MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

January 27, 2017

I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, January 27, 2017. Members present were Thomas Glover (Acting Chair), Branden Gross, Chad Needham, Larry Forester, 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, Autumn Goderwis, Barbara Rackers, and Tammye McMullen.

II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the December 16, 2016 meeting would be considered at this time.

Action - A motion was made by Mr. Gross, seconded by Mr. Forester, and carried 6-0 to **approve** the minutes of the December 16, 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).

Staff Comment – Ms. Goderwis announced that the applicant has withdrawn their application via email.

B. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-16-00056: RIMTYME** - requests a variance to reduce the required perimeter boundary setback from 50 feet to 10 feet in a Planned Shopping Center (B-6P) zone, at 361 E. New Circle Road (Council District 6).

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

a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The proposed use is appropriate to the vicinity and will utilize a currently vacant property.
b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because the new automobile service station will be located 10 feet from the side property line, which is permissible in other commercial zones.
c. Strict application of the Zoning Ordinance would prevent construction of the proposed 6,000 square-foot automobile service station due to the restricted buildable area caused by the on-site easements and would deprive the applicant of a reasonable use of the property.
d. The circumstances surrounding the requested variance are not the result of a willful violation of the Zoning Ordinance.

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, or as amended to address the requirements of the Divisions of Engineering, Traffic Engineering, and Building Inspection.
2. The final design of parking areas, access, and traffic circulation shall be subject to review and approval by the Division of Traffic Engineering.
3. Per the property's Conditional Zoning Requirements (91-6 CZ), landscaping that meets and/or exceeds the requirements of the Lexington-Fayette Urban County Zoning Ordinance shall be installed. The applicant shall attempt to preserve existing healthy trees on the boundary of the shopping center where reasonably possible.
4. Action of the Board shall be noted on an amended Development Plan for the subject property, subject to approval by the Planning Commission.
5. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection, including a Certificate of Occupancy, prior to opening the facility.

Representation – Adam Bender, with CMW, Inc., 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. Neeham and carried 6-0 to **approve PLN-BOA-16-00056: RIMTYME** – request for a variance to reduce the required perimeter boundary setback from 50 feet to 10 feet in a Planned Shopping Center (B-6P) zone, at 361 E. New Circle Road, based upon the recommendations of the staff and subject to the conditions in the staff report.

2. **PLN-BOA-16-00054: CHAMPS ENTERTAINMENT COMPLEX** – requests a conditional use permit to amend previously imposed conditions for operation of Champs Entertainment Complex, and allow continued operation of the facility under different ownership in a Light Industrial (I-1) zone, at 297 Ruccio Way/401 Sporting Court (Council District 9).

The Staff Recommends: **Approval of a continued conditional use with removal of Condition #13**, for the following reason:

a. Requiring a new Conditional Use hearing for an established facility under new ownership or operator is unnecessarily cumbersome. The remaining conditions are sufficient to insure that operations of the facility are compliant with the Board's intent. If a future owner/operator wishes to operate the facility without the remaining conditions, they should return to the Board.

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

1. Action of the Board shall be noted on the Final Development Plan for the subject property.
2. Any pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing the surrounding properties.
3. The sports bar/café shall not serve any alcoholic beverages other than beer and wine.
4. The sports bar/café shall not have a direct entrance from the outside of the recreational building, and any signage for the facility shall not include any reference to a sports bar/café or the serving of beer and wine
5. The sports bar/café shall not be open outside of the normal operating hours for the entertainment center.

Representation – Joe and Nick Champa, applicants, were present. Mr. Joe Champa was concerned about three of the conditions and explained his concerns. He also discussed the details of the type of establishment that they currently have, noting that it is not a sports bar or café. Mr. Champa requested that the language of "spirits" be added to condition #3 in order for them to be able to serve at corporate and private events, or to completely take out condition #3, as he further explained his reasoning. At this time, Mr. Champa discussed condition #2 with regard to the lighting. Mr. Gross noted that current conditions were restatements of the existing conditions, which Ms. Goderwis confirmed.

Staff and Board Questions/Comments – Ms. Goderwis discussed and explained the permitted uses in this zone, noting that if Mr. Champa hosted corporate events, that his facility would be considered a banquet facility, which is not permitted in the I-1 zone. At this time, there was discussion between the staff, the Board and the applicant with regard to what is permitted according to the Zoning Ordinance in this particular zone. Mr. Champa further discussed their desire to serve spirits.

Mr. Gross questioned whether or not that would be allowed for this proposed use. Ms. Goderwis explained that it is not the serving of spirits that would make it a banquet facility, but the hosting of events. Mr. Glover asked for further clarification with regard to whether or not this use would be considered a banquet facility. There was further discussion, to include comments from Mr. Marx, noting that the Board had the latitude to loosen up on condition #3. After further discussion, it was decided to amend condition #4 (to add spirits), and to delete condition #3.

