

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 30, 2017

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 30, 2017. Members present were Branden Gross, Larry Forester, Harry Clarke, Chad Needham, and Joan Whitman. Absent: Jan Meyer and Thomas Glover. 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 May 19, 2017 meeting would be considered at the July hearing due to Board members not having had the chance to review them.
- 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.

***Note** – Ms. Goderwis announced that the following applications had been withdrawn via email.

- a. **PLN-BOA-17-00034: THE BARN** – request for a variance to increase the maximum allowable projection of a project identification sign from 4 feet from the wall of the building to 6 feet 8 inches from the wall of the building in a Mixed Use-3 (MU-3) zone, at 119 Marion Drive (aka a portion of 4100 Nicholasville Road) (Council District 4).
- b. **PLN-BOA-17-00028: RODNEY D. & SEAN MCMULLIN** - an administrative appeal to determine that applying eyelash extensions is a permissible home occupation and is not equivalent to a beauty parlor; and a conditional use permit for a home occupation (application of eyelash extensions) in a Planned Neighborhood Residential (R-3) zone, at 2111 Patchen Lake Lane (Council District 6).

B. **ABBREVIATED HEARINGS:**

1. **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).

The Staff Recommends: Postponement, for the following reasons:

- a. The orientation and architectural details of the buildings in the B-1 portion of the lot have not been finalized; therefore, the variance request is premature.
- b. The lots have not yet been created via a final record plat, and the Final Development Plan for the site was recommended for postponement. Until further action has been made by the Planning Commission, this appeal should not be acted on by the Board.

Representation – Nick Nicholson, attorney, was present on behalf of the applicant. He indicated that this was a modified request and wanted to withdraw the other portion of the request (Lot 2). He further explained the applicant's revised request. Mr. Nicholson also indicated that they have reviewed the revised findings and conditions of the staff, and agreed to abide by them.

Action – A motion was made by Mr. Clarke, seconded by Mr. Forester and carried unanimously to **approve PLN-BOA-17-00013: JAKE RIORDAN** – a request for a variance to increase the maximum front setback from 20 feet to 90 feet for Lot 1 in a Neighborhood Business (B-1) zone, at 4235 Harrodsburg Rd., based on the revised findings and conditions by the staff as follows:

Findings:

- a. The variance request does not attempt circumvention of the provisions of the Zoning Ordinance. The increased setback is appropriate based on the use of the property. An accessory drive-through facility was approved by the Planning Commission on the development plan. Traffic enters the site from a private access easement that runs parallel to Harrodsburg Road. The increased setback allows for a row of parking and accommodates two-way traffic throughout the parking area. With a 20' setback and a drive-through, configuring the circulation through the site would be quite challenging.

- b. Approval of the variance will not alter the character of the vicinity. Several of the commercial properties in this area on the north side of Harrodsburg Road have similar setbacks to accommodate parking.
- c. Granting the variance will not adversely affect the public health, safety or welfare, nor will it cause a hazard or nuisance to the public.

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

1. The building shall be constructed in accordance with the approved Final Development Plan, or as that plan is amended to address design requirements of the Divisions of Engineering, Traffic Engineering, or Building Inspection.
 2. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
 3. 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.
2. **PLN-BOA-17-00037: SHAWN & KATRINA SMITH** - request a variance to reduce the side yard setback from 25 feet to 12 feet in order to construct an addition to the existing single family residence in the Agricultural Rural (A-R) zone, at 4179 Winchester Road (Council District 12).

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.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because the surrounding area is more characteristic of a Single Family Residential zone in which this type of setback would be more common. Several of the nearby properties have similar side yards.
- c. The circumstances surrounding the requested variance are not the result of a willful violation of the Zoning Ordinance. The residence was constructed in 1959, well before the current setbacks for the A-R zone were established.

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.

*Note – Ms. Goderwis presented the Board with one letter of opposition at this time.

