN-BOA-16-00043: JANETH MARTINEZ** – requests a variance to allow a porch to remain as constructed, encroaching into the required front yard by up to 2 feet in a Single Family Residential (R-1C) zone, at 770 Sandpiper Court (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance will not adversely affect the public health, safety, or welfare, nor allow an unreasonable circumvention of the Zoning Ordinance, as the variance is relatively minor and will permit an encroachment of only 1'8".
- b. Strict application of the Zoning Ordinance would provide minimal benefit to the overall character of the neighborhood, which does not have well-defined streetscape features along Sandpiper Court.

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

1. The applicant shall obtain a building permit from the Division of Building Inspection within 30 days of Board action and prior to completing construction of the porch.

Staff Comment – Mr. Marx noted that staff had received one letter of support and presented it to the Board.

Representation – Janeth Martinez, applicant, was present. She indicated that she had reviewed the recommended condition and agreed to abide by it

Board Questions/Comments – Mr. Glover asked if the applicant had a building permit. Ms. Martinez replied that they were unaware that they needed to have a permit and that was the reason for them being at today's hearing. Mr. Martinez explained their financial situation as to why they did not hire a contractor and further reiterated that they were unaware they were in need of a permit.

Action - A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 5-0 (Glover abstained, Forester absent), to **approve PLN-BOA-16-00043: JANETH MARTINEZ** – a request for a variance to allow a porch to remain as constructed, encroaching into the required front yard by up to 2 feet in a Single Family Residential (R-1C) zone, at 770 Sandpiper Court, for the reasons recommended by the staff and subject to the one condition.

3. **PLN-BOA-16-00045: WILLIAM STEPHEN & ROMI SIMONE HOWARD** - request a variance to reduce the required front yard from 300 feet to 150 feet in order to construct and occupy a single family residence in the Agricultural Rural (A-R) zone, at 3280 N. Cleveland Rd. (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare, nor alter the characteristic of the general vicinity, as the residence on the adjoining property to the south is set back approximately the same distance as the proposed residence.
- b. The location of the floodplain, which bisects the property at or near the 300-foot setback, is a special circumstance that justifies the request.
- c. Strict application of the Zoning Ordinance would make it impossible for the appellant to construct a single family residence on this lot. If required to place the residence behind the pond, it could be construed as an unreasonable restriction on the use of the land.

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

1. The new residence shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Stephen Howard, applicant, was present, along with Rory Kahly, EA Partners. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Board Questions and Comments – Mr. Glover asked for clarification with regard to the adjoining Buckley property. At this time there was further discussion between the Board members and the applicant. Mr. Needham asked what distance was needed from the back building line next to the pond, to which Mr. Kahly responded. There was further discussion with regard to the floodplain line on the property.

Action - A motion was made by Mr. Needham, seconded by Mr. Glover and carried 6-0 (Forester absent), to **approve PLN-BOA-16-00045: WILLIAM STEPHEN & ROMI SIMONE HOWARD** – a request for a variance to reduce the required front yard from 300 feet to 150 feet in order to construct and occupy a single family residence in the Agricultural Rural (A-R) zone, at 3280 N. Cleveland Rd., for the reasons recommended by the staff and subject to the two conditions.

5. **PLN-BOA-16-00046: MARK HUFNAGEL/SJM HOMES** – request a variance to reduce the required side street side yard from 30 feet to 15 feet in order to construct a residence in a Single Family Residential (R-1C) zone, at 305 E. Lowry Lane (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. Granting a variance to reduce the side street side yard to 15 feet will not cause a hazard or nuisance to the public and should not alter the character of the vicinity. The majority of corner lots in this neighborhood have similar setbacks to what is now requested, likely based on the platted building lines from decades ago. Granting the variance will allow a residence to be built at a setback similar to that of the previous residence and other corner lots in the vicinity.
- b. Granting a variance from 30 feet to 15 feet will not allow an unreasonable circumvention of the Zoning Ordinance. The property was originally platted with a 15-foot side street side yard that was only changed with a re-write of the Zoning Ordinance, requiring side street side yards of each zone to match the front yard requirements.
- c. The circumstance that justifies granting this variance is the fact that the property is a corner lot that has two 30-foot front yard requirements, which restricts the buildable area of the property. The proposed residence will replace a residence that was built at a similar setback, based on the platted setback from the original 1955 subdivision plat.
- d. Strict application of the Zoning Ordinance would greatly limit the size and layout of a residence that could be located on the property and would likely cause any new construction to be out of character with the rest of the area.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance since the property was originally platted with a 15-foot side street side yard. It was due to a re-write of the Zoning Ordinance that the side street side yard setback is now required to be 30 feet.

