

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 28, 2017

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, April 28, 2017. Members present were Branden Gross, Thomas Glover, Chad Needham, Harry Clarke, Larry Forester and Jan Meyer. Absent: Joan Whitman. 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, Jimmy Emmons and Tammye McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the March 31, 2017 meeting would be considered at this time.

Action - A motion was made by Ms. Meyer, seconded by Mr. Needham, and carried unanimously to **approve** the minutes of the March 31, 2017 meeting, with corrections noted by Ms. Meyer.

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.

***Note** – During the sounding of the agenda, Mr. Foster Ockerman stated that, after discussing with the applicant and having his concerns address and resolved, he wanted to withdraw his opposition to case number PLN-BOA-17-00016: Immanuel Baptist Church

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-17-00013: 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 – Nick Nicholson, attorney on behalf of the applicant, requested a postponement until the June 30, 2017 hearing.

Action – A motion was made by Mr. Forester, seconded by Mr. Clarke and carried unanimously to **postpone PLN-BOA-17-00013: JAKE RIORDAN** until the June 30, 2017 hearing.

- b. **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 to withdraw this application. No action needed.

- c. **PLN-BOA-17-00023: FAIRHAVEN BAPTIST CHURCH** – requests a conditional use permit to amend a previously approved conditional use (expanding the existing building) in the Agricultural Urban (A-U) zone, at 2265 Liberty Road (Council District 6).

Representation – Pastor Jonathan East was present. He requested a postponement until the May 19, 2017 hearing.

Action – A motion was made by Ms. Meyer, seconded by Mr. Forester and carried unanimously to **postpone PLN-BOA-17-00023: FAIRHAVEN BAPTIST CHURCH** until the May 19, 2017 hearing.

At this time, Mr. Gross turned the hearing over to Mr. Glover due to his recusal from the following case, as well as the first abbreviated case.

- d. **PLN-BOA-17-00021: NEWTON'S ATTIC, LLC.** – requests a conditional use permit for a proposed building to be used for academic instruction in the Agricultural Rural (A-R) zone, at 4974 Old Versailles Road (Council District 12).

Representation – There was no representation present.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 5-0 (Gross recused) to **postpone PLN-BOA-17-00021: NEWTON'S ATTIC, LLC.** until the May 19, 2017 hearing.

B. ABBREVIATED HEARINGS:

1. **PLN-BOA-17-00016: IMMANUEL BAPTIST CHURCH** – requests an amended conditional use permit to expand the on-site parking; and a variance to reduce the minimum setback from 40 feet to 18 feet in a Single Family Residential (R-1B) zone, at 3100 Tates Creek Road (Council District 5).

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

- a. Granting the requested amended conditional use permit to expand the parking lot should not adversely affect the subject or surrounding properties, provided that storm water management requirements are met.
- b. The need for the requested variance arises from a special circumstance existing on this site, which is the slanted configuration of the current parking lot, and is not the result of actions of the applicant taken without regard to zoning regulations.
- c. The requested variance will not alter the character of the general vicinity, as it creates a situation that is similar to the parking lot on the neighboring property.

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

1. The new parking areas shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
3. 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.
4. Any outdoor play area (in association with a child care use), of at least 25 square feet per child, shall be fenced and screened as required by the Zoning Ordinance.
5. All parking areas shall be landscaped in accordance with the provisions of Article 18.

*Note - At this time, Ms. Goderwis distributed several letters of opposition to the Board.

Representation and discussion – Greg Thornton, on behalf of the applicant, was present. Pastor Ron Edmondson, of Immanuel Baptist Church, discussed the church's need for the parking, noting that the church has doubled in attendance; they often have 0 paved parking spaces left, causing people to leave due to there being nowhere to park; and they have 200 people parking on the grass, which is killing the grass.

