

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

January 14, 2019

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, January 14, 2019. Members present were: Branden Gross, Jan Meyer, Raquel Carter (arrived at 1:36 p.m.), Harry Clarke, Thomas Glover (arrived at 2:07 p.m.), Chad Needham, and Joan Whitman. Others present were: Josh Dezarn, Division of Engineering; Tracy Jones, 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 December 10, 2018, meeting would be considered at this time.

Action - A motion was made by Mr. Clarke, seconded by Ms. Whitman, and carried 5-0 (Glover and Carter absent) to **approve** the minutes of the December 10th meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, The Chair sounded the agenda.

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.

There were none.

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. **ABBREVIATED HEARINGS:**

1. **PLN-BOA-18-00081: JEFFREY & KATHERINE WISEMAN** – request a variance to reduce the required setback for a swimming pool from 30 feet to 6 feet within the defined Infill & Redevelopment area in a Single Family Residential (R-1C) zone, at 223 Glendover Road (Council District 4).

The Staff Recommends: **Approval of a lesser variance, to reduce the required setback from 30' to 10'**, for the following reasons:

- Granting a variance will not have an adverse effect on the public health, safety, or welfare. The lesser variance will allow for a walkway surrounding the pool on all sides.
- Granting a variance will not have a negative impact on the character of the general vicinity. While a pool is considered to be a "structure," the visual impact of a pool is significantly less than that of a building. Therefore, a setback variance from, 30' to 10' is generally reasonable.
- The configuration of the lot, locations of other structures, and the location of the existing easement are special circumstances which justify the need for a variance.
- Granting a variance will not result in an unreasonable circumvention of the Zoning Ordinance. The applicant is going through the appropriate processes to seek approval prior to commencing construction.

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

- The pool shall be installed at a minimum setback of 10' from the property line along Glendover Road.
- All necessary permits shall be obtained from the Division of Building Inspection prior to beginning construction.

Representation – Katherine Wiseman, applicant was present, along with Rick Rushing. Ms. Wiseman indicated that she had reviewed the conditions and agreed to abide by them.

Board Questions/Comments – Ms. Meyer asked how far back the setback was from Glendover Road. Ms. Wiseman responded that it was on Edgemoor, with a comment from Mr. Rushing noting that there is a 10-foot easement that comes through the middle of the property line and the pool is going to be a minimum of 6 feet from the real lot line.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 6-0 (Glover absent) to **approve** **PLN-BOA-18-00081: JEFFREY & KATHERINE WISEMAN** – a request for a variance to reduce the required setback for a swimming pool from 30 feet to 10 feet within the defined Infill & Redevelopment area in a Single Family Residential (R-1C) zone, at 223 Glendover Road, based on the staff's recommendations and subject to the two conditions.

2. **PLN-BOA-18-00080: SPY COAST FARM KENTUCKY, LLC.** – requests a conditional use permit to operate a farm gift shop as an accessory use in the Agricultural Rural (A-R) zone, at 3295 Spy Coast Lane. (Council District 12).

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

- a. The proposed use should not adversely affect the subject or surrounding properties. The use is compatible with the existing horse farm operations on the site and the primary client base for the gift shop will be guests who are on the property for a tour of the equine facility, and the purpose of the gift shop is to enhance their experience of the farm.
- b. The proposed use should not have any major traffic impact since customers of the gift shop will already be visiting the property for tours. There will be no new employees and no new parking spaces are required.
- 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. That the gift shop be located and operated in compliance with the submitted application and site plan.
2. That there be no signage, other than directional or identification signage interior to the property, advertising the farm gift shop.
3. All necessary permits and approvals, including a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, prior to commencement of the gift shop use.

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

Board Questions/Comments – Mr. Needham asked if this was a structure that the Board granted a conditional use for earlier in the year. Mr. Carneal respond that this structure is different and further explained.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 6-0 (Glover absent) to **approve PLN-BOA-18-00080: SPY COAST FARM KENTUCKY, LLC.** – a request for a conditional use permit to operate a farm gift shop as an accessory use in the Agricultural Rural (A-R) zone, at 3295 Spy Coast Lane, based on the staff's recommendations and subject to the three conditions.