Action - A motion was made by Mr. Forester, seconded by Ms. Whitman and carried 6-0, to **approve PLN-BOA-16-00054: CHAMPS ENTERTAINMENT COMPLEX** – a request for a conditional use permit to amend previously imposed conditions for operation of Champs Entertainment Complex, and allow continued operation of the facility under different ownership in a Light Industrial (I-1) zone, at 297 Ruccio Way/401 Sporting Court; based on the recommended conditions by the staff, omitting condition #3 (as referenced above) and amending condition #4 (as referenced above) to add "spirits" at the end. Adopted conditions were as follows:

1. Action of the Board shall be noted on the Final Development Plan for the subject property.
2. Any pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing the surrounding properties.
3. The sports bar/café shall not have a direct entrance from the outside of the recreational building, and any signage for the facility shall not include any reference to a sports bar/café or the serving of beer, wine and spirits.
4. The sports bar/café shall not be open outside of the normal operating hours for the entertainment center.

3. **PLN-BOA-16-00055: VILLAGE ANIMAL HOSPITAL, LLC** – requests a conditional use permit to establish a small animal hospital/veterinary clinic in a Professional Office (P-1) zone, at 1610-1612 Harrodsburg Road (Council District 11).

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

   a. Granting the requested conditional use permit for use of an existing building should not adversely affect the subject or surrounding properties, nor should it disturb the adjoining property owners. It is a brick building that is at least 200 feet from the nearest residential structure. There will be no outdoor animal pens and no overnight boarding of animals, other than for medical purposes. Parking is onsite and adequate for the use.
   b. All necessary public services and facilities are available and adequate for the proposed use.

   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.
   2. Action by the Board shall be noted on an amended Development Plan for the subject property, subject to approval by the Planning Commission or staff, as appropriate.
   3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection including a Certificate of Occupancy prior to opening the facility.
   4. A minimum of 14 off-street parking spaces shall be provided.

   Representation – Kim Sears, DVM, applicant, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

   Action - A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 6-0 to **approve PLN-BOA-16-00055: VILLAGE ANIMAL HOSPITAL, LLC.** – a request for a conditional use permit to establish a small animal hospital/veterinary clinic in a Professional Office (P-1) zone, at 1610-1612 Harrodsburg Road, for the reasons recommended the staff and subject to the four conditions recommended by the staff.

C. **Conditional Use Appeals**

1. **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, was present. He indicated that they would like to request a postponement until the February hearing in order to conduct a traffic study of the site and be able to present it.

   Citizen and Board Comments/Questions - Mr. Phil Moloney, attorney for the opposition, discussed the fact that 30 days would not give the citizens time to respond to Kroger's study, and noted that there is another study being done by the City that takes into account the entire area. He further discussed the studies that are being done, noting that both parties should be able to look at all of the information and to be able discuss in ample time.

   Council Member Jake Gibbs noted that the City is paying an architectural design firm to take a look at Euclid Avenue for the long term, and further discussed that study.

   Ms. Amy Clark, who lives at 628 Kastle Road, discussed the commercial corridor study and the information it could bring to help the citizens when reviewing the traffic impact study.

   At this time, there was further discussion between the Board, applicant, and the staff as to how long to postpone this c case.

   Action - A motion was made by Ms. Meyer, seconded by Mr. Forester and carried 4-2 (Whitman and Needham opposed) to **postpone PLN-BOA-16-00037: KROGER COMPANY.** – until the March 31, 2017 hearing.

   *Note - Ms. Clark noted that this application was submitted in October 2016; they requested a postponement and received it in December 2016 to meet with the neighbors. There has been a lot of neighborhood energy and distress, and she said that the neighbors preferred that the application be heard at today's hearing.

D. **Administrative Reviews**

None to be heard.

IV. **BOARD ITEMS**

A. Election of Officers - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting. The present officers are: Chair – Vacant, due to the resignation of Mr. Stumbo from the Board; Vice-Chair – Thomas Glover; Secretary – Joan Whitman.

Action - A motion was made by Mr. Forester, seconded by Mr. Needham and carried 6-0, to **appoint** Branden Gross as Chair.

Action - A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 6-0, to **re-appoint** Thomas Glover as Vice-Chair.

B. In the past, the duties of Secretary have been delegated to the Planning Manager or a staff member appointed by the Planning Manager. The Chair will request action on this item.

Action - A motion was made by Mr. Glover, seconded by Mr. Forester and carried 6-0, to **re-appoint** Joan Whitman as Secretary of the Board, with duties delegated to the Planning staff.

V. **STAFF ITEMS**

There were none

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be February 24, 2017.

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

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Thomas Glover, Acting Chair

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Joan Whitman, Secretary

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