

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 10, 2018

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, September 10, 2018. Members present were: Branden Gross, Jan Meyer, Raquel Carter, Chad Needham, Harry Clarke, Thomas Glover and Joan Whitman. Others present were: Josh Dezarn, Division of Engineering; Tracy Jones, Department of Law; and Casey Kaucher, Traffic Engineering. Staff members in attendance were: Jim Marx, Autumn Goderwis, and Tammy McMullen.

- II. **APPROVAL OF MINUTES** – The Chair announced that the minutes of the August 13, 2018, meeting would be considered at this time.

Action - A motion was made by Mr. Clarke, seconded by Mr. Glover, and carried 4-3 (Meyer, Gross, and Glover abstained) to **approve** the minutes of the August 13, 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.

None were requested.

a. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-18-00056: SARA HEADLEY** – requests variances to reduce the required front setback from 10 feet to 0 feet; and the required side setback from 4 feet to 2.5 feet for additional paved parking in a Single Family Residential (R-1B) zone, at 908 Chinoo Ct. (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- Removal of the noncompliant pavement would be a costly endeavor for very little value as the portion of paving that does not comply with the Zoning Ordinance is rather small and does not have much impact on the overall character of the neighborhood.
- Granting the variance will not have an adverse effect on the public health, safety, or welfare. It will provide additional space for caretakers and emergency service vehicles, should the need arise, and should allow for added mobility for the applicant.

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

- The applicant shall submit corrected drawings showing the work as completed in order to obtain a paving permit from the Division of Building Inspection within 30 days of Board action.

***Note** – At this time, Ms. Goderwis distributed one letter of support to the Board members for review.

Representation – Duvall Headley, son of the applicant, was present. Mr. Headley indicated that he had reviewed the conditions and agreed to abide by them.

Board Questions/Comments – Mr. Glover questioned why this application was recommended for approval; there have been applications in the past similar to this that have been denied. Ms. Goderwis explained. Mr. Glover compared another application that was before the Board prior and was denied, and was very similar to the one at today's hearing. Ms. Goderwis further explained that the extent of the paving for the prior application was different, and further discussed.

Ms. Carter asked for clarification of the square footage the applicant was requesting. Ms. Goderwis responded.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-1 (Glover abstained) to **approve PLN-BOA-18-00056: SARA HEADLEY** – a request for variances to reduce the required front setback from 10 feet to 0

feet; and the required side setback from 4 feet to 2.5 feet for additional paved parking in a Single Family Residential (R-1B) zone, at 908 Chinoo Ct., based on the staff's recommendation and subject to the one condition.

2. **PLN-BOA-18-00061: ERIC AND NANCY STELTER** – request a conditional use permit to operate a home-based business (individual piano lessons) in a Single Family Residential (R-1D) zone, at 606 Gingermill Lane (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create a significant increase in traffic or noise. Adequate off-street and on-street parking is available.
- b. 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 home-based business (individual piano lessons) 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 from the Divisions of Planning and Building Inspection prior to initiation of the use.
3. The conditional use shall become null and void should the applicants no longer reside at this location.

*Note – At this time, Ms. Goderwis distributed two letters of support to the Board members for review.

Representation – Eric and Nancy Stelter, applicants were present. They indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions – Referencing Article 3-10; A-H (G), he questioned staff with regard to this application. Ms. Goderwis explained.

Mr. Gross asked if this was a “complaint based” application, or were the applicants the new owners. Ms. Stelter responded that this was a new business.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-18-00061: ERIC AND NANCY STELTER** – a request for a conditional use permit to operate a home-based business (individual piano lessons) in a Single Family Residential (R-1D) zone, at 606 Gingermill Lane, as recommended by the staff and subject to the three conditions.

3. **PLN-BOA-18-00062: NISHANN SANDHU** – requests a conditional use permit to operate a home-based business (health coaching) in a Planned Neighborhood Residential (R-3) zone, within the defined Infill & Redevelopment Area, at 457 Silver Maple Way (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. Adequate on-street parking is available.
- b. 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 home-based business (health coaching) shall be operated in accordance with the submitted application materials and site plan. A modest increase in client visits is allowable up to no more than two per day only on weekdays.
2. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
3. The conditional use shall become null and void should the applicant no longer reside at this location

*Note – At this time, Ms. Goderwis distributed one letter of support to the Board members for review.