3. **PLN-BOA-18-00085: ROMAN CATHOLIC BISHOP DIOCESE** – requests a conditional use permit for a place of religious assembly in order to expand parking for an existing church; and a request for a variance to reduce the required front setback for a parking lot from 20 feet to 10 feet in a High Density Apartment (R-4) zone, at 427, 429, 431, 435, 437, and 441 Smith Street and 432 Jefferson 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 parking lot will provide needed parking spaces for the expanding church, which is located in an area that generally needs more parking. The parking lot will be landscaped in order to create a buffer between the vehicular use and the residential neighborhood.
- b. The proposed use should not have any major traffic impact. The new parking lot will replace the 23 leased parking spaces that are no longer available to the church, and will be suitable for the previously approved sanctuary building.
- c. The proposed variance should not have a negative impact on the character of the general vicinity. Many buildings in the vicinity have a setback of less than 20' and there will be no access to the parking lot from Smith Street.
- 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 project shall be completed in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.
3. The final configuration of the parking lot, including any changes to the church's existing parking layout, shall be subject to approval by the Division of Traffic Engineering.
4. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
5. 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.
6. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.
7. Should the previously approved 400-seat sanctuary building be constructed, the applicant shall secure additional

parking spaces through a lease agreement or seek a variance. Should these options not be viable, the allowable sanctuary seating shall be adjusted accordingly at the time that building permits are issued.

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

Representation – Father Norman Fisher, applicant and Fred Eastridge with ECSI, were present. Mr. Fisher indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions/Comments – Mr. Clarke questioned the narrowness of the drive-way and the closeness to both houses, and expressed his concern, and asked if there was a reason why the drive-way was necessary. Mr. Eastridge responded and explained.

Mr. Needham indicated that he agreed that the access should come in and out of the original parking lot. He asked if the parking lot would change if the church acquired the lot in between the existing lot or the new drive-way. Mr. Eastridge noted that it would expand the existing parking lot.

At this time, there was further discussion by the Board and the applicant, and comment by Mr. Fisher and Mr. Parker (Traffic Engineering), with regard to the following:

- Parking;
- Speaking with the neighbors with regard to this proposed use;
- Sharing of the parking lot; and
- Lighting for the parking.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 6-0 (Glover absent) to **approve PLN-BOA-18-00085: ROMAN CATHOLIC BISHOP DIOCESE** –a request for a conditional use permit for a place of religious assembly in order to expand parking for an existing church; and a request for a variance to reduce the required front setback for a parking lot from 20 feet to 10 feet in a High Density Apartment (R-4) zone, at 427, 429, 431, 435, 437, and 441 Smith Street and 432 Jefferson Street, based on the staff's recommendations and subject to the seven conditions.

4. **PLN-BOA-18-00082: ECKMAN PROPERTIES** – requests an administrative appeal to change one non-conforming use (cocktail lounge) to another non-conforming use (florist) in a Planned Neighborhood Residential (R-3) zone, at 185 Eastern Ave. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested change in non-conforming use from a cocktail lounge to a florist should not adversely affect either the subject or surrounding properties. This change in use will allow a positive change, as it will provide an amenity for residents of the neighborhood with less potential for disturbance than the prior use.
- b. There should not be adverse impacts on traffic. The required parking will be provided on site.
- c. The proposed use is in a more restricted zoning classification than the previous use, and therefore qualifies for approval per Article 4-3(e).

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

1. The change in use to a florist shall be done in accordance with the submitted application materials and site plan. Cite plan revisions are acceptable if needed to meet Traffic Engineering requirements.
2. All necessary permits shall be obtained from the Division of Planning and the Division of Building Inspection prior to occupancy of the property as a florist.
3. Traffic circulation and layout of the parking areas shall be approved by the Division of Traffic Engineering.
4. All parking areas shall be paved, with spaces delineated and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.

