

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

October 8, 2018

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, October 8, 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 and Andrea Brown, Department of Law; and Stephen Parker, Traffic Engineering. Staff members in attendance were: Jim Marx, Autumn Goderwis, and Tammye McMullen.

- II. **APPROVAL OF MINUTES** – The Chair announced that the minutes of the September 10, 2018, meeting would be considered at this time.

Action - A motion was made by Mr. Glover, seconded by Mr. Clarke, and carried 7-0 to **approve** the minutes of the September 10, 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.

*Note – At this time, Sam Brawner discussed with the Board and the staff with regard to the request for postponement of **PLN-BOA-18-00066: Berea Christian Church**, and requested that his case be heard at today's hearing.

a. ABBREVIATED HEARINGS:

1. **PLN-BOA-18-00065: MATTHEW STINNETT & TONYA JERNIGAN** – request a variance to reduce the required setback of a 6 foot tall fence in a side street side yard from 36 inches to 21 inches in a Single Family Residential (R-1C) zone, at 766 Hildean Drive (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- While it is disconcerting that the fence was constructed in a location other than what was shown on the approved permit plans, and that a variance was not requested prior to construction, the existing tree line justifies a reduction in the normally required setback.
- While fences of this height so close to the right-of-way are not common in this vicinity, the size and configuration of the property are such that the requested variance should not have an effect on the overall character of the general vicinity. The property is triangular, and has approximately 525' of street frontage. The length of fence requiring the variance is only about 125', just under 25% of the total frontage. As constructed the fence is still set back nearly two feet from the edge of the sidewalk.

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 an updated fence permit from the Division of Building Inspection within 30 days of Board action.

*Note – Ms. Goderwis distributed several letters of opposition and one letter of support for this case for the board members to review.

Representation – Matthew Stinnett, applicant, was present. Mr. Stinnett indicated that they had reviewed the condition and agreed to abide by it.

Board Questions/Comments – Ms. Meyer asked for explanation of the applicant having an approved permit that was within the setback, and then ended up having a fence that wasn't within the setback. Mr. Stinnett responded and explained further.

Mr. Clarke asked the applicant to explain how much of the fence was 21 inches to the sidewalk, and how much was 3 feet from the sidewalk. Mr. Stinnett responded and discussed further.

Ms. Carter requested for a photo to be presented with further explanation. Mr. Stinnett presented photos for the record and further discussed.

There was further discussion by the board and the applicant with regard to the safety of the drive-way with the fence (i.e.: visibility etc.), as well as past applications similar to this that have been disapproved, with comments from Ms. Goderwis.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-1 (Glover nay) to **approve PLN-BOA-18-00065: MATTHEW STINNETT & TONYA JERNIGAN** – a request for a variance to reduce the required setback of a 6 foot tall fence in a side street side yard from 36 inches to 21 inches in a Single Family Residential (R-1C) zone, at 766 Hildean Drive, based on the staff's recommendation and subject to the one condition.

2. **PLN-BOA-18-00068: JONES AND SOUTHERN PROPERTIES, LLC.** – requests a variance to reduce the required side yard setback from 5 feet to 3 feet in order to construct a four-plex within the defined Infill & Redevelopment area in a High Density Apartment (R-4) zone, at 530 Merino St. (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. The special circumstance that justifies the need for the variance is the 15' sewer easement on the eastern side of the property, which renders 30% of the property unbuildable.
- b. Granting the variance should not have an adverse effect on the character of the general vicinity, as there is not a well-defined streetscape, due to a number of the surrounding properties being vacant/undeveloped. Where there are houses nearby, on the same side of Merino, they have rather narrow side yards.
- c. Granting the variance will not allow an unreasonable circumvention of the Zoning Ordinance. The applicant is going through the appropriate process and has applied for the variance prior to commencing construction. Additionally, the variance will allow the applicant to create a higher density project, meeting the intent of the R-4 zone which is "primarily for multi-family dwellings, but at a higher density than the R-3 zone."

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

1. The four-plex shall be constructed in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering prior to construction and occupancy.

