

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

July 9, 2018

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, July 9, 2018. Members present were: Branden Gross, Raquel Carter, Chad Needham, Jan Meyer, 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, and Tammye McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the June 11, 2018, meeting would be considered at this time.

Action - A motion was made by Mr. Needham, seconded by Ms. Carter, and carried 6-0 (Glover absent) to **approve** the minutes of the June 11, 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.

Staff Comment - Ms. Goderwis noted that the staff would like to recommend postponement for the following case due to a significant change in the applicant's site plan, noting that the applicant would like to have this case heard today:

**PLN-BOA-18-00046: MICHELLE MOREHEAD** – requests a variance to reduce the required front yard setback from 30 feet to 22 feet in order to expand the existing residence in a Single Family Residential (R-1C) zone, at 2120 Island Drive (Council District 5).

Representation – Jack Stewart, Stewart Architecture, was present. In response to a question from Mr. Gross regarding the staff's request for postponement, Mr. Stewart said that they felt the new plans that had been submitted would still fall within the qualifications of the previous plans that had been submitted, and the same variance would be applicable.

At this time, there was discussion between the Board, the staff, and the applicant with regard to a postponement of this case, with the old and new site plans presented on the overhead projector for comparison of the difference.

Action – A motion was made by Ms. Meyer, seconded by Mr. Needham and carried 6-0 (Glover opposed) to **postpone** **PLN-BOA-18-00046: MICHELLE MOREHEAD** until the August 13, 2018 hearing.

a. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-18-00045: ADAM CRUSOTT** – requests a variance to reduce the required side street yard from 30 feet to 13 feet in order to expand the existing residence in a Two Family Residential (R-2) zone, within the defined Infill and Redevelopment Area, at 1820 Nicholasville Rd. (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- Granting the variance should not negatively affect the character of the surrounding neighborhood. The subject property is located at a transition between the P-1 zoning to the north and the residential neighborhood. Hiltonia Park is a boulevard, and the landscaped island acts as an additional buffer between the two zones. A significant portion of the structure already has a 13' setback.
- The special circumstance that is unique to this property and justifies the variance is the shape of the lot, which is somewhat narrow and deep. Without the requested variance, the buildable area of the lot would be limited to approximately half of the width of the lot due to the side-street side yard setback of 30'.
- 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 variance prior to commencing construction.

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

1. The addition shall be constructed in accordance with the submitted site plan and application materials.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection, prior to construction and occupancy.
3. An administrative action plat, reflecting action of the Board, shall be submitted for staff approval within 30 days of Board action.

\*Note – Ms. Goderwis distributed one letter of opposition to the Board for review.

Representation – Adam Crusott, contractor for the property owner, was present. Mr. Crusott indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-18-00045: ADAM CRUSOTT** – a request for a variance to reduce the required side street yard from 30 feet to 13 feet in order to expand the existing residence in a Two Family Residential (R-2) zone, within the defined Infill and Redevelopment Area, at 1820 Nicholasville Rd., based on the staff's recommendation and the three conditions.

2. **PLN-BOA-18-00047: CHAUNCEY MORRIS & CELINA MAGANA** – request a variance to reduce the required side yard setback from 8 feet to 5 feet in order to expand the existing residence in a Single Family Residential (R-1C) zone, within the defined Infill and Redevelopment Area, at 1824 McDonald Ave. (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance should not negatively affect the character of the surrounding neighborhood. The new addition maintains the side building line of the existing structure and should not be noticeable from the street.
- b. The special circumstance that is unique to this property and justifies the variance is the configuration of the existing house on the lot. The house was constructed with the front building line parallel to the front lot line. Since the side lot line is not perpendicular to the front lot line, a condition is created resulting in the need for the variance.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The average side yard setback is quite close to meeting the averaging provisions of Article 15-2(b)(6), which would permit the addition without the need for a variance. The applicants are going through the appropriate processes and have applied for the variances prior to commencing construction.

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

1. The addition shall be constructed in accordance with the submitted site plan and application materials (with the understanding that the existing driveway may be relocated to the opposite side of the home).
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection.

Representation – Celina Magana, applicant, was present. Ms. Magana indicated that she had not reviewed the conditions; Mr. Gross read them to her, and she then agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-18-00047: CHAUNCEY MORRIS & CELINA MAGANA** – a request for a variance to reduce the required side yard setback from 8 feet to 5 feet in order to expand the existing residence in a Single Family Residential (R-1C) zone, within the defined Infill and Redevelopment Area, at 1824 McDonald Ave., for the reasons recommended by the staff and subject to the two conditions.

3. **PLN-BOA-18-00049: LEXINGTON REMODELING SERVICES** – requests a variance to reduce the required setback for a covered projection from 4 feet to 3 feet in order to construct an attached carport in a Single Family Residential (R-1C) zone, at 517 McCubbing Drive (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance should not negatively affect the character of the surrounding neighborhood. The new addition maintains the side building line of the existing structure and will be open and unenclosed.
- b. The special circumstance that is unique to this property and justifies the variance is the configuration of the existing house and driveway on the lot. The existing driveway and setback of the house make it impossible to construct a compliant covered parking area. Even if the driveway were to be relocated to the other side of the house, a variance would likely still be required to construct an attached carport.
- c. 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 variance prior to commencing construction.

