

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

March 12, 2018

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, March 12, 2018. Members present were: Branden Gross, Harry Clarke, Raquel Carter, Thomas Glover, Chad Needham and Jan Meyer. Absent was: Joan Whitman. Others present were: Josh Dezarn, Division of Engineering; Tracy Jones, Department of Law; and Stephen Parker, Traffic Engineering. Staff members in attendance were: Barbara Rackers, Autumn Goderwis, and Tammye McMullen.

***Note** – At this time (1:04 p.m.), the Chair announced that the Board would go into a closed session to discuss a matter regarding potential litigation.

A motion was moved by Ms. Meyer, pursuant to KRS 61.810(1)(c) to go into closed session for the purpose of discussing proposed litigation against or on behalf of the Board of Adjustment. The motion was seconded by Mr. Needham and carried unanimously. The meeting reconvened at 1:24 p.m. with the same members in attendance.

***Note** – At this time, the Chair announced that there was a discrepancy on of the notification letters for two cases on today's agenda; they read 1:30 p.m., versus the new scheduled time of 1:00 p.m., and he would be officially sounding the agenda for those cases again at/or around that time.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the February 12, 2018, meeting would be considered at this time.

Action - A motion was made by Ms. Carter, seconded by Mr. Clarke, and carried unanimously to **approve** the minutes of the February 12, 2018 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.

At this time, Ms. Goderwis announced that the following case had withdrawn their application via email on 03/12/18.

- a. **PLN-BOA-18-00007: MICHAEL BOOTH** – requests an administrative review to determine that events such as family reunions, birthday parties, and weddings should be considered a conditional use in the A-R (Agricultural-Rural) zone: if determined to be so, a conditional use to offer these events, as well as seasonal activities in the Agricultural-Rural (A-R) zone, at 4010 and 4026 Haley Road. (Council District 12).

***Note** – At this time, Mr. Gross sounded the agenda for the two cases that had a discrepancy regarding the meeting time.

a. ABBREVIATED HEARINGS:

1. **PLN-BOA-18-00016: PORTER MEMORIAL BAPTIST CHURCH** – requests a conditional use permit to expand an existing church building and parking lot in a Single Family Residential (R-1D) zone, at 4300 Nicholasville Rd. (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- This church has operated on this property since 1976 and the new addition should not adversely affect the surrounding properties, being limited to an area between the existing building and Toronto Road.
- All public facilities are in operation for the use of the property as a church.
- The proposed addition should not have a significant impact on traffic. Over twice as many parking spaces as are required exist on site, and additional parking is not required for the proposed addition.

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 and approvals, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to operation of this use.
3. Any changes to the parking configuration shall be reviewed by and subject to approval of the Division of Traffic Engineering.

Ms. Goderwis distributed one letter of support to the Board at this time.

Representation – Davis Royse, attorney, was present on behalf of the applicant. Mr. Royse 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-18-00016: PORTER MEMORIAL BAPTIST CHURCH** – a request for a conditional use permit to expand an existing church building and parking lot in a Single Family Residential (R-1D) zone, at 4300 Nicholasville Rd., based on the staff's recommendation and subject to the three conditions.

2. **PLN-BOA-18-00017: ROBERT CROVO** – requests a conditional use permit to establish a home-based business (scuba instruction) in a Single Family Residential (R-1B) zone, at 3279 Roxburg Drive (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use has been conducted on the property for 8 years with no complaints to LFUCG. The use is part-time and seasonal, with adequate parking provided in the applicant's driveway. The use should not result in a nuisance, as the activity is relatively quiet and has proven to have little impact on the neighbors.
- b. While the activity has been taking place for a number of years, this application is an effort to comply with the Zoning Ordinance, which the applicant has made upon learning that such an approval is required.
- c. 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. Signage for the business shall not be placed on the property or at any other location.
3. Should the applicant cease to own or occupy the subject property, the conditional use permit shall become null and void.
4. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
5. The applicant shall maintain a current certification as a scuba instructor during all times that lessons are provided.