Representation – Nishann Sandhu, applicant was present. She indicated that she had reviewed the conditions and agreed to abide by them.

Board Questions/Comments – Mr. Clarke asked the applicant to explain in detail the business and intentions. Ms. Sandhu explained. Mr. Clarke asked how long each session was. Ms. Sandhu responded approximately 90 minutes.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried unanimously to **approve PLN-BOA-18-00062: NISHANN SANDHU** – a request for a conditional use permit to operate a home-based business

(health coaching) in a Planned Neighborhood Residential (R-3) zone, within the defined Infill & Redevelopment Area, at 457 Silver Maple Way, based on the staff's recommendation and subject to the three conditions.

4. **PLN-BOA-18-00059: BARBARA FOLEY** – requests a variance to reduce the required setback for additional paved parking from 6 feet to 0 feet in a Single Family Residential (R-1D) zone, at 4005 Elora Lane (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. Removal of the noncompliant pavement would be a costly endeavor for very little value as the pavement does not have much impact on the overall character of the neighborhood. The portion of paving that does not comply with the Zoning Ordinance is rather small and the neighborhood has multiple driveway types, with some properties even having two driveways.
- b. Granting the variance will not have an adverse effect on the public health, safety, or welfare, as it will provide off-street parking where street parking has resulted in incidents with parked cars following the connection of a previously dead-end street to a new subdivision in recent years.

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

1. The applicant shall submit corrected drawings showing the work as completed in order to obtain a paving permit from the Division of Building Inspection within 30 days of Board action.

*Note – At this time, Ms. Goderwis distributed several letters of support to the Board members for review.

Representation – Barbara Foley, applicant was present (who was sworn in at this time). She indicated that she had reviewed the conditions and agreed to abide by them.

Board Questions/Comments – Ms. Meyer questioned the staff report that noted, there was a site plan that showed a fully compliant, paved area. Ms. Foley responded that it was a miscommunication.

Mr. Clarke indicated that he could not find the subject street address on a map. Ms. Foley explained, that the street name had been changed.

Ms. Meyer requested a drawing of the drive-way with the paving. Ms. Goderwis presented the photo on the overhead projector as Ms. Foley further explained their request for the variance.

At this time, there was further discussion by the Board, applicant and staff with regard to the following:

- The area that is out of compliance
- Widening the apron
- Drive-way expansion

Mr. Needham requested to view the actual photo of the property. Ms. Goderwis presented the photos on the overhead projector with further discussion, to include comments from Ms. Foley.

Mr. Needham asked how many other drive-ways have been expanded. Ms. Goderwis responded that it has been several, with a comment from Ms. Foley. At this time, there was further discussion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-18-00059: BARBARA FOLEY** – 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-1D) zone, at 4005 Elora Lane, for the reasons recommended by the staff and subject to the one condition.

5. **PLN-BOA-18-00064: HARMONY DAY MONTESSORI SCHOOL** – requests a conditional use permit to establish a pre-school program in a High Density Apartment (R-4) zone, at 2885 Rio Dosa Dr. (Council District 7).

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 in the church for a number of years without creating a problem. Church properties are typically not used throughout the week, so they are generally well suited for uses such as a preschool. This property is located near residential properties, and a preschool could provide a useful service for the surrounding neighbors.
- b. More than adequate parking exists and is available on the subject property.
- c. A fenced play area exists as required, and is large enough to accommodate up to 41 children.
- d. 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 preschool use shall be conducted in accordance with the submitted application, site plan, and the listed conditions.
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. The preschool's days and hours of operation shall not exceed Monday through Friday, from 6:00 a.m. to 6:00 p.m. without further approval of by the Board of Adjustment.
4. Should the operators of the preschool wish to expand class size in the future, it may provide services for no more than 41 students on the subject property, without further approval from the Board of Adjustment.
5. The facility shall be fully licensed and comply with requirements of the Kentucky Cabinet for Health and Family Services, Division of Regulated Child Care.