Representation – Greg Elam, who lives 3740 Winchester Road, was present on behalf of the applicant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Board Questions and Comments – Mr. Clarke noted that he agreed with the letter of opposition, and asked why the applicant wouldn't just build on the back of the property rather than the side. Mr. Elam explained the constraints of the property that would prevent construction behind the residence.

Mr. Gross asked how far away the addition would be from the home to the adjoining right. Mr. Elam responded, noting about 8-10 feet away.

Mr. Needham stated that he did not have a problem with the structure being on the side, but asked what the roof line would look like. Mr. Elam responded.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-17-00037: SHAWN & KATRINA SMITH** – a request for a variance to reduce the side yard setback from 25 feet to 12 feet in order to construct an addition to the existing single family residence in the Agricultural Rural (A-R) zone, at 4179 Winchester Road, based on the staff's reasons and subject to the two conditions.

3. **PLN-BOA-17-00040: PARADE OF PUPPIES** - requests a variance to reduce the required distance from a commercial kennel to a residential zone from 100 feet to 9 feet in a Highway Service Business (B-3) zone, at 565 East New Circle Road (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The existing space will be soundproofed to mitigate the closer proximity of the "kennel" use. No animals will be boarded overnight and no outdoor runs or pens will be added. The puppies will be on site during daytime hours only three times per week.
- b. The location of the existing building on the lot and configuration of the residential properties to the east are special circumstances that contribute to justifying the requested reduction.

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

1. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to opening the facility.
2. No more than 25 puppies available for sale shall be permitted on site per day.
3. Puppies available for sale shall only be present from 10 am to 5 pm, up to three times per week. No animals shall be boarded overnight.
4. The exterior wall at the rear of the suite (#11) shall be completely soundproofed to the maximum extent feasible by using existing technology.

Representation – Lennie Halstead, owner and groomer, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

Board Questions and Comments – Mr. Needham questioned as to how the operation works, and if they board the animals. Ms. Halstead explained.

Mr. Gross asked were there any records of complaints. Mr. Marx responded that there have been no formal complaints, and was unaware if there have been any with the residential neighbors.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-17-00040: PARADE OF PUPPIES** – a request for a variance to reduce the required distance from a commercial kennel to a residential zone from 100 feet to 9 feet in a Highway Service Business (B-3) zone, at 565 East New Circle Road, based on the staff's recommendation and subject to the four conditions.

4. **PLN-BOA-17-00032: MILL RIDGE FARM** – requests a conditional use permit to establish a farm gift shop in the Agricultural Rural (A-R) zone, at 2800 Bowman Mill Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use will not compromise the area surrounding Mill Ridge Farm. The primary client base for the gift shop will be guests who are on the property for a tour of the equine facility, and the purpose of the gift shop is to enhance their experience of the farm.
- b. The scale of the use, both in the size of the space and the operation of the gift shop, is minimal compared to the overall size and general operation of the farm. There will be no signage advertising the gift shop, other than interior to the property; no additional facilities or services are needed for its operation; it will be located in an existing building, adjacent to the already provided guest parking area; and traffic other than what will be associated with scheduled farm tours will be minimal and possibly non-existent.
- c. A small farm gift shop, such as the one proposed, providing memorabilia specific to Mill Ridge Farm, is an excellent example of what the recently adopted text amendment was designed to accomplish regarding agritourism in Fayette County.

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

1. That the gift shop be located and operated in compliance with the submitted application and site plan.
2. That only farm or industry memorabilia or items related to Mill Ridge Farm and its racing history be provided for sale on the property.
3. That there be no signage, other than directional or identification signs interior to the property, advertising the farm gift shop.

*Note – Ms. Goderwis distributed a letter of support to the Board members.

Representation – Price Bell was present on behalf of Mill Ridge Farm. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-17-00032: MILL RIDGE FARM** – a request for a conditional use permit to establish a farm gift shop in the Agricultural Rural (A-R) zone, at 2800 Bowman Mill Road, based on the staff's recommendations and subject to the three conditions.