Ms. Goderwis distributed one letter of support and one letter of opposition to the Board.

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

Board Questions and Comments – Mr. Gross asked the applicant how many participants he expected at a given time. Mr. Crovo responded that it may be up to 5, and then addressed the concerns expressed that there would be more.

Mr. Clarke asked what the age range is of the participants/students. Mr. Crovo responded that the youngest is 10 years old, and then there is no age limit thereafter, as long as persons met required physical conditions.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously to **approve PLN-BOA-18-00017: ROBERT CROVO** – a request for a conditional use permit to establish a home-based business (scuba instruction) in a Single Family Residential (R-1B) zone, at 3279 Roxburg Drive, for the reasons recommended by the staff and subject to the five conditions.

3. **PLN-BOA-18-00018: ROOD & RIDDLE PARTNERS** – requests a conditional use permit to construct a 3,200 square-foot addition to an existing equine hospital building in an Agricultural Urban (A-U) zone, at 2150 Georgetown Rd. (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. This is a well-established equine hospital with numerous facilities. The addition will be located away from adjoining

- residential properties, oriented toward the interior of the property.
- b. All necessary public and private services are available and adequate for the proposed use.

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

1. The building addition 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 construction and occupancy. Prior to issuance of a Certificate of Occupancy, a Zoning Compliance Permit (or its equivalent) shall be obtained from the Division of Planning.
3. The storm water management plan shall be updated in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Representation – Jeff Pearson, with Pearson and Peters Architects, was present on behalf of the applicant. Mr. Pearson indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-18-00018: ROOD & RIDDLE PARTNERS** – a request for a conditional use permit to construct a 3,200 square-foot addition to an existing equine hospital building in an Agricultural Urban (A-U) zone, at 2150 Georgetown Rd., for the reasons recommended by the staff and subject to the three conditions.

4. **PLN-BOA-18-00020: IGLESIA ADVENTISTA DEL SEPTIMODIA** – requests a conditional use permit to expand an existing church in a Single Family Residential (R-1D) zone, at 1718 and 1722 Bryan Station Road. (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. Churches have operated at this location for many years, since the building was constructed. No adverse impacts to the neighborhood are expected as a result of this relatively small addition.
- b. All public facilities are in operation for the use of the property as a church.
- c. Adequate parking exists on site and additional parking is not required for the proposed addition.

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 and approvals, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to construction and operation of this use.
3. Any changes to the access points or parking configuration shall be reviewed by and will be subject to approval of the Division of Traffic Engineering.

Ms. Goderwis distributed one letter of opposition to the Board.

Representation – Rafael Jacome was present on behalf of the applicant. Mr. Jacome indicated that he had reviewed the conditions and agreed to abide by them.

Board Questions and Comments – Mr. Gross asked for clarification of what is being requested, noting that the letter of opposition expressed concern regarding parking and the size of the addition. Mr. Jacome responded, and further explained the requested conditional use. He said that no required parking was being lost as a result of the addition.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-18-00020: IGLESIA ADVENTISTA DEL SEPTIMODIA** – a request for a conditional use permit to expand an existing church in a Single Family Residential (R-1D) zone, at 1718 and 1722 Bryan Station Road., based on the staff's recommendation and subject to the three conditions.

5. **PLN-BOA-18-00019: SOUTH ELKHORN VILLAGE SHOPPING CENTER** - requests an administrative review to transfer 75 square feet of unused allowable signage to allow a 150 square-foot freestanding sign 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 this requested appeal should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity. 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 elevation of the site is a special circumstance that justifies approval of the appeal. In fact, the increased size and height of the sign may actually contribute to the safety of motorists traveling in the area.
- c. Since there is limited need for a freestanding sign on Bowman Mill Road, a single larger sign along the Old

Harrodsburg Road frontage seems reasonable.

