

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 14, 2018

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, May 14, 2018. Members present were: Branden Gross, Harry Clarke, Raquel Carter, Thomas Glover, Chad Needham, Jan Meyer, and Joan Whitman. Others present were: 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, and Barbara Rackers.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the April 9, 2018, 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 April 9, 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 Goderwis announced that the following applicant had withdrawn their application via email:

- a. **PLN-BOA-18-00031: ANDY CHANG** - an administrative appeal to allow construction of a new residential structure within the defined Infill & Redevelopment Area, without a primary entrance for pedestrian access along the primary wall plane & without a one-story projection on the primary wall plane, in a High Rise Apartment (R-5) zone, at 155 Transcript Ave. (Council District 3).

a. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-18-00035: CIELO PROPERTIES, LLC.** - requests a variance to reduce the minimum building setback from the floodplain from 25 feet to 0 feet for new construction in a Neighborhood Business (B-1) zone, at 1389 Alexandria Drive (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- Granting the requested variance should not adversely affect the subject or surrounding properties, as the total amount of impervious area on the site will be reduced by 21.6%. This reduction in impervious area should have a positive effect on the property and floodplain.
- The special circumstances that are unique to the subject property are its inclusion in the FEMA 100-Year Flood Hazard Area. The update that included this property became effective on March 3, 2014, after this lot and many of those nearby had already been developed. This inclusion renders the property unbuildable when a 25' setback from the floodplain is required. The property was previously developed and the new development will be less non-conforming than the previous structure.
- Strict application of the Zoning Ordinance would create an unnecessary hardship for the applicant, since it would render the entire property unbuildable.

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

- 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.
- That all necessary permits be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to commencement of the community center use, land alterations, or erection of any structure.
- 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.

4. Action of the Board shall be noted on both the Final Development Plan and the Final Record Plat for the subject property.

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

Action – A motion was made by Mr. Needham, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-18-00035: CIELO PROPERTIES, LLC.** – a request for a variance to reduce the minimum building setback from the floodplain from 25 feet to 0 feet for new construction in a Neighborhood Business (B-1) zone, at 1389 Alexandria Drive, based on the staff's recommendation and subject to the four conditions.

2. **PLN-BOA-18-00037: GREER LAND COMPANY** – requests a variance to increase the maximum building setback from 20 feet to 33 feet for new construction in a Neighborhood Business (B-1) zone, at 1100 and 1108 South Broadway (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance will result in construction that is similar in character to the rest of this part of the South Broadway corridor. Several B-1 properties in the immediate vicinity have setbacks similar to what is requested, as do many commercial uses nearby with other commercial zoning.
- b. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The increased setback is appropriate based on the use of the property and setback of the nearby properties. The Planning Commission approved an accessory drive-through facility on the development plan. The increased setback allows for unimpeded circulation around the building.

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, Engineering, and Building Inspection prior to construction and occupancy.
3. 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.
4. Action of the Board shall be noted on both the Final Development Plan and the Final Record Plat for the subject property.

Representation – Matt Carter, with Vision Engineering, was present on behalf of the applicant. Mr. Carter indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously to **approve PLN-BOA-18-00037: GREER LAND COMPANY** – a request for a variance to increase the maximum building setback from 20 feet to 33 feet for new construction in a Neighborhood Business (B-1) zone, at 1100 and 1108 South Broadway, based on the staff's recommendation and subject to the four conditions.

3. **PLN-BOA-18-00038: IGLESIA EVANGELICA CHRISTIANA ESPIRITUAL** – requests a conditional use permit to construct a new church building in the Agricultural Rural (A-R) zone at 3696 Hurricane Hall Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A church has been operating on the property since 2015. Adjoining or nearby land uses are of an agricultural nature, and are not likely to be disturbed by typical church activities.
- b. All necessary public services and facilities are available and adequate for the proposed use. A septic system already in place will be updated as necessary to permit increased capacity for the new building.

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

1. The church use shall be conducted in accordance with the submitted application, site plan, and the listed conditions (minor revisions to the submitted site plan are acceptable if needed to satisfy permitting requirements).
2. All necessary permits and approvals, including a Building Permit, a Paving Permit, a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained, as appropriate.
3. The septic system shall be reviewed and approved for this use, as necessary, by the Fayette County Board of Health.
4. The parking lot shall be paved, landscaped and screened in accordance with Articles 16 & 18 of the Zoning

Ordinance.

5. Any pole lighting for the parking lot shall be of a shoebox or similar design, with light directed downward to avoid disturbing any adjoining or nearby properties.
6. A storm water management plan shall be implemented in accordance with the adopted Engineering Manual, subject to acceptance by the Division of Engineering.

