

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

March 31, 2017

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, March 31, 2017. Members present were Branden Gross, Thomas Glover, Chad Needham, Harry Clarke, Joan Whitman and Jan Meyer. Absent: Larry Forester. 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 February 24, 2017 meeting would be considered at this time.

Action - A motion was made by Mr. Glover, seconded by Ms. Whitman, and carried unanimously to **approve** the minutes of the February 24, 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-17-00012: DARBY DAN FARM** – requests a conditional use permit to establish a farm gift shop in the Agricultural Rural (A-R) zone, at 3225 Old Frankfort Pike (Council District 12).

Representation – Nick Nicholson, attorney on behalf of the applicant, requested a postponement until the April 28, 2017 hearing.

Action – A motion was made by Ms. Meyer, seconded by Mr. Needham and carried unanimously to **postpone** **PLN-BOA-17-00012: DARBY DAN FARM** until the April 28, 2017 hearing.

- b. **PLN-BOA-17-00016: IMMANUEL BAPTIST CHURCH** – requests an amended conditional use permit to expand the parking, and variances to: 1) reduce the minimum front yard setback from 30 feet to 23 feet at 3009 and 3013 Bates Creek Road; and 2) reduce the minimum setback from 40 feet to 18 feet at 3100 Bates Creek Road, in a Single Family Residential (R-1B & R-1C) zones, at 3100, 3009 & 3013 Bates Creek Road (Council District 5).

Representation – Greg Thornton, on behalf of the applicant, requested to withdraw the portion that applies to 3009 & 3013 Bates Creek Road, and requested a 30-day postponement for the remainder of the request.

Board Comment – Mr. Gross noted that he had previously, and would continue to recuse himself from this case. At this time he turned this portion of the hearing over to Mr. Glover to chair.

Citizen Comments – Douglas McSwain noted that he lives in the neighborhood adjoining the property. He said that he had no problem with the postponement, noting that the church wanted to speak with the neighbors and discuss some of the issues.

John Douglas, who lives at 783 Rebecca Drive, asked for clarification as to what was “across the road”. It was clarified, and he said that he did not have any objection to the withdrawal request of 3009 & 3013 Bates Creek Rd. and postponement of the remainder of the request.

Stephen White, representative of the Glendover Neighborhood Association, said that they are fine with the withdrawal of the portion of the request for the properties across Bates Creek.

Action – A motion was made by Mr. Needham, seconded by Ms. Meyer and carried 5-0 (Gross recused) to **withdraw the portion of the request regarding the properties at 3009 & 3013 Bates Creek Road and postpone the remainder of the request for PLN-BOA-17-00016: IMMANUEL BAPTIST CHURCH until the April 28, 2017 hearing**.

- c. **PLN-BOA-17-00013: JAKE RIORDAN** – requests variances to: 1) increase the maximum front setback from 20 feet to 90 feet for Lot 1, and 2) increase the maximum front setback from 20 feet to 145 feet from the private access easement for Lot 2 in a Neighborhood Business (B-1) zone, at 4235 Harrodsburg Rd. (Council District 10).

Representation – Jihad Hallany, with Vision Engineering, was present on behalf of the applicant. He requested a postponement until the April 28, 2017 hearing.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried unanimously to **postpone PLN-BOA-17-00013: JAKE RIORDAN** until the April 28, 2017 hearing.

- d. **PLN-BOA-17-00015: SOUTHERN OAK LLC.** – requests a conditional use permit for a drive-through window in a Downtown Frame Business (B-2A) zone, at 473 East Main Street (Council District 3).

Representation – Jihad Hallany, with Vision Engineering, was present on behalf of the applicant. He requested a postponement until the April 28, 2017 hearing.

Citizen Comments – Jacob Walbourn, attorney representing Kerr Brother's Funeral Home, said that they do object to the proposal, but wanted to note on the record that they had asked the applicant to consider a postponement. They had declined and now are asking for postponement after his clients have made efforts to be at today's hearing.

Kevin Murphy, who lives at 141 West Bell Court, noted that he was at today's hearing to also object to the appeal.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried unanimously to **postpone PLN-BOA-17-00015: SOUTHERN OAK LLC.** until the April 28, 2017 hearing.

B. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-17-00011: COMMUNITY MONTESSORI SCHOOL** – requests a conditional use permit to amend a previously approved conditional use (modifying the existing building and using an existing house located on the property as classrooms) in a Single Family Residential (R-1B) zone at 727 Stone Road (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- 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. Parking is on site and adequate for the use.
- A modest expansion of the approved existing school facilities and building envelope line, to include the existing building, will have little impact on the intensity of use on the property and will make use of a currently vacant structure.
- 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:

- The school shall be expanded in accordance with the submitted application and site plan.
- All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Certificate of Occupancy, prior to opening the expanded facility.
- The layout of the parking areas shall be reviewed and approved by the Division of Traffic Engineering.
- The school shall take whatever appropriate steps are necessary, above and beyond any required improvements to Stone Road, to ensure that stacking of vehicles on Stone Road does not take place. This may include working with parents to alter drop-off and pick-up routes and times.
- The off-street parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
- Any outdoor pole lighting shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby residential properties.
- A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
- The 25' floodplain buffer (on both sides of the floodplain) shall be maintained as a conservation easement, with preferred vegetation to consist of short-growing native grasses and wildflowers. Allowable activities within this easement shall be guided by a Vegetation Management Plan developed through consultation with the storm water section of the Division of Engineering. This plan shall be adopted, and implementation initiated, within 6 months after occupancy of the school.
- Should it ever be constructed, access to the special events parking area at the end of Ark Royal Way shall be

gated, with the gate to be open only during special school-related events. The gate shall remain closed during routine, daily school activities, and after the completion of any special events. The school shall take whatever steps are necessary to ensure that the end of Ark Royal Way is not used as a drop-off or pick-up area for students.

Representation – Casey Dunn with Denham-Blythe Co. was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Board questions and comments – Mr. Needham asked for clarification on condition #9. Mr. Dunn explained about the gate and Ark Royal Way.

Action – A motion was made by Ms. Meyer, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-17-00011: COMMUNITY MONTESSORI SCHOOL** – a request for a conditional use permit to amend a previously approved conditional use (modifying the existing building and using an existing house located on the property as classrooms) in a Single Family Residential (R-1B) zone at 727 Stone Road, for reasons recommended by the staff and subject to the nine conditions outlined by the staff.

2. **PLN-BOA-17-00014: POLO 1 LLC.** – requests a conditional use permit to construct and operate an assisted living facility in the EAR-3 portion of a property that is split-zoned Expansion Area Residential (EAR-3)/Agricultural Rural (A-R), at 2575 Polo Club Boulevard (Council District 12).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Immediately bordering property on two sides is currently undeveloped, and a high density residential use is on a third side. Properties directly across Polo Club Boulevard are commercial in nature, as are the properties across Man o' War Boulevard. With the recommended landscape buffer and plantings, the specialized residential facility that is proposed should be compatible with whatever use is developed on the immediately adjoining properties, which, once the property is subdivided, will also be zoned EAR-3. Assisted living facilities do not generate high levels of traffic, and the activities at such a facility are not inherently noisy or otherwise disturbing.
- b. All necessary public facilities and services are or will be available and adequate for the proposed use.

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

1. The assisted living facility shall be constructed in accordance with the submitted application, and possibly a revised site plan, as amended to be consistent with a Final Development Plan approved by the Planning Commission.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, Traffic Engineering and Building Inspection prior to construction and prior to occupying the facility.
3. The parking lots shall be paved, with spaces delineated, and landscaped in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the access points, traffic aisles and layout of the parking spaces shall be subject to review and approval by the Division of Traffic Engineering.
5. Any outdoor pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. A 15' wide landscape buffer shall be provided around the full perimeter of the subject property, to include (on average) one tree for every 40' of linear boundary, recognizing that trees may be staggered rather than formally aligned; and pockets of shrubbery and smaller trees, rather than a continuous hedge. The design of the landscape buffer will be subject to the approval of the Urban County Landscape Examiner with the Division of Building Inspection.
8. Action of the Board shall be noted on the Final Development Plan for the subject property and on the final subdivision plat of the property.

Representation – Jihad Hallany, with Vision Engineering, was present on behalf of the applicant. He indicated that they had reviewed the conditions and agreed to abide by them.