Representation – Taylor Steele and David Jones, applicants, were present. They indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions/Comments – Mr. Glover asked if the property was on the corner of next to the corner. Mr. Jones responded that it was in the middle.

Mr. Gross noted that he remembered this application before the Planning Commission, and indicated that it was proposed to be two buildings. Mr. Jones responded that the proposal had changed, and further explained.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried 7-0 to **approve PLN-BOA-18-00068: JONES AND SOUTHERN PROPERTIES, LLC.** – a request for a variance to reduce the required side yard setback from 5 feet to 3 feet in order to construct a four-plex within the defined Infill & Redevelopment area in a High Density Apartment (R-4) zone, at 530 Merino St., for the reasons recommended by the staff and subject to the two conditions.

3. **PLN-BOA-18-00071: JAMES FENDER** – requests a conditional use permit to operate a funeral home in conjunction with a place of religious assembly in the Agricultural Urban (A-U) zone, at 1545 Russell Cave Rd. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use has been conducted on the property for several years without creating a problem.
- b. More than adequate parking exists and is available on the mosque's properties.
- 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 funeral home use shall be conducted in accordance with the submitted application materials and site plan. No embalming shall occur on the subject property.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the continuation of this use.
3. The facility shall be fully licensed and comply with requirements of the Kentucky Board of Embalmers and Funeral Directors.

Representation – Jacob Walbourn, attorney on behalf of the applicant, was present. Mr. Walbourn indicated that they had one minor change they would like to request to condition #1, which they had discussed with staff prior to the hearing, and to which staff was agreeable.

Board Questions/Comments – Mr. Gross asked for explanation of the requirements for “funeral services”. Mr. Walbourn explained and further discussed, with a comment from Ms. Goderwis indicating that the staff was agreeable to the change to the condition.

At this time, there was further discussion with regard to the regulations and whether or not this facility would be considered a full service funeral home.

Mr. Glover asked would there be any embalming at the facility. Mr. Walbourn responded, only as needed for the annual inspection to maintain the licensure. There was further discussion by the board and the applicant with regard to the wording of condition #1. At this time, it was further discussed as to how word or delete certain words from the condition. It came to the conclusion to delete the last sentence.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-1 (Glover nay) to **approve PLN-BOA-18-00071: JAMES FENDER** – request for a conditional use permit to operate a funeral home in conjunction with a place of religious assembly in the Agricultural Urban (A-U) zone, at 1545 Russell Cave Rd., for the reasons discussed at today’s hearing; the reasons of the staff report, and subject to the three conditions, deleting the language in condition #1 as follows:

1. The funeral home use shall be conducted in accordance with the submitted application materials and site plan. ~~No embalming shall occur on the subject property.~~

b. **Discussion items:**

*Note – The following case is a continuance from the September 10th hearing.

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:

1. 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.
2. 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.
3. 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:

- a. 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.
- b. The final design of the drive-through/parking lot shall be subject to review and approval by the Division of Traffic Engineering.
- c. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

* Note – Ms. Goderwis distributed several letters of opposition to the board members for review.

Representation – Antonio Carranza, applicant, and Jack Stewart, architect, were present. Mr. Carranza indicated that they had reviewed the conditions and agreed to abide by them.

Discussion – At this time, Mr. Gross asked for the site plan to be shown on the overhead projector, as Mr. Carranza discussed his proposed use, indicating that he had conversations with the neighbors. He further addressed the concerns of the citizens with regard to traffic impact, with comments from Mr. Stewart. There was further discussion by the board and applicant with regard to the grade level; and the exit and entry ways off Grinstead and Third Street.

Citizen Comment – Thomas Tolliver (was sworn in this time), who lives at 335 East Third St., has lived there for 24-years, spoke in favor of the requested conditional use.

The following citizens spoke in opposition to this case:

- Billie Mallory, Executive Director of the Eastend Community Development Cooperation, located at 560 East Third Street, indicated that they welcome businesses in the corridor; however, they are opposed to the drive-through.

Mr. Glover noted that he didn't see anything in Ms. Mallory's studies that discourage drive-through windows. He then asked if she didn't think they could have a combination of traffic going through the corridor. Ms. Mallory responded, no.