5. **PLN-BOA-17-00033: CENTERPOINTE CHRISTIAN CHURCH** – requests a conditional use permit to construct an addition to the existing church in a Light Industrial (I-1) zone, at 865 Greendale Road (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested Conditional Use permit should not adversely affect the subject or surrounding properties. An addition to the church that does not increase the number of sanctuary seats should have little effect on the intensity of the use on this property.
- 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 addition and shed shall be constructed in accordance with the application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection, including a Certificate of Occupancy, prior to opening the facilities.
3. The storm water management plan shall be updated and implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Representation – Tom Cruze, architect for project was present on behalf of the applicant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Board Questions – Mr. Clarke asked what the purpose of the shed was. Mr. Cruze responded that it was for storage, and further explained.

Action – A motion was made by Mr. Needham, seconded by Mr. Forester and carried unanimously to **approve PLN-BOA-17-00033: CENTERPOINTE CHRISTIAN CHURCH** – a request for a conditional use permit to construct an addition to the existing church in a Light Industrial (I-1) zone, at 865 Greendale Road, based on the staff's recommendations and subject to the three conditions.

6. **PLN-BOA-17-00035: FULL FORCE ATHLETICS, LLC.** – requests a conditional use permit to establish an athletic club facility in a Heavy Industrial (I-2) zone, at 195 S. Forbes Road (Council District 1).

The Staff Recommends: Disapproval, for the following reasons:

1. Adequate off-street parking is not provided. Eleven parking spaces are required and must have a defined entrance to a parking lot for vehicles to enter, turn around, and then exit. Vehicles are not permitted to back out onto the street.
2. Based on traffic and a lack of pedestrian facilities, leasing parking spaces from a nearby property is not feasible and raises serious concerns regarding pedestrian safety. The likely need for participants and/or parents to cross S. Forbes Road is considered especially problematic.

Representation – John Bunch and Lynda Stevenson were present on behalf of the applicant. Ms. Stevenson gave an explanation of their proposed use for the facility, and addressed the parking issues.

Staff and Board Questions and Comments - Ms. Kaucher presented Traffic Engineering's concerns with regard to the required parking, noting that they did not want vehicles backing out onto S. Forbes Road.

Mr. Gross asked what the building was currently being used for, to which Ms. Kaucher responded that she didn't know. Mr. Bunch said that it was semi-flex and explained further.

Mr. Needham asked what the previous use was. Mr. Bunch responded that it was used for storing wedding supplies and for event planning. Mr. Needham then asked what it was originally built for, to which Mr. Bunch responded. Mr. Needham asked what use could go in for which parking would suffice. Ms. Kaucher responded that anything that is a similar use; it is limited due to parking. At this time, there was further discussion with regard to the parking, the schedule that is being proposed for the new use, and the age group of clients who would be attending, with a comment from Ms. Goderwis noting that this property is not conducive to parking.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously to **disapprove PLN-BOA-17-00035: FULL FORCE ATHLETICS, LLC.** – a request for a conditional use permit to establish an athletic club facility in a Heavy Industrial (I-2) zone, at 195 S. Forbes Road, based on the two reasons outlined by the staff.

7. **PLN-BOA-17-00036: CORE LIFE** – an administrative appeal to transfer 108 square feet of unused wall signage to allow a projecting sign of up to 120 square feet in a Mixed Use Community (MU-3) zone, at 4040 Finn Way (aka a portion of 4100 Nicholasville Road) (Council District 4).