Susan Wedding, owner of the property adjacent to the subject property, said that she is in favor of the proposed use as long as the water drainage is under control. There was further discussion, with questions and comments from Mr. Glover, Mr. Needham, and Mr. Thornton. Ms. Wedding presented a photo on the overhead projector of the lay of the land and explained her concerns. At this time, Mr. Fred Eastridge with ECSI-Professional Engineer discussed the stormwater plan and the greenspace, with questions and comments from Mr. Glover and Mr. Clarke. Mr. Thornton commented that they had met with the neighbors that live on Montavesta and Councilman Farmer and had worked out some compromises. He noted that the church is willing to go forward with the two Mt. Tabor lots, and requested that three years be allowed to them to complete the fund raising and to build the parking lots. Then, if they still needed additional parking, they would come back and address the other issues at a later time. There was further discussion, with comments from Pastor Edmondson and Mr. Eastridge, who stated that there were other ways to pave the parking lot such as grass pavers. Mr. Clarke proposed a continuance due to his concerns about the opposite corner water drainage. He asked that the applicant come back with a new proposal; with which Mr. Glover agreed.

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried 5-0 (Gross recused) to **continue PLN-BOA-17-00016: IMMANUEL BAPTIST CHURCH** until the May 19, 2017 hearing.

*Note - At this time, Mr. Gross continued as the Chair.

2. **PLN-BOA-17-00020: LEXINGTON PRIMITIVE BAPTIST CHURCH** – requests a conditional use permit to expand the existing church in a Planned Neighborhood Residential (R-3) zone, at 4574 Old Schoolhouse Lane (Council District 10).

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

- a. Granting the requested conditional use permit to modestly expand the 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. Additional parking will not be required as a result of the expansion.

- 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 church shall be expanded in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection, including a Certificate of Occupancy, prior to opening the expanded facility.
3. The parking lot addition shall be landscaped/screened in accordance with Article 18 of the Zoning Ordinance.

Representation – Alan Hisle, architect and a Deacon of the church, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-17-00020: LEXINGTON PRIMITIVE BAPTIST CHURCH** a request for a conditional use permit to expand the existing church in a Planned Neighborhood Residential (R-3) zone, at 4574 Old Schoolhouse Lane, for the reasons recommended by the staff and subject to the three conditions.

3. **PLN-BOA-17-00022: MASJID BILAL** – requests a conditional use permit to establish a cemetery in the Agricultural Rural (A-R) zone, at 3427 Georgetown 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, nor should it disturb the adjoining property owners. The area of use is relatively secluded. Parking is on site 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. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Zoning Compliance Permit, a land disturbance permit for initial grading (if necessary), and Certificate of Occupancy, prior to use of the property as a cemetery.
2. Any approvals that may be needed from the Health Department or other state agency must be obtained and documented prior to issuance of a Zoning Compliance Permit.
3. Any outdoor pole lighting for the parking area shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties.

Representation – Kevin Palley, attorney, was present, along with Dr. G. Rod Erfani on behalf of the applicant. Mr. Palley indicated that they had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Needham, seconded by Mr. Forester and carried unanimously to **approve PLN-BOA-17-00022: MASJID BILAL** a request for a conditional use permit to establish a cemetery in the Agricultural Rural (A-R) zone, at 3427 Georgetown Road, based on the staff's recommendation and subject to the three conditions.

C. Discussion items:

1. **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, within the defined Infill and Redevelopment Area, at 473 East Main Street (Council District 3).

The Staff Recommends: Disapproval, for the following reasons:

- a. Granting the requested conditional use permit for a drive-through facility will adversely affect the subject property and surrounding properties because it will exacerbate an already less than desirable traffic situation on this portion of East Main Street, as well as in the property's parking lot. Turning left out of the parking lot is very difficult due to the traffic situation and lack of a turn lane, and could result in traffic backing up on the site as well as treacherous conditions for drivers, pedestrians, and cyclists along this portion of East Main Street.
- b. A coffee shop with a drive-through is anticipated to result in nearly five times as many morning trips, and nearly four times as many total trips per day as a bank with a drive-through. As such, adverse impacts associated with this proposed use are reasonably expected to be much greater than the previously approved bank facility.
- c. The elevated noise associated with a coffee shop drive-through facility including frequent use of speakers, cars idling, and car radios, is not appropriate, given the adjacent property's use as a funeral home.

