

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

October 27, 2017

I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, October 27, 2017. Members present were: Branden Gross, Thomas Glover, Harry Clarke, Chad Needham, Joan Whitman, Jan Meyer and Raquel Carter. Others present were: Josh Dezarn, Division of Engineering; Tracy Jones, Department of Law; and Casey Kaucher, Traffic Engineering. Staff members in attendance were: Jim Marx, Autumn Goderwis, and Tammye McMullen.

II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the September 29, 2017, meeting would be considered at this time.

Action - A motion was made by Mr. Glover, seconded by Mr. Clarke, and carried unanimously to **approve** the minutes of the September 29, 2017 meeting.

III. PUBLIC HEARING ON ZONING APPEALS

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time to several staff members and other persons in the audience.

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda with regard to any postponements, withdrawals, applicants present and objectors.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

B. ABBREVIATED HEARINGS:

1. **PLN-BOA-17-00072: BRUCE KUNTZ** - requests a variance to reduce the required side yard from 8 feet to 0 feet in order to expand an existing accessory garage in a Single Family Residential (R-1C) zone, at 2508 Windsor Court (Council District 10).

The Staff Recommends: Approval of a variance to reduce the required side yard from 8 feet to 18 inches, for the following reasons:

- a. Granting a lesser variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity, as 18" would provide needed space to facilitate construction and future maintenance.
- b. The applicant did not provide information justifying the need for the variance (aside from the fact that the existing garage has a 0' setback), nor are there apparent special circumstances that justify the need for the variance that has been requested (i.e., to zero feet).
- c. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project by requesting the variance prior to starting construction.
- d. The recommended variance should not create a hardship for the applicant, as there is still adequate space to construct an addition of the desired size, which should be usable in conjunction with the existing garage space.
- e. Requiring the addition to be totally compliant would create an awkward alignment and would limit connectivity between the existing structure and proposed addition.

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

1. The garage addition shall be constructed with a minimum side setback of 18 inches.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

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

Representation – Bruce Kuntz, applicant, was present. Mr. Kuntz indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-17-00072: BRUCE KUNTZ** – a request for a variance to reduce the required side yard from 8 feet to 18 inches; as recommended by the staff, in order to expand an existing accessory garage in a Single Family Residential (R-1C) zone, at 2508 Windsor Court, based on the staff's recommendations and subject to the two conditions.

2. **PLN-BOA-17-00074: SOUTH ELKHORN VILLAGE SHOPPING CENTER** - requests a variance to increase the height of a shopping center identification sign from 20 feet to 40 feet in a Planned Shopping Center (B-6P) zone, at 4379 Old Harrodsburg Road (Council District 10).

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

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity. Contextually, the requested signage is not out of scale or overwhelming due to the location of the shopping center, which is at a significantly lower elevation than Harrodsburg Road.
- b. The configuration of the site is a special circumstance that justifies approval of the variance. In fact, the increased size and height 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.

*Note – At this time, Mr. Gross recused himself, and asked Mr. Glover to chair this case.

Representation – Jacob Walbourn, 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 Mr. Needham and carried 6-0 (Gross recused) to **approve PLN-BOA-17-00074: SOUTH ELKHORN VILLAGE SHOPPING CENTER** – a request for a variance to increase the height of a shopping center identification sign from 20 feet to 40 feet in a Planned Shopping Center (B-6P) zone, at 4379 Old Harrodsburg Road, for the reasons outlined by the staff and subject to the two conditions.

*Note – Mr. Gross returned to the meeting at this time.

3. **PLN-BOA-17-00075: CHRISTINE WESTOVER** - requests a variance to reduce the minimum side street yard from 20 feet to 0 feet in order to create an off-street parking area within the defined Infill & Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 527 Goodloe Street (Council District 1).

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

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity. The parking area will utilize an existing curb cut on Warnock Street and will create a safe parking area for the residents.
- b. The special circumstance that affects this property is that there is no existing garage or driveway; and residents must park on the street, which can be hazardous to both the parked car and local traffic due to the property's location at an intersection.
- c. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project by applying for the variance prior to initiating the work.

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

1. The parking area shall be constructed in the location shown on the submitted site plan, utilizing the existing curb cut, and shall extend 18' into the property in order to insure that vehicles will not overhang the sidewalk.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction of the parking area.

Representation – Jacob Walbourn, 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 Mr. Needham, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-17-00075: CHRISTINE WESTOVER** – a request for a variance to reduce the minimum side street yard from 20 feet to 0 feet in order to create an off-street parking area within the defined Infill & Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 527 Goodloe Street, based on the staff's recommendations and subject to the two conditions.

