

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 13, 2019

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, May 13, 2019. Members present were: Branden Gross, Raquel Carter, Joan Whitman, Harry Clarke, Chad Needham and Jan Meyer. Absent was: Thomas Glover. 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 April 8, 2019, meeting would be considered at this time.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 6-0 (Glover absent) to **approve** the minutes of the April 8th 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.

- a. **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).

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

Jacob Walbourn, attorney for several neighbors, was present, and noted that they did not have any objections to the postponement.

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried 5-1 (Glover absent; Gross recused) to **postpone PLN-BOA-19-00020: ARBOR DRIVE, LLC.** to the June 10, 2019 hearing.

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-19-00027: TIMOTHY CONDO** – requests a variance to increase the allowable height of a fence in the front yard from 4 feet to 6 feet in a Single Family Residential (R-1C) zone, at 659 Cardinal Lane (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- Granting a variance to allow a 6-foot tall fence in the front yard of this property should not have a negative impact on the character of the general vicinity. While the house fronts on Cardinal Lane, the majority of green space is between the house and Sheridan Drive. Fencing the narrower portion of the lot, adjacent to the house's back door, significant areas of paving, and the detached garage should have no more (or possibly less) impact on the character of the neighborhood than an allowable side street side yard fence along Sheridan Drive would have.
- There are special circumstances that justify the need for a variance because the property is somewhat irregular in shape; narrowing significantly from one end to the other and having a rather shallow rear yard. These circumstances result in available outdoor space for private use by the applicant being significantly limited.

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

- The fencing shall be installed in accordance with the submitted application materials and site plan, except that the portion of fencing connecting the house and detached garage shall not extend past the front plane of the house.
- A fence permit shall be obtained from the Division of Building Inspection, prior to construction.
- No fencing exceeding 4' in height shall be installed in the side street side yard between the house and Sheridan Drive as long as the requested fence exists.

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

Board Question – Mr. Needham asked for clarification of the fence in front of the primary dwelling (Cardinal Lane side). Mr. Condo responded and noted that he was okay with the condition.

Action – A motion was made by Mr. Needham, seconded by Ms. Meyer and carried 6-0 (Glover absent) to **approve PLN-BOA-19-00027: TIMOTHY CONDO** – a request for a variance to increase the allowable height of a fence in the front yard from 4 feet to 6 feet in a Single Family Residential (R-1C) zone, at 659 Cardinal Lane, based on the staff's recommendations and subject to the three conditions.

2. **PLN-BOA-19-00029: BALL HOMES, LLC.** – requests a variance to reduce the required side yard setback for a fence or wall from 3 feet to 0 feet in order to construct a retaining wall in a Planned Neighborhood Residential (R-3) zone, at 2308 Armature Ct. (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. The variance should not adversely affect the public health, safety, or welfare. The retaining wall will allow for the creation of elevations that will provide safe, accessible side yards for both the subject property and the adjacent property.
- b. The variance will not have a negative impact on the character of the general vicinity. While this is a newly developing area, there is already a precedent for this type of structure on an immediately adjacent property.
- c. There are special circumstances that justify the need for a variance because the property is situated on sloping land which creates challenges for full utilization of the site.

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

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

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

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 6-0 (Glover absent) to **approve PLN-BOA-19-00029: BALL HOMES, LLC.** – a requests for a variance to reduce the required side yard setback for a fence or wall from 3 feet to 0 feet in order to construct a retaining wall in a Planned Neighborhood Residential (R-3) zone, at 2308 Armature Ct., based on the staff's recommendations and subject to the two conditions.

3. **PLN-BOA-19-00025: MARCUS CAMMUSE** – requests a conditional use permit for a home-based business (private yoga instruction) in a Planned Neighborhood Residential (R-3) zone, at 334 East High St. (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. Adequate off-street parking is available.
- 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 home-based business (yoga and wellness instruction) shall be operated 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 from the Divisions of Planning and Building Inspection prior to initiation of the use.
3. The conditional use shall become null and void should the applicant no longer reside at this location.

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

Board Question – Mr. Needham asked if this was a one-way or two street. Mr. Cammuse responded.

Mr. Needham also asked where the driveway was located. Mr. Cammuse responded that it is at the back of the house.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 6-0 (Glover absent) to **approve PLN-BOA-19-00025: MARCUS CAMMUSE** – a request for a conditional use permit for a home-based business

(private yoga instruction) in a Planned Neighborhood Residential (R-3) zone, at 334 East High St., for the reasons recommended by the staff and subject to the three conditions.