- Chef Angelia Drake from The Heart of Catering, as well as the President of the Eastend Developing Committee, expressed her concerns about the safety of the children at Charles Young Park with the traffic impact of the proposed drive-through. Ms. Drake submitted a photo of the traffic in the area for the record.

For clarification, Mr. Glover asked if there was designated parking for Charles Young Park. Ms. Drake, responded, yes, but the kids are not doing the parking.

- Amy Clark, 628 Kastle Rd. on behalf of the Fayette County Neighborhood Council. Ms. Clarke presented a PowerPoint presentation on the overhead projector and expressed her concerns about the requested condition use.
- James Braeshear, owns and lives at 559 E. Third Street, expressed his concerns of precedent settings. Mr. Braeshear also noted that the headlights beaming from the cars in the drive-through into someone's residential window would be a nuisance.
- Mary Kanai, who lives at 559 E. Third Street indicated that she was not opposed to the donut shop, but was not in favor to the drive-through.
- James Brown, 1st District Councilman, noted that he shared some of the same concerns of the citizens, and expressed his concerns of the drive-through.

Frank Algaro (was sworn in at this time), the son of Francisco Algaro, owner of Frank's Donuts, addressed the headlight concern of the citizens, and noted that a "barrier" can be placed in between the donut shop and the resident's house. Mr. Algaro also noted that the business hours would be 4:30 am until 1:00 pm, and would not affect the normal traffic flow that occurs.

Frank B. noted that he was very good friends with the owners of Frank's Donuts and spoke in favor of the proposed drive-through.

At this time, there was discussion by the Board and the staff with regard to the zoning of the general vicinity; and where the residential zone begins.

Applicant Rebuttal – Mr. Carranza addressed questions related to the access easement; and the headlights towards the back of the drive-through. Mr. Carranza noted that he was open to anything to prevent issues for the neighbors.

Board Questions/Comments – Ms. Carter questioned whose idea it was to open the exit to Grinstead. Mr. Parker (Traffic Engineering) responded and explained. At this time, there was further discussion by the board, the staff, and the applicant with regard to resolution of traffic impact.

Mr. Needham asked Mr. Parker to speak on the Legacy Trail as to where it is going and what it is going to look like. Mr. Parker responded and further discussed, with comments by Ms. Goderwis.

Note: Mr. Gross declared a brief recess at 3:00 p.m. in order for the Board to discuss changes to the conditions. The meeting reconvened at 3:11 p.m., with the same members in attendance. Upon return from recess, the Board members discussed, and placed on the overhead projector, the new added conditions.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 4-3 (Meyer, Gross, and Needham nay) to **approve PLN-BOA-18-00057: FRANK'S DONUTS, LLC.** – request for 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, based the staff's recommendations, including the conditions listed by the staff, and adding two more conditions (4 & 5) as follows:

4. There shall be no access on Grinstead. Entry and exit points shall be on East Third Street. A revised site plan shall be submitted to show these revisions.
5. The conditional use shall become null and void should the donut shop use cease.

Mr. Carranza was asked if he would agree to abide the new conditions. Mr. Carranza responded, yes.

Note: At this time, Ms. Whitman had left the meeting.

2. **PLN-BOA-18-00066: BERE A CHRISTIAN CHURCH** – requests a conditional use permit to expand a church parking lot in the Agricultural Rural (A-R) zone, at 3894 Iron Works Pike (aka 2689 Berea Rd.) (Council District 12).

The Staff Recommends: Postponement, for the following reasons:

- a. While staff is supportive of the applicant's request for additional parking, there are significant questions related to the overall design of the parking area that is currently proposed. The applicant should confer with the Division of Traffic Engineering to identify potential changes to the proposal in order to address these issues prior to the Board's consideration of this request.

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

Representation – Sam Brawner, representing the church, was present. Mr. Brawner presented his site plan on the overhead projector and explained the requested conditional use, and explained why they would be prefer to have their case heard at today's hearing.

