

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 19, 2017

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, May 19, 2017. Members present were Branden Gross, Thomas Glover, Chad Needham, Harry Clarke, and Jan Meyer. Absent: Joan Whitman and Larry Forester. Others present were: Thomas Clements and Josh Dezarn, 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 April 28, 2017 meeting would be considered at this time.

Action - A motion was made by Ms. Meyer, seconded by Mr. Clarke, and carried unanimously to **approve** the minutes of the April 28, 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.

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-17-00026: COHEN BROTHERS** - an administrative appeal to change the use on the property from one legal non-conforming use (scrap iron storage) to another legal non-conforming use (junk yard) in a Light Industrial (I-1) zone, at 757 East Seventh Street (Council District 5).

Representation – William Carle, who was present on behalf of the applicant, requested a postponement until the June 30, 2017 hearing in order to revise their “language” of the application.

Citizen Comments – Larry Hamilton, former Neighborhood Association President for the Loudon Avenue area, noted that he was in opposition to a postponement and would like to have the hearing today.

Councilman Steve Kay said that the wording does not represent what the applicant is proposing to do, and he was in agreement for a postponement.

Board Questions and Comments – Autumn Goderwis said that with the initial application, there was a need to clarify the use.

Mr. Glover asked if “on its face”, the staff thought that the request wouldn’t be rejected. Mr. Marx said that the staff could not commit either way as to how it would play out.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried unanimously to **postpone PLN-BOA-17-00026: COHEN BROTHERS** until the June 30, 2017 hearing.

- b. **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, and indicated that they wanted to withdraw their application.

No action was needed.

- c. **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).

Note – Ms. Goderwis noted that this application was withdrawn via email on 05/08/17.

B. ABBREVIATED HEARINGS:

1. **PLN-BOA-17-00024: WESTON LYONS** – requests a variance to reduce the required setback of a 6-foot tall fence (to replace an existing 4-foot fence) in a side street side yard in a Single Family Residential (R-1C) zone, at 345 Dudley Road (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. Similar situations exist in the area and the existing landscaping will be maintained, preserving the streetscape.
- b. Strict application of the Zoning Ordinance would create a visually awkward circumstance by creating a gap between the retaining wall and fence. This would also reduce the amount of usable back yard space for the applicant.
- c. Due to the location of the existing retaining wall the 6' fence will be situated about 3' back from the sidewalk, thereby satisfying the intent of the Zoning Ordinance.

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

1. The fence shall be constructed in accordance with the submitted application and site plan.
2. The applicant shall obtain a fence permit from the Division of Building Inspection prior to installation of the fence.
3. The applicant shall maintain the existing landscaping between the fence and sidewalk.

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

Board Questions and Comments – Mr. Glover asked how tall the retaining wall was. Mr. Lyons responded that it was approximately 3 feet tall. At this time, there was further discussion with regard to the retaining wall and the height of the back yard, to include comments from Ms. Goderwis. Mr. Clarke questioned the need for a fence. Mr. Lyons said that the current fence is falling apart. Mr. Needham also asked if there was going to be a fence in the front of the yard. Mr. Lyons responded that there would not.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried unanimously to **approve PLN-BOA-17-00024: WESTON LYONS** – a request for a variance to reduce the required setback of a 6-foot tall fence (to replace an existing 4-foot fence) in a side street side yard in a Single Family Residential (R-1C) zone, at 345 Dudley Road, based on the recommendations and conditions by the staff.

2. **PLN-BOA-17-00031: ROMANY ROAD IGA SUPERMARKET** – requests a variance to reduce the minimum required front yard from 10 feet to 4.5 feet in a Neighborhood Business (B-1) zone, at 344 Romany Rd. (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The proposed use is appropriate to the vicinity and will utilize a currently vacant property.
- b. Strict application of the Zoning Ordinance would prevent the expansion of the existing building due to the existing configuration of the building and parking areas.

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

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Certificate of Occupancy, prior to opening the facility.

Representation – Jacob Walbourn, attorney on behalf of the applicant, was present. He 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. Clarke and carried unanimously to **approve PLN-BOA-17-00031: ROMANY ROAD IGA SUPERMARKET** – a request for a variance to reduce the minimum required front yard from 10 feet to 4.5 feet in a Neighborhood Business (B-1) zone, at 344 Romany Rd., based on the staff's recommendations and subject to the conditions.

3. **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 Tate Creek Road (Council District 5).

Based on a recently submitted amended site plan (dated May 3, 2017) that eliminates the necessity of a variance, the following revised findings and conditions for **Approval** are recommended:

Finding:

- 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. All necessary public services and facilities are or will be available for the proposed use.

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, Mr. Gross recused himself from the case, and turned the meeting over to Mr. Glover to chair.

Ms. Goderwis distributed several letters of support to the Board.

