

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

February 11, 2019

I. **ATTENDANCE** – The Acting Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, February 11, 2019. Members present were: Thomas Glover (Acting Chair), Raquel Carter, Joan Whitman, Harry Clarke, and Chad Needham. Absent were: Branden Gross and Jan Meyer. Others present were: Josh Dezarn, Division of Engineering; Tracy Jones, Department of Law; and Stephen Parker, Traffic Engineering. Staff members in attendance were: Autumn Goderwis, and Tammye McMullen.

II. **APPROVAL OF MINUTES** – The Acting Chair announced that the minutes of the January 14, 2019, meeting would be considered at this time.

Action - A motion was made by Mr. Clarke, seconded by Ms. Whitman, and carried 5-0 (Gross and Meyer absent) to **approve** the minutes of the January 14th meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

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

1. **Postponement or Withdrawal of any Scheduled Business Item** – The Acting Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

1. **PLN-BOA-19-00005: THE PENINSULA** – requests a conditional use permit for a private club in order to construct a clubhouse in a High Density Apartment (R-4) zone, at 440 Squires Rd. (Council District 7).

Representation – Nick Nicolson, attorney representing applicant, requested a one- month postponement for further discussion.

Action – A motion was made by Ms. Whitman, seconded by Mr. Needham and carried 5-0 (Gross and Meyer absent) to **postpone** **PLN-BOA-19-00005: THE PENINSULA** –to the March 11, 2019 hearing.

Swearing of Witnesses – Prior to sounding the agenda, The Acting 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-18-00086: BUDDY PRATHER** – requests a variance to reduce the required distance from a residential zone for an overhead door from 100 feet to 73 feet within the defined Infill & Redevelopment Area in a Wholesale and Warehouse Business (B-4) zone, at 486 Curry Ave. (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- Granting the requested variance should not adversely affect the public health, safety or welfare; nor should it have much effect on the character of the general vicinity. The properties on either side of the subject property have overhead doors facing the residential zone.
- Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance. Although the overhead door will be closer to the residential zone than 100 feet, it will be more than 100 feet from the nearest multi-family building on the property across Curry Avenue.
- The size of the property limits its buildable area and dictates the location of an overhead door, which is a typical feature of a warehouse building. The property has been zoned B-4 and intended for use as a warehouse (a principal permitted use in the zone) for several years, long before the R-5 zoning was implemented on the other side of Curry Avenue.
- The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process of applying for the variance prior to construction of the warehouse building.

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

- The property shall be developed in accordance with the submitted application and site plan.
- 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 construction and occupancy.
- Any use within the building, should it have the potential to create a noise or other disturbance, shall keep the overhead door closed during hours of business.

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

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 5-0 (Gross and Meyer absent) to **approve PLN-BOA-18-00086: BUDDY PRATHER** – a request for a variance to reduce the required distance from a residential zone for an overhead door from 100 feet to 73 feet within the defined Infill & Redevelopment Area in a Wholesale and Warehouse Business (B-4) zone, at 486 Curry Ave., based on the staff's recommendations and subject to the three conditions.

2. **PLN-BOA-19-00002: OHP-SOUTHLAND, LLC.** – request variances to: 1) increase the allowable front setback from 20 feet to 53 feet; 2) to eliminate the vehicular use area perimeter landscape buffer, and a conditional use for a drive-through in order to construct a new restaurant with a pick-up window in a Neighborhood Business (B-1) zone, at 115 Southland Drive (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed drive-through facility should not adversely affect the subject or surrounding properties, as there is only a pick-up window and adequate stacking space is available. There are access points on both Southland Drive and Collins Lane which allow parked customers to exit separately from customers utilizing the pick-up window.
- b. All necessary public services and facilities are available and adequate for the proposed use.
- c. Granting the setback variance should not adversely affect the public health, safety, or welfare, nor alter the essential character of the vicinity. Southland Drive is characterized by businesses with setbacks greater than 20', many of which have large parking lots between the buildings and the street.
- d. There are special circumstances that justify the need for the setback variance as the existing easements prevent a compliant structure from being built.
- e. Granting the landscape variance should not adversely affect the public health, safety, or welfare, nor alter the essential character of the vicinity. The proposal should improve the character of the vicinity as this plan includes the required interior landscaping for vehicular use areas which historically has not existed on this property.
- f. The perimeter landscaping on the west side of the property is essentially compliant, except that the neighboring property does not have a landscape plan on file. While the perimeter landscaping on the east side is somewhat lacking, the angle of that property line limits the available space for parking. Requiring a fully compliant landscape buffer at that property line would create a hardship for the applicant, as it would result in the loss of a number of parking spaces.