Discussion – There was discussion by the Board, applicant, and staff with regard to the applicant's proposed changes, with comments from Mr. Parker. Mr. Parker further discussed the reasons for Traffic Engineering's recommendation of disapproval. It was discussed to continue this hearing in order to give the applicant time to submit a new site plan.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried 6-0 (Whitman absent) to **continue PLN-BOA-18-00066: BERE A CHRISTIAN CHURCH** – until the November 12' 2018 hearing.

3. **PLN-BOA-18-00070: CLARK'S CENTRAL, LLC.** – requests a conditional use permit for a drive-through accessory to a convenience store in a Neighborhood Business (B-1) zone, at 1419 Versailles Rd. (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed drive-through will is unlikely to have adverse effects on public safety due to the anticipated level of use and adequate vehicle stacking area provided. While the configuration may cause some congestion on the subject property, it is unlikely to have a significant impact on the public streets. The applicant plans to provide striping and signage to mitigate for potential negative impacts relating to parking and turning movements.
- b. Except for the neighbor directly to the rear, the drive-through is on the opposite side of the building from most of the nearby residences. The drive-through window should not create a noise nuisance for the nearby neighbors, as there will be no menu board, amplified speaker, or microphone device at the window. Additionally, the applicant is proposing an 8-foot tall fence and landscaping along the rear property line to reduce potential noise and headlight disturbances.

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

1. The drive-through use shall be established in accordance with the submitted application materials and site plan.
2. There shall be no menu board, amplified speaker, or microphone devices associated with the drive-through window.
3. The applicant shall maintain an 8-foot tall, solid fence at the rear property line, as shown on the approved site plan.
4. The applicant shall maintain landscaped screening at the rear property line, consisting of American Arborvitae or similar plantings, with an initial planting height of at least three feet.
5. The applicant shall maintain all proposed striping, pavement markings, and directional signage, as shown on the approved site plan

6. All necessary permits including a Zoning Compliance Permit shall be obtained from the Division of Planning prior to initiation of the use.
7. The conditional use shall become null and void should any portion of the building change from a convenience store/gas station to another use.

Representation – Doug Martin, attorney on behalf of the applicant, was present, along with Daniel Rehner, engineer with Thoroughbred Engineering, and Mark Ruddy, who lives at 102 Delmont – the property to the immediate rear of the gas station, and an employee of the applicant. Mr. Martin indicated that they had one change to item #4 on the conditions and explained further, with comments from Ms. Goderwis.

Mr. Martin presented a PowerPoint presentation on the overhead projector and further discussed the requested conditional use.

Board Questions/Comments – Ms. Meyer asked how tall the barrier would be. Mr. Martin responded and explained.

Mr. Gross asked if there would be alcohol sales from the drive-through window. Mr. Martin responded that it was possible, but rare, and further discussed.

Mr. Glover asked about the drive-through already existing. Mr. Martin explained, noting it is there, but not usable.

Referring to the presentation, Mr. Rehner further explained the design of the requested conditional use, and further explained.

There was discussion by the Board and the applicant with regard to entry and exit way of the drive-through and parking.

Mark Ruddy expressed his support of why it felt the drive-through would be a safety factor, and further discussed.

Mr. Martin noted that he has put in the record, a flash drive of the Cardinal Valley small area development plan; The Oxford Circle Study, and the Versailles Road mobility study.

Citizen Comments – Rita Miller expressed her concerns of the proposed use with regard to selling alcohol out of the drive-through possibly causing a negative effect. She read a statement into the record and distributed it to the Board members.

Mr. Gross asked staff if they were comfortable changing the language in condition #4 as previously requested. Ms. Goderwis responded yes.

Applicant Rebuttal – Mr. Martin addressed the concerns of Ms. Miller and further discussed, referring back to the PowerPoint presentation on the overhead projector.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 4-2 (Whitman absent; Gross and Meyer nay) to **approve PLN-BOA-18-00070: CLARK'S CENTRAL, LLC.** – a request for a conditional use permit for a drive-through accessory to a convenience store in a Neighborhood Business (B-1) zone, at 1419 Versailles Rd., based on the staff's recommendations and subject to the seven conditions with the change to condition #4 as follows:

4. The applicant shall maintain landscaped screening ~~at~~ **near** the rear property line, consisting of American Arborvitae or similar plantings, with an initial planting height of at least three feet.