Representation – Matt Carter, with Vision Engineering, was present on behalf of the applicant. Mr. Carter indicated that they had reviewed the conditions and agreed to abide by them.

Board Question – Mr. Needham asked for clarification of the address of the church.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-18-00038: IGLESIA EVANGELICA CHRISTIANA ESPIRITUAL** – a request for a conditional use permit to construct a new church building in the Agricultural Rural (A-R) zone at 3696 Hurricane Hall Road, for the reasons recommended by the staff and subject to the six conditions.

b. **Discussion items:**

1. **PLN-BOA-18-00033: DISTINCTIVE DESIGN** – requests a variance to reduce the required side yard setback from 8 feet to 3 feet for construction of a garage in a Single Family Residential (R-1C) zone, at 3137 Starling Drive (Council District 4).

The Staff Recommends: Disapproval, for the following reasons:

- a. While it is regrettable that the setback requirements for this project were initially miscommunicated, there do not appear to be any special circumstances that justify the need for a variance. The property is of an appropriate size and configuration to allow an average sized two-car garage without a variance.
- b. Strict adherence to the Zoning Ordinance should not create an unnecessary hardship for the owner, as a garage slightly narrower than the 28' width proposed would still be several feet wider than what is generally considered as customary.
- c. Existing homes along Starling Drive generally meet the required 8' setback without averaging and there have been no variances granted on this street. A compliant side yard of 4' at all points of the addition (with an overall average setback of 8') will already result in a garage that is closer to the side lot line than the majority of structures in the general vicinity.

Representation – Charles Penn, applicant, was present on behalf of the property owners.

Staff Comments – Ms. Goderwis presented photos on the overhead projector and gave a staff report with regard to the reasons for the staff's recommendation of disapproval.

Board Questions and Comments – Mr. Needham asked if the entire carport would be enclosed. Ms. Goderwis responded, that it would, and that it would extend beyond where the carport is currently.

Mr. Gross questioned the building permit, showing 4 feet from the property line. Ms. Goderwis responded and explained the reason for the requested variance.

Ms. Carter asked if the extension went past the current driveway. Ms. Goderwis replied that she was not sure.

At this time, Mr. Glover requested to see a closer look of the garage. Mr. Gross asked the applicant if he had elevation plans for the proposed use. Mr. Penn presented the plan on the overhead projector.

Applicant Comments – At this time, Mr. Penn explained how he got to the point of the requested variance.

Discussion – Mr. Clarke asked what had been done at this point. Mr. Penn responded that the footer was in place. There was further discussion with regard to the proposed garage.

Ms. Meyer asked if there was any particular reason why the garage was so long. Mr. Penn responded that this is what the home owner wanted. Ms. Carter then asked if the entire portion of the garage was crossing over the line, or just the front corner. Mr. Penn noted that it is the side of the lot.

Mr. Glover asked the applicant, when receiving "verbal" approval prior to pouring the footer, whom he had talked to. Mr. Penn responded that he spoke to Ms. Goderwis. He further explained that it was all a "mix-up". Mr. Glover asked if there were going to be any fire issues. Mr. Penn noted that it was already fire-rated.

At this time, there was further discussion between the Board members and the applicant with regard to the proposed garage, along with photos presented by the applicant on the overhead projector for further explanation. There was further discussion with regard to eliminating the side door.

Note: Mr. Gross declared a brief recess at 1:21 p.m. in order for the Board to review the letters and documentation related to this request. The meeting reconvened at 1:48 p.m., with the same members in attendance.

Action – A motion was made by Mr. Needham, seconded by Ms. Clarke and carried unanimously to **approve PLN-BOA-18-00033: DISTINCTIVE DESIGN** – a request for a variance to reduce the required side yard setback from 8 feet to 3 feet for construction of a garage in a Single Family Residential (R-1C) zone, at 3137 Starling Drive, based on the testimony at today's hearing, with the following findings and conditions:

Findings:

1. This particular case raises a unique set of circumstances because both the applicant and the staff relied on miscommunication which resulted in the expense of the footers and concrete being poured and the expense being incurred.
2. Disapproval will result in a hardship to the applicant financially to comply with the side yard setback without the variance.

Conditions:

1. The side door will be removed from the structure.
2. Construction would be according to the site plan.
3. Submit revised plans to Building Inspection.

At this time, the Chair asked the applicant if he was agreeable to abide by the three conditions. Mr. Penn responded that he was.