4. **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).

The Staff Recommends: **Approval (excluding special events)**, for the following reasons:

- a. While the restaurant will no longer be accessory to the antique sales, no new use is being introduced. The restaurant's operation along with the antique sales will continue to be a less intense use than the original use as a school, which served up to 400 students on weekdays, as well as some nights and weekends for most of the year.
- b. The restaurant's hours will be limited to breakfast and lunch, which will be quite similar to the daily hours of operation of an elementary school.
- c. The building is currently set up for operation as a restaurant and antique shop. The proposed changes are to the frequency of the restaurant use and will not result in any changes to the building.
- d. The changes being proposed 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 allowing restaurant service of breakfast and lunch throughout the week will create a significant disturbance.
- e. The continued use of the property for a restaurant and antique sales will continue to 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.
- f. Adequate off street parking is available in the existing paved areas.
- g. All necessary public services and facilities are or will be available and adequate for the uses.

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

1. The uses 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 the restaurant use by its new operator.
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 continued use of the property. Any additional areas for paving or graveling is strictly prohibited.
4. The septic system shall be reviewed and approved, as necessary, by the Fayette County Board of Health.
5. 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.
6. Retail sales shall conclude by 6:30 p.m. on any day, and shall take place on no more than 12 days in any month.
7. The restaurant's hours of operation shall not exceed 6 a.m. to 2 p.m. daily, except when operated in conjunction with the antique sales, when it may operate until 6:30 p.m.
8. The restaurant shall be limited in size to that of the existing cafeteria.
9. There shall be no alterations or additions to the exterior of the building.
10. The hosting of special events related to a commercial purpose shall be strictly prohibited.

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

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

Board Question – Mr. Clarke asked if it had been settled for the use of special events. Ms. Goderwis responded yes.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried 6-0 (Glover absent) to **approve PLN-BOA-19-00017: ATHENS PROPERTY, LLC.** – a request for 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, based on the staff's recommendation subject to the conditions.

5. **PLN-BOA-19-00024: DENTISTRY PLUS** – requests an administrative appeal to allow a second wall sign (transferred from another wall) to be located on the front wall of the building in a Professional Office (P-1) zone, at 2800 Palumbo Dr. (Council District 7).

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

- a. Granting the request will not circumvent the Zoning Ordinance as the proposed signage will comply with the limitations outlined in Article 17-8(a).
- b. The combined total size of the two wall signs proposed for the front wall plan will not exceed that allowed by Article 17 of the Zoning Ordinance (5% of the wall area).

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

1. The sign shall be installed in accordance with the submitted application materials and site plan.
2. A sign permit shall be obtained from the Division of Building Inspection prior to relocation of the sign.
3. The rear wall of the building shall not have any wall signage.

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

Board Questions – Mr. Needham asked why the applicant wants to do this. Mr. Collins responded and explained.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 6-0 (Glover absent) to **approve PLN- PLN-BOA-19-00024: DENTISTRY PLUS** – a request for an administrative appeal to allow a second wall sign (transferred from another wall) to be located on the front wall of the building in a Professional Office (P-1) zone, at 2800 Palumbo Dr., based on the staff's recommendation and subject to the three conditions.

b. **Discussion items:**

1. **PLN-BOA-19-00023: WILLIAM AND BEN STRAMER** – request a variance to increase the allowable height of a detached accessory structure to 18 feet in order to construct a detached garage that exceeds the elevation of the principal structure in a Single Family Residential (R-1B) zone, at 1143 Athenia Drive (Council District 10).

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

- a. A variance allowing an 18' tall garage should not have a negative impact on the character of the general vicinity. The proposed garage will be located approximately 165' from the front property line, and will have little to no impact on the streetscape. Additionally, the closest house on an adjoining property is over 100' away from the proposed structure, and unlikely to be affected by the height increase.
- b. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary processes for this project by securing an encroachment agreement for the utility easement and applying for the variance prior to construction of the desired garage.

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

1. The building shall be constructed in accordance with the submitted site plan and application materials.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection, prior to construction.
3. Any vehicular drives and/or parking areas shall be paved in accordance with Article 16 of the Zoning Ordinance, as permitted by the Division of Building Inspection.

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

Representation – William Stramer, applicant was present. Mr. Stramer indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions – Mr. Clarke asked what the purpose of the garage was for. Mr. Stramer responded and explained.