*Note - Mr. Clarke noted that he would like his comments with regard to the exiting from the drive-through window having problems, and needs to be looked at again and cleared up a little, to be put on the record.

4. **PLN-BOA-18-00067: JOSEPH HUDSON** – requests an administrative appeal to increase the allowable size of an accessory structure from 831 square feet to 1,260 square feet; and a variance to decrease the required side yard setback for an accessory structure from 18 inches to 1 inch in order to construct a new 2-story garage within the defined Infill & Redevelopment Area in a Two Family Residential (R-2) zone, at 280 Bassett Ave. (Council District 5).

The Staff Recommends: Disapproval, for the following reasons:

- a. There are not any special circumstances that justify the need for the setback variance. The subject property is of a size and configuration that would allow a fully compliant, 2-story garage to be

- constructed at the required setback.
- b. There are not any special circumstances that justify the need for an increase in allowable square-footage of the accessory structure from 831 square feet to 1,260 square feet. While this type of appeal has been approved from time to time, the scale of the accessory structure in relation to the lot is a very important consideration. Approval of these types of requests have typically been in locations where the subject property is a much larger lot, with more rural character.
 - c. Granting the variance and appeal could have an adverse effect on the character of the general vicinity. While detached garages are not uncommon in the general vicinity, they are mostly modest in size and only one story. No variances for accessory structure setbacks have been requested or granted in the immediate vicinity.
 - d. Granting the variance will could allow an unreasonable circumvention of the Zoning Ordinance. The applicant began construction without obtaining the proper permits and without regard to the requirements of the Zoning Ordinance.

Staff Report – Ms. Goderwis gave a staff report with regard to the staff's recommendation of disapproval.

Board Questions and Comments – Mr. Needham asked the staff to explain what "unfinished" would consist of. Ms. Goderwis explained, with comments from Mr. Gross.

Mr. Gross asked how much square footage was the ground floor. Ms. Goderwis responded that it was 630 square foot.

There was further discussion with regard to the square footage of the requested administrative appeal.

Representation – Joseph Hudson, applicant was present. At this time, Mr. Hudson explained his requested variance and administrative appeal and further discussed.

Discussion – There was discussion by the Board and the applicant with regard to the already constructed garage and how to possibly salvage the project, as well as discussion on whether or not to approve or deny this application, with comments from Ms. Jones and Mr. Marx.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-0 (Whitman absent) to **disapprove PLN-BOA-18-00067: JOSEPH HUDSON** – request for an administrative appeal to increase the allowable size of an accessory structure from 831 square feet to 1,260 square feet; and a variance to decrease the required side yard setback for an accessory structure from 18 inches to 1 inch in order to construct a new 2-story garage within the defined Infill & Redevelopment Area in a Two Family Residential (R-2) zone, at 280 Bassett Ave., for the reasons recommended by the staff.

IV. **BOARD ITEMS**

None to be heard.

V. **STAFF ITEMS**

- a. Staff reminded board members of the upcoming David Pike, all day training on Friday, October 12, 2018.
- b. Landscape Review Committee - The term of Mr. Richard Weber, Landscape Architect, owner of Springhouse Gardens member of the Landscape Review Committee, will expire on November 30 of this year. Mr. Weber has agreed to serve another four-year term. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jan Meyer	Board of Adjustment
11/30/2017	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2018	Mr. Richard Weber	Landscape Architect
11/30/2019	Ms. Ann Bowe	Tree Board
11/30/2020	Mr. Mike Cravens	Lexington Homebuilders

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Whitman absent) to **reappoint** Mr. Richard Weber to serve on the Landscape Review Committee.

c. Staff noted the upcoming 2019 meeting schedule due for voting at next month's hearing.

VII. **NEXT MEETING DATE** – The Chair announced that the next meeting date would be November 12, 2018.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 4:45 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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