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

1. That the property be developed in accordance with the submitted application and site plan.
2. That a building permit be obtained from the Division of Building Inspection prior to construction.

*Note – Mr. Marx stated there were three letters of objection. The Board reviewed the letters.

Representation – Mark Hufnagel, applicant was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Board, Applicant and Staff Discussion – There was discussion of the letters of objection with regard to the neighbors' concern about maintaining the current setback, the house being too large for the neighborhood, and traffic concerns, as well as parking issues. There was also further discussion with regard to the frontage of the building. An aerial view was presented on the overhead projector and was discussed further.

Action - A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 6-0 (Forester absent), to **approve PLN-BOA-16-00046: MARK HUFNAGEL/SJM HOMES** – a request for a variance to reduce the required side street side yard from 30 feet to 15 feet in order to construct a residence in a Single Family Residential (R-1C) zone, at 305 E. Lowry Lane, based upon the recommendations of the staff and subject to the conditions recommended 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).

Revised findings and conditions for approval were presented by the staff as follows:

The Staff Recommends: **Approval of a conditional use, limiting the number of children to 32**, for the following reasons:

- a. Granting an amended conditional use permit should not adversely affect the subject or surrounding properties, as a child care center has operated at this location for many years. The applicant wishes only to re-open the facility, although there will be a reduction in the number of children cared for (from 60 to 32).
- 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 3-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. Granting the variance will allow at least some of 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 additional parking 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 additional parking can be provided and be in compliance with the requirements of the Zoning Ordinance is to allow a 6-foot setback, as opposed to the 30-foot requirement of the zone.

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

1. The child care center, when expanded to accommodate up to 32 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 three 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 according to current standards 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 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 revised recommended conditions, and agreed to abide by them.

Board, Staff and Applicant Discussion – Ms. Rackers explained the modifications of the staffs' recommendation for the childcare center and indicated that there was a new parking layout, unfortunately, a circular driveway would not work. There was further discussion with regard the hours of operations of the childcare center, to include comments by Tracy Jones. There was discussion with regard to proposed use and the previous uses, and whether or not it was currently a conforming use or not. There was also some discussion with regard to revision of the conditions, in which one condition was added with regard to hours of operation, as well as the parking for the proposed use.

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

support his case.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman, and carried 4-2 (Forester abstained; Needham & Glover opposed) to **approve PLN-BOA-16-00031: DENISE EDMONDS** – a request for a conditional use permit to re-establish a previously approved child care facility for up to 32 children and a variance to reduce the required front yard from 30 feet to 6 feet to accommodate parking in a Single Family Residential (R-1C) zone, at 3580 Caulder Road and 1228 Hot Springs Court, for the reasons recommended by the staff and subject to the six conditions, adding a seventh to read as follows:

7. The hours of operation shall be 6 a.m. to 6 p.m. Monday-Friday, with some Saturdays for special events.

D. Administrative Reviews

1. **PLN-BOA-16-00038: FIRST CORBIN, LLC.** – an administrative appeal to transfer 42½ square feet of unused wall signage to a freestanding sign; and a variance to increase the allowable height of the freestanding sign from 10' to 18' in a Professional Office (P-1) zone, at 2404 Sir Barton Way (Council District 6).

It was noted that the applicant had withdrawn their variance appeal for the subject property at the beginning of the hearing. Mr. Marx distributed new findings for the proposed application (for a transfer of 15 square feet) to the Board, which were reviewed and were as follows:

Findings

- A. Such a transfer should not adversely impact the subject or surrounding properties, as it is a relatively minor amount and will result in an expanded freestanding sign that remains in compliance with the established 10' height limit for the P-1 zone.
- B. The transfer will allow the addition of an artistic feature to the existing sign with no expansion of the actual text.

Conditions

1. A sign permit shall be obtained from the Division of Building Inspection prior to attaching the fork sculpture to the existing freestanding sign.
2. The design of the fork addition shall comply with the drawing and rendering submitted to the Board at the November 18, 2016 hearing, with the height of the expanded sign not to exceed 10'.

Mr. Gross recused himself from the proposed application due to a conflict of interest.