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

Representation – William Wood, representing Eckman Properties, present on behalf of the applicant. Mr. Wood indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions/Comments – Ms. Carter commented that she liked the project that was being proposed, with comments by Mr. Needham.

Mr. Needham questioned that parking spaces that were available. Mr. Wood responded and further explained.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 6-0 (Glover absent) to **approve**

PLN-BOA-18-00082: ECKMAN PROPERTIES – a request for an administrative appeal to change one non-conforming use (cocktail lounge) to another non-conforming use (florist) in a Planned Neighborhood Residential (R-3) zone, at 185 Eastern Ave., for the reasons recommended by the staff and subject to the four conditions.

b. **Discussion items:**

1. **PLN-BOA-18-00083: MICHAEL ECTON** – requests conditional use permits to: 1) establish a plant nursery, and 2) to extend the regulations for the A-R portion of the lot 50 feet beyond the zone line into the remaining R-1B portion of the lot in order to conduct the plant nursery use on the R-1B portion at split zoned property in the Agricultural Rural (A-R) zone, at 191 Swigert Ave. (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or surrounding properties. The storage and maintenance of live plants is generally an appropriate use for an agricultural area, and the 50-foot extension into the R-1B portion will allow an existing barn to be utilized.
- b. The proposed use should not have any major traffic impact since there will be no retail operations and clients will not be visiting the site.
- 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 plant nursery shall be operated in accordance with the submitted application and site plan.
2. There shall be no retail operations on the subject property.
3. Hours of operation shall be limited to 7:30 a.m. to 4:00 p.m. Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays.
4. Additional landscaping (at least three 8-foot Norway Spruce or similar) shall be provided on the R-1B portion of the property that adjoins 177 Swigert Avenue.
5. The access drive and driveway apron at Swigert Avenue shall be graveled or paved and otherwise improved in accordance with the recommendations of the Division of Traffic Engineering. Improvements (including a determination of appropriate apron width for anticipated truck/trailer traffic) shall extend for a distance of at least 50' from the paved edge of Swigert Avenue.
6. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection within 30 days of Board action.

**Note* – Ms. Goderwis distributed several letters of opposition to the Board for their review.

Representation – Doug Martin, present on behalf of the applicant, along with Michael Ecton. At this time, Mr. Martin distributed several handouts to the Board.

Note: Mr. Gross declared a brief recess at 1:57 p.m. in order for the Board to review all the letters distributed. The meeting reconvened at 2:26 p.m., with the same members in attendance.

At this time, Mr. Martin presented a PowerPoint presentation on the overhead projector and discussed the requested conditional use permit, with questions and comments by the Board members, and comments by Mr. Ecton.

**Note* – Mr. Glover arrived at 2:07 p.m.

Board Questions/Comments – Mr. Gross asked the staff, after the presentation of Mr. Martin, would they still consider this application as a plant nursery. Ms. Goderwis responded and further discussed. Mr. Gross then asked if this application is not a plant nursery, but a landscaping business, would the landscaping business need a conditional use permit. Ms. Goderwis replied yes, and further explained. It was determined that the staff still saw this application as a plant nursery.

Mr. Gross then asked Traffic Engineering what were their thoughts on the entrance of this proposed use. Mr. Parker responded and further discussed, with comments from Mr. Martin.

Citizen Comments – The following citizens spoke in opposition to this case:

- Stephanie Bray, who lives at 169 Swigert Ave. Ms. Bray presented a PowerPoint presentation and expressed her concerns.
- William Woodward, who lives at 282 Swigert Ave. (was sworn in at this time.)
- Edgar Hume, who lives 264 Swigert Ave.
- Donna Burklow, who lives at 169 Swigert Ave.