*Note – Applicant arrived later into the hearing.

Representation – Michelle Walker-Campbell, applicant was present (who was sworn in at this time). Ms. Walker-Campbell indicated she had not read over the conditions, and took the time during this hearing to read them. She indicated she did agree to abide by the conditions.

Board Question – For the record, Ms. Meyer noted that this school has been operating since August 2010. Ms. Walker-Campbell responded that was correct. Ms. Meyer asked if this application was being brought before the board so that the school could offer services to younger children, and that there hasn't been any problems with operating the business. Ms. Walker-Campbell said yes.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-18-00064: HARMONY DAY MONTESSORI SCHOOL** – a request for a conditional use permit to establish a pre-school program in a High Density Apartment (R-4) zone, at 2885 Rio Dosa Dr., based on the staff's recommendation and subject to the five conditions.

b. **Discussion items:**

1. **PLN-BOA-18-00057: FRANK'S DONUTS, LLC** – requests a conditional use permit for a drive-through facility within the defined Infill & Redevelopment Area, in a Neighborhood Business (B-1) zone, at 547 & 549 East Third Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or surrounding properties. The subject property is located near neighborhoods and a number of employers downtown, and this type of drive-through would provide a convenient amenity to people who work or live in this area.
- b. The proposed drive-through should not have adverse effects on traffic at this location. The drive-through design is enhanced by having separate entry and exit points on East Third Street and Grinstead Street, leaving space for customers who park to go inside the donut shop. There is more than adequate space available for the required vehicular stacking area.
- 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 drive-through facility shall be established in accordance with the submitted application materials and site plan, with revisions allowed as required by the Division of Traffic Engineering.
2. The final design of the drive-through/parking lot shall be subject to review and approval by the Division of Traffic Engineering.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

*Note – At this time, Ms. Goderwis distributed several letters to the Board members for review.

Representation – Antonio Gill Carranza, applicant, and Jack Stewart with Stewart Architects, were present. They indicated that they had reviewed the conditions and agreed to abide by them. At this time, Mr. Carranza requested a continuance until the next month's hearing in order to be able to reach out to those who are in opposition.

Opposition – Amy Clark, member of the Fayette County Neighborhood Council Board, spoke in support of the East End Neighborhood Development Cooperation, and expressed her concerns with regard to the request of a

continuance. She indicated that per Ms. Mallory they were under the impression the applicant was going to withdraw this application.

At this time, there was discussion with regard whether to continue or postpone this case, with comments from Ms. Jones and Mr. Stewart.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried unanimously to **continue PLN-BOA-18-00057: FRANK'S DONUTS, LLC** – until the October 8, 2018 hearing.

2. **PLN-BOA-18-00060: VERONICA JOSEPH** – requests a conditional use permit to operate a family childcare for up to 12 children in a Single Family Residential (R-1C) zone, at 1205 Octavian Circle (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. Adequate off-street and on-street parking is available. A fenced outdoor play area will be provided that is much larger than the minimum size required.
- b. 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. Childcare for up to 12 children shall be provided 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 from the Divisions of Planning and Building Inspection prior to initiation of the childcare use.
3. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
4. The conditional use shall become null and void should the applicant no longer reside at this location.

*Note – At this time, Ms. Goderwis distributed several letters to the Board members for review.

Representation – Steve Wides, attorney and Veronica Joseph, applicant, were present. Ms. Joseph indicated that she had reviewed the conditions and agreed to abide by them. At this time, Mr. Wides explained and discussed the reason for the requested conditional use, with comments from Ms. Joseph.

Board Questions/Comments – Mr. Gross noted and discussed the text amendment that was passed with regard to family child care for up to 6 children that would not need a conditional use permit.

Mr. Gross asked the applicant to explain the hours and days of operation, and how many children she expected to have for her proposed use. Ms. Joseph responded and further discussed, with comments from Ms. Jones and Mr. Glover.

At this time, there was further discussion with regard to the requested conditional use and placing an additional condition limiting the hours of operation.

