

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

December 16, 2016

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, December 16, 2016. Members present were Barry Stumbo (Chair), Thomas Glover, Branden Gross, Chad Needham, and Larry Forester. Absent were: Joan Whitman and Jan Meyer. Others present were: Thomas Clements, Division of Engineering; Tracy Jones and Andrea Brown, 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 November 18, 2016 meeting would be considered at this time.

Action - A motion was made by Mr. Gross, seconded by Mr. Forester, and carried 5-0 to **approve** the minutes of the November 18, 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-16-00037: KROGER COMPANY** – requests a conditional use permit to construct a new parking lot and driveways in a Neighborhood Business (B-1) zone, at 445 South Ashland Avenue (Council District 3).

Representation – Bruce Simpson, attorney on behalf of the applicant, said that they would like to postpone their application until the January 27, 2017 hearing.

Action – A motion was made by Mr. Glover, seconded by Mr. Forester and carried 5-0 to **postpone** **PLN-BOA-16-00037: KROGER COMPANY** until the January 27, 2017 hearing.

- b. **PLN-BOA-16-00051: CHRIS HARRISON (SPEEDWASH CAR WASH)** – requests a conditional use permit to allow a self-service car wash in a Neighborhood Business (B-1) zone, at 3284 Eagle View Lane (Council District 7).

Representation – Keith Ransdell, attorney on behalf of law partner, David Royse, was present representing the applicant. He said that they would like to postpone their application until the January 27, 2017 hearing.

Action – A motion was made by Mr. Gross, seconded by Mr. Glover and carried 5-0 to **postpone** **PLN-BOA-16-00051: CHRIS HARRISON (SPEEDWASH CAR WASH)** until the January 27, 2017 hearing.

B. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-16-00053: DOUG TACKETT** - requests a variance to increase the maximum allowable setback from 20 feet to 43 feet in order to allow reconstruction of a building in a Neighborhood Business (B-1) zone, at 411, 425 & 435 Southland Drive (Council Districts 11).

The Staff Recommends: Approval, for the following reasons:

- Granting the variance will not have an adverse effect on the public health, safety and welfare, as the proposed setback will bring the structure out of the floodplain.
- The proposed setback, while greater than the allotted maximum per the zoning ordinance, will allow for part of the existing parking and access aisle to remain and will fit in aesthetically with the neighboring properties more than would a setback in strict accordance with the ordinance.

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

- The facility shall be established in accordance with the submitted application and site plan, with revisions as needed to comply with the requirements of the Divisions of Engineering, Traffic Engineering, and Building Inspection.

2. No more than 25% of the public floor area shall be primarily devoted to the preparation and service of malt beverages, wine, or alcoholic beverages.
3. A minimum of 112 parking spaces shall be provided. The final design for the parking and drive aisles shall be subject to review and approval by the Division of Traffic Engineering.
4. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection, including a Certificate of Occupancy, prior to constructing and opening the facility.

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

Board Questions/Comments – Mr. Glover questioned the setbacks on the property. Further questions and discussion between the Board and the Planning staff followed, to include comments from Rebecca Burnworth, architect for the applicant. At this time, there was a map of the proposed use presented on the overhead projector with further discussion.

Action – A motion was made by Mr. Needham, seconded by Mr. Gross and carried 5-0 to **approve PLN-BOA-16-00053: DOUG TACKETT** – a request for a variance to increase the maximum allowable setback from 20 feet to 43 feet in order to allow reconstruction of a building in a Neighborhood Business (B-1) zone, at 411, 425 & 435 Southland Drive, based on the reasons provided by the staff and subject to the four conditions.

2. **PLN-BOA-16-00047: THE ART OF SOCCER** – requests a conditional use permit for an indoor recreational facility (soccer training) in a Light Industrial (I-1) zone, at 2430 Palumbo Drive (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Adverse impacts to surrounding properties are not anticipated, as the soccer training should not be an inherently disturbing activity and will be confined to the interior of an existing building.
- b. Surrounding properties on three sides are exclusively commercial/industrial in nature, which should greatly limit the potential for any disturbances from indoor soccer training activities, particularly since the training will be conducted during evenings and on weekends, at least initially.
- 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 soccer training facility shall be confined to the interior of the existing building and shall be established in accordance with the submitted application and site plan.
2. Off-street parking shall be provided to ensure that there will be a minimum of 8 spaces to accommodate the soccer training facility.
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 – Cary Tsamas, applicant, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Board Questions/Comments – Mr. Glover questioned the staff report with regard to the proposed extended hours, for which Ms. Rackers provided an explanation.

