

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

February 24, 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), Chad Needham, Joan Whitman and Jan Meyer. Absent: Branden Gross, Larry Forester, and Harry Clarke. 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.

Prior to the start of the hearing, Mr. Glover recognized Mr. Barry Stumbo on his 10 ½ year of service with the Board of Adjustment and presented him with a plaque. Mr. Stumbo thanked the Board members and expressed his appreciation to the Board members and LFUCG staff.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the January 27, 2017 meeting would be considered at this time.

Action - A motion was made by Ms. Meyer, seconded by Ms. Whitman, and carried 4-0 to **approve** the minutes of the January 27, 2017 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-17-00008: SHOWPROP PICO RIVERA, LLC.** – requests a conditional use permit to install a drive-up ITM in the Downtown Business (B-2) zone, at 400 E. Vine Street (Council District 3).

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 Goderwis announced that the applicant had withdrawn their application via email.

B. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-17-00010: VINCENT ZHOU** – requests a variance to reduce the required setback for a parking area from 6 feet to 0 feet and to eliminate the required separation between the private walkway and parking area in a Single Family Residential (R-1D) zone, at 2208 Chesapeake Ct. (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance will not adversely affect the public health, safety, or welfare as the paving in question is relatively minor and was installed without the need to widen the curb cut.
- b. Removal of the noncompliant pavement would be a costly endeavor for very little value as the pavement does not have much impact on the overall character of the neighborhood. The cul-de-sac is already fairly heavily paved due to the driveways for each of the six homes located there, with one of those homes having two driveways.

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

1. The basketball goal or another physical barrier shall remain at the shared edge of the private walkway and the new paving to delineate the walkway as such and to prevent vehicles from being parked on the walkway.

Representation – Vincent Zhou was present. He indicated that he had not reviewed the recommended condition was read by Mr. Glover. Mr. Zhou agreed to abide by it.

Action – A motion was made by Ms. Whitman, seconded by Mr. Needham and carried 4-0 to **approve PLN-BOA-17-00010: VINCENT ZHOU** – a request for a variance to reduce the required setback for a parking area from 6 feet to 0 feet and to eliminate the required separation between the private walkway and parking area in a Single Family Residential (R-1D) zone, at 2208 Chesapeake Ct., as recommended by the staff and subject to the one condition.

2. **PLN-BOA-17-00006: BRYAN STATION BAPTIST CHURCH** – requests a conditional use permit for a school for academic instruction in the Agricultural Rural (A-R) zone, at 3175 Briar Hill Road (Council District 12).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the school will accommodate a limited number of students and the surrounding property is primarily agricultural.
- b. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The school shall be established in accordance with the submitted application and site plan, with enrollment limited to no more than 40 students.
2. All necessary permits and licenses, including a Zoning Compliance Permit and Certificate of Occupancy from the Divisions of Planning and Building Inspection, shall be obtained prior to opening the school.
3. Evidence of compliance with sewage treatment requirements of the Fayette County Health Department (for a combined church and school) shall be submitted to the Division of Building Inspection prior to the issuance of a Certificate of Occupancy.

Representation – Brent Spears was present on behalf of the applicant. He indicated that he had reviewed the conditions and agreed to abide by them.

Action - A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 4-0, to **approve PLN-BOA-17-00006: BRYAN STATION BAPTIST CHURCH** – a request for a conditional use permit for a school for academic instruction in the Agricultural Rural (A-R) zone, at 3175 Briar Hill Road, for the reasons recommended by the staff and subject to the three conditions.

3. **PLN-BOA-17-00004: THE SUMMIT** – an administrative appeal to transfer 35 square feet of unused signage to allow a primary freestanding sign of 110 square feet, and a variance to increase the allowable height of that sign from 10 feet to 12'4"; and an administrative appeal to transfer 35 square feet of unused signage to allow a secondary freestanding sign of 75 square feet, in a Mixed Use Community (MU-3) zone, at 4100 Nicholasville Road (Council District 4).

