

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

August 25, 2017

- I. **ATTENDANCE** - The Acting Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, August 25, 2017. Members present were Thomas Glover, Harry Clarke, Chad Needham, Joan Whitman and Jan Meyer. Absent: Branden Gross. Others present were: Vaughn Atkins, 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, and Tammye McMullen.

***Note** – At this time, the Acting Chair recognized Mr. Forester for his 3½ years of service with the Board of Adjustment, and presented him with a plaque.

- II. **APPROVAL OF MINUTES** - The Acting Chair announced that the minutes of the July 28, 2017, meeting would be considered at this time.

Action - A motion was made by Mr. Clarke, seconded by Ms. Whitman, and carried unanimously to **approve** the minutes of the July 28, 2017 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Acting 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 Acting Chair sounded the agenda with regard to any postponements, withdrawals, applicants present and objectors.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Acting 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 Goderwis announced that the following application was withdrawn via email on 8/17/17.

- a. **PLN-BOA-17-00047: JAMES MITCHELL** – an administrative appeal to change one legal non-conforming use (retail market) to another legal non-conforming use (restaurant) in a Planned Neighborhood Residential (R-3) zone, at 201 East Fifth Street (Council District 1).
- b. **PLN-BOA-17-00046: JEFF GRAVES** - requests a variance to increase the allowable width of a driveway from 10 feet to 21 feet at a property within the defined Infill & Redevelopment Area in a Single Family Residential (R-1E) zone, at 509 Marquis Ave. (Council District 3).

Representation – Mr. Jeff Graves requested a postponement until the September 29th hearing in order to have more time to speak with neighbors and come up with a better plan.

Staff & Board Comments – Ms. Goderwis indicated that the staff was prepared to present at today's hearing and there were several people at the hearing in opposition. She further discussed the staff's reasons as to why this case should be heard today.

In response to a question from Mr. Neeham, Mr. Graves explained the reasons behind his request. Comments were made by Mr. Clarke and Ms. Meyer with regard to a postponement.

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried unanimously to **postpone PLN-BOA-17-00046: JEFF GRAVES** until the September 29, 2017 hearing.

B. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-17-00055: DEAN SKARVAN** – requests variances to reduce the side yard setback from 25 feet to 5 feet; and the front yard from 100 feet to 65 feet to construct an accessory building (workshop/garage) in the Agricultural Rural (A-R) zone, at 4224 Leestown Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety, or welfare, since the 65'

front yard is 25' more than typically required for a similarly sized and configured lot in the R-1A zone, and the 5' side yard is at least a few feet more than the 18" setback that is normally required for accessory buildings. The proposed accessory structure will also provide safer access than the existing accessory structure.

- b. Granting the requested variances should not have much effect on the character of the general vicinity. The subject property is located in a rural area where there is little uniformity in the character of the nearby properties.
- c. The slope of the property and location of a propane line and a septic field are special circumstances that at least to some extent justify the proposed location of the building.

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

1. The accessory structure shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.

Representation – Dean and Sherry Skarvan, applicants, 4224 Leestown Road, were present. They indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions – Mr. Clarke asked why it was important for the proposed location rather than further back on the property. Mr. Skarvan explained, with comments from Ms. Skarvan.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously to **approve PLN-BOA-17-00055: DEAN SKARVAN** – a request for variances to reduce the side yard setback from 25 feet to 5 feet; and the front yard from 100 feet to 65 feet to construct an accessory building (workshop/garage) in the Agricultural Rural (A-R) zone, at 4224 Leestown Road, based on the staff's recommendations and subject to the two conditions.

2. **PLN-BOA-17-00059: DENNIS ANDERSON INV 1700 LLC.** – requests a variance to increase the allowable front yard setback from 20 feet to up to 67 feet in a Neighborhood Business (B-1) zone, at 124 Louie Place (Council District 2).

The Staff Recommends: Approval to increase the allowable front yard setback from 20 feet to 53 feet, for the following reasons:

- a. Granting the variance will not adversely affect the public health, safety, or welfare. The variance will allow for safe shared use of the existing access easement.
- b. 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. The increased setback allows for use of the shared access 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.

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.

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

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-17-00059: DENNIS ANDERSON INV 1700 LLC.** – a request for a variance to increase the allowable front yard setback from 20 feet to up to 53 feet in a Neighborhood Business (B-1) zone, at 124 Louie Place, as recommended by the staff and subject to the three conditions.