Representation – Jacob Walbourn, attorney for the applicant, was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Board, Staff and Applicant Discussion – Mr. Glover questioned the design/site plan submitted to the Board asking if it was included in the packet or if it was new one. Mr. Marx presented these on the overhead projector and discussed. Mr. Walbourn discussed the history of the landmark sign. Mr. Needham questioned whether or not if for the transfer, it had to be attached. Mr. Walbourn responded and there was further discussion with regard to the sign.

Action – A motion was made by Mr. Needham, seconded by Mr. Forester and carried 6-0 (Gross recuse) to **approve PLN-BOA-16-00038: FIRST CORBIN, LLC.** – an administrative appeal to transfer 15 feet of unused wall signage to a freestanding sign in a Professional Office (P-1) zone, at 2404 Sir Barton Way, based on the staff's findings and the conditions recommended by the staff.

2. **PLN-BOA-16-00040: DENNIS MOORE, MARKUS EMIG, CHERYL TUDOR & BUCK BUSBY** – an administrative appeal of the Division of Planning's decision to allow multiple RVs and trailers for housing workers during church construction in a Single Family Residential (R-1B) zone, at 516 Pasadena Drive (Council District 10).

Representation – Markus Emig, who lives at 579 Lamont Drive, was present.

Staff and Board Comments – Mr. Marx presented a chronology of events related to the RVs and trailers that were placed on the construction site. Tracy Jones explained that there may be some legal constraints regarding how the RVs and trailers are regulated.

Mr. Gross noted that it might be helpful for administrative appeals that there be a report presented to the Board members as something to reference.

There was discussion between Board members, the staff, and the appellants with regard to whether or not the Zoning Compliance Permit was issued in error for the RVs and trailers.

Appellant Comments – Mr. Emig expressed his concerns regarding the RVs and trailers that are on the subject property, noting that it was similar to a “campground”, as well as his concern with the buffer that was proposed to be on the property to protect the privacy of the surrounding residents, but does not function due to its size.

Mr. Dennis Moore, who lives at 577 Lamont Drive, expressed his concerns that the Zoning Compliance Permit decision was not part of a public hearing in order for concerned citizens to be heard. There was further discussion with regard to this. He presented photos of the RVs and trailers that are next to his back yard and further discussed the issue.

Citizen Opposition – Mr. Matt Ellison, a member of St. John’s Lutheran Church, discussed his opposition of the appeal. There was further discussion between the citizens and the Board, to include comments by Tracy Jones.

There was discussion with regard to the RVs and trailers not being present from December through March and possible continuance of this case until the January 2017 hearing, in order to give the appellants and church time to possibly come up with some resolution to the problem.

Action - A motion was made by Mr. Glover, seconded by Mr. Gross and carried unanimously, to **continue PLN-BOA-16-00040: DENNIS MOORE, MARKUS EMIG, CHERYL TUDOR & BUCK BUSBY** – until the January 27, 2017 hearing.

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

V. **STAFF ITEMS**

A. Landscape Review Committee - The term of Mr. Mike Cravens, Lexington Homebuilders member of the Landscape Review Committee, will expire on November 30 of this year. Mr. Cravens has agreed to serve another four-year term. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jan Meyer	Board of Adjustment
11/30/2017	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2018	Mr. Richard Weber	Landscape Architect
11/30/2019	Ms. Ann Bowe	Tree Board
11/30/2020	Mr. Mike Cravens	Lexington Homebuilders

Action – A motion was made by Ms. Meyer, seconded by Mr. Gross and carried unanimously to **reappoint** Mr. Mike Cravens to serve on the Landscape Review Committee.

Staff Comment – Mr. Gross mentioned the David Pike training with regard to the issue that was raised on the “unauthorized practice of law” by persons who were representing entities other than themselves and asked if this was going to be raised with legal and staff. There was discussion with regard to Mr. Gross’ concern.

B. **2017 MEETING & FILING SCHEDULE** - As part of its Bylaw-related duties, each year the Board of Adjustment must adopt its Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2017 is now in draft form and was presented to the Board for review and/or discussion prior to its official adoption.

There was discussion on changing the hearing dates on the filing schedule. There was no resolution; therefore the Board agreed to revisit this at the next hearing on December 16, 2016.

C. The staff wished the Board members and their families a safe and happy Thanksgiving holiday.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be December 16, 2016.

Ms. Meyer indicated that she would not be present for the December 16th hearing.

VII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 5:00 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary

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