2. **PLN-BOA-18-00034: SHEPHERD'S HOUSE/JOURNEY PURE** – requests a conditional use permit to operate a rehabilitation home in the Agricultural Rural (A-R) zone, at 2326 Royster Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The property operated as the Bluegrass Boys' Ranch for many years and the facilities are appropriate for this type of residential program, which, while targeting a different group, will offer a similar scope of services to its residents.
- b. The proposed use will provide a much-needed service that will serve primarily local residents, while utilizing a property that is uniquely suited to this type of use based on its existing structures.
- c. 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 rehab facility shall be operated in accordance with the submitted application materials 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.
3. There shall be no medical services or prescribing of medications as part of the rehabilitation facility.
4. The septic system shall be reviewed and approved for this use, as necessary, by the Fayette County Board of Health.

Representation – Nick Nicholson, attorney, was present on behalf of the applicant. Mr. Nicholson indicated that they had reviewed the conditions and agreed to abide by them. At this time, Mr. Nicholson presented a PowerPoint on the overhead projector and discussed the reason for the requested conditional use. It was noted for the record that the applicant, rather than Journey Cure, was Journey Pure. He indicated that the following people were present at today's hearing: Jerod Thomas; Kevin Lee; and Jerry Lucas from Shepherd's House. During his discussion, he asked for all supporters present to please stand.

Board Questions and Comments – Mr. Glover asked what happened to the Bluegrass Boys' Ranch. Mr. Patrick Madden, whose family had owned the property and founded the Bluegrass Boy' Ranch, explained that the BBR was originally set up for orphans, and further explained. Ms. Blevins and Ms. Hale, with the Lexington School, discussed the program and the partnership. Mr. Glover asked what their program had to do with the requested use. Ms. Hale further explained, with comments from Mr. Madden and Mr. Nicholson.

Mr. Glover asked, with this facility being located in an Agricultural zone, if they thought it would work better in the downtown area. Mr. Nicholson responded that it may, but there is not an existing facility like the one they are

proposing downtown. At this time, there was further discussion by the Board and the applicant with regard to the proposed use, with comments from Mr. Lee, CEO of Journey Pure, and Mr. Thomas.

During the discussion, Mr. Glover asked how the program was being paid for. Mr. Lee explained. Mr. Glover also asked what other locations were in Kentucky. Mr. Lee responded that, locations are in Paducah, Elizabethtown, and Bowling Green. Ms. Meyer asked if they are all in a rural area. Mr. Lee replied that not all are, and further discussed.

Supporter – Leah Ranier Warner stated that her son was with this program. The program gave her son back, and she further discussed.

Opposition – Jacob Walbourn, attorney on behalf of the Briar Hill Neighborhood Association, distributed several documents to the Board for the record. Mr. Walbourn presented a PowerPoint on the overhead projector and discussed their reasons for opposition to the proposed use. He discussed the following points:

- Septic System and Flood Plain;
- Adequate space;
- Rural, narrow road;
- Isolated location;
- Detrimental impact to property values; and
- Rural character.

Board Questions – Ms. Carter asked if the neighborhood association had any complaints on record from the Boys' Ranch. Mr. Walbourn said that he didn't have knowledge of any.

At this time there was further discussion as to the previous use versus the proposed use.

Andrea James (at this time, sworn in by Mr. Gross), discussed her concerns and some of the neighbors' concerns regarding the proposed conditional use.

Applicant Rebuttal – Mr. Nicholson addressed the concerns of the opposition and further discussed, with comments from Mr. Lee. At this time, there were comments by the Board with regard to the proposed use.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-18-00034: SHEPHERD'S HOUSE/JOURNEY PURE** – a request for a conditional use permit to operate a rehabilitation home in the Agricultural Rural (A-R) zone, at 2326 Royster Road, based on the staff's recommendation and subject to the four conditions.

3. **PLN-BOA-18-00036: TRANSYLVANIA UNIVERSITY** – requests a conditional use permit to construct and occupy a new on-campus building in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, at 331, 333, and 345 North Broadway (Council District 1).

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

- a. Construction of a new campus center should not have a negative effect on the public health, safety, or welfare and the use will fit in very well with the surrounding area, as the site has been used as dormitory facilities for many years and is located within the University's central campus.
- b. Construction of a new campus center near the new dormitories will enhance the area adjacent to those new residence halls and should improve the quality of student life on campus.
- c. All necessary public services and facilities are available and adequate for the proposed use, including police and fire protection. Additionally, Transylvania has its own public safety department.