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

1. The subject property shall be developed in accordance with the submitted application materials and site plan, with changes as required by Traffic Engineering.
2. There shall be no menu board, amplified speaker, or microphone devices associated with the drive-through window.
3. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction and occupancy.
4. The final configuration of the parking lot shall be subject to approval of the Division of Traffic Engineering.

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

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 5-0 (Gross and Meyer absent) to **approve PLN-BOA-19-00002: OHP-SOUTHLAND, LLC.** – a request for variances to: 1) increase the allowable front setback from 20 feet to 53 feet; 2) to eliminate the vehicular use area perimeter landscape buffer, and a conditional use for a drive-through in order to construct a new restaurant with a pick-up window in a Neighborhood Business (B-1) zone, at 115 Southland Drive, based on the staff's recommendations and subject to the four conditions.

3. **PLN-BOA-19-00003: BAPTIST HEALTH** – requests a variance to reduce the setback for a free-standing sign from 10 feet to 5 feet in a Highway Service Business (B-3) zone, at 3101 Wall Street. (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. The variance request is generally reasonable due to the location of the sanitary sewer on the property. Strict application of the Zoning Ordinance would limit the visibility of a free-standing sign from Beaumont Centre Circle.
- b. Granting the variance should not adversely affect the public health, safety, or welfare. The sign will be located outside of the required sight-distance triangle and should not have an effect on traffic visibility.

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

1. The sign shall be installed in accordance with the submitted application and site plan, and shall not exceed 10' in height.
2. All necessary permits for signage shall be obtained from the Division of Building Inspection, prior to erecting the sign.

Representation – Adam Bender with CMW was present on behalf of the applicant. Mr. Bender indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 5-0 (Gross and Meyer absent) to **approve PLN-BOA-19-00003: BAPTIST HEALTH** – requests a variance to reduce the setback for a free-standing sign from 10 feet to 5 feet in a Highway Service Business (B-3) zone, at 3101 Wall Street, based on the staff's recommendations and subject to the two conditions.

4. **PLN-BOA-18-00084: LNMCC** – requests a conditional use permit for a place of religious assembly in order to establish a religious and cultural center in the Agricultural Rural (A-R) zone, at 6251 & 6270 Athens Walnut Hill Pike. (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 Athens Rural Settlement is made up of a mixture of agricultural, residential, and business uses; and it is unlikely that religious services and classes several days throughout the week would create a significant disturbance.
- b. The use of the property as a place of religious assembly will eliminate the properties' non-conforming use status, as is recommended by Article 4 of the Zoning Ordinance. The property will now be required to conform to the regulations for the zone in which it is located going forward, and the non-conforming use may not be resumed.
- c. The proposed use will utilize an historic building that has been recommended for preservation. The historic school building will be preserved and maintained, with no external changes to take place.
- d. Off street parking as required by the Zoning Ordinance will be available in the existing paved areas.
- e. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The use shall be conducted 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 prior to the commencement of this use.
3. Existing paved parking areas on both 6251 and 6270 Athens Walnut Hill Pike shall be re-stripped in accordance with the recommendations of the Division of Traffic Engineering. The intent of this condition is not to require a total reconfiguration, but to mirror historical patterns to the maximum extent possible while addressing any specific areas of concern (e.g., number and location of handicapped parking spaces) based on the new use.
4. The septic system shall be reviewed and approved for this use, as necessary, by the Fayette County Board of Health.
5. Any future structures, accessory structures, or parking areas shall be subject to review and approval by the Board of Adjustment prior to their construction; and shall be in accordance with the size limitations specified in Article 8-1 of the Zoning Ordinance.
6. The 15' wide landscape buffer shall be maintained along Athens-Walnut Pike and Athens-Boonesboro Road within tract #3 of the subject property, except for the required sight triangle area. This buffer shall contain at least one tree for every 40' of linear boundary, consisting of a mix of deciduous and non-deciduous species, as determined to be appropriate by the Landscape Examiner with the Division of Environmental Services.

Representation – Dilu Parajuli and Mohani Dumre, on behalf of the applicant were present (were also sworn in at this time), along with Taft McKinstry (representative of the present owners of the subject property). Ms. McKinstry indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 5-0 (Gross and Meyer absent) to **approve PLN-BOA-18-00084: LNMCC** – a request for a conditional use permit for a place of religious assembly in order to establish a religious and cultural center in the Agricultural Rural (A-R) zone, at 6251 & 6270 Athens Walnut Hill Pike, based on the staff's recommendations and subject to the six conditions.