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

Mr. Thornton distributed a copy of his PowerPoint presentation to the Board and the staff, and discussed the church's new parking proposal.

Board Questions and Comments – Mr. Clarke asked about the removal of the brush or trees. Referring to the PowerPoint, Mr. Thornton responded to Mr. Clarke's question.

Mr. Thornton noted that the church would like to pay cash for the project, and requested that they have a three-year extension in order to raise the money. In response, Mr. Marx indicated that the staff was okay with the three-year window, with comments from Ms. Jones.

Citizen Comment – Ms. Susan Wedding, owner of the property adjacent to the subject property, commented that she is in favor of the new proposed plan as long as the water drainage will not impact her property.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 4-0 (Gross recused) to **approve PLN-BOA-17-00016: IMMANUEL BAPTIST CHURCH** – a request for an amended conditional use permit to expand the on-site parking in a Single Family Residential (R-1B) zone, at 3100 Tate Creek Road, based on the staff's new findings and conditions.

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

At this time, Mr. Simpson came to the podium and requested a 30-day postponement for case **PLN-BOA-17-00028: RODNEY D. & SEAN MCMILLIAN**, in order for them to discuss with the neighbors and the Home Owners Association to try and resolve any issues.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously to **postpone PLN-BOA-17-00028: RODNEY D. & SEAN MCMILLIAN** until the June 30, 2017 hearing.

4. **PLN-BOA-17-00027: WILLIAM CRANK** – requests a conditional use permit to operate a cocktail lounge in order to allow the applicant to serve beer by the glass in a bicycle shop in a Neighborhood Business (B-1) zone, at 439 Southland Drive (Council District 11).

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

- a. Serving just beer by the glass as an accessory use should not adversely affect the subject or surrounding properties, nor should it disturb the adjoining property owners, as no significant increase in traffic is anticipated and live entertainment will not be provided.
- 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. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to opening the facility.
2. Any signage for the bicycle shop shall not include any reference to a cocktail lounge or the serving of beer.
3. Alcoholic beverages other than beer and wine shall not be served.
4. The facility shall function as accessory to the bicycle shop, and shall not be open for the sale of alcoholic beverages outside of the normal operating hours for the bicycle shop, which are 10 am to 6 pm Monday-Friday and 10 am to 5 pm Saturday.
5. The conditional use for serving alcoholic beverages shall immediately cease upon the changing of ownership, or the primary operator, of the facility.
6. Should the operator decide that the sale of alcoholic beverages become the primary use for the property, the applicant shall return to the Board of Adjustment to evaluate the appropriateness of a full-fledged cocktail lounge and to address potential requirements for additional parking.

Representation – Chuck Ellinger, at 1823 Nicholasville Road, was present on behalf of the applicant. He indicated that they had reviewed the recommended conditions and agreed to abide by them. Mr. Ellinger said that they would like clarification on condition number 2 where it indicates “any signage”. Mr. Marx noted that it was his understanding that the applicant wanted to put some window signage, and noted that the staff was agreeable to modifying the condition. Mr. Ellinger presented a photo on the overhead projector, and there was further discussion, with comments from Ms. Goderwis.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-17-00027: WILLIAM CRANK** – a request for a conditional use permit to operate a cocktail lounge in order to allow the applicant to serve beer by the glass in a bicycle shop in a Neighborhood Business (B-1) zone, at 439 Southland Drive, as recommended by the staff and subject to the six conditions with the word “exterior” added to the second condition as follows:

2. Any exterior signage for the bicycle shop shall not include any reference to a cocktail lounge or the serving of beer.

*Note – William Crank, applicant, stated that once the application is approved, they will have to do a newspaper notice within 30 days, stating their intention; and then it will take 60 days to obtain ABC license, making it approximately 90 days total.

IV. **BOARD ITEMS**

None

V. **STAFF ITEMS**

- a. **C-2015-57: DR. ANDREW SCHROYER & CHARLSEY Y. SCHROYER** at 1096 Wellington Way.

Mr. Marx gave a report of the concerns with regard to the use, noting that there have been citizen complaints regarding noise disturbance (primarily from dogs barking). The staff has confirmed that pet boarding services are being provided, which are unrelated to the need of the medical services. It was discussed whether or not to hold a revocation hearing for the conditional use.

Mr. Glover asked what the difference was between an animal clinic and a veterinary clinic. Mr. Marx explained that they are virtually the same.

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried unanimously to **schedule a revocation hearing for C-2015-57: DR. ANDREW SCHROYER & CHARLSEY Y. SCHROYER** at 1096 Wellington Way in a Professional Office (P-1) zone, to be heard on June 30, 2017.

- VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be June 30, 2017. Mr. Gross indicated that he may not be present for the June hearing.

- VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:35 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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