Action - A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously, to **approve PLN-BOA-17-00014: POLO 1 LLC.** – a request for a conditional use permit to construct and operate an assisted living facility in the EAR-3 portion of a property that is split-zoned Expansion Area Residential (EAR-3)/Agricultural Rural (A-R), at 2575 Polo Club Boulevard, based on the staff's recommendations and subject to the eight conditions.

C. Discussion items:

1. **PLN-BOA-17-00017: KENNETH BERRY** – requests variances to (1) reduce the required front yard from 20 feet to 15 feet for a porch enclosure; (2) increase the allowable projection of a deck from 8 feet to 12 feet; and (3) reduce the minimum front yard setback for the deck from 10' to 3' in a High Density Apartment (R-4) zone, within the defined Infill and Redevelopment Area, at 193 Old Georgetown Street (Council District 2).

The Staff Recommends: Approval of (1) a front yard setback reduction for the residence from 20' to 15' and (2) a reduction in the front yard setback for the deck from 10' to 7', for the following reasons:

- a. Granting the variances will not adversely affect the public health, safety, or welfare.
- b. The newly enclosed area was originally a covered porch, so the change does not have a significant impact on the site and provides additional interior space for the occupant of the home.
- c. The site is located within the Infill and Redevelopment area, which generally has more flexibility regarding setbacks; and the variances will not adversely affect the character of the general vicinity.
- d. Allowing the deck to remain at a depth of 8' would result in green space being preserved in the front yard and an improvement more in scale with the residence and surrounding properties. Bringing the deck closer to compliance by 4 feet will not deprive the applicant of a reasonable use of the land or prevent the applicant from using and enjoying the space.

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

1. The applicant shall obtain a building permit from the Division of Building Inspection within 30 days of Board action.
2. The applicant shall remove a portion of the constructed deck to reduce its projection into the front yard from 12 feet to 8 feet.

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

*Note – Ms. Goderwis distributed several letters of opposition to the Board members.

Staff Comments – Ms. Goderwis gave a staff report of the proposed request and the staff's recommendations. At this time, she presented photos on the overhead projector and discussed. There was further discussion between the Board, the staff, and the applicant.

Board Questions and Comments – Mr. Gross stated that he thought there were only two issues with the porch. Mr. Marx responded. There was further discussion with regard to the porch issues, to include a presentation on the overhead projector. Mr. Gross inquired about the length of the previous porch prior to the enclosure, to which Ms. Goderwis responded.

Citizen Comment – Bill Johnston, who lives at 645 W. Short Street, president of the Historic Western Suburb Neighborhood Association and a property owner on Old Georgetown Street, was present. Mr. Johnston presented photos on the overhead projector and explained his opposition to the proposed request.

Mr. Glover asked what would have happened if the applicant had made an application prior to his changes; if he would have been approved for this request, to which Mr. Marx responded. At this time, there was further discussion about the deck and the permit process.

Applicant comment – Mr. Glover asked Mr. Berry a building permit wasn't issued prior to construction. Mr. Berry responded that it was a bad mistake on his part and further explained. Mr. Gross asked if Mr. Berry occupied the house. Mr. Berry responded that he didn't currently, but had planned to. At this time, Mr. Glover asked Mr. Berry if he had read the staff report and agreed with removing the portion of the constructed deck. Mr. Berry responded affirmatively. There was further discussion between the Board and the applicant with regard to the proposed use.

Ms. Whitman asked the staff if there would be other requirements for the deck besides a railing. Mr. Marx noted that this would be a permitting question.

At this time there was further discussion between the Board and the applicant.

Action - A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 4-2 (Meyer and Needham opposed) to **approve PLN-BOA-17-00017: KENNETH BERRY** – a request for variances to (1) reduce the required front yard from 20 feet to 15 feet for a porch enclosure; and (2) reduce the minimum front yard setback for the deck from 10' to 7' in a High Density Apartment (R-4) zone, within the defined Infill and Redevelopment Area, at 193 Old Georgetown Street, for the reasons recommended in the staff report and subject to the two conditions.