5. **PLN-BOA-19-00004: CAPKY BLUEGRASS PROPERTIES, LLC.** – requests a conditional use permit to establish an extended-stay hotel within the defined Infill & Redevelopment Area in a High Rise Apartment (R-5) zone, at 353 Waller Ave. (Council District 3).

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 institutions that will likely find this type of use to be a welcome amenity.
- 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 (or as amended by the Planning Commission) 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 – Rory Kahly with EA Partners. Ms. Kahly indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions and Comments – Mr. Clarke asked about the extended care use. Mr. Kahly responded that it is not a health facility, but an extended-stay hotel and further explained.

Mr. Needham asked if the front portion would be out parcels. Mr. Kahly responded.

Mr. Needham then asked about the traffic and cut-through traffic on the back of the property. Mr. Kahly explained. At this time, Mr. Needham asked about a path for pedestrians and cyclists. Mr. Kahly responded and explained.

At this time, there were further questions and comments by the Board and the applicant with regard to the requested conditional use for the extended-stay hotel, with a photo and further explanation on the overhead projector by Mr. Kahly.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 5-0 (Gross and Meyer absent) to **approve PLN-BOA-19-00004: CAPKY BLUEGRASS PROPERTIES, LLC.** – a request for a conditional use permit to establish an extended-stay hotel within the defined Infill & Redevelopment Area in a High Rise Apartment (R-5) zone, at 353 Waller Ave, based on the staff's recommendations and subject to the four conditions.

b. **Discussion items:**

1. **PLN-BOA-19-00006: CHRISTIAN STUDENT FELLOWSHIP, INC.** – requests a conditional use permit for a place of religious assembly in order to amend an existing conditional use in order to construct an interim sanctuary building and a permanent scholar house; and variances to: 1) decrease the rear yard setback from 30 feet to 15 feet for the interim sanctuary building; 2) to decrease the minimum required parking from 80 spaces to 44 spaces; 3) to decrease the minimum required parking for the permanent sanctuary building from 120 spaces to 66 spaces within the defined Infill & Redevelopment Area in a Two Family Residential (R-2) zone, at 507, 511, 523, 527, & 537 Columbia Ave. (Council District 3).

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

- a. Granting the conditional use for the scholar house should not adversely affect the subject or surrounding properties. Its design will be of a more residential character which will likely create a more graceful transition between the church with its associated parking and the residential neighborhood at large.
- b. Granting the conditional use for the interim sanctuary building will allow the church to continue to operate throughout the construction process. Allowing a temporary structure to house its congregation as the expansion is completed is generally reasonable. It will not have an adverse effect on the subject or surrounding properties, and will allow a timely renovation and upgrade for a use that has thrived at this location for over 5 decades. The interim building will be removed once construction of the main sanctuary building is completed.
- c. All necessary public facilities and services are available and adequate for the proposed uses.
- d. Granting the variance for the rear yard setback for the interim sanctuary is generally reasonable. Construction of the interim building in this location will allow for phased construction of the other components of this project. It will allow for completion of the majority of the parking lot on the portion of the property closer to campus and the main building. It will also allow the interim building to be located at the required distance from the scholar house as required by fire codes.
- e. Granting the parking variances for the interim sanctuary and permanent sanctuary is appropriate for this location

based on the previous approval of a variance for a 45% reduction from 160 to 88 spaces. The current request is for essentially the same variance – a 45% reduction based on number of seats. As noted above, the request meets the three criteria that are generally considered in assessing parking variances in the Infill & Redevelopment area.

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

1. The property shall be developed in accordance with the approved site plan and application materials.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction and occupancy.
3. The interim sanctuary building shall be removed within 6 months following the issuance of a Certificate of Occupancy for the permanent sanctuary building.
4. The configuration of the parking lot shall be subject to approval by the Division of Traffic Engineering.
5. 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.
6. All exterior lighting shall be directed away from any adjoining residential property.

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

Representation – Dick Murphy, attorney on behalf of the applicant was present. Mr. Murphy indicated that they had reviewed the conditions and agreed to abide by them. At this time, Mr. Murphy presented a PowerPoint on the overhead projector and discussed the requested conditional use and variances with regard to the preservation of the trees, with comments from Steve Vogel with Strand Associations (was sworn in at this time).

At this time, there was further discussion with regard to the requested conditional use and variances.

Citizen Comment – Amanda Bledsoe spoke in support of the project.