4. **PLN-BOA-17-00071: CENTER POINT CHURCH** – requests a conditional use permit to establish a church in an existing building in a Highway Service Business (B-3) zone, at 163 Old Todds Road (Council District 7).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. Adjoining or nearby land

uses are of a commercial nature and are not likely to be disturbed by typical church activities. The church's highest parking needs are during the off-hours of the nearby commercial entities and should not overlap; therefore, adequate parking is available for the proposed 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. The church shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.

Representation – Todd Thomas was present on behalf of the applicant. He indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously to **approve PLN-BOA-17-00071: CENTER POINT CHURCH** – a request for a conditional use permit to establish a church in an existing building in a Highway Service Business (B-3) zone, at 163 Old Todds Road, for the reasons recommended by the staff and subject to the two conditions.

C. Discussion items:

1. **PLN-BOA-17-00073: THE HUB AT LEXINGTON** - requests a variance to reduce the number of required parking spaces by 21% (from 210 spaces to 166 spaces) within the defined Infill & Redevelopment Area in a Neighborhood Business (B-1) zone, at 500 S. Upper Street & 519 Jersey Street (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity. The property is located within the defined Infill & Redevelopment Area where parking variances of up to 50% may be granted. The applicant is asking for a relatively modest reduction. The general vicinity has adequate pedestrian facilities, including walk signals and crosswalks, and public transportation is available.
- b. The special circumstances that justify the variance are the location of the development and the type of user expected. The development is in a very pedestrian and bike-friendly area, adjacent to the University of Kentucky campus. The typical user will be associated with the University and will likely walk to school or work and take advantage of the amenities that are within walking distance.
- c. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variance prior to commencing construction.

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

1. The development 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.

*Note – Ms. Goderwis distributed several letters of opposition to the Board. There were also several documents presented to the Board by the applicant, as well as citizens in opposition.

Note: Mr. Gross declared a brief recess at 1:50 p.m. in order for the Board to review the letters and documentation. The meeting reconvened at 2:07 p.m., with the same members in attendance.

Representation – Dick Murphy, attorney on behalf of Core Spaces, the developer for the Hub at Lexington, was present.

Citizen Comments – Nathan Billings with Billings Law Firm, 111 Church Street, representing the Historic South Hill Neighborhood Association and Center Court Condominiums, distributed several documents to the Board for the record.

John Bryce, homeowner at 340 South Mill Street, distributed a series of parking photographs to the Board with regard to this case.

Brenda Stewart, owner of property at 345 South Limestone, distributed photos to the Board of parking issues with regard to this case.

Representation Comments – Mr. Murphy, along with Chad Matesi from Core Spaces; Lillie Guerrero, project architect; Kevin Warner, landscape architect with Carman and Associates; and Brett Malloy with Integrated Engineering, who did the traffic and parking studies, were all present.

At this time, Mr. Murphy discussed the history of Core Space, discussed their proposed use, and presented a PowerPoint on the overhead projector with regard to the requested conditional use.

Board Questions and Comments – Mr. Glover questioned the 166 parking spaces. Mr. Murphy responded and explained. Mr. Glover also questioned what might be the problem with regard to building 100% of the required parking. Mr. Murphy explained. At this time, there was further discussion with regard to the proposed parking.

Mr. Clarke inquired about the percentage of students on campus with cars. Mr. Murphy explained. At this time, there was further discussion with regard to having a vehicle versus walking and/or taking shuttle to or from the site.

Mr. Glover questioned if the property at Virginia Avenue had been before the Planning Commission, and if it was approved. Mr. Murphy responded.

Mr. Needham asked about the current parking, and what issues its loss would create. Mr. Murphy explained, and Ms. Goderwis provided additional comment.

Mr. Glover asked what the project would look like if the variance is not granted. Mr. Murphy responded.

Mr. Needham asked if Core Space currently owns the property. Mr. Murphy said that they were under contract. There was further discussion, with comments from Mr. Marx.

Citizen Comment – Mr. Billings presented a PowerPoint on the overhead projector and discussed his opposition to the case, referencing Zoning Ordinance Article 7-6(b)(1), and presented data from surveys he conducted regarding the use of cars by UK students.

Board Questions and Comments – Mr. Gross asked Ms. Jones, if approved, if so many parking spaces had to be provided for residential occupants versus retail. Ms. Jones responded. There was further discussion with regard to the parking.

Opposition – Brenda Stewart, representing the businesses on Limestone owner of 345 South Limestone (Chipotle) was present. She expressed her concerns about the proposed parking for the commercial businesses. She indicated that she is not opposed to the development, but wants them to provide enough parking spaces so that the residents are not impacted.

Lewis Wolfe owns eight historic properties (residential and commercial) and renovates them for investments. He expressed his concerns about the parking issues that could occur for the nearby residents. He said that his family owns a condominium at 535 South Upper Street.

Mary Morgan, owns a business on South Limestone and property on South Upper Street. She expressed her concerns about not having enough parking for her business.