2. **PLN-BOA-17-00007: TOTAL GRACE CHURCH** – requests a conditional use permit to expand the existing church and parking in a Planned Neighborhood Residential (R-3) and a Single Family Residential (R-1C) zone, at 1217, 1313 & 1317 N. Limestone and 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 Le'Det was present representing the applicant, as was Pastor Michael Robinson.

Staff Comments – Ms. Goderwis distributed several letters. She gave a staff report and discussed new findings and conditions for approval.

Board Questions and Comments – Mr. Gross questioned if 1217 N. Limestone had already been demolished. Ms. Goderwis responded affirmatively. Mr. Gross also questioned the Withers Avenue parking lot.

Ms. Meyer noted in the staff report about better interest in creating streetscapes in the North Limestone area, and questioned what type of landscaping is being proposed for the new plan. Ms. Goderwis responded that there is not a current plan in place, but the applicant is allowing for the appropriate landscape buffer area and presented a photo on the overhead projector.

Mr. Clarke asked the staff what resolution has come about with regard to the previous issues that were of concern. Ms. Goderwis responded. At this time, there was further discussion with regard to the proposed use.

Citizen Comment – John Horsley, who lives at 105 Withers Avenue, presented a PowerPoint presentation and discussed his reason for opposition. There was also further discussion with regard to the storm water run-off and parking issues between the Board and the applicant.

Representation Rebuttal – Mr. Le'Det responded to the concerns of Mr. Horsley. Ms. Meyer expressed her concerns about the water run-off. Mr. Clements responded that there were no requirements that would make it improve the situation. Mr. Gross asked if there could be something in the approval with regard to making sure that the water run-off runs toward North Limestone and if there was some of way to keep it from running into the street. Mr. Clements responded. There was further discussion, to include comments from Pastor Michael Robinson. (Mr. Le'Det had to leave at this time).

Action - A motion was made by Mr. Glover, seconded by Mr. Clarke and carried unanimously to **approve PLN-BOA-17-00007: TOTAL GRACE CHURCH** – a request for a conditional use permit to expand the existing church and parking in a Planned Neighborhood Residential (R-3) and a Single Family Residential (R-1C) zone, at 1217, 1313 & 1317 N. Limestone and 100 Withers Ave., based upon the staff report; the amended revised conditions; the amended site plan received at today's hearing; and subject to the six conditions in the revised findings and conditions for approval. Revised findings and condition are as follows:

Findings:

- a. The 5,000 square-foot addition and parking expansion/reconfiguration will not have an adverse effect on the subject property or the surrounding neighborhood, as landscaping will be provided and storm water management in accordance with adopted Engineering manuals.
- b. All necessary public services and facilities are or will be available and adequate for the proposed use.

Conditions for Approval of the church addition and parking at 1313 and 1217 North Limestone and 100 Withers Avenue:

1. The new addition and new parking areas shall be established in accordance with the submitted application and revised site plan dated March 23, 2017.
2. The final design of the parking areas shall be subject to review and approval by the Division of Traffic Engineering.
3. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.

4. An updated storm water management plan shall be implemented as part of the parking lot expansion. This plan, subject to acceptance by the Division of Engineering, shall address existing drainage problems in the immediate area, as required by the adopted Engineering Manuals.
 5. All parking areas shall be landscaped in accordance with the provisions of Article 18.
 6. Any pole lighting for the parking lots shall be of a shoebox or similar design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties.
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).

Based on a recently submitted amended site plan (dated 1-22-17, 36 Total Parking Spaces) that reasonably addresses staff concerns regarding impacts to the South Ashland streetscape and pedestrian/biker access, the following revised findings and conditions for approval are recommended:

Findings:

- a. A new parking lot at this location should not adversely impact the subject or surrounding properties. The parking lot will include a direct access from the main Kroger store to South Ashland Avenue, which is considered as a much needed improvement for traffic management purposes. Additional parking will alleviate crowded conditions in the existing surface parking lot, and biker/pedestrian access will be facilitated by the provision of a 5' wide internal sidewalk adjacent to the parking.
- b. All necessary public services and facilities are available and adequate for the proposed use.