The Staff Recommends: **Approval** of the variance and the administrative appeals, for the following reasons:

- a. Granting this request will not cause a hazard or nuisance to the public; will not adversely affect public health, safety, or welfare; nor will it alter the essential character of the vicinity. Much of the nearby property along Nicholasville Road is either a Highway Service Business (B-3) or a Planned Shopping Center (B-6P) zone, each of which permits significantly taller free-standing signs. In addition, contextually, the requested signage is not out of scale or overwhelming due to the size of the development and its location, which is a heavily traveled area.
- b. Granting this request will not allow an unreasonable circumvention of the Zoning Ordinance, as transferring signage to the Man O' War and Nicholasville Road frontages will shift the visual impact of the signs to the more populous, commercial streets and access points, away from the adjacent residential areas where large signs would be more concerning.
- c. The circumstances that justify granting this request are the large scale of the development, as well as its location at the intersection of Man O' War Boulevard and Nicholasville Road. This is one of the more heavily traveled areas and busy intersections in Fayette County, and the increased size and height of the signs may actually contribute to the safety of motorists traveling in the area.

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

1. The proposed signage shall be established in accordance with the submitted application and site plan.
2. All necessary permits for signage shall be obtained from the Division of Building Inspection.
3. Free-standing signage shall not be permitted along the East Tiverton Way or Habersham Drive frontage.
4. A project identification sign shall not be permitted on the northerly wall of the parking garage facing East Tiverton Way.

At this time, Mr. Goderwis distributed a letter in opposition to the Board members.

Representation – Aaron Anderkin and Craig Harris, developers for the applicant, were present. They indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions – Mr. Glover questioned the maximum of transfer of unused signage, to which Ms. Goderwis responded. There was some discussion following. Mr. Needham questioned how the signage work son the out parcels. Ms. Goderwis responded, with discussion following.

Action - A motion was made by Ms. Whitman, seconded by Mr. Needham and carried 4-0 to **approve PLN-BOA-17-00004: THE SUMMIT** – an administrative appeal to transfer 35 square feet of unused signage to allow a primary freestanding sign of 110 square feet, and a variance to increase the allowable height of that sign from 10 feet to 12'4"; and an administrative appeal to transfer 35 square feet of unused signage to allow a secondary freestanding sign of 75

square feet, in a Mixed Use Community (MU-3) zone, at 4100 Nicholasville Road, as recommended by the staff and subject to the four conditions.

4. **PLN-BOA-17-00001: EDDIE HUNT** – an administrative appeal to allow continued use of a previously authorized second kitchen in a single family residence with new owners, and to amend the previously imposed conditions so that future owners could retain the second kitchen without further appeals in a Single Family Residential (R-1D) zone, at 3965 Forsythe Drive (Council District 10).

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

- a. The inclusion of a second kitchen in a residence does not automatically constitute the establishment of a second dwelling unit if used by family members of the property owner residing in the home.
- b. There have been no zoning compliance issues or citizen complaints regarding the second kitchen in the 14 years that have passed since the original approval in 2002.

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

1. The second kitchen and associated living area shall not be rented out or otherwise used as a separate living unit and shall only be used by blood or marriage relatives of the property owner who resides in the home.
2. The applicant shall clearly convey this use limitation to any prospective buyers of the property.

At this time, Mr. Goderwis distributed a letter in support to the Board members.

Representation – Eddie Hunt was present. He indicated that he had reviewed the conditions and agreed to abide by them.

Board Questions – Ms. Meyer expressed concern about the second condition with regard to removing the condition when new owners come and removing the second kitchen. Mr. Marx gave an explanation.

Action - A motion was made by Mr. Needham, seconded by Ms. Meyer and carried 4-0 to **approve PLN-BOA-17-00001: EDDIE HUNT** – an administrative appeal to allow continued use of a previously authorized second kitchen in a single family residence with new owners, and to amend the previously imposed conditions so that future owners could retain the second kitchen without further appeals in a Single Family Residential (R-1D) zone, at 3965 Forsythe Drive, as recommended by the staff and subject to the two conditions.

5. **PLN-BOA-17-00007: TOTAL GRACE CHURCH** – requests a conditional use permit to expand the existing church and parking in a Planned Neighborhood Residential/Single Family Residential (R-3/R-1C) zones, at 1217, 1313, & 1317 N. Limestone & 100 Withers Ave. (Council District 1).