Tim Condo, on behalf of the Bluegrass Trust for Historic Preservation, expressed the Trust's concerns regarding the quality of life of the neighborhood, as well as the possible parking issues.

John Brice, who lives at 340 South Mill Street, expressed his concerns with regard to the parking issues.

Jean Scott, president of the Historic South Hill neighborhood association, discussed the applicant's suggestion regarding buying permits for parking. She noted that they are concerned about residential visitor parking.

Mary Campbell, who lives at 328 South Mill Street, expressed her concerns about the "Lexington neighborhood first" motto, and further discussed.

Amy Clark, who lives 628 Kastle Road, discussed her concerns about the need of transportation for the students who work.

Alan Bartley, who lives at 353 South Mill Street, expressed his concerns about the possible parking issues.

Representation Rebuttal – Charles Hite, who lives at 929 Aurora Ave., addressed the concerns of the citizens with regard to the survey data presented by Mr. Billings. He noted that the survey technique was invalid.

Chad Matesi addressed the parking lease concerns.

At this time, Mr. Murphy addressed the parking concerns of the citizens.

Citizen Rebuttal – Mr. Billings rebutted on the public parking discussed by Mr. Murphy.

Note: Mr. Gross declared a brief recess at 4:46 p.m. in order for the Board to discuss facts and findings for the case. The meeting reconvened at 5:05 p.m., with the same members in attendance.

Closing remarks from the Board were heard at this time.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 4-3 (Meyer, Glover, and Clarke opposed) to **approve PLN-BOA-17-00073: THE HUB AT LEXINGTON** – a request for a variance to reduce the number of required parking spaces by 21% (from 210 spaces to 166 spaces) within the defined Infill & Redevelopment Area in a Neighborhood Business (B-1) zone, at 500 S. Upper Street & 519 Jersey Street, based on the staff's recommendation and to adopt the additional findings by the applicant, subject to the three conditions outlined by the staff. Additional findings and conclusions are as follows:

1. Granting this variance will not adversely affect the public, safety or welfare and will not alter the character of the general vicinity and will not cause a hazard or nuisance to the public because the property is located within the defined Infill & Redevelopment area where parking variances of up to 50% may be granted. The applicant is asking for a relatively modest reduction of 21%, not counting 12 additional tandem spaces. The general vicinity has adequate pedestrian facilities including walk signals and crosswalks, and public transportation is available. The property is located adjacent to the campus of the University of Kentucky and is closer to the central campus than many of the recently constructed dormitories. It is a high-pedestrian traffic area and is well served by both community-wide transit and university transit. The development will appeal to persons who do not need automobiles to get around campus.
2. Granting this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the Ordinance allows reduction of parking requirements in the Infill and Redevelopment Area of up to 50%. The applicant proposes a reduction of 21%, not counting 12 additional tandem spaces. Many of the people who reside in the building will not need or desire an automobile. The retail will be pedestrian and transit-oriented. The request for a variance is based on the applicant's experience regarding the need for parking spaces obtained through operation of similar developments in other cities across the country.
3. The special circumstances that justify the variance are the location of the development and the type of user expected. The development is in a very pedestrian and bike-friendly area, adjacent to the University of Kentucky campus. The typical user will be associated with the University and will likely walk to school or work and take advantage of the amenities that are within walking distance. It is located on a major corridor adjacent to the University. Both the residential and commercial portions of the development are pedestrian and transit-oriented, and a 21% reduction in required parking is merited because many residents will not need vehicles to access the University, and much of the retail traffic will come on foot from the University and surrounding employment areas.
4. Strict application of the regulations of the Zoning Ordinance would deprive the applicant of a reasonable use of its land or create an unnecessary hardship because in a high-density urban development, excess parking is not needed or desirable and takes up valuable space which can be utilized for retail or residential purposes. This proposal agrees with the Comprehensive Plans of this community which call for encouragement of infill and redevelopment, reduction of Lexington's carbon footprint and development of higher density residential near employment and educational centers. The request for a variance is based on the applicant's experience regarding the need for parking spaces obtained through operation of similar developments in other cities across the country.
5. The circumstances surrounding the requested variance are not the result of actions this applicant has taken subsequent to the regulation from which relief is sought, nor is the request a result of a willful violation of the Zoning Ordinance. The ordinance specifically allows parking reductions of up to 50% in the Infill & Redevelopment area. The applicant is requesting a reduction of 21%. The applicant has taken care to go through the necessary process for this project and has requested the variance prior to commencing construction.

**Note – Mr. Murphy noted that the applicant agreed to the conditions and would abide by them.*

IV. **BOARD ITEMS**

None

V. **STAFF ITEMS**

a. Discussion of alternative Board of Adjustment meeting days & times, to continue discussion at the next hearing.

VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be November 17, 2017.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 5:24 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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