Conditions:

1. The parking lot and access shall be constructed in accordance with the revised site plan (dated 1-22-17, 36 Total Parking Spaces), or as amended to address requirements of the Divisions of Engineering, Traffic Engineering and Building Inspection.
2. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to construction and prior to opening the parking lot and access.
3. The final design of the parking lot, including the layout of parking spaces, access to South Ashland and overall circulation, shall be subject to review and approval by the Division of Traffic Engineering.
4. The front of the lot (along South Ashland) shall be landscaped in accordance with the requirements of Article 18-3(a)(2)2 of the Zoning Ordinance. In order to maintain sight triangles for traffic visibility, per Article 3-3 of the Zoning Ordinance, it may be necessary to provide only ground cover in some of the landscaped area where a 3' tall continuous planting would otherwise be required. A minimum of three trees shall be provided along the 100' of frontage, with planting location and species selected to minimize the potential for sight triangle obstruction.
5. Landscape buffers bordering the 5' wide sidewalk shall be planted with Liriope muscari (a low-growing plant in the Lily family, commonly known as spider grass), or another similar low maintenance ground cover, with spacing as customarily recommended for the plant chosen.
6. A speed hump shall be placed in the traffic aisle at the southwest corner of the property, at the property line where the zoning changes from B-1 to B-6P.
7. A stop sign shall be placed at the easterly end of the southern traffic aisle, to ensure that vehicles stop before crossing the sidewalk to get onto South Ashland Avenue.
8. Delivery trucks serving the Kroger store shall not enter or exit via the access provided at 445 South Ashland Avenue.

Staff Comments - Mr. Marx distributed several letters of objection and support to the Board, and gave a presentation of the staff's recommendation of new findings and conditions for approval of the application. There was further discussion between the Board and the staff, to include comments from Ms. Kaucher with regard to parking and traffic.

Representation – Bruce Simpson, attorney with Stoll Keenon Ogden, PLLC, was present on behalf of the applicant. Mr. Simpson distributed several handouts and gave a presentation with regard to the proposed request. Mr. Simpson discussed the traffic study, as well as the history for the proposed use, and provided a presentation on the overhead projector with discussion.

Bob Cornett, with the Roberts Group, discussed the access easement and the water run-off. There were further questions and concerns that were discussed by the Board and the Mr. Cornett.

Danny Lethco, real-estate manger, Louisville division for Kroger, discussed the reasoning for the additional parking.

Citizen Comments – Amy Clark, president of the Euclid League, whom she represents, was present. She distributed several items to the Board, as well as a letter for the record from a concerned citizen who was present at the last hearing, but was unable to attend today's hearing. Ms. Clark discussed their opposition to the proposed use. There was further questions and discussion between the Board and Ms. Clark.

Kate Savage, who lives at 619 Columbia Ave., spoke in opposition with regard to the Kroger being too large for the neighborhood, as well as the concern of the traffic flow in the neighborhood.

Jane Peters, who lives adjacent to the subject property, expressed her concerns about pedestrian safety with the possible increase in traffic flow. There was further discussion.

Diane Spurlock, who lives at 665 Berry Lane, expressed her concerns about the potential increase in traffic and the destruction of the affordable housing units for more parking spaces.

Representation Rebuttal – Mr. Simpson responded to the concerns and questions and of the citizens' opposition.

Diane Zimmerman, who prepared the traffic impact study and has 30 years of experience, discussed the results of the study. Ms. Zimmerman said that she has prepared over 400 traffic studies in 25 jurisdictions in the State of Kentucky.

Mr. Simpson further discussed the design of the proposed use, as well as to the traffic impact.

Citizen Rebuttal – In rebuttal, Ms. Clark further discussed her concerns with regard to the traffic; demolition of a "usable" building; the closure of the easement; possible condition changes if approved; and the development of the neighborhood.

Board Comments and Discussion – Mr. Glover stated that Ms. Clark had made some good points - things he had not thought about. He noted his disbelief that the proposed plan is a better plan than what currently exists. Mr. Glover said that he, too, was concerned about the pedestrian access to Kroger. He believed that this "was as good as it was going to get," and said that he was in favor in it.

Mr. Clarke noted that he appreciated the effort made and comments of the neighbors. He stated that there are some problems that may need to be looked at and worked on, but maybe not primarily Kroger problems. Mr. Clarke also agreed with Mr. Glover that "this may be a better solution that is what is currently," and explained his reasoning.

