

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

March 11, 2019

I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, March 11, 2019. Members present were: Branden Gross, Thomas Glover, Raquel Carter, Joan Whitman, Harry Clarke, Chad Needham 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, James Marx and Tammye McMullen.

II. **APPROVAL OF MINUTES** – The Chair announced that the minutes of the February 11, 2019, meeting would be considered at this time.

Action - A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 5-2 (Gross and Meyer abstained) to **approve** the minutes of the February 11th 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.

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-19-00008: DAVID KING** – request for variances to: 1) reduce the required front yard from 20 feet to 12 feet; and 2) to increase the allowable height of a building from 24 feet to 28 feet in order to construct a single family residence within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 673 North Martin Luther King Blvd. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. The requested variances should not have adverse effects on the public health, safety, or welfare, and should not alter the character of the general vicinity. This block of North Martin Luther King Boulevard is characterized by a variety of building styles and heights, and the properties on either side of the subject property have been granted similar height and yard variances.
- b. The requested variances for the front yard and building height are generally reasonable. The variances will allow the applicant to build a new single family residence, which will replace the residential structure that had existed there previously.
- c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The applicant is going through the appropriate process and has applied for the variances prior to commencing construction.

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

1. The building shall be constructed in accordance with the submitted application and site plan, including the rendered elevation shown on the site plan.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection, prior to construction and occupancy.

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

Board Questions – Mr. Clarke asked about the parking for the subject property. Mr. King responded that there is street parking and a 4-foot long retaining wall.

Mr. Needham asked if the photo was an indication of the front design. Mr. King responded yes.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously to **approve PLN-BOA-19-00008: DAVID KING** – a request for variances to: 1) reduce the required front yard from 20 feet to 12 feet; and 2) to increase the allowable height of a building from 24 feet to 28 feet in order to construct a single family residence within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 673 North Martin Luther King Blvd., for the reasons recommended by the staff and subject to the two conditions.

2. **PLN-BOA-19-00009: LEXINGTON HABITAT FOR HUMANITY** – requests a variance to reduce the required side yard setback from 8 feet to 3 feet in order to construct a single family residence within the defined Infill & Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 230 East Sixth Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- The special circumstance that justifies the need for the variance is the 15' storm sewer easement, which runs through the center of the property. The easement limits the buildable frontage of the lot to less than 35'. A property within the Infill & Redevelopment area with 24' to 35' of lot frontage would only be required to have a 3-foot side yard, so granting the requested variance is generally reasonable.
- Granting the variance should not have an adverse effect on the character of the general vicinity, as many of the houses on this portion of East Sixth Street have very narrow side yards.
- 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 utilize a currently vacant lot within the defined Infill & Redevelopment area for needed housing.

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

- The property shall be developed in accordance with the submitted application materials and site plan.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection.

Representation – Peter Carew, construction director was present on behalf of the applicant. Mr. Carew indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried unanimously to **approve PLN-BOA-19-00009: LEXINGTON HABITAT FOR HUMANITY** – a request for a variance to reduce the required side yard setback from 8 feet to 3 feet in order to construct a single family residence within the defined Infill & Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 230 East Sixth Street, for the reasons recommended by the staff and subject to the two conditions.

3. **PLN-BOA-19-00014: GALE AND THOMAS WILLIAMS** – request a variance to reduce the required setback from an alley for an accessory structure to 4 feet in order to construct a new carport within the defined Infill & Redevelopment Area in a High Density Apartment (R-4) and Historic District Overlay (H-1) zones, at 620 West Short Street (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- Granting the requested variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The carport will be situated along Klair Alley, similar to other garages and accessory structures located at the rear of properties. These are common in the Historic Western Suburb Neighborhood.
- The existing development pattern of similar structures along Klair Alley is a special circumstance that contributes to justifying the need for the requested variance.
- The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicants are going through the appropriate process and have applied for the variances prior to commencing construction.

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

- The carport shall be constructed in accordance with the submitted application and site plan.
- All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Historic Preservation (and/or the Board of Architectural Review) prior to construction and occupancy.

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

Representation – Nick Keitz with Keitz Construction, was present on behalf of the applicant. Mr. Keitz indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions – Mr. Needham asked if the carport would have a roof on it, but no sides. Mr. Keitz responded that was correct.

Mr. Clarke is asked if this was the final step. Mr. Keitz responded that was correct.

Mr. Needham questioned one of the conditions placed on the report by the staff referencing the BOAR approval. Ms. Goderwis responded and explained.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-19-00014: GALE AND THOMAS WILLIAMS** – a request for a variance to reduce the required setback from an alley for an accessory structure to 4 feet in order to construct a new carport within the defined Infill & Redevelopment Area in a High Density Apartment (R-4) and Historic District Overlay (H-1) zones, at 620 West Short Street, based on the recommendations of the staff and subject to the two conditions.

4. **PLN-BOA-19-00013: ANABASIS, LLC.** – requests a conditional use permit for a non-commercial swimming pool in a High Density Apartment (R-4) zone, at 2750 Meadowsweet Lane. (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed use should not have adverse effects on the subject or surrounding properties. The swimming pool facilities will provide a desirable service to residents of the development, without risk from noise or other disturbances.
- 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 proposed swimming pool and bath house shall be constructed in accordance with the submitted application materials and site plan, with site plan revisions allowed as required by the Division of Traffic Engineering or as revised by the Planning Commission on an amended Final Development Plan.
2. Any pole lighting for the parking lot or swimming pool area shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.
3. All necessary permits shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction and occupancy.