3. **PLN-BOA-17-00051: MACEDONIA CHRISTIAN CHURCH** – requests a conditional use permit to expand the parking lot at an existing church in the Agricultural Rural (A-R) zone, at 3101 Maria Dr. & 4551 Winchester Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the conditional use to expand the parking lot should not adversely affect the subject or surrounding properties. It is a relatively minor expansion, when compared to the size of the property. Additionally, the expansion of the parking area will allow a more efficient layout and circulation pattern.

- 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 new parking areas shall be established in accordance with the submitted application and site plan, or as revised per Traffic Engineering requirements.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection prior to construction and occupancy.
3. The proposed parking lot shall be reviewed and approved by the Urban County Traffic Engineer prior to any development of the subject property.
4. The Urban County Engineer shall approve all storm water drainage or retention plans for the proposed development.
5. All parking areas shall be landscaped in accordance with the provisions of Article 18

Representation – Russell Sales, Chair of the Board at Macedonia Christian Church, was present on behalf of the applicant. He indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions and Comments – Mr. Glover asked if the parking lots were going to be connected. Mr. Sales responded that they would, and explained.

Ms. Meyer asked about the dirt road that is currently around the perimeter of the existing parking. Mr. Sales noted this is where they are currently parking, and the proposed parking lot would take care of that.

Mr. Glover stated that the staff and Board had questions about an alternate configuration, and asked if the Division of Traffic Engineering needed to sign off on this or if it needed to be made an additional condition. Ms. Goderwis noted that condition #3 takes care of that.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried unanimously to **approve PLN-BOA-17-00051: MACEDONIA CHRISTIAN CHURCH** – a request for a conditional use permit to expand the parking lot at an existing church in the Agricultural Rural (A-R) zone, at 3101 Maria Dr. & 4551 Winchester Road, based on the recommendations of the staff and subject to the five conditions.

4. **PLN-BOA-17-00052: FLORACLIFF NATURE SANCTUARY** – requests a conditional use permit to expand an existing nature sanctuary in the Agricultural Rural (A-R) zone, at 7950, 8000, 8030 Elk Lick Falls & 6350 Cedarcreek Lane (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit will not adversely impact the subject or surrounding properties, and should benefit the general public. With the expansion of the sanctuary to include an additional 59 acres, new opportunities to enjoy, appreciate and learn from this designated nature preserve will be forthcoming.
- b. This property is protected by a conservation easement conveyed to Floracliff by the Kentucky Heritage Land Conservation Fund, and all activities on the land must adhere to that easement.
- c. All necessary public facilities and services are available and adequate for the proposed use, with sewage treatment and garbage pick-up to be handled privately.

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

1. The proposed expansion to the nature preserve shall be done as described in the submitted application and in accordance with the submitted site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, prior to establishing the use.
3. All new vehicular use areas shall be paved or graveled in a manner that maximizes the potential for retaining permeability, with the new parking area to be bordered by railroad ties or another similar feature to prevent the spread of gravel.
4. The overall design of the new parking area shall be subject to review and approval by the Divisions of Engineering and Traffic Engineering.
5. The facility shall not have any outdoor lighting (other than for security purposes), loud speakers, retail sales, restaurants or food service.

Representation – John Park, attorney and President of the Board of Directors for the applicant, along with Peter Brown, attorney, were present on behalf of the applicant. They indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions and Comments – Mr. Glover asked what a conservation easement was. Mr. Park explained. Mr. Glover also asked what the applicant was proposing to expand, which Mr. Park explained. Mr. Glover then asked if the current map that has been presented shows current property boundaries or the proposed boundaries. Mr. Park responded that he believed it shows the existing property boundaries. At this time, there was some discussion with the proposed use and its property boundaries with regard to the requested conditional use.

Mr. Clarke commented that he was pleased at the proposed expansion, as did Ms. Meyer.

Mr. Needham asked if the sanctuary was open to the public. Mr. Park responded that it is by appointment only (controlled access). Mr. Needham asked how many acres were in the proposed expansion. Mr. Park responded.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-17-00052: FLORACLIFF NATURE SANCTUARY** – a request for a conditional use permit to expand an existing nature sanctuary in the Agricultural Rural (A-R) zone, at 7950, 8000, 8030 Elk Lick Falls & 6350 Cedar Creek Lane, for the reasons recommended by the staff and subject to the five conditions.