Ms. Whitman stated that she was in agreement with the parking lot. She, too, agreed with Mr. Clarke with regard to the concerns of the "mingling" of the cars and pedestrians. She said that the Hollywood community has been a unique community for many years. It will continue to be, and she hoped that the traffic from Kroger would go back out the Ashland community and not mingle with the subdivision.

Ms. Meyer said that she appreciated both sides of the issue, and expressed her concerns about safety. She said that she was hesitant about supporting the building of the parking lot, and that she leaning toward not supporting this proposed use.

Mr. Needham said that he struggled with both sides the issue. He said that he was pro Kroger, taking care of their customers and providing better access for walkers and autos; there needs to be education and a way to convince people to park on the roof; and he would much rather see just access versus a parking lot on the property. He said that he is leaning towards providing access only, but not the apartment building coming down.

Action - A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 5-1 (Meyer opposed) to **approve PLN-BOA-16-00037: KROGER COMPANY** – a request for a conditional use permit to construct a new parking lot and driveways in a Neighborhood Business (B-1) zone, at 445 South Ashland Avenue, based on the revised findings and subject to the eight conditions.

Note: Mr. Gross declared a brief recess at 5:28 p.m. in order to discuss findings and conditions for approval of this case. The meeting reconvened at 5:43 p.m., with Mr. Glover absent due to his recusal from the following case.

E. Administrative Reviews

1. **PLN-BOA-17-00018: LISA N. GANNOE** – an administrative appeal to determine that the Division of Planning erred in not recommending a revocation hearing for a conditional use approved by the Board on May 26, 2006 in the Agricultural Rural (A-R) zone at 7524 Old Richmond Road (Council District 12).

Applicant and Citizen Comments – Mary Diane Hanna, who lives at 6398 Old Richmond Road and is President of the Old Richmond Road Neighborhood Association, noted that Dr. Gannoe is requesting a revocation hearing, which is not listed as such on today's hearing and explained her reasoning. As Ms. Hanna asked questions to the Board, Mr. Gross noted that questions should come from the Board members to the citizens and not the other way around. At this time, Ms. Jones noted that she did not believe that there has been a report received from the Planning staff recommending a revocation hearing and explained the process that is pursued. Ms. Hanna further discussed the neighborhood and the neighborhood association's concerns with regard to the non-compliance of the current conditional use at the subject property, quoted the "law" and noted that no revocation hearing has happened. It was her opinion that it should be revoked today. Ms. Hanna also quoted Dr. Gannoe's previous arguments: "The Board shall have power to revoke and has right of action to compel structures (offending) to be removed."

Lisa Gannoe, who lives at 7525 Old Richmond Road, distributed several documents to the Board, and said that this should be the easiest decision of the day. Dr. Gannoe noted how many times she has come before the Board with the request for a revocation hearing and further discussed her reasons for that request. Dr. Gannoe noted that the business has never commenced, and there is nothing in record noting that the conditions have been met. She said that it should be evident that no conditions have been met since 2006; there have been no certificate of occupancy or other permits obtained; the applicants are not doing what they should be doing (e.g., not paying taxes). Dr. Gannoe said that there has been enough proof or evidence to substantiate reasons for a revocation hearing. She also said that a conditional use permit should not have an adverse effect on surrounding property owners, and this has. In conclusion, Dr. Gannoe said that she is requesting that the Board of Adjustment revoke the conditional use permit for the subject property.

Charles Martin, who lives at 7416 Grimes Mill Road, asked if anyone has actually seen the greenhouse. He presented the development plan for the subject property from 2006 on the overhead projector and discussed. At this time, he read a letter of opposition that he had written in 2006 (when the conditional use was granted), which was entered into the record. Dr. Martin addressed the variances on the subject property that he didn't believe were taken care of before. There was further discussion. In conclusion, he stated that the Chair should be able to request a revocation hearing for the subject property.