Action - A motion was made by Mr. Glover, seconded by Mr. Forester and carried 5-0, to **approve PLN-BOA-16-00047: THE ART OF SOCCER** – a request for a conditional use permit for an indoor recreational facility (soccer training) in a Light Industrial (I-1) zone, at 2430 Palumbo Drive, for the reasons recommended by the staff and subject to the three conditions.

3. **PLN-BOA-16-00050: WAGJ, LLC.** – requests a conditional use permit to operate a veterinary clinic/small animal hospital in a Neighborhood Business (B-1) zone, at 185 Pasadena Drive, Ste. 115 (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties and will not cause disturbance to the adjoining property owners. Ample parking will be provided, the existing tenant space will be soundproofed to accommodate this use, and no outdoor runs or pens will be added.
- b. Granting the requested conditional use permit will help to fill a need for this service for residents of the area. The veterinary clinic was previously located in the adjoining shopping center where traffic is much more congested. Granting this conditional use will allow better access to the small animal hospital, which is intended to be an affordable service for pet owners in the area.

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

1. The facility shall be established in accordance with the submitted application and site plan. As stated in the application, walls shall be completely soundproofed and no outdoor animal pens or runs shall be permitted as specified in the Zoning Ordinance.
2. Boarding shall take place only for animals receiving medical treatments.
3. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to opening the facility.

Representation – Dick Murphy, attorney on behalf of the applicant, was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Board Questions and Comments – Mr. Glover questioned the occupancy of the entire building. Mr. Murphy responded that it was only one suite proposed to be occupied by the applicant. Mr. Glover also questioned the sound proofing of the building. Mr. Murphy explained the plan for the sound proofing.

Action - A motion was made by Mr. Forester, seconded by Mr. Glover and carried 5-0 to **approve PLN-BOA-16-00050: WAGJ, LLC.** – a request for a conditional use permit to operate a veterinary clinic/small animal hospital in a Neighborhood Business (B-1) zone, at 185 Pasadena Drive, Ste. 115, based on the staff's recommendation and subject to the three conditions.

C. Variance Appeals

1. **PLN-BOA-16-00052: LANDSCAPE ENHANCEMENTS/RYAN JOHNSON** - request a variance to reduce the front yard setback from 20 feet to 7 feet in order to complete construction of a building in a Light Industrial (I-1) zone, at 1730 Bryant Road (Council District 6).

The Staff Recommends: Disapproval, for the following reasons:

- a. There appear to be other areas on the site where the building could be placed that would comply with the Zoning Ordinance.
- b. The reduced setback is not characteristic of the area in general and places the building quite close to the area residents; this increases the likelihood that use of the storage building will be disruptive to the adjacent residences, as well as pedestrians and cyclists who wish to utilize the Brighton East Rail Trail, which begins just past the property at the end of Bryant Road.

Representation – Robert Ryan, attorney, was present on behalf of the applicant.

Staff Report – Mr. Marx presented an aerial on the overhead projector, and gave a staff report on the Division of Planning's recommendation of disapproval. Mr. Marx distributed one letter of opposition to the Board members.

Board and Staff Discussion – Mr. Glover asked if the building was closer to the road than the existing adjacent building or farther away. Mr. Marx responded. At this time there was further discussion with regard to what might be other options for the applicant if the appeal was denied, as well as to how the mistake was made with regard to issuance of a building permit. There was also discussion with regard to the parts of Bryant Road that would be closing, and as to what the "setbacks" would become.

Applicant Comments – Mr. Ryan presented the Board members with documentation of "The City of Berea" case regarding a similar case as the one being heard at this hearing. He discussed the applicants' intent of the proposed use and how it has come before the Board today. At this time, Mr. Stumbo swore in Mr. Ryan Johnson before hearing his testimony. Mr. Johnson, owner of the property, gave his testimony in full detail as to the intended/ proposed use of the subject property.

Mr. Gross asked if the applicant would be opposed to installing screening between the property and the neighborhood in order to protect the neighbors from disturbance. Mr. Johnson responded with a detail explanation as to what is currently there, and indicated that he did not have a problem adding what would be needed and/or required.

Mr. Glover stated, for the record, that he didn't agree that it was all the fault of Lexington-Fayette Urban County Government or the "error" in the issuance of the building permit, noting that the Zoning Ordinance is a public document that can be viewed by all citizens.