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

1. The addition shall be constructed in accordance with the submitted site plan and application materials.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and use.
3. The carport shall remain open and unenclosed.

Representation – Chris Schenk and Gerald Patterson, contractors for the property owner, were present. They 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-18-00049: LEXINGTON REMODELING SERVICES** – a request for a variance to reduce the required setback for a covered projection from 4 feet to 3 feet in order to construct an attached carport in a Single Family Residential (R-1C) zone, at 517 McCubbing Drive, based on the staff's recommendation and subject the three conditions.

b. **Discussion items:**

1. **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 variances will not negatively 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. The variance for Lot 2 will result in the canopy of the gas station more or less lining up with the building on Lot 1. The new site plan shows the two buildings on Lot 3 moving 57 feet closer to Harrodsburg Rd., resulting in a somewhat lesser variance that will allow for parking on both front and back of the proposed structures.
- b. The row of townhouses to be built on the west side of the development fronts on the back side of these commercial buildings. The applicant is proposing a significant landscape barrier between the townhouses and the proposed buildings. This landscaped area should aid in stormwater management and act as a buffer between the residential and commercial uses.
- c. The applicant has relocated the dumpsters so that they will not interfere with the pedestrian amenities, which have been expanded. Pedestrian access from the residential area has been realigned to create a more visible path to the commercial area. A significant amount of patio space is provided around the proposed buildings and sidewalks enter Lot 3 at three locations.

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

1. The property shall be developed in accordance with the revised site plan dated July 3, 2018, 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 the Final Development Plan for the subject property.

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

\*Note – At this time, Ms. Goderwis presented the new and old site plans on the overhead projector that were submitted after the Board had received the information for this hearing. At this time, Mr. Carter explained the new changes to their plan.

Board Questions and Comments – At this time there were several questions and comments from the Board with regard to tree barriers/screening to protect from traffic and noise, etc., and the previously submitted development plan. This was further discussed by the Board, the staff, and the applicant, with comments from Ms. Jones, including whether to add an additional condition.

Note: Mr. Gross declared a brief recess at 2:08 p.m. in order for the Board to write out a new condition. The meeting reconvened at 2:26 p.m., with the same members in attendance.

At this time, Mr. Gross asked the applicant if they were agreeable to the new condition. Mr. Carter responded that they were agreeable to all five conditions.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-18-00042: ETHINGTON & ETHINGTON** – a request for 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 131 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., for the reasons of the staff's recommendation and revised findings, and subject to the five conditions (the 5<sup>th</sup> one being added at today's hearing). They are as follows:

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.
5. On the Harrodsburg Road side of development, there shall be at least a 3-foot berm, based on averaging for the length of the frontage on Harrodsburg Road.

Ms. Meyer also noted that she would like for it to go on record that the Planning Commission, when they revisit this application, make note of the lengthy discussion at today's hearing regarding the landscaping for this project.

2. **PLN-BOA-18-00048: SAMIR GANDHI** – requests a conditional use permit to establish an Extended Stay hotel in a Professional Office (P-1) zone, at 209 Ruccio Way (Council District 9).

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 use should be compatible with the surrounding uses. The property is located near amenities such as convenient shopping, restaurants, and recreational facilities that will likely complement this type of use.
- b. Negative traffic impacts are unlikely and sufficient parking will be provided on the subject property.
- 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 extended-stay hotel shall be constructed and operated 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. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance.
4. Action of the Board shall be reflected on the Final Development Plan for the property.

Representation – Kevin Warner, with Carman Landscape Architecture, was present on behalf of the applicant. He indicated that they had reviewed the conditions and agreed to abide by them.

Opposition – Kristi Peters, Executive Director of Morning Pointe Lexington, was present on behalf of Morning Pointe and the Lantern of Lexington Morning Pointe, which adjoin the subject property. Ms. Peters expressed their concerns with regard to noise and increase of traffic levels of the proposed use.

Board Questions and Comments – At this time there were questions from the Board members with regard to the location of the properties and security with the Morning Pointe facility. Ms. Peters explained. There were also comments from Ms. Jones and Ms. Goderwis.

There were several questions directed to the applicant with regard to the activity that will go on in the establishment. Mr. Warner presented a site plan on the overhead projector and further explained, with comments from Mr. Gandhi (sworn in at this time), who further explained the requested conditional use. Screening of the property was discussed regarding what would be around the establishment to prevent disturbance, with comments from Shawn Pan (who was sworn in at this time). The site plan for the proposed use was presented on the overhead projector with further explanation from the applicant.

Applicant Rebuttal – At this time, Ms. Peters requested that the site plan be adjusted on the overhead projector to indicate the distance between her facilities and the proposed extended stay hotel. She further discussed their concerns.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-18-00048: SAMIR GANDHI** – a request for a conditional use permit to establish an Extended Stay hotel in a Professional Office (P-1) zone, at 209 Ruccio Way, for the reasons recommended by the staff and subject to the four conditions.

At this time, Ms. Meyer further expressed her concerns with the barriers/screening of the property and requested an amendment of the motion. There was further discussion among the Board members with regard to barrier/screening of the proposed extended-stay hotel, with further comments from Ms. Peters and Mr. Warner. It was decided to revise condition #3 to read as follows:

3. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance. A 6-foot, solid wood fence be placed on the northern boundary.

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 August 13, 2018.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 3:07 p.m.

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Branden Gross, Chair

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Joan Whitman, Secretary

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