

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

January 8, 2018

I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, January 8, 2018. Members present were: Branden Gross, Harry Clarke, Chad Needham, Joan Whitman, Jan Meyer, Raquel Carter, and Thomas Glover. Others present were: Josh Dezarn, Division of Engineering; Tracy Jones and Andrea Brown, Department of Law. 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 December 15, 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 December 15, 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.

a. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-17-00092: JEFF BAKER** – requests a variance to increase the allowable projection to within 1 foot of the side lot line in order to construct a covered porch in a Planned Neighborhood Residential (R-3) zone, at 3316 Beaumont Centre Circle (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 have much effect on the character of the general vicinity. The covered porch is located within the fenced-in yard and is located mostly behind the house. The covered porch will be most visible to the property to the side that shares the existing 6-foot tall fence.
- b. The size and configuration of the property, as well as an approximately 30" slope throughout the yard, are special circumstances which limit the applicant's use of his yard and justify the need for a variance.
- 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 of applying for the variance prior to construction of the desired covered porch.

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

1. The deck and covered porch shall be constructed in accordance with the submitted application and site plan.
2. The covered porch shall remain open and unenclosed.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Jonathan Donley, from Nature's Expressions, was present representing Jeff Baker. Mr. Donley indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions – At this time, Mr. Needham asked if the fire pit was going to be under the covered porch, and if the garage was detached. He then asked if a layout of the property could be placed on the overhead projector for further explanation. Mr. Donley responded affirmatively.

Mr. Clarke asked how drainage would be accommodated. Mr. Donley explained.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously to **approve PLN-BOA-17-00092: JEFF BAKER** – a request for a variance to increase the allowable projection to within 1 foot of the side lot line in order to construct a covered porch in a Planned Neighborhood Residential (R-3) zone, at 3316 Beaumont Centre Circle, based on the three reasons outlined by the staff and subject to the three conditions.

b. **Discussion items:**

***Note** – At this time, Mr. Gross recused himself from the following case, and Mr. Glover chaired the remainder of the hearing. Mr. Glover noted that on a previous case for the subject property, he had recused himself due to a conflict of interest, and before he accepted the chair, he asked if the applicant had any connection to the former applicant/owner. Mr. Wunderlich indicated that there is no connection.

1. **PLN-BOA-17-00091: DUSTIN WUNDERLICH** – requests a conditional use permit to establish a commercial greenhouse; and a variance to eliminate the required landscape easement in the Agricultural Rural (A-R) zone, at 7524 Old Richmond Rd. (Council District 12).

The Staff Recommends: Approval of the Conditional Use, for the following reasons:

- a. The proposed use should not adversely affect the subject or surrounding properties. There will be no on-site sales, nor will there be heavy delivery truck traffic.
- b. The small size of the property greatly limits any full-scale agricultural use, and the proximity of both Interstate 75 and Old Richmond Road do not make for a desirable residential use. This type of low-impact agricultural use is well-suited to this challenging lot and will make use of the existing greenhouse structure.
- c. Adequate parking for this type of use will be provided on the property.
- d. All necessary public services and facilities are or will be available and adequate for the proposed use.

The Staff Recommends: Disapproval of the requested variance to eliminate the required easement and Approval of a lesser variance, to reduce the landscape easement, for the following reasons:

- a. Granting the requested variance would result in an unreasonable circumvention of the requirements of the Zoning Ordinance because, while there are valid reasons to reduce the required landscape easement, there are no special circumstances that justify its total elimination.
- b. The special circumstances that justify a reduction in the required landscape easement include the existing vegetation located in the I-75 and Old Richmond Road rights-of-way and the high ridge along the front of the property, both of which offer some screening. Also, the greenhouse operation proposed will not include any on-site retail or wholesale sales, nor any outdoor storage of any kind.
- c. Additional special circumstances include the necessity for sunlight penetration of the greenhouse in order for this use to be successful. A 20-foot landscape easement that meets all of the requirements of Article 8-1(d) could have potentially detrimental effects on the operation of the greenhouse by limiting sunlight, especially given the relatively small and narrow shape of the property. In lieu of a 6-foot high planting, hedge, fence, wall or earth mound and perimeter trees located every 30', clustering of trees in various specified locations could provide appropriate screening of the structure to the highway and neighbors while still maintaining adequate sunlight for plant growth within the greenhouse.

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

1. The commercial greenhouse shall be established in accordance with the submitted application materials and a revised site plan showing all paving and landscape elements specified in the conditions below, subject to approval by the Division of Planning.
2. All necessary permits and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to commencing the approved use.
3. A portion of the driveway shall be paved from the access point on Old Richmond Road to one car length past the turn. Additionally, one parking space shall be paved to meet accessibility requirements and shall include the paving of a sidewalk from that space to the building entrance. The access to Old Richmond Road shall be improved in accordance with recommendations of the Division of Traffic Engineering and with a permit issued by the Kentucky Transportation Cabinet.
4. The final design of the driveway, circulation and parking layout shall be subject to review and approval by the Division of Traffic Engineering.
5. In lieu of the entire 20-foot landscape easement required by the Ordinance, the following landscape elements shall be provided and a landscape plan submitted to and subject to approval by the Divisions of Planning and Environmental Services:
 - a. A cluster of lower growing evergreen trees (such as, but not limited to, Pfitzer Junipers) shall be planted along Old Richmond Road, from the access point to the southern property line.
 - b. Lower growing evergreen trees along Old Richmond Road from the access point to the north, for the length of the greenhouse, shall be planted to fill in gaps left by the existing right-of-way trees to create a visual screen for the adjacent property across Old Richmond Road.
 - c. Evergreen trees shall be planted to the north of the greenhouse in order to screen the parking area.
 - d. Two medium to tall trees shall be planted along the western property line in the gap between the two tall trees that exist along the I-75 frontage to screen the building from the Interstate.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. Any pole lighting for the parking and loading areas, or any other outdoor areas, shall have a maximum height of 12', and shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing

nearby properties.