At this time, Mr. Marx presented new findings and conditions in case of approval of this application. There was further discussion between the Board, staff, and applicant with regard to the proposed findings and conditions, with additional wording added to condition #2.

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

Findings

- a. The need for a variance has not arisen due to a willful violation or other action of the appellants, but resulted from an error that took place during the permitting process.
- b. The northerly side of Bryant Road has no well-established character that will be impacted, and the overall appearance of the property will be improved somewhat by the removal of three buildings along the western property line.
- c. The imposing appearance of the building can be softened significantly by the installation of appropriate landscaping along the Bryant Road frontage.

Conditions

1. The completed building may remain in place (in conjunction with the removal of three buildings of 1,711 square feet), as depicted on the submitted site plan dated 12/16/16, or as amended by the Planning Commission.
2. Action of the Board shall be noted on an amended development plan for the subject property, subject to review and approval by the Planning Commission.
3. The building shall only have door, window or other openings on the northerly side.
4. Evergreen landscaping, consisting of Arborvitae or similar species, shall be provided along the southern and western sides of the building at a minimum of 8' to 12' on center. Trees and/or shrubs shall have an initial planting height of at least 6', and all landscaping shall be completed by May 1, 2017.
5. The granted variance is only for the purpose of allowing the single building that is the subject of this application to remain in place, and is not applicable to any other building or structure subject to a front yard setback requirement.

Action – A motion was made by Mr. Glover, seconded by Mr. Gross, and carried 5-0 to **approve PLN-BOA-16-00052: LANDSCAPE ENHANCEMENTS/RYAN JOHNSON** – request for a variance to reduce the front yard setback from 20 feet to 7 feet in order to complete construction of a building in a Light Industrial (I-1) zone, at 1730 Bryant Road, based on the findings that were presented at today's hearing and subject to the five conditions, with the addition of the language in condition #2, which was as follows:

2. Action of the Board shall be noted on an amended development plan for the subject property, subject to review and approval by the Planning Commission **within 12 months**.

D. Administrative Reviews

1. **PLN-BOA-16-00049: PATRICIA EHRKAMP** – an administrative appeal to allow the addition of a first floor rear porch and second floor living/bedroom area to an existing nonconforming residence in a Neighborhood Business (B-1) zone, at 203 Owsley Avenue (Council District 5).

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

- a. The second floor addition will enlarge the finished living area of the existing non-conforming use as a single family residence by 822 square feet, contrary to the restrictive provisions outlined in Article 4-3(a) of the Zoning Ordinance.
- b. The subject property was partially approved for a zone change to an R-2 zone in 2006, but the previous owners did not follow through with the zone change to completion. A renewed zone change request would be an appropriate option to pursue for this property.

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

Representation – Jack Stewart of Stewart Architecture was present on behalf of the appellant, and requested that the appellant be allowed to move forward with her request.

Staff Report – Autumn Midyett presented an aerial photo on the overhead projector and gave a staff report of the Division of Planning's recommendation of disapproval.

Board, Staff and Appellant Discussion – Mr. Glover questioned the non-conformity of the use. At this time, there was further discussion between the Board, staff and appellant regarding what would constitute expansion of the nonconforming use.

Note: Mr. Stumbo declared a brief recess at 2:37 p.m. in order to discuss findings and conditions for approval of this case. The meeting reconvened at 2:42 p.m. with the same members in attendance.

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

1. The property will continue to be used as a single family residence, with no increase in the number of living units.
2. There will be no increase in the building footprint, and porch additions have previously been determined to not constitute an expansion of a non-conforming use.

Action – A motion was made by Mr. Needham, seconded by Mr. Forester and carried 4-0 (Gross recused) to **approve PLN-BOA-16-00049: PATRICIA EHRKAMP** – an administrative appeal to allow the addition of a first floor rear porch and second floor living/bedroom area to an existing nonconforming residence in a Neighborhood Business (B-1) zone, at 203 Owsley Avenue, based on the two new findings discussed at today's hearing.

IV. **BOARD ITEMS** – Mr. Glover and Mr. Stumbo wished everyone a happy holiday. Mr. Stumbo announced his resignation, effective December 31, 2016, from the Board of Adjustment.

V. **STAFF ITEMS**

- A. **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.

Action - A motion was made by Mr. Glover, seconded by Mr. Forester and carried 5-0, to **adopt the 2017 Meeting & Filing Schedule**.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be January 27, 2017.

VII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:51 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary

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