The Staff Recommends: Approval, 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. The sign is over 300' from the public thoroughfare and will be only somewhat visible to passing motorists. In addition, contextually, the request signage is not out of scale or overwhelming due to the size of the development and in relation to other projecting signs proposed by several other tenants throughout the site.
- b. Granting this request will not allow an unreasonable circumvention of the Zoning Ordinance, as the applicant will forgo wall signage on the northeast elevation of the tenant space in order to transfer signage to this projecting sign.
- c. The circumstances that justify granting this request are the large scale of the development, the size of similar signs throughout the development, and the limited visibility this location will have from Nicholasville Road due to the existing and proposed buildings on the North and South sides of the adjacent parking lot. The sign will likely only be visible from Nicholasville Road for the short distance where travelers are directly parallel to Core Life and could

possibly look directly across the parking lot. Given the distance from the road and the angle of the sign, the sign faces would still be difficult to see from this vantage point.

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

1. 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. No wall signage shall be installed on the north wall of the Core Life tenant space.

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

Board Comment – Mr. Needham asked for the site plan to be presented on the overhead and clarified, which, Mr. Nicholson did.

Action – A motion was made by Mr. Clarke, seconded by Mr. Forester and carried unanimously to **approve PLN-BOA-17-00036: CORE LIFE** – an administrative appeal to transfer 108 square feet of unused wall signage to allow a projecting sign of up to 120 square feet in a Mixed Use Community (MU-3) zone, at 4040 Finn Way (aka a portion of 4100 Nicholasville Road), as recommended by the staff.

8. **PLN-BOA-17-00038: BLUEGRASS STOCKYARDS** - an administrative appeal to request a transfer of 150 square feet of unused allowable wall signage to allow a 200 square-foot free standing sign along the interstate in the Agricultural Rural (A-R) zone, at 4561 Iron Works Pike, 110 (Council District 12).

The Staff Recommends: Approval, 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. Contextually, based on the large size of the subject property, the distance the sign will be from the interstate, and the speed of the vehicular traffic on the interstate, the requested signage is not out of scale or overwhelming.
- b. Special circumstances that justify granting this request are the large size of the property and the type of traffic on I-75. A compliant sign would be very difficult to see for passing motorists. Due to the speed and number of vehicles travelling I-75, the increased size of the sign 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.

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

Board Questions – Mr. Needham asked to review the site plan. Mr. Nicholson presented the site plan and explained the proposed use.

Mr. Clarke asked if there was a proposed design. Mr. Nicholson responded affirmatively and provided that information.

Action – A motion was made by Mr. Forester, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-17-00038: BLUEGRASS STOCKYARDS** – an administrative appeal to request a transfer of 150 square feet of unused allowable wall signage to allow a 200 square-foot free standing sign along the interstate in the Agricultural Rural (A-R) zone, at 4561 Iron Works Pike, #110, based on the staff's recommendations and subject to the two conditions.

C. Discussion items:

1. **PLN-BOA-17-00039: JOHN SAMSON** - requests a variance to increase the allowable area of an accessory building from 1,186 square feet to 3,420 square feet in order to construct a 2,700 square-foot accessory building with a 720 square-foot open air lean-to structure at one end in the Single Family Residential (R-1B) zone, at 280 Swigert Ave. (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The proposed accessory structure is similar to others in the area and will not be very visible from the road.
- b. Strict application of the Zoning Ordinance would deprive the applicant of the reasonable use of his land as he would be unable to utilize his property to store personal vehicles and equipment, on a large, oversized lot in an R-1B zone.
- c. The variance request is not the result of any willful violation or attempt to circumvent the requirements of the Zoning Ordinance.

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

1. The structure shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection, prior to beginning construction.
3. That the applicant consult with the Urban County Engineer to determine what, if any, measure might be recommended to mitigate the potential for increased runoff from the property.
4. The two existing accessory structures shall be removed upon completion of the new structure.
5. The new accessory structure shall be used for personal use only and shall not be used for any business purposes.

*Note – Ms. Goderwis distributed letters of opposition, which, the Board to reviewed.