8. All sales shall be conducted remotely with no sales taking place on the property.
9. Sanitary sewer treatment and garbage pick-up shall be privately provided.

Staff Comments – Ms. Goderwis gave an overview of the history of the property and its previous use.

Representation – Dustin Wunderlich, applicant, was present. Mr. Wunderlich indicated that he had reviewed the conditions and agreed to abide by them. At this time, Mr. Wunderlich presented several items to the Board for review and then gave a PowerPoint presentation and explained his proposed use for the subject property.

Citizen Comments – The following persons spoke in opposition to this case:

Mary Dianne Hanna, 6398 Old Richmond Road, representing the Old Richmond neighborhood association and the Boone Creek neighborhood association (due to the absence of Melissa Brown). Ms. Hanna submitted her notes into the record.

Alex Martin, 7121 Grimes Mill Road.

Lauren Gambrell, daughter-in-law, of John and Kathy Hadlock, who live at 7940 Old Richmond Rd., spoke on their behalf. Ms. Gambrell presented a letter and several documents on the overhead projector and further discussed.

Dr. Lisa Gannoe, 7525 Old Richmond Rd., noted that this was her eighth time being present at a Board of Adjustment hearing for this particular property. Dr. Gannoe distributed several documents and further expressed her concerns with regard to the proposed use. As a part of her packet, she submitted proposed findings and facts for denial this case.

Wayne Mitchell, 7601 Old Richmond Rd., diagonally across from the subject property.

Walt Gaffield, President of the Fayette County Neighborhood Council, distributed several documents, presented them on the overhead projector, and further discussed.

Jim Griggs, 600 McCalls Mill Road, former Board of Adjustment member. Mr. Griggs noted that he was on the Board in 2006 when the greenhouse on this property was permitted, and he discussed his concerns with the proposed use.

Dr. Charles Martin, 7416 Grimes Mill Road, distributed several materials, as well as a letter he had written in May 2006 to the Board. His materials were presented on the overhead projector and discussed.

Gloria Martin, 7416 Grimes Mill Road, distributed documentation to the Board and discussed her concerns.

Amy Clark, 628 Kastle Road, distributed materials to the Board, presented them on the overhead projector, and expressed her concerns.

Applicant Rebuttal – Mr. Wunderlich addressed the concerns of the opposition, as well as comments from Dr. Martin and Ms. Clark.

Board Questions and Comments – Ms. Carter asked if the issue of the permit with the conditions was being addressed. Ms. Goderwis responded affirmatively, as well as a comment from Mr. Wunderlich.

At this time, Mr. Glover asked the staff, after hearing all of the testimony at today's hearing, if they had any concerns regarding their original recommendation. This was further discussed.

In closing, comments were provided by Mr. Glover and Mr. Clarke with regard to the proposed use.

Note: Mr. Glover declared a brief recess at 3:11 p.m. in order for the Board to discuss findings of facts for disapproval of this application. The meeting reconvened at 3:25 p.m., with the same members in attendance.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and resulted in a tie vote 3-3 (Carter, Whitman, and Glover opposed) to **disapprove PLN-BOA-17-00091: DUSTIN WUNDERLICH** – a request for a conditional use permit to establish a commercial greenhouse; and a variance to eliminate the required landscape easement in the Agricultural Rural (A-R) zone, at 7524 Old Richmond Rd., based on the following findings of facts:

1. The specific location and configuration of the property renders it unsuitable for a commercial greenhouse use because of site restrictions related to size and shape of the property;

2. The submitted application does not comply with the conditions of a commercial greenhouse in the A-R zone, specifically Article 8-1(d), 5(a), and f.

Additionally, to disapprove the requested variance based on the staff's recommendation that granting the requested variance would result in an unreasonable circumvention of the requirements of the Zoning Ordinance because there are no special circumstances that justify the total elimination of the landscape easement.

Action – Due to the tie vote, motion was made by Ms. Carter, seconded by Ms. Whitman and resulted in a tie vote 3-3 (Meyer, Needham, and Clarke opposed) to **approve PLN-BOA-17-00091: DUSTIN WUNDERLICH** – a request for a conditional use permit to establish a commercial greenhouse; and a partial variance to eliminate the required landscape easement in the Agricultural Rural (A-R) zone, at 7524 Old Richmond Rd., as recommended by the staff and subject to the nine conditions.

The motion failed, and the applicant's request for a conditional use and variance was not approved.

IV. **BOARD ITEMS**

- a. Ms. Jones announced that an appeal had been filed with regard to a previous case that was denied for a drive-through window.

V. **STAFF ITEMS**

None to be heard

- VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be February 12, 2018.

- VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 3:43 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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