Representation – Nick Nicholson was present on behalf of the applicant. Mr. Nicholson indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-19-00013: ANABASIS, LLC.** – a requests for a conditional use permit for a non-commercial swimming pool in a High Density Apartment (R-4) zone, at 2750 Meadowsweet Lane, based on the staff's recommendations and subject to the three conditions.

b. **Discussion items:**

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).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed use should not have adverse effects on the subject or surrounding properties. The clubhouse and outdoor recreational facilities will provide a desirable service to residents of the development.
- 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 proposed clubhouse and outdoor recreational facilities shall be constructed in accordance with the submitted application materials and site plan, with site plan revisions allowed as required by the Division of Traffic Engineering or as revised by the Planning Commission on an amended Final Development Plan.
2. There shall be no amplification of outdoor live music.
3. Any pole lighting for the parking lot or outdoor recreational area shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.
4. All necessary permits shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction and occupancy.

Representation – Nick Nicholson was present on behalf of the applicant. Mr. Nicholson indicated that they had reviewed the conditions and agreed to abide by them in general; with objection to condition #2

Mr. Nicholson presented a PowerPoint presentation on the overhead projector (and submitted a copy for the record), and further discussed their objection to condition #2.

Mr. Glover asked if the applicant has had discussion with the staff about their objection. Mr. Nicholson responded and explained.

Staff's Comments – Ms. Goderwis explained the staff's reasons for the recommended condition, noting that it is on a separate parcel. She also noted that the staff would agree to make any changes if necessary.

Board Questions – Mr. Clarke asked what the difference is between live and recorded music. Ms. Goderwis responded, with comments by Mr. Marx, noting that if the Board wanted to delete condition number 2, the staff was fine with that.

Mr. Clarke asked what type of buffer would there be between the water and the site. Mr. Nicholson explained and further discussed.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-19-00005: THE PENINSULA** – a request for 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., based on the staff's recommendations and subject to the conditions with the exception of condition number 2 to be deleted as follows:

1. The proposed clubhouse and outdoor recreational facilities shall be constructed in accordance with the submitted application materials and site plan, with site plan revisions allowed as required by the Division of Traffic Engineering or as revised by the Planning Commission on an amended Final Development Plan.
 2. ~~There shall be no amplification of outdoor live music.~~
 3. Any pole lighting for the parking lot or outdoor recreational area shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.
 4. All necessary permits shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction and occupancy.
2. **PLN-BOA-19-00010: RANDY & SHARON GRAY** – request for variances to reduce the required side yard setbacks from 3 feet to 0 feet in order to allow a fence to remain as constructed within the required side yard between the principal structure and the side property lines in a Planned Neighborhood Residential (R-3) zone, at 916 Quarter Horse Ct. (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. While it is disconcerting that a permit was not acquired when the applicant decided to expand the fence, and that a variance was not requested prior to construction, the requested variances should not have adverse effects on the public health, safety, or welfare. The new fence encloses the existing crawl space and air conditioning units, and does not change access to the house.
- b. Granting the variances should not alter the character of the general vicinity. Based on aerial photography there appear to be a number of houses in the general vicinity with similar side yard fencing.

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

1. The applicant shall submit as-built drawings to the Division of Building Inspection in order to obtain a fence permit within 30 days of Board action.

*Note – Ms. Goderwis distributed two letters of opposition and one letter of support to the Board members for their review.

Representation – Randy Gray, applicant was present. Mr. Gray indicated that he had reviewed the condition and agreed to abide by it. He distributed photos to the Board members for their review, and then presented them on the overhead projector, explaining his reason for the request with further discussion.

At this time, Mr. Gray and Mr. Carlisle were sworn in.

Opposition – Rob Carlisle, adjoining neighbor, expressed his concerns and asked for clarification about the access between his home and the applicant's home, and further discussed.

Board Questions – Mr. Glover asked what distance was there from Mr. Carlisle's property line to the applicant's. Mr. Carlisle responded, about 4 feet, as he pointed it out on the photo on the overhead projector, and noted that he doesn't dispute the fence, but wanted to get some clarification.

Ms. Carter asked Mr. Gray if he received approval from his HOA in order to do this request. Mr. Gray responded yes.

Mr. Clarke's asked the staff if this was a common request in neighborhoods. Ms. Goderwis responded, yes.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-1 (Carter-Nay) to **approve PLN-BOA-19-00010: RANDY & SHARON GRAY** – a request for variances to reduce the required side yard setbacks from 3 feet to 0 feet in order to allow a fence to remain as constructed within the required side yard between the principal structure and the side property lines in a Planned Neighborhood Residential (R-3) zone, at 916 Quarter Horse Ct., based on the staff's recommendation and subject to the one condition.

IV. **BOARD ITEMS**

None to be discussed.

V. **STAFF ITEMS**

None to be discussed.

VII. **NEXT MEETING DATE** – The Chair announced that the next meeting date would be April 8, 2019.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:30 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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