Note: Mr. Gross declared a brief recess at 2:33 p.m. in order to review the letters that had been given to them by Ms. Goderwis. The meeting reconvened at 2:42 p.m., with the same members in attendance.

Staff Comments and Discussion – Ms. Goderwis presented the staff's recommendation of disapproval, noting that they had received a traffic study from the applicant, the morning prior to today's hearing; Transportation Planning and Traffic Engineering have reviewed the study, and have expressed serious concerns regarding the study.

Prior to the staff's presentation, Mr. Needham questioned the concern about increased traffic. Ms. Goderwis responded, as did Ms. Kaucher. Mr. Glover asked how the traffic would be any different than other uses going in and out of the property. Ms. Kaucher replied that it would be the volume of traffic. At this time, there was further discussion between the Board and Ms. Kaucher with regard to traffic and Traffic Engineering's concerns.

At this time, Mr. Emmons discussed the traffic impact study that was received from the applicant. He further discussed Transportation Planning's concerns, referencing the ITE (Institute of Transportation Engineers) manual. Mr. Gross asked Mr. Emmons to explain the difference between Transportation Planning and Traffic Engineering, for the record. Mr. Emmons explained. There was further discussion between the Board and Mr. Emmons, with comments from Ms. Kaucher.

Representation – David Royse, attorney with Ransdell, Roach, and Royse Law firm, was present on behalf of the applicant. He presented slides on the overhead projector and discussed the proposed use. Mr. Royse said that he believed that their traffic study was submitted on or about April 8th, with an amendment that was submitted on April 27th. Jihad Hallany, with Vision Engineering, also provided a presentation on the overhead projector, and discussed the proposed use with regard to the entrances and exit. There were questions and comments from the Board, as well as comments from Mr. Royse. Mr. Royse further discussed the proposed use with regard to the drive-through. At this time, Mr. Hallany discussed the traffic study that was submitted. There was continued discussion from Mr. Royse, with questions and comments from the Board.

Phil Greer, owner of the subject property, gave a little history on the previous uses and discussed their current proposed use, with further comments from Mr. Royse. He also noted that there are other uses that can be placed on the subject property that would not require a conditional use, and further discussed. Mr. Royse submitted proposed findings and conclusion to be considered by the Board in case they might support an approval. He asked that his PowerPoint Presentation, the traffic study, and the letters be added as part of the official record.

Citizen Comments – Jacob Walbourn, attorney representing Kerr Brothers Funeral Home, presented slides on the overhead projector, distributed a copy of his presentation to the Board (for the record), and discussed their opposition to the proposed use. Mr. Walbourn discussed the following:

- Concerns for the Kerr Brothers business
- AM peak conflict concerns
- Anecdotal evidence
- Traffic counts
- Public health and safety concerns
- Traffic study provided by the applicant
- Cut throughs
- Layout concerns

Mr. Gross asked about buffering, to which Mr. Walbourn responded.

Virginia Kerr-Zoller, acting manager of Kerr Brothers Funeral home (fifth generation), said that they have been open for over 100 years and have been at the current location for 80 years. She said that her family lives close to downtown, and they have a very vested interest in the downtown area. Ms. Kerr-Zoller discussed her concerns with the possible negative traffic impact and excessive sound from the drive-through, with regard to the proposed use.

Councilmember Jake Gibbs – 3rd District, expressed his concerns with the proposed use. He believed that it would endanger drivers, pedestrians and cyclists, due to being unprotected and would be the cause of an accident, and indicated that the Bell Court and Aylesford Place Neighborhood Associations are also opposed for this reason.

Rebuttal – Mr. Royse addressed the opposition's comments regarding their concerns with the drive-through and traffic. He presented a photo on the overhead projector and discussed several points.

Mr. Walbourn said that he didn't think that Kerr Brothers funeral home and Starbucks are compatible uses and explained why.

