

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 8, 2019

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, April 8, 2019. Members present were: Branden Gross, Thomas Glover, Raquel Carter, Harry Clarke, Chad Needham and Jan Meyer. Absent were: 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: Autumn Goderwis, James Marx and Tammye McMullen.

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

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 6-0 (Whitman absent) to **approve** the minutes of the March 11th 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.

Representation – Jacob Walbourn, attorney on behalf of the applicant, requested a one-month postponement for further discussion.

- a. **PLN-BOA-19-00017: ATHENS PROPERTY, LLC.** – requests an administrative appeal to make changes to the conditions placed on an existing non-conforming use (antique shop with accessory restaurant) in order to expand the restaurant's operation and allow the facility to be open daily in the Agricultural Rural (A-R) zone, at 6251 & 6270 Athens Walnut Hill Pike (Council District 12).

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried 6-0 (Whitman absent) to **postpone** **PLN-BOA-19-00017: ATHENS PROPERTY, LLC.** to the May 13, 2019 hearing.

- b. **PLN-BOA-19-00020: ARBOR DRIVE, LLC.** – requests a conditional use permit for a rehabilitation home in a Professional Office (P-1) zoned portion of a split-zoned (P-1/Townhouse Residential (R-1T) property, at 3500 Arbor Dr. (Council District 8).

*Note – At this time, Mr. Gross recused himself from this case, and handed the gavel over to Mr. Glover to chair.

Representation – Jake Michul, attorney on behalf of the applicant, requested a one-month postponement consistent with the staff's recommendation to provide additional information.

Board Question – Ms. Meyer asked if the applicant had planned meetings with the neighbors to address their concerns prior to the next hearing. Mr. Michul responded yes.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried 5-0 (Whitman absent; Gross recused) to **postpone** **PLN-BOA-19-00020: ARBOR DRIVE, LLC.** to the May 13, 2019 hearing.

*Note – At this time, Mr. Gross returned to the chair.

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-19-00012: JUSTIN DENTON** – requests a variance to increase the allowable floor area ratio from 0.35 to 0.5 in order to enclose existing patios within the defined Infill & Redevelopment area in the Two-Family Residential (R-2) and Historic District Overlay (H-1) zones, at 356 South Mill Street (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare, nor alter the

character of the general vicinity. The two areas to be enclosed are within the existing footprint of the house, and their enclosure will not be very noticeable from the outside.

- b. The lower elevation of the larger patio has resulted in drainage issues for the applicant. These issues constitute a special circumstance that justifies the need for a variance.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. Variances to the allowable floor area ratio are allowable where they will not result in an increase in density and the applicant is going through the appropriate process to seek the necessary approvals prior to construction.

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

1. Construction shall be in accordance with the submitted application materials and site plan.
2. 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.

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

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 6-0 (Whitman absent) to **approve** **PLN-BOA-19-00012: JUSTIN DENTON** – a request for a variance to increase the allowable floor area ratio from 0.35 to 0.5 in order to enclose existing patios within the defined Infill & Redevelopment area in the Two-Family Residential (R-2) and Historic District Overlay (H-1) zones, at 356 South Mill Street, for the reasons recommended by the staff and subject to the two conditions.

2. **PLN-BOA-19-00016: BARON GIBSON** – requests a variance to reduce the required side yard setback from 3 feet to 0 feet in order to construct an addition at an existing house within the Infill & Redevelopment area in a Single Family Residential (R-1E) zone, at 559 Maryland Ave. (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. There are a number of houses in the vicinity with similar setbacks and the applicant does not plan to enlarge the building footprint.
- b. The requested variance is generally reasonable as it allows for continued use of an existing residential structure within the defined Infill & Redevelopment area, and allows for an addition to make the house more desirable for potential tenants/buyers.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the variance as soon as it was determined that one was needed during the permit process, and prior to construction of the second story.

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

1. Construction shall be in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Baron Gibson, applicant was present. Mr. Gibson 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 6-0 (Whitman absent) to **approve** **PLN-BOA-19-00016: BARON GIBSON** – a request for a variance to reduce the required side yard setback from 3 feet to 0 feet in order to construct an addition at an existing house within the Infill & Redevelopment area in a Single Family Residential (R-1E) zone, at 559 Maryland Ave., based on the staff's recommendations and subject to the two conditions.