Mr. Clarke then asked what kind of hobby was this. Mr. Stramer responded.

Mr. Clarke asked if the proposed garage was going to be on the back of the property. Mr. Stramer responded yes and further explained. At this time, there was further discussion with regard to the requested variance with regard to location and pavement.

At this time, Mr. Gross asked if anyone was in the audience for the case and wanted to speak. There were several people who indicated yes.

Mr. Gross questioned the water issues. Mr. Dezarn responded. Ms. Meyer asked if the applicant was required to manage the water run-off. Mr. Dezarn responded and explained.

At this time, Ms. Goderwis noted that the variance is for the height.

Mr. Gross noted that some of the letters received were in concern of design issues and restrictions of record, and this hearing had nothing to do with that. He also noted that it was mentioned that this request was for a hobby shop, and this request was not for a home occupation use; it is for personal use only.

Citizen Comments – (At this time, those who wanted to speak were sworn in.) The following person expressed their concern about the requested variance:

- Bruce Hutchinson, who lives one house away, expressed his concern about the structure of the building.
- Bernie Skeeters, who lives at 1151 Athenia Drive, noted he wanted to say the same thing as the previous opposition.

Ms. Goderwis noted that a home occupation for automobile work would be not be allowed in this zone and further explained the protocol if it were to occur.

Action – A motion was made by Ms. Carter, and to **failed due to a lack of second PLN-BOA-19-00023: WILLIAM AND BEN STRAMER** – a request for a variance to increase the allowable height of a detached accessory structure to 18 feet in order to construct a detached garage that exceeds the elevation of the principal structure in a Single Family Residential (R-1B) zone, at 1143 Athenia Drive based on the staff's recommendation and subject to the three conditions.

Note: Mr. Gross declared a brief recess at 2:21 p.m. The meeting reconvened at 2:28 p.m. to options for how to proceed, with the same members in attendance.

Upon the return, Mr. Gross explained that the applicant is allowed to go forward with his plan without a variance, but is unable to building higher than the 13 feet and 9 inches (per Ms. Goderwis).

Mr. Stramer asked if there was more expectation of water run-off from an 18 foot building than there is a 13 foot 9 inch building. Mr. Dezarn responded.

2. **PLN-BOA-19-00026: DAVID KING** – requests for variances to reduce the minimum required setback of a projection (deck) to 1.5 feet in the side street side yard, and 2 feet in the front yard within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 675 North Martin Luther King Blvd. (Council District 1).

The Staff Recommends: **Approval of the variances (with an amended site plan removing the portion of the porch that wraps around the house)**, for the following reasons:

- a. Variances allowing separate porches to be installed at the doors on N. Martin Luther King Blvd. and East 7th Street are generally reasonable because the design requirements of the Infill and Redevelopment area recommend projecting features to create an engaging streetscape. Additionally, this particular site has a considerably limited buildable area due to both its size and location on a corner, making it challenging to incorporate such design features.
- b. The grade of the site and the effect that it has on accessing the doors is a special circumstance that justifies the need for the variances.
- c. Porches to be installed at the two doors will not adversely affect the public health, safety, or welfare. Removal of the portion of the porch that wraps around the house will maintain the sight triangle requirements and improve visibility for cars and/or pedestrians.
- d. While the variance request is the result of the applicant's actions in that the porch was constructed without approval, the request does not appear to be an attempt to circumvent the Zoning Ordinance. The applicant's intent was to meet the design requirements of the Infill & redevelopment area, but he did not account for the typical requirements for projections.

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

1. The porches shall be constructed in accordance with the submitted application materials and an amended site plan, similar to that provided by the Division of Traffic Engineering. The porch along East 7th Street shall extend a maximum of 5' from the left side of the door frame toward N. Martin Luther King Blvd. The porch along N. Martin Luther King shall not extend past the right edge of the front plane of the house.
2. The portion of the porch that has already been constructed and is not in accordance with this approval shall be removed within 30 days.

3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection within 30 days of Board action.

Representation – David King and Joanna Slogan, applicants were present. Mr. King presented a PowerPoint on the overhead projector and explained his requested variance.

Board Questions and Comments – Mr. Gross asked if the applicant was simply wanting to do a wrap-around porch. Mr. King responded yes.

Ms. Goderwis explained and discussed what is supposed to be built. Mr. Gross noted that he didn't recall on the last request for a variance, a wrap-around porch, and asked the staff what the issue was for a wrap-around porch. Ms. Goderwis explained the issues of visibility.