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 Compass, LLC, was present Mr. Walbourn indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions and Comments – Mr. Clarke asked how the sign would be placed relative to Harrodsburg Road. Mr. Walbourn responded that it would be visible to traffic headed both ways on Harrodsburg Road.

Mr. Glover asked about the maximum height of 20 feet, and if this is what the applicant has planned. Mr. Walbourn stated that they would abide by whatever the Board had previously approved, with a comment from Ms. Goderwis, noting that it had been increased to 40 feet. At this time, there was further discussion with regard to the administrative appeal request. Mr. Glover requested that the site plan be presented on the overhead projector for clarification, which was further discussed by the Board members and the applicant.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 5-0 (Gross recused) to **approve PLN-BOA-18-00019: SOUTH ELKHORN VILLAGE SHOPPING CENTER** – a request for an administrative review to transfer 75 square feet of unused allowable signage to allow a 150 square-foot freestanding sign in a Planned Shopping Center (B-6P) zone, at 4379 Old Harrodsburg Road, based on the reasons outlined by the staff and subject to the two conditions.

*Note – At this time, Mr. Gross varies from the order of the agenda to discuss the staff's change in recommendation for case # **PLN-BOA-18-00003: Grantham, LLC**, one that Mr. Walbourn is also representing. After consulting with parties present in opposition to the following case, a motion was made to postpone:

- a. **PLN-BOA-18-00003: GRANTHAM, LLC** – requests a conditional use permit to operate a home-based business (gunsmithing, and mail order and onsite retail sale for firearms and items that serve as accessories to firearms; i.e., scopes, binoculars, etc.) in a Single Family Residential (R-1C) zone, at 103 Woods Ave. (Council District 5).

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried unanimously to **postpone PLN-BOA-18-00003: GRANTHAM, LLC** until the April 9, 2018 hearing, for the reasons that were presented on the overhead projector by the staff.

b. DISCUSSION ITEMS:

1. **PLN-BOA-18-00021: CABALLO CROSSINGS APARTMENTS** – requests a variance to increase the allowable height of a front yard fence from 4 feet to 6 feet in a Planned Neighborhood Residential (R-3) zone, at 500, 510, and 522 Hollow Creek Rd. (Council District 1).

The Staff Recommends: Disapproval, for the following reasons:

- a. There are no compelling special circumstances that justify the variance. A 4-foot tall fence is allowed by the Zoning Ordinance and would likely offer a similar level of security and privacy. Secure by Design principles indicate that lower fences in front yards provide more safety and reduce the risk of crime by keeping dwelling frontages open to view. This creates active street frontages and allows natural surveillance of the public space. Their recommendation is for front yard fences to be even lower than our Zoning Ordinance allows, at a maximum of 1 meter, or about 3.3 feet, in height.
- b. This type of fence is not typical of the vicinity. The apartments to the west of the subject properties have an approximately 4-foot tall wooden fence, similar to the existing fence on the subject properties; and the apartments to the east do not have a front yard fence. Across Hollow Creek are primarily single-family residences, without front yard fences.
- c. Strict enforcement of the Zoning Ordinance would not create an unnecessary hardship for the applicant, as the desire for a 6-foot tall fence seems to be primarily based on aesthetic preference. A 4-foot tall fence, which should provide some security as well as improved aesthetic, is allowed at this location.

Representation – Brett Grigsby, Vice President of Operations with Denton Floyd Real Estate Group, as well as Sylvia Garten, Property Manager, were present.

Staff Report – At this time, Ms. Goderwis presented a staff report explaining the reasons for the staff's recommendation of disapproval.

Board Questions and Comments - Ms. Carter inquired about the type of fence that is allowed, to which Ms. Goderwis responded.

Mr. Clarke inquired about the access to the apartment complex. Ms. Goderwis responded that there were gates along the drive and she was unaware of any other entry points.

