

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 11, 2018

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, June 11, 2018. Members present were: Branden Gross, Raquel Carter, Chad Needham, Jan Meyer. Absent were: Harry Clarke, Thomas Glover, and Joan Whitman. Others present were: Josh Dezarn, Division of Engineering; and Tracy Jones, 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 May 14, 2018, meeting would be considered at this time.

Action - A motion was made by Ms. Meyer, seconded by Mr. Needham, and carried unanimously to **approve** the minutes of the May 14, 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.

a. ABBREVIATED HEARINGS:

1. **PLN-BOA-18-00044: MIKE HEITZ** – requests a variance to reduce the rear and side yard setbacks to 0 feet in order to enclose an existing covered walkway in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, at 558 Central Ave. (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- Granting the variance should not affect the character of the surrounding neighborhood. The covered walkway already exists and its enclosure should not be very noticeable. There is a tall fence located in the front yard that obscures the view of this portion of the property.
- The special circumstance that is unique to this property and justifies the variance is the configuration of the townhouses. The rear wall of the townhouse on the subject property is attached to the side wall of the neighboring townhouse and the covered walkway is already located along that property line as well. Allowing the walkway to be enclosed will simply continue the existing setback along the rear property line. Additionally, the configuration of the property is rather irregular in shape due to the connection between the main portion of the property and the garage. The connection between the house and the garage is quite narrow, and an enclosed connection would be impossible without the requested variances.
- The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicant is going through the appropriate processes and has applied for the variances prior to commencing construction.

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

- The covered walkway shall be enclosed in accordance with the submitted site plan and application materials.
- All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, Historic Preservation, and Water Quality prior to construction and occupancy.

Representation – Jack Stewart, with Stewart Architecture, was present on behalf of the applicant. Mr. Stewart indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Carter, seconded by Ms. Meyer and carried unanimously to **approve PLN-BOA-18-00044: MIKE HEITZ** – a request for a variance to reduce the rear and side yard setbacks to 0 feet in order to enclose an existing covered walkway in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, at 558 Central Ave., based on the staff's recommendation and subject to the two conditions.

2. **PLN-BOA-18-00040: BHARATIYA TEMPLE AND CULTURAL CENTER** – requests a conditional use permit to construct two structures accessory to a place of religious assembly in the Agricultural Rural (A-R) zone, at 3050 N. Cleveland Pike (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed additions to the property should not have an adverse effect on the subject or surrounding properties. The activities associated with this request are already occurring on this site under the existing conditional use with the use of tents; therefore, there should be no adverse effects from increased traffic or noise. Ample parking exists and no new parking spaces are required.
- b. Perimeter landscaping exists and will be maintained to buffer the use from public roads and adjoining properties to the north.
- 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 accessory structures shall be constructed in accordance with the submitted site plan and application materials.
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. The accessory structures shall not be utilized for activities generating commercial gain, as such activities are prohibited by Article 8-1(e)25 which lists special events, parties, festivals, concerts, and children's rides related to a commercial purpose as prohibited in the A-R zone.
5. All conditions for prior approvals by the Board of Adjustment shall remain applicable.

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

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-18-00040: BHARATIYA TEMPLE AND CULTURAL CENTER** – a request for a conditional use permit to construct two structures accessory to a place of religious assembly in the Agricultural Rural (A-R) zone, at 3050 N. Cleveland Pike, based on the staff's recommendations and subject to the five conditions.

3. **PLN-BOA-18-00041: STEVE WAINRIGHT** – requests a conditional use permit to establish a place of religious assembly in a Planned Neighborhood Residential (R-3) zone, at 2700 Old Todds Rd. (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. The conditional use should not adversely affect the subject or surrounding properties. The property has historically been used for a place of religious assembly, and the church will likely benefit the surrounding residential area.
- b. The property is accessible from Old Todd's Road and of an adequate size to support both a childcare facility and a place of religious assembly and the associated required parking. Additionally, the two uses have different hours and days of operation, so it will be quite rare for the two to be in use at the same time.
- 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 building shall be constructed in accordance with the submitted site plan, or as that plan is amended to address Planning Commission requirements and/or design requirements of the Divisions of Planning, Engineering, Traffic Engineering, or Building Inspection.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Engineering, Traffic 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. Required landscaping for the reconfigured vehicular use areas shall be provided and maintained in accordance with the provisions of Article 18 of the Zoning Ordinance.
5. Action of the Board shall be noted on an amended Development Plan, subject to approval by the Division of Planning or the Planning Commission, as necessary.