3. **PLN-BOA-19-00021: CITY CENTER** – request for variances to reduce the minimum required height of two wall mounted signs from 10 feet to 8 feet for two tenants within the Infill & Redevelopment area and the Courthouse Area Design Overlay in a Lexington Center Business (B-2B) zone, at 100 West Main Street (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety, or welfare. The signs will

be located just above the entry doors to the two businesses and should not cause issues with vertical clearance, nor should they have an effect on the character of the general vicinity, as there are many different sizes and types of signs in the area.

- b. The structural system of the building prevents installation of a wall sign at 10 feet, creating a special circumstance that justifies the need for the variances.

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

1. The signs shall be installed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection.

Representation – Christine Oberst, agent of the owner was present on behalf of the applicant. Ms. Oberst indicated that they had reviewed the conditions and agreed to abide by them.

Board Question – Mr. Glover asked if City Center was a corporation. Ms. Oberst stated she assumed so, but was uncertain.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 6-0 (Whitman absent) to **approve PLN-BOA-19-00021: CITY CENTER** – a request for variances to reduce the minimum required height of two wall mounted signs from 10 feet to 8 feet for two tenants within the Infill & Redevelopment area and the Courthouse Area Design Overlay in a Lexington Center Business (B-2B) zone, at 100 West Main Street, based on the recommendations of the staff and subject to the two conditions.

4. **PLN-BOA-19-00019: BLUEGRASS GREENSOURCE, INC.** – requests a conditional use permit for ecotourism activities including an “outdoor classroom” and associated parking lot in a Light Industrial (I-1) zone, at 650 Setzer Way (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the public health, safety, or welfare. The proposed ecotourism activities do not include any disturbing elements, and will provide environmental education and recreation for children and adults.
- b. More than adequate parking is proposed for the requested use and any traffic impacts should be minimal.
- 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 condition:

1. The use shall be conducted in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection, Traffic Engineering, Engineering, and Water Quality.

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

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried 6-0 (Whitman absent) to **approve PLN-BOA-19-00019: BLUEGRASS GREENSOURCE, INC.** – a request for a conditional use permit for ecotourism activities including an “outdoor classroom” and associated parking lot in a Light Industrial (I-1) zone, at 650 Setzer Way, for the reasons recommended by the staff and subject to the two conditions.

b. **Discussion items:**

1. **PLN-BOA-19-00015: JAMES JOHNSON** – requests a variance 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 in a Planned Neighborhood Residential (R-3) zone, at 2820 Our Tibbs Trail (Council District 2).

The Staff Recommends: Disapproval, for the following reasons:

- a. The need for a variance has come about because the fence was not installed in accordance with the approved fencing permit and despite correspondence between the contractor and building inspector which detailed the requirements of the Zoning Ordinance.
- b. The subject property is located within a new developing subdivision, and creating a precedent for forgiveness of noncompliance could have lasting effects on the neighborhood’s development.
- c. There are not compelling special circumstances that justify the need for the variances. There are other potential means to cover up the oil tanks which are located at the side of the applicant’s house.

Representation – James Johnson, applicant, was present.

Staff Report – Ms. Goderwis presented photos on the overhead projector and summarized the staff's recommendation of disapproval.

Board Questions and Comments – Mr. Gross asked if the issue was because the fence was on the property line. Ms. Goderwis responded and explained.

Mr. Glover asked if the staff had a recommendation or suggestion about how the applicant do something different without being in violation of the ordinances. Ms. Goderwis responded.

At this time, Ms. Goderwis presented additional photos on the overhead projector with further questions by the Board with further discussion regarding the fence.

Representation – Mr. Johnson distributed documentation to the Board and the staff and explained his request for the variance, noting that he was unaware of the wrong doing, presented photos on the overhead projector and further explained.

Board Questions and Comments – Mr. Clarke asked if the applicant had spoken with his contractor, and if he had agreed to what the recommendation was. Mr. Johnson responded and explained.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover and carried 6-0 (Whitman absent) to **disapprove PLN-BOA-19-00015: JAMES JOHNSON** – a request for a variance 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 in a Planned Neighborhood Residential (R-3) zone, at 2820 Our Tibbs Trail, based on the staff's recommendation.