Staff Concluding Comments – Ms. Kaucher commented on the stacking, clarifying some previous comments in that regard. She also commented on the double yellow line that was discussed earlier in the hearing. Mr. Gross

questioned whether or not it would get to a point where Traffic Engineering would approve or at least recommend approval of the proposal. Ms. Kaucher responded that it would not, because it is all associated with the drive-through trip generator.

Mr. Emmons addressed the applicant's rebuttal with regard to the trip generation.

Mr. Marx commented on the data of the associated accidents; the amount of traffic generated; and the reason for the conditional use request.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried unanimously to **disapprove PLN-BOA-17-00015: SOUTHERN OAK, LLC.** request for a conditional use permit for a drive-through window in a Downtown Frame Business (B-2A) zone, within the defined Infill and Redevelopment Area, at 473 East Main Street, for the reasons recommended by the staff.

Note: Mr. Gross declared a brief recess at 4:58 p.m. The meeting reconvened at 5:14 p.m., with Mr. Glover absent.

E. Revocation Hearing

1. **CV-2006-20: AARON JAMISON/MARVIN FELDPAUSCH** - the Board of Adjustment has requested a revocation hearing for a conditional use permit to operate a plant nursery and commercial greenhouse in the Agricultural Rural (A-R) zone, at 7524 Old Richmond Road (Council District 12).

Craig Music with Micah Group was present representing the owner. He requested a postponement, or that they continue the case in order for them to have legal representation and an opportunity to prepare their case. He said that according to the Zoning Department, the business was in compliance as long as the building was vacant. Mr. Music also stated that they received notice of the revocation hearing around the 8th or 10th of this month, and hadn't had time for preparation. Mr. Gross responded that this case has been before the Board for some time. He said the notice that was given was in ample time, and that he would like for the revocation hearing to be done today. The rest of the Board concurred. Mr. Gross announced that he would like to give each party 15 minutes to be heard.

Staff Report – Mr. Marx distributed documentation to the Board members and all parties involved at today's hearing; he discussed a presentation on the overhead projector with the factual background of the current use.

Citizen Comments – Charles Martin, who lives at 7416 Grimes Mill Road, said that this is the 7th time that this group has been at a hearing to discuss this matter, and asked if they could have longer than 15 minutes to speak. Mr. Gross agreed, and granted 30 minutes total for the individuals to speak. Mr. Martin discussed his concerns of "no action" on the property and requested that the conditional use be revoked. On the overhead projector, he presented two one-minute clips from the 2006 hearing of the original conditional use, and discussed his concerns regarding approval of the original use. He requested that the conditional use permit be revoked and the structure be removed.

Mary Diane Hanna, who lives at 6398 Old Richmond Road, distributed information to the Board members (entered into the official record), and discussed her concerns of the current use on the subject property. Ms. Hanna referenced the Zoning Ordinance and KRS 100, with regard to conditional uses, and discussed. She, too, requested that the conditional use be revoked and the structure on the property be removed. Ms. Hanna presented a map of the subject property on the overhead projector and discussed the following points:

- Zoning Ordinance
- Small lots
- Article 7(6)(a)
- Commercial business in the area
- Illegal uses
- Preserved lands in the area (shown on the overhead projector)

Walter Gaffield, who lives at 2001 Bamboo Drive, president of the Fayette County Neighborhood Council, said he assists neighborhood and homeowners associations in Fayette County. He addressed the manner in which the Board of Adjustment reviews conditional uses to make sure that are met, and referred to the Zoning Ordinance 7(5). Mr. Gaffield requested that the conditional use be revoked conditions.

Councilmember Kathy Plomin – 12th district, distributed two letters from residents of the subject area, for the record.

Wayne Mitchell, who lives diagonally across the street from the subject property, said that he has lived there for almost 7 years. Mr. Mitchell said that he had submitted a letter for the last hearing, supporting the revocation hearing, and suggested that the structure be demolished because it has not been used at all. He said that he has tried his best to maintain the property. Mr. Mitchell said that he would request that the conditional use be revoked and the structure torn

down.

*Note – Mr. Gross said that he would like to give Dr. Gannoe additional time to be heard (15 minutes).