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

Action – A motion was made by Mr. Needham, seconded by Ms. Meyer and carried unanimously to **approve PLN-BOA-18-00041: STEVE WAINRIGHT** – a request for a conditional use permit to establish a place of religious

assembly in a Planned Neighborhood Residential (R-3) zone, based on the staff's recommendation and subject to the five conditions.

At this time (1:12 pm), the applicants for **PLN-BOA-18-00043: Non-Stop Towing** arrived, and Mr. Gross swore them in.

b. **Discussion items:**

1. **PLN-BOA-18-00039: LUKE MORGAN** – requests a variance to increase the allowable projection of a covered porch from 8 feet to up to 12 feet into the required front yard in a Single Family Residential (R-1D) zone, at 1325 New Ridge Ct. (Council District 9).

The Staff Recommends: Disapproval, for the following reasons:

- a. A large projection is not in character with the general vicinity. Covered front porches are uncommon in this neighborhood in general. The streetscape is quite uniform in this location, with most houses set back at about 30 feet, many with relatively shallow stoops. A compliant porch projecting 8 feet into the front yard would be somewhat unusual in this vicinity, so granting the variance would likely result in construction that is out of character in the neighborhood.
- b. There are no special circumstances that justify the variance request, and strict adherence to the Zoning Ordinance should not deprive the property owner reasonable use of their land or create a hardship. A compliant 8-foot-deep porch with the same width as proposed (23') would result in a 184 square-foot usable covered outdoor space that is considerably larger than other covered projections in the area without the need for a variance.
- c. While the applicant's desire for additional porch space is understandable, accepting that alone as justification for the requested variance would essentially render the Zoning Ordinance restriction as rather meaningless. If there is widespread concern that the current provision is too restrictive, that issue could potentially be addressed as a proposed amendment to Article 15-5(a) of the Zoning Ordinance.

Representation – Luke Morgan, applicant, was present.

At this time, Ms. Goderwis distributed letters of support to the Board, which they took a few moments to review.

Staff Comments – Ms. Goderwis gave a staff report with regard to the staff's reason for recommending of disapproval.

Ms. Meyer asked what was allowed in by Ordinance, to which Ms. Goderwis responded.

Applicant Comments – Mr. Morgan explained why they were requesting the variance for the projection of a covered porch and further discussed.

Board Questions and Comments – Ms. Meyer asked if there was a compelling reason to grant this variance. She asked if they thought about having just an 8-foot porch across the entire front of the house. Mr. Morgan stated that they had not; they did not want that much of a porch and further explained reasons for wanting a 12-foot wide porch.

Action – A motion was made by Ms. Carter, seconded by Ms. Meyer and carried unanimously to **disapprove PLN-BOA-18-00039: LUKE MORGAN** – a request for a variance to increase the allowable projection of a covered porch from 8 feet to up to 12 feet into the required front yard in a Single Family Residential (R-1D) zone, at 1325 New Ridge Ct., based on the staff's recommendations.

2. **PLN-BOA-18-00042: ETHINGTON & ETHINGTON** – requests variances to: 1) increase the maximum front yard setback from 20 feet to 215 feet in order to construct a building on Lot 2; and 2) to increase the maximum front yard from 20 feet to 195 feet in order to construct two buildings on Lot 3 in the B-1 portion of a property that is split-zoned B-1, R-1T & R-1D (Neighborhood Business, Townhouse Residential and Single Family Residential), at 4235 Harrodsburg Rd. (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Approval of the variance will not alter the character of the vicinity. Several of the commercial properties in this area on the north side of Harrodsburg Road have similar setbacks to accommodate parking, and a similar variance was approved last year for Lot 1, at the corner of Madrone Way and Harrodsburg Road.
- b. The row of townhouses behind these commercial buildings fronts on the back side of these buildings. Strict application of the Zoning Ordinance would likely result in parking to the rear of the commercial buildings, between them and the townhouses. Based on this configuration, the variance will allow for a more pedestrian friendly design and better interaction between the townhouses and commercial uses.

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

1. The buildings 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. The dumpster shown on the patio between Buildings A and B shall be relocated, or eliminated.
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 they had reviewed the conditions and agreed to abide by them. It was noted at this time that the citizen present in opposition was, no longer opposed to the variances after speaking with the applicant to prior to the hearing.

Board Questions and Comments – Ms. Meyer referenced the zone change approval by the Planning Commission, and asked if the plan submitted to the BOA is the same plan that the PC approved. Mr. Carter responded yes, and further explained, noting that they had to come before the BOA to get approval for the variances.