2. **PLN-BOA-19-00022: ROMAN CATHOLIC BISHOP DIOCESE OF LEXINGTON** – requests a conditional use permit to expand a school for academic instruction in a Single Family Residential (R-1C) zone, at 2236, 2240 & 2250 Clays Mill Rd. and 598 Stratford Drive (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The high school is an established use at this location and the additions should improve the campus. The proposed parking area will be landscaped in accordance with Article 18 of the Zoning Ordinance and will provide relief to the neighborhood by preventing students from parking on the street. The proposed building addition will be located between two existing school buildings and will provide modern services for the students.
- b. The proposed use should not have a major traffic impact. The new parking area will provide 36 additional spaces for existing students and staff. The proposed additions will not increase the school's capacity.
- 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 condition:

1. Construction shall be 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 and Building Inspection.
3. The final configuration of the parking lot 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. The storm water management plan shall be updated and implemented in accordance with the requirements of the adopted Engineering Manuals, with due attention being given to any existing drainage problems. This plan shall be 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.

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

Mr. Simpson presented a PowerPoint on the overhead projector, and further explained the request for the conditional use. Steve Angelucci, President of Lexington Catholic; referencing the PowerPoint on the overhead projector, further explained the need for the school expansion. Mr. Gross asked if there was a speed limit on campus. Mr. Angelucci responded. Mr. Simpson then concluded his presentation.

Mr. Gross asked if there were sidewalks on Clay Mills Rd. and Stratford Drive. Mr. Simpson responded.

At this time, District 10 Councilmember Amanda Bledsoe spoke with regard to “all sides” of this case.

Citizen Comments – The following citizens expressed their concerns with regard to the requested conditional use:

- Francis Stokes, 590 Stratford Dr. – 2 doors down from the proposed parking lot.
- John Kalbleisch, 593 Stratford Dr.
- Rebecca Kuntz, President of the Rosemill Neighborhood Association, who lives at 2508 Windsor Ct. – presented
- Edward Dove, 594 Stratford – right next to the where the proposed parking lot would be. Mr. Glover asked Mr. Dove what other options he would suggest. Mr. Dove responded, referencing a photo on the overhead projector.
- Chanthin Talwalker, 581 Stratford Dr., presented a slide show on the overhead projector and discussed his concerns.
- Darren Duzyk, 775 Harbor Point, spoke in favor of the requested conditional use. Ms. Meyer asked if he had considered looking into some type of parking agreement. Mr. Duzyk responded.

Mr. Gross asked for the aerial to be placed back on the overhead projector, and asked the staff to address the existing drainage issues, and to address condition #5 recommended by the staff. Mr. Dezarn explained and discussed. At this time, there was further discussion by the Board and the staff with regard to the drainage issues.

Mr. Gross asked that the following be addressed by the applicant:

- The timeline
- Where construction staging would be done
- Gross or net parking
- Stormwater

Representation Rebuttal – Mr. Simpson, presenting photos on the overhead projector, addressed the citizen concerns, with comments by Mr. Dezarn and Mr. Angelucci.

At this time, there was further discussion by the board with regard to the parking. Mr. Gross noted that there was a letter of opposition that had been distributed for review.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover and carried 4-2 (Meyer and Needham nay; Whitman absent) to **approve PLN-BOA-19-00022: ROMAN CATHOLIC BISHOP DIOCESE OF LEXINGTON** – a request for a conditional use permit to expand a school for academic instruction in a Single Family Residential (R-1C) zone, at 2236, 2240 & 2250 Clays Mill Rd. and 598 Stratford Drive, based on the staff's recommendation and subject to the six conditions.

3. **PLN-BOA-19-00018: ALAN CHAU** – requests an administrative review to determine whether a conditional use permit is necessary to establish the proposed use; and a conditional use permit to establish a place of religious assembly in a Single Family Residential (R-1C) zone, at 130 & 134 Northwood Dr. (Council District 6).

The Staff Recommends: Disapproval of the Administrative Appeal, for the following reasons:

- a. While small gatherings such as dinner parties, scout meetings, and the like may be conducted accessory to a residential use, the configuration of the recent addition, which very much resembles a sanctuary or auditorium typical of a place of religious assembly (with large open space and adjoining restrooms) and the documented parking issues indicates that the proposed use is of a higher intensity than a typical residential accessory use. Without further clarification of the actual scope of use, and evidence to determine that a conditional use is not warranted, staff is not in support of these activities taking place as an accessory use.
- b. Approval of the administrative review portion of this application would prohibit the applicant from constructing a parking lot on the vacant property at 134 Northwood Drive because parking is not allowed on lots with no principal structure in the R-1C zone. Congregation members coming to the residence for meals or other events would have to park on the street only, as parking on grass is prohibited. Based on the field observations made by Zoning Enforcement officers, and documentation by the neighbors, the parking area is needed to accommodate those visiting the house.