5. **PLN-BOA-17-00053: BOARD & BRUSH** – requests a conditional use permit to establish a cocktail lounge in conjunction with an art studio in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road, Ste. 170 (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed cocktail lounge is a very specialized bar and limited access bar, which will be operated in conjunction with an artist's studio for painting classes. This use is about 250 feet away from the nearest residential zone, and should not cause noise or other disturbances.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted site plan and application.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, prior to establishing the use.
3. The conditional use of a cocktail lounge is only valid when operated in conjunction with an artist's studio at this location.
4. This approval shall be considered null & void if the applicant should cease operating this use at this location.
5. 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 at this location.

*Note – At this time, Ms. Goderwis distributed one letter of opposition to the Board.

Representation – Amy Spanyer and Melanie Gonsalves, applicants were present. They indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions and Comments – Mr. Glover asked where the exact location of the proposed use was going to be in the shopping center. Ms. Spanyer responded and explained the proposed use.

Mr. Needham commented that the way the staff has written the staff report appears to have addressed the concerns of the neighbor who had written the letter of opposition.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously to **approve PLN-BOA-17-00053: BOARD & BRUSH** – a request for a conditional use permit to establish a cocktail lounge in conjunction with an art studio in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road, Ste. 170, based on the staff's recommendation and subject to the five conditions.

C. Discussion items:

1. **PLN-BOA-17-00056: JITENDRA AND NELAMBEN PATEL** - request a variance to reduce the required front setback for additional paved parking from 6 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, at 3877 Mooncoin Way (Council District 4).

The Staff Recommends: Disapproval, for the following reasons:

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to installation of the driveway and parking area.
- b. The subject property is located within a new developing subdivision, and creating a precedent for forgiveness of noncompliance could have lasting effects on the neighborhood's development.
- c. The site does not have special circumstances that justify the need for a variance. There appears to be sufficient space for a compliant parking area alongside the residence, which negates the need for the variance.

Representation – Jitendra and Nelamben Patel, applicants, were present. Mr. Patel's son explained to the Board the reason for the additional paving.

Board Comments – Ms. Meyer asked for photos to be presented on the overhead projector. At this time, there was discussion between the Board and applicant with regard to the paving. Mr. Patel indicated that both his parents have had knee surgery, which is the reason for them expanding the parking space.

Staff Report – Ms. Goderwis gave a staff report and explained the staff's recommendation for disapproval, with questions and comments from the Board, as well as further discussion.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously to **disapprove PLN-BOA-17-00056: JITENDRA AND NELAMBEN PATEL** – a request for a variance to reduce the required front setback for additional paved parking from 6 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, at 3877 Mooncoin Way, based on the staff's reasons.

2. **PLN-BOA-17-00058: LESTER STUDER** - requests a variance to reduce the front setback from 6 feet to 0 feet for an additional paved area in a Single Family Residential (R-1C) zone, at 3407 Greentree Rd. (Council District 8).

The Staff Recommends: Disapproval, for the following reasons:

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to installation of the driveway and parking area.
- b. The site does not have special circumstances that justify the need for a variance, and there appears to be sufficient space for a compliant parking area.

*Note – At this time, Ms. Goderwis distributed one letter of opposition to the Board.

Representation – Lester Studer & Kathy Schriefer, applicants, were present. Ms. Schriefer explained their request and discussed further with comments from Mr. Studer.

Staff Report – Ms. Goderwis presented photos on the overhead projector and gave a report of the staff's recommendation of disapproval, there were comments from Mr. Marx, noting that a second variance would be necessary for the paving to remain as is, and also questions and comments from the Board.

Board Questions and Comments – Mr. Glover questioned the diagonal cut of the driveway, and asked for the site plan to be displayed on the overhead projector. Ms. Goderwis explained.

Mr. Clarke inquired about the second variance request, which Ms. Goderwis explained. At this time, there was further discussion.

Mr. Glover asked the applicant if he understood what was being explained to him. Mr. Studer stated that he understood that what is being explained by the Planning Staff is what would make his driveway compliant, that he was asking for forgiveness and requested that this be granted. Ms. Schriefer made comments as well. At this time, there was further discussion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Needham and carried unanimously to **disapprove PLN-BOA-17-00058: LESTER STUDER** – a request for a variance to reduce the front setback from 6 feet to 0 feet for an additional paved area in a Single Family Residential (R-1C) zone, at 3407 Greentree Rd., for the reasons recommended by the staff.