Dr. Lisa Gannoe, who lives at 7525 Old Richmond Road, said she has appeared before the Board 6 times previously, with regard to her request to have the conditional use revoked. She has submitted documentation from the neighborhood; the neighborhood lawyer; and the neighborhood association. Dr. Gannoe noted that the applicants have not appeared at a Board of Adjustment hearing since 2006. She discussed her request to revoke the conditional use permit for 7524 Old Richmond Road, and to remove the structure on the subject property, referring to KRS 100.237. She presented photos on the overhead projector and discussed. Dr. Gannoe also referred to the Zoning Ordinance, which talks about commercial greenhouse, and discussed. Dr. Gannoe distributed several items of documentation to the Board members, to include a petition from the neighbors of the surrounding area. She distributed facts and findings for a revocation of the conditional use permit, and asked that all of her documentation be submitted into the official record.

At this time, Ms. Plomin read a letter from Mr. Jeremey Litchfield that was submitted for the record.

Representation Comments – Mr. Music said that after each meeting that had been heard regarding this case, they would contact Planning and Zoning, and they were told that they were in compliance and didn't need to do anything until they had someone in the building. He said as far as removing the building, he wasn't sure how that would work since there is a mortgage on the building. Mr. Music said that he couldn't comment much with regard to the letter from Mr. Litchfield, but that they did have to ask him to leave. He said that on February 22nd, there was a Building Inspector on the property that advised of some roof panels that were in need of repair, and those repairs were made on time. Mr. Music indicated that he is not the owner, just a representative of the owner, and was limited to what he could comment on, due to lack of knowledge of the entire situation.

Board Comments and Questions – Mr. Clarke asked Mr. Music why the owner was not at today's hearing. Mr. Music responded that the owner actually lives in South Carolina, and he did not know why he was not in attendance. He said that their legal counsel was supposed to appear, but was unable to. Mr. Clarke then asked why the facility was not being used for what it was designed for. In response, Mr. Music said that it was for a plant nursery, but he wasn't sure if they even got that far with it, and was not sure why. At this time, there was discussion with regard to the intentions for the subject property as far as use or selling.

Ms. Meyer said that she had concerns about the lack of permits. She also had concerns about the variances that weren't obtained, according to the site plan, and were not being met, and she felt that those were two compelling reasons to revoke the conditional use permit.

Agreeing with Ms. Meyer, Mr. Clarke questioned if the Board had the authority to require the building to be removed. Ms. Jones responded to Mr. Clarke's question, referring to Zoning Ordinance 7(6)(a)(1). At this time, there was further discussion between the Board and the staff with regard to whether or not the Board has authority to require the building to be removed. There was further discussion with regard to revoking the conditional use, as well as what is permissible in the zone of the subject property, with comments from Mr. Marx. Mr. Needham said that he did not believe that the conditions have been met, the neighbors are not happy, and he was for supporting to revoke the conditional permit. At this time, there was further discussion as to how to move on this conditional use permit, with additional comments from Ms. Jones.

Note: Mr. Gross declared a brief recess at 6:48 p.m. in order to discuss findings and conditions for approval of this case. The meeting reconvened at 7:03 p.m., the same members present.

Action – A motion was made by Mr. Needham, seconded by Mr. Clark and carried 4-1 (Gross opposed, Glover recused) to **revoke CV-2006-20: AARON JAMISON/MARVIN FELDPAUSCH** the conditional use permit to operate a plant nursery and commercial greenhouse in the Agricultural Rural (A-R) zone, at 7524 Old Richmond Road, for the following reasons:

- 1) Numerous complaints about the lack of use, lack of property maintenance and periods of non-compliant use have been made.
- 2) Without any compliant use over an extended period of time (10 years), there is effectively no reason to allow the conditional use permit to continue.

And note that this does not include razing of the building.

IV. BOARD ITEMS

Mr. Gross addressed the Board members, asking them to use the Granicus system for voting starting next month.

V. **STAFF ITEMS**

None

VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be May 19, 2017. Mr. Gross indicated that he may not be present for the May hearing.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 7:05 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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