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

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process. This will be subject to the review and approval of the Divisions of Historic Preservation, Planning, Building Inspection, Traffic Engineering, and Engineering, as necessary.
2. All necessary permits, including a Building Permit, Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the construction and occupancy of this building.
3. Any construction on the property at 331 N. Broadway will be subject to review and approval by the Board of Architectural Review.

Representation – Dick Murphy, attorney, along with Mark Matthews, Vice-President of Finance and Business at Transylvania University, were present. Mr. Murphy indicated that they had reviewed the conditions and agreed to abide by them. He asked for a fourth condition to state that they have three years to exercise their conditional use permit. Ms. Goderwis presented the new condition on the overhead projector, and indicated the staff was okay with adding the condition.

At this time, Mr. Murphy provided a PowerPoint presentation on the overhead projector, and discussed the proposed conditional use.

Board Questions, Comments and Discussion – Mr. Needham questioned the square footage of the proposed structure, and asked if it included the campus center. Mr. Matthews responded and explained.

Mr. Clarke asked if this was going to increase pedestrian traffic across N, Broadway. Mr. Matthews responded no, and further explained how they intend to address that issue.

Mr. Glover asked if they could respond to the expressed concerns regarding the dumpsters and trash pick-up. Mr. Matthews explained how trash pickup for Transylvania generally occurs.

Opposition – Harry Steven Brown, who lives on Hampton Court (has lived there since 1978), expressed his concerns regarding the dumpsters and trash pick-up, which is very close to his property. He acknowledged that there was nothing that could be done through the Board of Adjustment process-he just wanted to get his concerns on the record. He said that it had to be addressed by the Council, and he was going to try to have it addressed.

Mr. Glover asked if the Board had a mind to do something, what could be done. Mr. Brown responded that the number of dumpster in that location not be increased. Ms. Meyer asked for it to be pointed out on the site plan; Ms. Goderwis commented and explained that there was a previous site plan and the Board could not do anything about that plan at this point, as it was a separate property from what was in the current application. There were further comments from Mr. Glover. At this time, there was further discussion with the Board and the applicant regarding the concerns of Mr. Brown, and Mr. Brown rebutted some of Mr. Murphy's comments regarding the site/development plan.

Patty Scott, who lives at 325 North Broadway (was sworn in at this time), expressed her concerns with the construction as well as the dumpsters that are used, which were previously located behind her property.

Action – A motion was made by Mr. Needham, seconded by Ms. Meyer and carried unanimously to **approve PLN-BOA-18-00036: TRANSYLVANIA UNIVERSITY** – a request for a conditional use permit to construct and occupy a new on-campus building in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, at 331, 333, and 345 North Broadway, based on the staff's recommendation and subject to the three original conditions, with a fourth condition added at today's hearing, as follows:

4. The applicant is allowed up to three years to exercise this conditional use permit, with the ability to phase construction for the expected build-out to occur over a period of time for an additional five years.

At this time, Mr. Gross re-called the following case, for which the applicant still was not present.

4. **PLN-BOA-18-00026: MINNIE SHARP** – requests an administrative appeal to allow placement of a mobile home on a property less than 40 acres with no principal structure in the Agricultural Rural (A-R) zone, at 5942 Sulphur Well Road. (Council District 12).

The Staff Recommends: Disapproval, for the following reasons:

- a. Granting the requested appeal would set a dangerous precedent that, over time, could adversely affect the quality and character of Fayette County's rural area by allowing an accessory residential structure without a principal residential structure. The Zoning Ordinance states specifically that a mobile home shall not be permitted as a principal residence, and a tenant home is described as being accessory throughout the Zoning Ordinance.
- b. In addition to the lack of a principal residence, the property is approximately one-quarter of the required size to allow a mobile home as an accessory tenant home.
- c. While a mobile home did exist on the property previously, staff cannot justify the placement of a new mobile home as a replacement of the previous one, given the length of time since its removal, at least 8 years ago.

Staff Report – Ms. Goderwis distributed opposition letters to the Board and gave a staff report of the staff's recommendation of disapproval.

Board Comments – Mr. Gross asked if applicants are notified of their time and date of hearing. Mr. Goderwis said yes, and stated that she had spoken with the applicant prior to, but nothing since the mail-out.

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried unanimously to **disapprove PLN-BOA-18-00026: MINNIE SHARP** – a request for an administrative appeal to allow placement of a mobile home on a property less than 40 acres with no principal structure in the Agricultural Rural (A-R) zone, at 5942 Sulphur Well Road, for the reasons recommended by the staff.

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 June 11, 2018.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 3:54 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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