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

- a. Additional time is needed for the applicant to consider a modified proposal that reduces the extent of paving proposed in the front yards of 1217 and 1317 North Limestone and 100 Withers Avenue, with the goal of maintaining a comparable amount of open space as that provided on the adjoining residential properties.
- b. There are significant questions related to the overall design of the parking areas that are proposed, which should be discussed with the Division of Traffic Engineering prior to the Board's consideration of the conditional use request.
- c. The provisions of landscape buffers for the proposed parking lot, whether required by the Zoning Ordinance or otherwise deemed desirable, should be addressed by the appellant. Given the dimensions of the lots where parking is proposed, such buffers may ultimately determine the feasibility and design options for expanding the off-street parking areas for this church facility.

Representation – Shirrod LeDet was present.

Staff Comment – Ms. Goderwis distributed a letter of concern (from Mr. Paul Newton) to the Board and gave a staff report as to the staff's recommendation of postponement.

Action - A motion was made by Mr. Needham, seconded by Ms. Meyer and carried 4-0 to **postpone PLN-BOA-17-00007: TOTAL GRACE CHURCH** to the March 31, 2017 hearing.

(After the action of the motion) Citizen Comment – Mr. LeDet asked for more clarity as to what is expected of them in order to be better prepared for the next hearing. He was advised to setup a follow-up meeting with the Planning staff.

C. **Conditional Use Appeals:**

1. **PLN-BOA-17-00002: YMCA OF CENTRAL KENTUCKY** - requests a conditional use permit to convert existing multi-purpose rooms into offices and expand the existing parking lot in a Light Industrial (I-1) zone, at 381 W. Loudon Ave. (Council District 1).

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

- a. A relatively minor parking lot expansion should not adversely affect the subject or surrounding properties, as adequate space is available and large areas of open space will remain.
- b. The new parking areas will be landscaped and designed to handle water drainage.

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

1. The parking lot expansion shall comply with the submitted site plan; and the existing Development Plan shall be amended subject to approval by the Division of Planning, or the Planning Commission, as appropriate.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to paving, with the new parking areas to be landscaped per Article 18 of the Zoning Ordinance. Additionally, a Certificate of Occupancy will be required prior to use of the new parking area.
3. Final design of the new parking areas and drive aisles shall be subject to review and approval by the Division of Traffic Engineering.
4. A storm water management plan shall be provided in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

*Note – The applicant was not present; therefore, the following action was taken on the subject case:

Action – Mr. Glover made a recommendation to **postpone PLN-BOA-17-00002: YMCA OF CENTRAL KENTUCKY** to the March 31, 2017 hearing. Case was postponed, but that action was rescinded later.

2. **PLN-BOA-17-00003: DUKE ROAD PERSONAL CARE, LLC.** – requests a conditional use permit to modify and expand a rest home in a Planned Neighborhood Residential/Neighborhood Design Overlay (R-3/ND-1) zones, at 319 and 327 Duke Road (Council District 5).

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

- a. Granting the requested conditional use permit will not adversely affect the subject or surrounding properties, as the use will remain the same; there will be only a slight increase in the number of residents that can be accommodated (from 16 to 18), and the facility will be expanded and modernized to better serve the residents and staff; the parking in the rear of the property will resolve a currently non-conforming situation, alleviating the on-street parking that is currently experienced on Duke Road; and the facility will be inspected and approved by both the Office of the Inspector General and the Division of Health Care with the State of Kentucky, as well as all appropriate local government agencies.
- b. All public facilities and services continue to be available and adequate for the expanded facility.

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 permits, including a Zoning Compliance Permit, a Land Disturbance Permit (if necessary), a Paving Permit, a Building Permit and a Certificate of Occupancy be obtained from the Divisions of Planning, Engineering and Building Inspection, as appropriate.
3. That all encroachment agreements be obtained from the Urban County Government, as well as all applicable utilities.
4. That the properties known as 319 and 327 Duke Road be consolidated via plat, submitted to the Division of Planning, prior to commencement of construction.
5. That the parking area be paved and screened, in compliance with Articles 16 and 18 of the Zoning Ordinance.

Representation – Solomon VanMeter was present on behalf of the applicant.

Citizen Comment – Leah Backmeyer Kille, who lives at 1348 Cantrill Drive, was present on behalf of her mother and uncle, the co-owners of the adjoining property (331 Duke Road). She expressed her concerns regarding the timeline of construction potentially disrupting their tenants; concerns whether this would change the character of the neighborhood; and what type of impact that it could have their property value.