Representation – Mr. Grigsby explained their reasons for requesting the variance, noting that they are concerned about safety and access by others who do not reside on the premises; and further discussed, with comments from Ms. Garten. There were also questions and comments from the Board members, with additional comments from Ms. Goderwis.

At this time, Mr. Grigsby presented photos on the overhead projector and explained. There was further discussion between the Board, staff, and applicant with regard to the requested fence variance.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover and carried 5-1 (Needham opposed) to **disapprove PLN-BOA-18-00021: CABALLO CROSSINGS APARTMENTS** – a request for a variance to increase the allowable height of a front yard fence from 4 feet to 6 feet in a Planned Neighborhood Residential (R-3) zone, at 500, 510, and 522 Hollow Creek Rd., based on the staff's recommendations.

2. **PLN-BOA-18-00022: DAN DAVIS** – requests a variance to reduce the required setback for additional paved parking from 6 feet to 0 feet in a Single Family Residential (R-1C) zone, at 130 Jesselin Drive. (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.
- b. The site does not have any special circumstances that justify the requested variance. There appears to be sufficient space to serve the applicant's needs in the paved area that would remain if the noncompliant portion were removed.
- c. This neighborhood is characterized primarily by properties with single lane driveways.

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

Staff Report – Ms. Goderwis presented a staff report explaining the staff's reasons for recommendation of disapproval.

Ms. Meyer requested photos on the overhead projector with explanation as to what would be allowed to stay. Ms. Goderwis presented photos and explained. At this time, there was further discussion as to what is allowed for the driveway.

Representation – Daniel and Diane Davis, applicants, were present. Prior to Ms. Davis' explanation, Mr. Gross asked who lived on the property. Ms. Davis replied that their daughters currently stay there with a few friends who live there as well. Ms. Davis then apologized for the confusion on their part with regard to the permit issues. She explained that they had submitted the permit prior to the work being done, but were unaware that the permit process hadn't been completed, and that they take full responsibility for the lack of knowledge.

At this time, Mr. Davis explained the safety concerns that they had, and explained they had expanded the driveway in order for the occupants to have somewhere "safe" to park, with further discussion as to their request for this variance. Further comments were made by Ms. Davis. She also stated that they did get a petition signed by many of the neighbors in support of the expanded driveway. Comments were also made by Stephen Parker with Traffic Engineering, explaining their observation of Jesselin Drive area, and the need for the expanded driveway. Mr. Parker noted that Traffic Engineering is currently looking at this area to possibly implement parking restrictions.

Board Questions and Comments – Mr. Gross asked what is generally the standard width of a 2-car driveway. Mr. Parker responded, with comments from Mr. and Mrs. Davis. Ms. Davis noted that about 90% of the neighbors are interested in a traffic study for this neighborhood.

Mr. Clarke asked how many other driveways along Jesselin were like the one before the Board today. Mr. Parker responded that he could think of three off hand, but was unsure of the total, with a comment from Mr. Davis.

Ms. Carter requested a photo of the front of the house to be presented on the overhead projector, and Ms. Davis presented these photos to the Board. At this time, there were further questions, comments, and discussion with regard to the options for approval of the requested variance, with comments from Ms. Goderwis and Ms. Jones.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter and carried unanimously to **approve PLN-BOA-18-00022: DAN DAVIS** – a request for a variance to reduce the required setback for additional paved parking from 6 feet to 0 feet in a Single Family Residential (R-1C) zone, at 130 Jesselin Drive, based the following three reasons:

1. The need arises from circumstances along Jesselin Dr. that have resulted in sideswipes and hitting of mirrors on cars parked in street.
2. The granting of the variance will not affect the public health, safety or welfare as it will provide off-street parking in an instance where street parking has resulted in sideswipes and accidents with parked cars.
3. The granting of the variance will not alter the essential character of the neighborhood as there are similar driveways along and near the Jesselin Corridor.

IV. **BOARD ITEMS**

None to be heard.

V. **STAFF ITEMS**

None to be heard.

VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be April 9, 2018.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:52 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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