Representation – John and Julia Samson, applicants, were present. They indicated that they had reviewed the recommended conditions and agreed to abide by them. Mr. Samson discussed the history of the home, explained the purpose of the proposed use, and presented photos on the overhead projector. Mr. Samson said that he had some older vehicles that he would like to store in the proposed structure.

Board Questions and Comments – Mr. Gross asked if the current structure that is proposed to be removed is a barn. Ms. Samson responded that it was a storage shed, with comments from Mr. Samson.

Mr. Gross asked what a “lean to” was. In response, Mr. and Ms. Samson said that it refers to the roof, and explained. At this time, there was further discussion between the Board and the applicants with regard to the proposed use.

Ms. Whitman asked what the structure would look like as far as size and color, etc. Mr. Samson explained.

Citizen Comments – John Paul Miller, who lives at 277 Swigert Ave., expressed his concern about the structure being right at his back door, (what he would see out of his kitchen window), and asked that this not be approved. Mr. Miller also stated that he believed that the accessory building is way over the allowable square footage. He also said that he disagreed with the staff’s statement that this structure would not alter the character of the general vicinity.

Jeff Creech, who lives at 276 Swigert Ave. (immediate neighbor of the proposed structure), and owns 272 Swigert, noted that he had submitted a letter to the Board of his concerns. Mr. Creech presented a photo on the overhead and further explained his concerns as far as structure size and public health issues, and requested that the Board not approve this application.

Jan Guy, who also lives at 276 Swigert Ave., stated that she was a licensed, practicing physician for over 40 years. She addressed the health and safety impact that could be caused by an enormous structure, and further discussed her concerns along with photos presented on the overhead, and asked that the Board deny the proposed variance.

Elizabeth Woodward, who lives at 282 Swigert Ave., noted that she and her husband have lived in the neighborhood since 1991, and addressed the negative character of the proposed structure. She said that she had sent a letter to be entered into the record. Ms. Woodward distributed a chart from the neighborhood association with regard to the square footage of the subject property, and further discussed. She asked that the Board deny this proposed variance.

Rose Carver, who lives at 253 Elmwood Drive, distributed handouts to the Board. She discussed her concern and her fear of flooding on the lower part of Elmwood Drive created by run-off off from the Swigert Ave. properties, to include the subject property, and further discussed. Ms. Carver presented photos of the run-off impact that has occurred in the past, and discussed. She requested that the Board deny this proposed variance.

Flora Guter, who lives at 238 Swigert Ave., distributed handouts to the Board and discussed her concerns regarding the roof of the proposed structure; and the distinct slope on the back of the subject property, and further discussed.

Edgar Hume, who has lived at 264 Swigert Ave., for 20 years, expressed his concerns with regard to the possibility of the proposed structure destroying the character of the neighborhood, as well as the possible decrease in property value.

Catherine Perkins, who lives at 258 Swigert Ave., secretary for Joyland Neighborhood Association, noted that she submitted a letter to the Board for the record, with regard to some of her concerns. Ms. Perkins discussed her concerns regarding the size of the animals on the subject property; waste removal; how the trees on the property would affect run-off; and traffic impact.

Judy Miller, who lives at 277 Swigert Ave., expressed her concern regarding the proposed use being out of scale for the neighborhood, and requested that staff change their recommendation of approval.

Lisa Cliggett, who lives at 262 Swigert Ave., expressed her concern for the children in the neighborhood playing in the area and the impact the proposed structure could possibly bring.

Amy Clark, who lives at 628 Kastle Rd., noted that she submitted a letter prior to the hearing to be entered into the record. Ms. Clark said that she did not live near or around the proposed structure, but noted that the subject property is the type of area where she grew up. Ms. Clark presented photos on the overhead, referring to the proposed structure as a "garage", and further discussed her concerns with regard to the proposed use.