Mr. Glover questioned the other daycares in the applicant's area. Ms. Joseph responded that she was aware of several, but they are full. There was further discussion by the board and the applicant at this time with regard to surrounding daycare service, transportation, and structure for the daycare, with comments by Ms. Jones.

Opposition – Sue Roberts, who lives at 1208 Octavian Circle; directly across the street from the applicant, stated that she has nothing against the neighbors, but she just did not want a business on their street with extra traffic coming and going.

Ella Neikirk, who lives at 1220 Octavian Circle, expressed her concerns that some of the safety of some of the kids who like to play in the street of the neighborhood with the extra traffic flow coming through from the proposed use. She also has concerns of the value of the home with a daycare in the neighborhood.

Board Questions/Comments – Ms. Carter asked for clarification that the daycare has gone through all that it needed to in order to run a daycare from the home. Ms. Joseph responded, with comments from Mr. Wides.

At this time there was further discussion with regard to the hours, days, number of children, and mitigation of traffic in the neighborhood with regard to the proposed conditional use.

Applicant Rebuttal – At this time, Ms. Joseph addressed the concerns of those in opposition, with a comment from Mr. Clarke. Mr. Glover asked the applicant if she would agree to modification of the conditions. Ms. Joseph agreed.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-18-00060: VERONICA JOSEPH** – a request for a conditional use permit to operate a family childcare for up to 12 children in a Single Family Residential (R-1C) zone, at 1205 Octavian Circle, based on the staff's recommendation and subject to the four conditions with an additional condition as follows:

5. That it be operational only on Monday through Saturday from 6:30 am until 7:30 pm.

3. **PLN-BOA-18-00063: ELEMENT DESIGN** – requests a conditional use permit to construct a parking lot in a Professional Office (P-1) zone, at 2405 Greatstone Pt. (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. There should not be any adverse traffic impacts on the surrounding neighborhood. The proposed parking lot is relatively modest in size and should relieve expected parking congestion issues caused by the additional services planned at the KMSF building. Over two-thirds of the lot will remain as open space.
- b. The proposed use should not have an adverse effect on the public health, safety, or welfare. There is an existing sidewalk along the frontage of the property that provides a safe path for those who will be parking on the subject property and walking to work at the KMSF building.
- 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 parking lot shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits shall be obtained from the Divisions of Building Inspection, Engineering, and Planning.
3. A storm water management plan shall be implemented in accordance with the requirements of the Engineering Manuals and accepted by the Urban County Engineer.
4. Traffic circulation and layout of the parking areas shall be approved by the Division of Traffic Engineering.
5. All parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.

Representation – Catarina Marina, was present on behalf of the applicant. She indicated she did agree to abide by the conditions. Ms. Marina explained their reasons for the requested conditional use.

Board Questions/Comments – Ms. Meyer asked if the mobile MRI unit would be parked in the existing parking lot. Ms. Marina responded yes. At this time, Ms. Marina addressed a few concerns of the neighbors with regard to parking concerns.

Mr. Clarke asked if the people who are parking there visiting the Kentucky Clinic South. Ms. Marina responded and explained.

Opposition – Luther Hargis, owner of 1041 Grimson Creek, expressed his concerns about the construction of the parking lot and its location and further discussed. He indicated he would like the parking to be up against Greatstone and any potential future building to be back away from Greatstone. Mr. Hargis also expressed his concern with the proposed new entrance and further discussed.

Board Questions/Comments – Mr. Glover asked Ms. Kaucher about any concerns of the access point of the requested conditional use. Ms. Kaucher responded that Traffic Engineering did not have any concerns.

Mr. Clarke asked the applicant if the location of the parking is related to saving the trees. Ms. Marina responded and further discussed. At this time, there was further discussion with regard to use of the medical facility. Ms. Marina responded and noted that it will be a continued use of medical services.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-18-00063: ELEMENT DESIGN** – a request for a conditional use permit to construct a parking lot in a Professional Office (P-1) zone, at 2405 Greatstone Pt., based on the staff's recommendation and subject to the five conditions.

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 October 8, 2018.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 3:00 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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