Staff Comments – At this time, Ms. Rackers presented a photo on the overhead projector, discussed and explained the proposed use. There was further discussion between the Board members, the staff, and the applicant with regard to the proposed use.

Action - A motion was made by Mr. Needham, seconded by Ms. Meyer and carried 4-0 to **approve PLN-BOA-17-00003: DUKE ROAD PERSONAL CARE, LLC** – a request for a conditional use permit to modify and expand a rest

home in a Planned Neighborhood Residential/Neighborhood Design Overlay (R-3/ND-1) zones, at 319 and 327 Duke Road, based on the staff's recommendations and subject to the five conditions.

*Note - Ms. Whitman indicated that there needs to be some discussion and/or change with regard to the definition of a "Personal Care Facility" to be included in the Zoning Ordinance. At this time, there was further discussion with regard to whom to refer the matter, including comments from Ms. Jones.

*Note – Due to the arrival of the following applicant, the previous motion for postponement was reconsidered.

3. **PLN-BOA-17-00002: YMCA OF CENTRAL KENTUCKY** - requests a conditional use permit to convert existing multi-purpose rooms into offices and expand the existing parking lot in a Light Industrial (I-1) zone), at 381 W. Loudon Ave. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. A relatively minor parking lot expansion should not adversely affect the subject or surrounding properties, as adequate space is available and large areas of open space will remain.
- b. The new parking areas will be landscaped and designed to handle water drainage.

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

1. The parking lot expansion shall comply with the submitted site plan; and the existing Development Plan shall be amended subject to approval by the Division of Planning, or the Planning Commission, as appropriate.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to paving, with the new parking areas to be landscaped per Article 18 of the Zoning Ordinance. Additionally, a Certificate of Occupancy will be required prior to use of the new parking area.
3. Final design of the new parking areas and drive aisles shall be subject to review and approval by the Division of Traffic Engineering.
4. A storm water management plan shall be provided in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Representation – Charlie Schneider was present on behalf of the applicant. He indicated that he had not reviewed the staff report. The conditions were read by Mr. Glover, and Mr. Schneider indicated that they agreed to abide by the conditions.

Action - A motion was made by Ms. Meyer, seconded by Ms. Needham and carried 4-0 to **rescind postponement PLN-BOA-17-00002: YMCA OF CENTRAL KENTUCKY**.

Board Questions – Mr. Needham asked where the offices would be located in the facility, to which Mr. Schneider responded. At this time there was further discussion with regard to the proposed use.

Action - A motion was made by Mr. Needham, seconded by Ms. Meyer, and carried 4-0 to **approve PLN-BOA-17-00002: YMCA OF CENTRAL KENTUCKY** - a request for a conditional use permit to convert existing multi-purpose rooms into offices and expand the existing parking lot in a Light Industrial (I-1) zone), at 381 W. Loudon Ave., based on the reasons recommended by the staff and subject to the four conditions.

E. **Administrative Reviews**

None remaining.

- IV. **BOARD ITEMS** - At this time there was discussion with regard to the conditional use review conducted by the staff.

V. **STAFF ITEMS**

None

VI. **AUDIENCE ITEMS**

- a. Dr. Lisa Gannoe, who lives at 7526 Old Richmond Road, indicated that she has come before the Board and communicated in writing on numerous occasions between October 2015 and January 2016 with regard to a request for a revocation hearing at 7524 Old Richmond Road. Dr. Gannoe read and submitted a letter explaining her concerns regarding the use of the subject property. (Information submitted by Dr. Gannoe can be found in the Division of Planning in the minute book for the February 24, 2017 hearing.)

Mr. Glover indicated that due to his recusal the previous times of Dr. Gannoe's request, he would have to recuse himself from it this time as well. With Mr. Glover's recusal and the absence of several Board members, there was no quorum to provide a vote for a revocation hearing. At this time there was some discussion on the previous requests of Dr. Gannoe, including comments from Ms. Jones.

Council member, Kathy Plomin indicated her support of Dr. Gannoe's request and noted that she would like to request a future meeting on the subject.

VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be March 31, 2017.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:55 p.m.

Action - A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 4-0 to **adjourn** the February 24, 2017 hearing.

Thomas Glover, Acting Chair

Joan Whitman, Secretary

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