Staff Rebuttal/Board Comments and Discussion – In rebuttal to Ms. Clark, Mr. Marx stated that the staff would not call the proposed structure a "garage", but more of a storage facility; and the staff would not require the access to be paved, as he further discussed. Presenting documentation on the overhead, and referring to Article 16-6(c), Mr. Marx explained what the requirements were for the proposed structure. He then stated that, after hearing all of the testimony and concerns, the staff should maybe take another closer look at this application and further discussed.

Mr. Gross asked if, given the testimony that has been heard at today's hearing, the staff would change their recommendation. Mr. Marx responded that based on what was heard, the staff would agree that there needs to be a reduction in the size.

Mr. Clark inquired about the septic system. Mr. Marx responded that the septic system was a part of the Department of Health issues, and the Planning staff couldn't really comment on that.

Applicant Rebuttal/Discussion – In response, Mr. Samson addressed the concerns regarding the size of the building and the flooding issues. Ms. Samson addressed the concerns of the animals that are currently on their property. At this time, Mr. Samson distributed a letter to the Board with regard to his application.

Mr. Needham asked how much the applicant would be willing to reduce the size of the building, based on neighborhood reaction. Mr. Samson responded that they do need a sizable building, and discussed a compromise.

At this time, there was discussion of a continuance in order for the applicant to propose a different plan, with comments from Ms. Jones.

Citizen Comments – Ms. Woodward said that she might be willing to agree with the reduction; however, she believed that the neighbors may want more time to understand it better.

Mr. Miller said that he would like for someone to explain to him exactly what the requirement would be to put a building on the subject property. In response, Mr. Gross explained.

Dr. Guy said that the applicants knew about the restrictions before the property was bought; therefore, this is not new or different. She noted that the value of her property and her neighbors' property would decline if the Board allows beyond the restriction, and said that she believed the property value should be considered when making the decision.

Ms. Carver asked if the applicant is permitted to build the new structure, what would happen to the two existing structures that are currently on the property. Mr. Gross responded that those structures would need to come down. Ms. Carver also asked if there could be a requirement placed in the conditions for the applicant to be responsible for any increase of run-off. Mr. Gross noted that the discussion, at this point, is to decide whether or not there is going to be a continuance for 30-60 days to allow the applicants to come up with a new plan and allow the neighbors to be able to view the new plan.

Ms. Clarke said that she believed it should be up to the neighbors to decide what size they would welcome as a variance beyond what the regulations allow, and it would help to have a complete and accurate plan.

Ms. Woodward said that, as the neighbors, they are willing to give the applicants a continuance to try and work it out with them.

Ms. Samson asked if they could be heard again in 30 days instead of 60.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously to **continue PLN-BOA-17-00039: JOHN SAMSON** to the July 28th hearing.

2. **PLN-BOA-17-00026: COHEN BROTHERS** – an administrative appeal to change 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 Districts 5).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed non-conforming use is in the same classification as the current legal non-conforming use and will not result in a more intense use of the property than the current use. Additionally, the proposed use should be less noisy than the current use.
- b. The property is a mostly interior lot, with little street frontage, so the proposed change in use will have little effect on the character of the surrounding neighborhood.

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

1. The property shall be developed as a pull-apart type facility, as generally described in the submitted application.
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.
3. The facility shall not be operated beyond the hours of Monday through Friday from 8 am to 5 pm, and from 9 am to 4 pm on Saturday and Sunday.
4. Any outdoor pole lighting shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing nearby residential properties.
5. All fluids shall be drained from vehicles when they arrive on site in a designated "pre-treatment" area.
6. All non-conforming activities associated with the operation of the pull-apart junk yard use shall be limited to the subject property and shall not spill over onto any adjacent properties.
7. A six-foot tall privacy fence shall be installed and maintained along the NE property line adjacent to the CSX Railroad, with installation completed prior to the issuance of a Certificate of Occupancy.
8. The use of any loud speaker/outdoor amplification system shall be prohibited.
9. Outdoor burning shall be prohibited.
10. Once the new proposed use is implemented on the subject property, use of the property cannot revert back to the original nonconforming use (scrap iron storage) unless such a change is specifically authorized by appeal to the Board of Adjustment.
11. The current nonconforming use (scrap iron storage) shall be discontinued once the new use is initiated, with the exception that vehicles brought to the site for parts may be crushed on site and stored temporarily once they are no longer valuable for parts.