- Lucy Brooks, representative of Hilliard Lyons of Louisville Ky., representing the client who resides at 166 Swigert Ave., expressed their concern about potential impacts on their client's health.
- Leonard Atkinson, who lives at 177 Swigert Ave.
- Deborah Aminoff, who lives at 232 Swigert. She said she sent in a letter and expressed her concern.
- Carole Whalen, who lives at 157 Swigert Ave. Ms. Whalen noted she submitted and presented a PowerPoint presentation on the overhead projector and expressed her concerns with regard to the requested conditional use.
- Catherine Perkins, who lives at 258 Swigert Ave., representing herself as well as the Joyland Neighborhood Association where she is secretary. She noted that she also serves on the Paris Pike Corridor as a Commissioner.
- Bobby Bray, who lives at 169 Swigert gave his time to his wife, Stephanie Bray, who presented more concerns.
- James Brown, Councilmember for 3rd District (was sworn in at this time), expressed his concerns, noting this property was not in his district, but represents some people that live in the area.
- Susan Durant, who lives at 109 Swigert.
- Kathy Plomin Councilmember for 12th district (was sworn in at this time).

Mr. Glover asked if the subject street was a county or city road. Mr. Parker responded that it was an Urban County Government Road.

Also at this time, Mr. Gross asked the Planning staff after hearing the testimony at today's hearing, did it change the recommendation of the staff. Mr. Marx responded and further discussed. There was then further discussion by the Board and the staff with regard to today's testimony, with comments by Ms. Goderwis.

Applicant Rebuttal – At this time, Mr. Martin presented photos on the overhead projector; addressed the concerns of the citizens, and further discussed the proposed plan for the requested conditional use.

There was further discussion by the Board and the staff at this time with regard to the requested conditional use referencing: use of the subject property (i.e.: parking, burning etc.); hours of operation, etc., with additional comments by Mr. Martin, Mr. Parker, and Ms. Jones. During this time, Mr. Marx presented the definition of a plant nursery versus a commercial greenhouse, and further explained.

Note: Mr. Gross declared a brief recess at 5:20 p.m. in order for the Board to discuss changes to the conditions. The meeting reconvened at 5:47 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.

It was noted that the applicant agreed to the newly conditions and agreed to abide by them.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter and carried 5-2 (Whitman and Meyer nay) to **approve PLN-BOA-18-00083: MICHAEL ECTON** – a request for conditional use permits to: 1) establish a plant nursery, and 2) to extend the regulations for the A-R portion of the lot 50 feet beyond the zone line into the remaining R-1B portion of the lot in order to conduct the plant nursery use on the R-1B portion at split zoned property in the Agricultural Rural (A-R) zone, at 191 Swigert Ave., based on the staff's recommendation and the testimony heard at today's hearing, and subject to the ten conditions as follows:

1. The plant nursery shall be operated in accordance with the submitted application and site plan.
2. There shall be no retail operations on the subject property.
3. Hours of deliveries and loading shall be limited to 7:30 a.m. to 4:00 p.m. Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays.
4. Additional landscaping (at least three 8-foot Norway Spruce or similar), totaling 12 shall be provided on the R-1B portion of the property that adjoins 177 Swigert Avenue.
5. The access drive and driveway apron at Swigert Avenue shall be graveled or paved and otherwise improved in accordance with the recommendations of the Division of Traffic Engineering, as shown on standard drawing 307-2.
6. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection within 60 days of Board action.
7. No parking of commercial vehicle in the R-1B zone, except for loading.
8. No storage of inventory, material or equipment in the R-1B zone other than within the barn.
9. No trash shall be stored on site for longer than a week.
10. The conditional use permit shall comply with all local, state and federal laws.

IV. **BOARD ITEMS**

- a. Mr. Gross noted that it was time to elect officers for the Board of Adjustment. With comments by Ms. Jones, noting that this could be done at the February hearing.

- b. Mr. Gross noted that it need to be discussed with regard to citizens representing on “behalf” of other parties that are not “authorized”, with comments by Ms. Jones.

V. **STAFF ITEMS**

None to be discussed.

- VII. **NEXT MEETING DATE** – The Chair announced that the next meeting date would be February 11, 2019.

- VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 5:58 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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