The Staff Recommends: Approval of the Conditional Use, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The place of religious assembly will only hold gatherings on occasional Sundays throughout the year, (approximately 6 times) for a few hours at a time.
- b. Places of religious assembly are often located in residential areas and do not typically cause problems for neighbors, when adequate parking is provided. The proposed parking lot shows more than enough parking spaces

- to accommodate 25 current members, and modest growth in the size of the congregation.
- 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 use shall be conducted in accordance with the submitted application materials, justification letter, and site plan.
2. Gatherings shall be limited to no more than 40 participants, once per month, on Sundays.
3. All necessary permits and approvals, including a Certificate of Occupancy shall be obtained from the Divisions of Building Inspection, Traffic Engineering, and Engineering prior to commencement of the use.
4. The final 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. Any pole lighting for the parking lot shall be of a shoebox or similar design, with light directed downward to avoid disturbing any adjoining or nearby properties.

Note: Mr. Gross declared a brief recess at 4:09 p.m. The meeting reconvened at 4:19 p.m., with the same members in attendance.

**Note – Ms. Goderwis distributed a letter of opposition for the Board to review. She also noted that the applicant wished to hear the conditional use permit portion first, with the option of withdrawing the administrative appeal if conditional use is approved.*

At this time, there was some discussion with regard to what would be heard at today's hearing.

Representation – Dick Murphy, attorney, was present on behalf of the applicant. Mr. Murphy indicated that they had reviewed the conditions and agreed to abide by them with a slight modification to condition #2, which Ms. Goderwis noted that the staff was agreeable to.

Mr. Murphy explained and discussed the requested conditional use and further explained. He presented photos on the overhead projector and further discussed.

Board Questions and Comments – Mr. Needham questioned the new addition and inquired as to what it is being used for. Mr. Murphy responded and explained.

Mr. Gross asked if the applicant was open to having an added condition to state this use would be null and void if not in use by the applicant.

Mr. Needham commented that he felt an added parking lot would alter the character of the neighborhood. Mr. Murphy responded, referencing photos presented on the overhead projector, with a comment by Ms. Meyer. There was some discussion as to who the original owner was, and what name would a land use restriction go under if approved, with response by Mr. Murphy.

Citizen Comments – The following citizens expressed their concerns or support with regard to the requested conditional use:

- Clara Craig, 380 Northwood Dr., presented photos on the overhead projector and discussed her concerns.
- Greg Lawrence, 312 Northwood Dr.
- Larry Bain Sr., 153 Northwood Dr.
- Zack Tyler, 336 Northwood Dr. – spoke in favor of the requested conditional use.
- Belinda Sanchez, 146 Northwood Dr.
- Gene Williams, Realtor, previous owner of the subject property, spoke in favor of the requested conditional use.
- Jerry Sullivan, architect – volunteers his services to the applicant, spoke in favor of the requested conditional use.

Applicant Rebuttal – Mr. Murphy addressed the citizens' concerns.

At this time there was discussion by the Board and the staff with regard to the requested conditional use.

Action – A motion was made by Ms. Glover, seconded by Ms. Carter and carried 4-2 (Gross and Needham opposed; Whitman absent) to **approve PLN-BOA-19-00018: ALAN CHAU** – a request for a conditional use permit to establish a place of religious assembly in a Single Family Residential (R-1C) zone, at 130 & 134 Northwood Dr., for the reasons recommended by the staff and the testimony at today's hearing, and subject to the six conditions, with the amendment proposed by the applicant to condition #2 and a seventh condition as follows:

1. The use shall be conducted in accordance with the submitted application materials, justification letter, and site plan.
2. Gatherings shall be limited to no more than 40 participants, six times per year. Gatherings may include activities on two consecutive days.
3. All necessary permits and approvals, including a Certificate of Occupancy shall be obtained from the Divisions of Building Inspection, Traffic Engineering, and Engineering prior to commencement of the use.
4. The final 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. Any pole lighting for the parking lot shall be of a shoebox or similar design, with light directed downward to avoid disturbing any adjoining or nearby properties.
7. Should the Temple no longer own the property, the conditional use shall be null and void.

At this time, Mr. Murphy withdraw the requested administrative appeal without prejudice.

IV. **BOARD ITEMS**

None to be discussed.

V. **STAFF ITEMS**

Mr. Gross noted the upcoming training opportunity on April 10th for the Board members.

VII. **NEXT MEETING DATE** – The Chair announced that the next meeting date would be May 13, 2019.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 5:18 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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