At this time, there was further discussion with regard to the requested variances with regard to the visibility issues that could occur, with comments by Mr. Parker with Traffic Engineering concerns.

Ms. Meyer asked if the proposed porch on the 7th Street side was the maximum length that Traffic Engineering feels comfortable with. Mr. Parker responded and explained. There was further discussion with regard to the requested variances as well as discussion to an amendment to condition #1 to allow 10 feet instead of 5 feet, with comments by Mr. King and Ms. Slogan.

Representation Comments – In summary, Ms. Slogan explained and discussed the requested variances.

There was further discussion by the Board and the staff with regard to the wrap-around porch and options as to what can be approved, with comments by Ms. Slogan, Mr. King and Mr. Parker.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 6-0 (Glover absent) to **approve PLN-BOA-19-00026: DAVID KING** – a request for variances to reduce the minimum required setback of a projection (deck) to 1.5 feet in the side street side yard, and 2 feet in the front yard within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 675 North Martin Luther King Blvd., based on the staff's recommendation and the amended site plan (removing the porch that wraps around the house) and subject to the three conditions with an amendment to condition #1 as follows:

- a. The porches shall be constructed in accordance with the submitted application materials and an amended site plan, similar to that provided by the Division of Traffic Engineering. The porch along East 7th Street shall extend a maximum of 5' a maximum of 10 feet from the left side of the door frame toward N. Martin Luther King Blvd. The porch along N. Martin Luther King shall not extend past the right edge of the front plane of the house.

Note: Mr. Gross declared a brief recess at 3:01 p.m. The meeting reconvened at 3:06 p.m. to allow the applicants to discuss suggested amendment to condition #1, with the same members in attendance.

Upon return, the applicant was asked if they were agreeable to the amended condition. Ms. Slogan noted that they agree to abide by all conditions.

3. **PLN-BOA-19-00030: SCHLICH & DEBOOR, LLC.** – requests a conditional use permit to expand an existing animal hospital; and a variance to reduce the required side yard setback from 25 feet to 20 feet in order to construct a new addition in the Agricultural Urban (A-U) zone, at 4570 Nicholasville Road. (Council District 9).

The Staff Recommends: **Approval of the conditional use (with an amended parking arrangement)**, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the public health, safety, or welfare. The business has been in operation for many years at this location. The proposed expansion is relatively modest and will allow an existing business to modernize and better utilize its property.
- b. Adequate parking will be provided and any traffic impacts should be minimal.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

- a. The addition will maintain the existing side yard setback at the rear of the building and should not have an effect on the character of the general vicinity.
- b. A greater variance that was approved for the existing structure previously is a special circumstance that justifies the need for this variance.

This recommendations of approval are made subject to the following conditions:

1. The use shall be conducted in accordance with the submitted application materials and site plan, allowing for changes to the parking configuration to meet the requirements of Condition #3.
2. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection, Traffic Engineering, and Engineering.
3. The final configuration of the parking lot, including any changes to the existing parking layout, shall be subject to approval by the Division of Traffic Engineering. The setback of the existing parking area shall be maintained with that area either being reconfigured to contain 14 spaces, or with the new parking spaces being located at the rear of the building.
4. 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.

Representation – Adam Bender with CMW, was present on behalf of the applicant. Mr. Bender indicated that he had reviewed the conditions and agreed to abide by them, but requested a re-wording of condition number 3. Mr. Bender presented a revised site plan and the amendment to condition #3 on the overhead projector, and explained the reason for the request.

Ms. Goderwis noted that staff is in agreement with the request. Ms. Goderwis read the new condition as follows:

3. The final configuration of the parking lot, including any changes to the existing parking layout, shall be subject to approval by the Division of Traffic Engineering. A front yard setback of 28 feet shall be maintained for the parking.

Mr. Bender agreed to the new wording.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 6-0 (Glover absent) to **approve PLN-BOA-19-00030: SCHLICH & DEBOOR, LLC**, – a request for a conditional use permit to expand an existing animal hospital; and a variance to reduce the required side yard setback from 25 feet to 20 feet in order to construct a new addition in the Agricultural Urban (A-U) zone, at 4570 Nicholasville Road, based on the staff's recommendations with the amended parking arrangement, and subject to the four conditions and the modified wording to condition #3.

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 June 10, 2019.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 3:15 p.m.

Branden Gross, Chair

Joan Whitman, Secretary