Ms. Meyer expressed her concerns about the parking in the Neighborhood Business zone being so visible from Harrodsburg Rd. Mr. Carter responded, and further discussed the plans for the proposed project. At this time, there was further discussion with regard to the parking, along with comments from Mr. Gross, who requested that the site plan be presented on the overhead projector, as it was further discussed. There was further comment from Mr. Carter, as he discussed what was approved through the Planning Commission. Mr. Needham asked which lots were approved through the PC. Ms. Goderwis responded, noting there was no variance approved through the PC.

At this time there was discussion between the Board, the applicant, and the Planning staff with regard to the variance request, with photos presented on the overhead projector by Mr. Carter.

Ms. Meyer asked how many townhomes were planned to be built. Mr. Carter responded that there would be 25 in one phase, 10 in another phase. At this time, there was discussion about a continuation of this hearing to allow for further details and a possible redesign of the property.

Action – A motion was made by Ms. Meyer, seconded by Ms. Carter and carried unanimously to **continue PLN-BOA-18-00042: ETHINGTON & ETHINGTON** – until the July 9th hearing.

3. **PLN-BOA-18-00043: NON-STOP TOWING** – requests an administrative appeal to change one non-conforming use (carpet cleaning business) to another non-conforming use (towing business) in a Single Family Residential (R-1B) zone, at 180 Beverly Ave. (Council District 6).

The Staff Recommends: Disapproval, for the following reasons:

- a. Approving the appeal to change a non-conforming use (carpet cleaning business) to another non-conforming use (towing business) would result in a greater non-conformity due to the intensity of the use and the equipment required for the use. A carpet cleaning business is first permitted in the B-4 zone, but a towing business would typically require a conditional use in an I-1 zone.
- b. Adverse traffic impacts are likely if a towing business is approved, as Beverly Avenue is not sufficient for serving this type of use. Additionally, and possibly more to the point, parking and storage of tow trucks is specifically prohibited in residential zones.
- c. It is likely that the new use would adversely affect the existing or future development of the subject property and surrounding area because a towing service would change the residential character of the general vicinity by introducing a more intense use utilizing tow trucks (which are expressly prohibited in residential zones) and generating significant activity 7 days per week.

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

At this time, the Board took a few minutes to review the letters of opposition presented to them by Ms. Goderwis.

Representation – Romie and David McIntosh, applicants, were present.

Staff Comments – Ms. Goderwis gave a report with regard to the staff's reason for recommendation of disapproval, noting that this case was the result of a zoning enforcement complaint.

Applicants Comment – Mr. R. McIntosh explained their reason for the request. Ms. Carter asked where the trucks are being stored when they are not towing. Mr. R. McIntosh responded that they really don't stop, as he further discussed their operation. At this time, there was further discussion between the Board and applicants with regard to the storing of the tow trucks, with a question from Ms. Meyer asking why the trucks needed to come to their residence. Mr. R. McIntosh explained, and it was further discussed, with comments from Mr. D. McIntosh. Mr. Needham noted that this proposed use is not acceptable in this zone.

Citizen Comments – The following persons expressed their concerns with regard to the requested change of use:

- Connie McCullough, who lives at 189 Beverly Ave. Ms. McCullough submitted photos to the Board for the record.
- Andrew Finn, who lives at 130 Beverly Ave. (was sworn in at this time) - expressed his concern with regard to the traffic flow and speed of the tow trucks.
- Diane Brashear, who lives at 217 Beverly Ave., noted that she doesn't live close to the applicants, but was expressing her concerns about the noise of the trucks and was concerned about the value of their home.
- Jake Michul, attorney on behalf of Mark, Judy, and Emily Vollbrecht, who live at 231 Beverly Ave.

Action – A motion was made by Ms. Meyer, seconded by Ms. Carter and carried 3-0 (Gross recused) to **disapprove PLN-BOA-18-00043: NON-STOP TOWING** – a request for an administrative appeal to change one non-conforming use (carpet cleaning business) to another non-conforming use (towing business) in a Single Family Residential (R-1B) zone, at 180 Beverly Ave., for the reasons recommended by the staff.

*Note – At this time, Mr. Gross returned to chair the remaining of the hearing.

IV. **BOARD ITEMS**

None to be heard.

V. **STAFF ITEMS**

- a. BOA members training opportunity all day on October 12, 2018, to be held in the Phoenix Building 3rd floor conference room.

Mr. Gross announced that this is an upcoming training opportunity for the Board members.

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

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:17 p.m.

Branden Gross, Chair

Joan Whitman, Secretary