Note – Mr. Gross noted that, according to the Ordinance, if a conditional use has not be exercised within a year, then a revocation can be held to revoke it

Staff Comments and Discussion – Mr. Marx said that he did not dispute that the applicants were not complying with the conditions; they have never complied with the conditions that were imposed by the Board. The property has been vacant since 2006, and a revocation hearing is not relevant. At this time, Mr. Marx provided a presentation on the overhead projector, as he discussed three findings for disapproval of a revocation hearing. He also explained the purpose of a revocation hearing, when it should be held, and what the intent of a revocation is in the first place. He showed the Zoning Ordinance (Article 7) and discussed. He noted that one of the purposes expressed by the appellant for the revocation hearing is to revoke the conditional use permit and to remove the greenhouse. He stated that this is not something under the Board of Adjustment's purview. The building is an allowable use in an Agricultural zone.

Mr. Gross noted that he didn't believe that any of the Board members were on the Board during the 2006 hearing of the original request; and that his recollection was that the application for the conditional use was to use the property for a wholesale agricultural use. Mr. Marx responded that it was to be used as a plant nursery and a commercial greenhouse building for wholesale purposes. Mr. Gross questioned if the conditional use was for the applicant to do the wholesale. Mr. Marx responded affirmatively. Mr. Gross asked if they would have been able to build the greenhouse anyway. Mr. Marx responded affirmatively. At this time, there was further discussion with regard to the use of the subject property, with comments from Ms. Jones. Ms. Jones explained the letter written by Mr. Marx as to what is being appealed, noting that Mr. Marx didn't feel that it was necessary to issue a staff report to the Board of Adjustment to advise that there is a problem with the use since there is not a use going on.

Mr. Gross asked Ms. Jones, if the Board were to have a revocation hearing and decided to revoke the conditional use permit, would it be her recommendation to the Board to not order a demolition of the building, in that it could be used by anyone for agricultural purposes even without the conditional use. Ms. Jones responded yes, and was reluctant to recommend a building demolition for that reason.

Mr. Clarke said that he was trying to understand that if the conditional use is not being used, it is to be understood that there is nothing to revoke. Mr. Marx responded that there is no condition that if the property changes hands that it be null and void. He added that the conditional use can be passed on if someone else purchases the property. Mr. Gross explained further to Mr. Clarke what Mr. Marx had stated. There was further discussion with regard to the conditional use permit and whether a revocation of the conditional use permit is permissible.

Addressing Ms. Jones, Ms. Meyer said that it seems that there are two interpretations: the Planning Staff's interpretation that there is no activity on the property, so therefore, the conditions don't have to be met; and Dr. Gannoe saying that there are conditions on this property; therefore the conditions have to be met even though there is no activity. Ms. Jones responded that according to the by-laws, normally there is a written report from the administrative official that handles conditional uses, and that has not been done for reasons given by the Planning staff. She further discussed the question of misinterpretation, frequently referring to the by-laws. Ms. Meyer asked if Ms. Jones was saying that the Board of Adjustment did not have the right to compel the land owner to take down the structure. Ms. Jones replied that it can only be done if it can be proven that it is an offending structure.

Ms. Whitman asked if a conditional use ever expires if it is not being used. Ms. Jones responded that sometimes the Board places time limits on conditional uses; so if the conditions are not being met by the date that is put on them, it will expire, and she explained this to the Board.

Mr. Gross noted that the Board of Adjustment has the authority to revoke a conditional use that is not being used after a one-year period, and asked what the point of it would be. Ms. Jones responded that if the conditional use is revoked, then someone who purchases the property will not have it available to them; however, it doesn't necessarily mean the structure would come down, and the Board of Adjustment would have to go through the required notification process to hold a revocation hearing.

Applicant and Citizen Rebuttal – Dr. Gannoe noted that all property owners in the area have investments in their property that have been hurt by the subject property. She stated that it has been verified by an expert that the greenhouse is falling apart. She questioned how the building got there because there is no paper trail, and felt that should be determined. Dr. Gannoe further discussed her concerns regarding the subject property. At this time, she read an email from Mr. Marx (dated March 1st) with regard to her question about the plant nurseries. In conclusion, Dr. Gannoe stated that she thinks the Board needs to decide if they are meeting the conditions; if a permit has been given; and determine the issues that should be decided in a revocation hearing.