Mr. Murphy asked the remaining citizens in the audience to stand to show their support for the project.

Amy Clarke, 628 Kastle Rd., noted that she was not opposed to the project, but expressed her concern with regard to the preservation of the trees, and further discussed.

Board Questions and Comments – Mr. Needham questioned the “interim” sanctuary and the condition that stated it would be removed in 6 months. Mr. Murphy responded.

Mr. Clarke asked what the intention was for tree preservation. At this time, Mr. Murphy presented an aerial view on the overhead projector, and further explained.

Ms. Carter asked who utilizes the current parking lot that is on the property now. Mr. Murphy noted that it is not a parking lot currently, and further discussed. There was further discussion by the Board and the applicant with regard to the preservation of the trees, with comments by Mr. Vogel.

There was more discussion with regard to a tree protection plan by the Board, the staff, and the applicant, with comments by Ms. Jones. At this time, Mr. Murphy distributed a packet of letters of support to the staff to be entered into the record. There was continued discussion with regard to the tree plan with Mr. Vogel presenting a slide show on the overhead projector with further discussion.

At this time, several Board members made comments with regard to their thoughts of the proposed project, and further discussed. They discussed whether or not there should be a tree protection plan implemented into the conditions of possible approval, with comments by Ms. Jones.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 4-1 (Clarke-Nay; Gross and Meyer absent) to **approve PLN-BOA-19-00006: CHRISTIAN STUDENT FELLOWSHIP, INC.** – a request for a conditional use permit for a place of religious assembly in order to amend an existing conditional use in order to construct an interim sanctuary building and a permanent scholar house; and variances to: 1) decrease the rear yard setback from 30 feet to 15 feet for the interim sanctuary building; 2) to decrease the minimum required parking from 80 spaces to 44 spaces; 3) to decrease the minimum required parking for the permanent sanctuary building from 120 spaces to 66 spaces within the defined Infill & Redevelopment Area in a Two Family Residential (R-2) zone, at 507, 511, 523, 527, & 537 Columbia Ave., based on the staff's recommendations and subject the six conditions.

2. **PLN-BOA-19-00001: ALAN BIDWELL** – requests a variance to reduce the front required setback for additional paved parking from 6 feet to 0 feet in order to bring a recently paved driveway wider than 24 feet into compliance in a Single Family Residential (R-1C) zone, at 1961 Vicksburg Rd. (Council District 11).

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

- a. This request would result in an unreasonable circumvention the Zoning Ordinance, as the need for a variance has come about primarily because the paving that was done deviated from what was shown on the permitted plan.
- b. A 30' wide driveway is not characteristic of the general vicinity. Most homes in the area have single width driveways, and those with wider driveways leading to two-car garages do not exceed 24' in width.
- c. The site does not have special circumstances that justify the need for the variance. The noncompliant concrete shown on the site plan could be removed without affecting the functionality of the driveway, or interfering with reasonable access by handicapped persons.

Representation – Alan Bidwell, applicant was present, along with wife, Pam Bidwell. Mr. Bidwell presented photos on the overhead projector and further explained his reason for the requested variance.

Citizen Comments – A neighbor who lives three doors down from the applicant, spoke in support of the requested variance.

Staff Report – Ms. Goderwis presented a photo on the overhead projector and gave a report for the staff's recommendation of disapproval, with comments by Mr. and Mrs. Bidwell.

There was discussion by the Board, the staff, and the applicant with regard to the drive-way.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 5-0 (Gross and Meyer absent) to **disapprove PLN-BOA-19-00001: ALAN BIDWELL** – a request for a variance to reduce the front required setback for additional paved parking from 6 feet to 0 feet in order to bring a recently paved driveway wider than 24 feet into compliance in a Single Family Residential (R-1C) zone, at 1961 Vicksburg Rd., based on the staff's recommendations.

IV. **BOARD ITEMS**

- a. Election of Officers - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting. This was inadvertently omitted from the January agenda. The current officers are: Chair – Branden Gross; Vice Chair – Thomas Glover; Secretary – Joan Whitman.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 5-0 (Gross and Meyer absent) to **re-elect** the present officers as follows:

- Chair – Branden Gross
- Vice Chair – Thomas Glover
- Secretary – Joan Whitman.

V. **STAFF ITEMS**

None to be discussed.

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

- VIII. **ADJOURNMENT** - There was no further business. The Acting Chair declared the meeting adjourned at 3:42 p.m.

Thomas Glover, Acting Chair

Joan Whitman, Secretary

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