3. **PLN-BOA-17-00057: BEHRS & DAWGS, LLC.** – requests a conditional use permit to allow indoor and outdoor live entertainment and dancing accessory to a cocktail lounge; and a variance to reduce the required setback of such a use from a residential zone from 100 feet to 30 feet within the defined Infill & Redevelopment Area in a Neighborhood Business (B-1) zone, at 385 South Limestone (Council District 3).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided the applicant complies with appropriate measures, as recommended. These include restrictions on the days, hours, and amplification of the entertainment.
- b. All necessary public facilities and services are available and adequate for the proposed live entertainment conditional use.
- c. Granting the requested variance will not adversely affect the public health, safety or welfare. It will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public provided there are limits on the hours of operation and amplification is prohibited. No physical change or expansion of the existing building is required or proposed by the applicant to accommodate this use.
- d. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because, although the residential zone is closer to the proposed use than 100', the nearest residential structure is over 100' away.

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

1. The use shall be conducted in accordance with the submitted site plan and as further regulated below.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, prior to establishing the use.
3. Amplified music/entertainment shall be limited to Thursday through Saturday nights, beginning no earlier than 9:00 p.m. and ending no later than 1:00 a.m.
4. All music/entertainment shall be provided in a manner that does not create a nuisance to the surrounding neighborhood.

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

Representation – Rebecca Wichard, Counsel for the applicant, along with Brian Behr, owner/applicant, were present. Mr. Behr displayed a photo on the overhead projector, and explained their proposed use, with comments from Ms. Wichard.

Board Questions and Comments – Ms. Meyer asked if the musicians were going to be inside, and if the doors were going to be open. In response, Mr. Behr said this was correct.

Mr. Needham asked about the location of the garage door relative to where the music would be played. Mr. Behr explained.

At this time, there was further discussion with regard to other similar uses in the area with regard to noise and possible disturbance of the neighbors, as well as discussion of possible changes to the business hours of operation.

Opposition – Carolyn Gago, who lives at 431 Adair, also owns properties in South Hill Station. She said was representing 63 condominiums and spoke in opposition with regard to the noise caused by the proposed use, as well as the hours of operation.

Wayne Wilson, who lives at 535 South Upper Street, spoke in opposition with regard to the noise disturbance. Mr. Glover asked staff if the establishments in the area are operating, outside of the Noise Ordinance. Mr. Marx responded and explained.

Mike Kovash, who lives at 371 South Upper Street, was representing the Historic South Hill neighborhood association. He presented a letter from the neighborhood association President and addressed how the proposed use would impact the Historic South Hill neighborhood regarding noise and nuisance issues from this bar and others in the area.

Mr. Glover questioned where South Hill was located in relation to the subject property. Mr. Kovash responded that South Hill abuts the property. At this time, Mr. Kovash further discussed his concerns, as well as reading the staff report of a previous "Tin Roof" case for comparison of what was before the Board today. Mr. Kovash also referred to KRS 100.243 with regard to granting variances and the findings that are required.

Discussion – Mr. Glover asked about what he read as an inconsistency in the staff report about amplified music, and asked if it was prohibited or not. Mr. Marx responded and explained. Mr. Glover also expressed his concern about condition #4 (annual review with regard to noise violations), and asked who enforces this types of violations. Ms. Jones responded that it would be Public Safety (police).

Mr. Clarke questioned the variance request, which was for the setback, and wondered how "noise" plays into the application. Ms. Goderwis responded with regard to why the variance was requested. At this time, there was further discussion between the Board and the applicant with regard to the request as it relates to noise issues, hours of

operation, and whether to continue the case for 30 days to give the applicant time to meet with the neighbors and those who were in opposition to come up with a solution.

Mr. Marx noted that there should be some discussion as to whether the applicant cease their current activity or scale back some. Mr. Behr said that they have already scaled back some.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried unanimously to **continue PLN-BOA-17-00057: BEHRS & DAWGS, LLC.** until the September 29th hearing.

IV. **BOARD ITEMS**

None

V. **STAFF ITEMS**

None

VII. **NEXT MEETING DATE** - The Acting Chair announced that the next meeting date would be September 29, 2017.

VIII. **ADJOURNMENT** - There was no further business. The Acting Chair declared the meeting adjourned at 3:48 p.m.

Thomas Glover, Acting Chair

Joan Whitman, Secretary

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