Dr. Martin referred to the letter written by Mr. Marx, noting that the conditions were not met when he wrote the letter to the property owner. He said that it seemed as if a hearing was being held today. Dr. Martin said that this is not issue between the staff and the neighbors, but the issue of the owner, who has not met the conditions. They didn't do anything as promised since 2006, so they never really got a conditional use permit, and he requested that there be a revocation hearing to be able to hear from the owners as well. He reiterated that this is the sixth time that Dr. Gannoe has come before the Board. Referring to the letter of Mr. Marx advising to the owners as to what needed to be done; he stated that the only thing that had been done was the water quality control. The building is falling apart and not worth anything.

Ms. Hanna said that her understanding from what she has learned over the years was that, when there is a conditional use, it is for that one use, that one company, that one thing. It doesn't get to transfer from owner to owner; and, to her, that conditional use is over and anyone who purchased the property would have to re-apply and start from ground zero.

Mr. Clarke said that he understood the frustration; the building is a mess and in the wrong place, and he wished something specific could be done that follows the law. He said that he didn't see how what is being talked about at today's hearing would work. Mr. Clarke noted that, even if the conditional use was revoked, it wouldn't get rid of the building, and asked what the point of all this would be. Dr. Martin responded that if the City couldn't take it down, the neighborhood would raise the money to do it. Mr. Needham responded that the building is going to stay. He thought that it was odd to revoke a conditional use that doesn't exist, and it may be worth having a revocation hearing to clear the table so the next owner can come back if needed.

Ms. Meyer said that she didn't know what the basis would be for having a revocation hearing since the building will not be torn down, but she believed that a revocation hearing may be pertinent to revoke the conditional permit and possibly be able to start over fresh with a new owner. She said there needs to be some type of resolution, but questioned whether a revocation hearing would bring resolution of the issue.

Ms. Whitman said that that she was torn about whether to do a another hearing, when it doesn't seem that the Board really has to, since they can't require the building to be torn down unless the owners agree to it; and if someone purchases it and decides they want a greenhouse, she is not sure what the hearing will do. Mr. Needham responded that not having a hearing would bring the Board right back where they are today.

Ms. Jones explained the basis of holding a revocation hearing, based on what was heard at today's hearing. She noted that if the Board decided on a revocation hearing based on abandonment of use, it would require notice to the property owner – and it may get them here or not. Referring to the Zoning Ordinance, she quoted: "The Board has a right of action to compel offending structure or use to be removed," and discussed that statement.

Ms. Whitman questioned if there would need to be a letter from the Planning staff stating that they were in violation, as well as comments from Mr. Gross. Ms. Jones responded that she would not recommend it, but a revocation hearing could be scheduled based on today's appeal. At this time, there was further discussion with regard to the basis of a revocation hearing and whether or not to schedule one.

Dr. Martin asked whether a vote was required to schedule a revocation hearing. Mr. Gross asked Ms. Jones if it was in his purview to make the decision. Ms. Jones referred to the Zoning Ordinance. Mr. Marx noted that there are two different questions being asked: 1) with today's appeal, there is a vote that needs to be taken; and 2) whether or not to vote to schedule a revocation hearing. Mr. Martin said that they did not come today for an appeal. Mr. Marx responded that this is what today's hearing is. Mr. Gross referred to the Zoning Ordinance section 7-6(b), read and explained it. There was further discussion with regard to voting. Ms. Jones read Zoning Ordinance section 7-6(a)(1), and discussed the basis for it. She said the difficult part is that there is not report from Mr. Marx.

Action - A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 4-1 (Gross recused) to **schedule a revocation hearing** on April 28, 2017.

Action - A motion was made by Mr. Gross, seconded by Mr. Needham and carried 4-1 (Gross opposed, Glover recused) to **deny** the appeal of **PLN-BOA-17-00018: LISA N. GANNOE** – an administrative appeal to determine that the Division of Planning erred in not recommending a revocation hearing for a conditional use approved by the Board on May 26, 2006 in the Agricultural Rural (A-R) zone at 7524 Old Richmond Road based upon the three findings that have been reported by the Planning staff and entered into the record.

IV. **BOARD ITEMS**

Mr. Gross apologized for the lengthy hearing.

V. **STAFF ITEMS**

None

VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be April 28, 2017.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 7:07 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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