Note: Mr. Gross declared a brief recess at 4:19 p.m. The meeting reconvened at 4:26 p.m., with the same members in attendance.

Representation – William Carle and Brennen Lawrence were present on behalf of the applicant. Mr. Carle indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – Gary Hamilton, who lives at 637 St. Anthony Dr., was present. He said that he had grown up across the railroad tracks from the subject property. Mr. Hamilton said that his main concerns are security. They have had issues with people using his property to get to the subject property for theft. His other concerns are the Sunday hours that the applicant is proposing.

Larry Hamilton, who lives at 690 East Loudon Ave., also expressed his concern regarding the Sunday hours, noting that he does not want an auto salvage yard and a scrap business. It should be one or the other. If it is both, he is opposed to it.

Mr. Gross asked what the noise factor was that affects Mr. Hamilton under the current use. Mr. Hamilton responded that with the current use, they are not taking in any metal at all; therefore, there is no noise factor, and he discussed further.

Representation Rebuttal/Discussion – Mr. Carle addressed the Hamilton's concerns and discussed the proposed use. At this time, there was further discussion between the Board and the applicants with regard to the use and possible related noise, with comments from Mr. Lawrence.

Mr. Forester asked about the tools that would be used for taking apart the vehicles. Mr. Lawrence responded.

Mr. Clarke commented on the fact that the proposed use is a junk yard and not a scrap yard. Mr. Carle noted that condition #11 addresses that, and said that they are more than happy to adhere to that condition, and further discussed.

At this time, there was further discussion between the Board and applicant with regard to the proposed use and business hours, with comments from Ms. Jones.

For the record, Mr. Carle noted that the applicant agrees to the modified condition #3.

Action – A motion was made by Mr. Clarke, seconded by Mr. Forester and carried unanimously to **approve PLN-BOA-17-00026: COHEN BROTHERS** – an administrative appeal to change 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, as recommended by the staff and subject to the ten conditions, with the revision to condition #3 as discussed at today's hearing. Revision is as follows:

3. The facility shall not be operated beyond the hours of Monday through Friday from 8 am to 5 pm, and from 9 am to 4 pm on Saturday and Sunday, with a six-month review to take place after operation begins on site to review any

impact due to Sunday hours.

3. **PLN-BOA-17-00041: THOMAS W. MILLER** - an administrative appeal to determine that the Division of Planning erred in considering the operation of a clothing business as a zoning violation in a Single Family Residential (R-1B) zone, at 821 Chinoe Road (Council District 5).

***Note** – Mr. Marx announced that the staff had received a letter from Mr. Miller during today's hearing, withdrawing his application.

D. Revocation Hearing

1. **C-2015-57: DR. ANDREW P. & CHARLSEY Y. SCHROYER** - the Board of Adjustment has requested a revocation hearing for a conditional use permit to operate a veterinary clinic/animal hospital in a Professional Office (P-1) zone, at 3580 Lyon Drive (aka 1096 Wellington Way) (Council District 10).

Representation – Dick Murphy, attorney present on behalf of the applicant, said that he believed that the applicant had come to an agreement with the Planning staff and believed this has been resolved. In response, Mr. Marx noted that the applicant has agreed to no longer board animals, with the exception of dogs that have special medical needs, which would be allowed to be boarded there, and this issue has been resolved. Mr. Murphy provided additional comments explaining the use.

IV. BOARD ITEMS

None

V. STAFF ITEMS

None

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

- VIII. ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 4:55 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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