

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 10, 2019

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 10, 2019. Members present were: Branden Gross, Raquel Carter, Joan Whitman, Harry Clarke, Chad Needham, Jan Meyer and Thomas Glover. Others present were: Jake Stephens, Division of Engineering; Chad Edwards and Keith Horn, 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 May 13, 2019, meeting would be considered at this time.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-0 (Whitman absent) to **approve** the minutes of the May 13th 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 – Laura Wachter with EA Partners, on behalf of the applicant, requested a one-month postponement.

- a. **PLN-BOA-19-00035: HIGHGATES** – requests for variances to: 1) reduce the landscape buffer area between a residential zone and the Urban Service Boundary from 5 foot to 0 feet; 2) to reduce the setback for buildings and structures from the Rural Service Area Boundary from 100 feet to 20 feet; 3) to reduce the Rural Service Agricultural use buffer yard to 20 feet; and 4) to relocate fencing required between a development and land being used for agricultural purposes in order to allow a 20 foot landscape buffer and Rural Service Area setback on a split-zoned Expansion Residential 1 Area/ (EAR-1) Agricultural Rural (A-R) zone, at 4128 Todds Road (Council District 12).

Action – A motion was made by Ms. Meyer, seconded by Mr. Needham and carried 6-0 (Whitman absent) to **postpone** **PLN-BOA-19-00035: HIGHGATES** to the July 8, 2019 hearing.

At this time, Ms. Goderwis announced that the following applicants have withdrawn their application:

- a. **PLN-BOA-19-00032: SUSAN COX** – requests a variance to reduce the perimeter landscape buffer from 15 feet to 10 feet in a Highway Service Business (B-3) zone, at 4731 & 4771 Georgetown Rd. (Council District 12).
- 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).

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-19-00033: ERIC WHITAKER** – requests a variance to reduce the required setback for a 6-foot tall fence in a side street side yard from 3 feet to 2 feet in order to allow a recently constructed fence to remain as constructed in a Single Family Residential (R-1C) zone, at 3340 Hunter Road (Council District 4).

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

- a. While it is disconcerting that the fence was not constructed in accordance with the approved fencing permit, the variance does not appear to be an attempt to circumvent the Zoning Ordinance, as the relatively slight curvature of the property line could be difficult to mirror with fencing.
- b. Allowing the fence to remain as constructed should not have an adverse effect on the public health, safety, or welfare, nor should it have an adverse effect on the character of the neighborhood. The majority of the length of fencing along Heather Way is 3' from the sidewalk, with less than 35' in length being up to 1' closer to the sidewalk.

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

1. The applicant shall submit corrected drawings showing the work as completed in order to obtain an updated fence permit from the Division of Building Inspection within 30 days of Board action.

*Note – Ms. Goderwis distributed two letters of support to the Board for their review.

Representation – Eric Whitaker, applicant, was present. Mr. Whitaker indicated that he had reviewed the condition and agreed to abide by it.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6-0 (Glover nay) to **approve PLN-BOA-19-00033: ERIC WHITAKER** – a request for a variance to reduce the required setback for a 6-foot tall fence in a side street side yard from 3 feet to 2 feet in order to allow a recently constructed fence to remain as constructed in a Single Family Residential (R-1C) zone, at 3340 Hunter Road, based on the staff's recommendation and subject to the one condition.

2. **PLN-BOA-19-00036: LEXINGTON HOME OWNERSHIP COMMISSION II, INC.** – requests a variance to reduce the required side yard setback from 25 feet to 15 feet in order to construct a duplex within the defined Infill and Redevelopment Area in a Two Family Residential (R-2) zone, at 369 Glen Arvin Ave. (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. The requested variance should not have a negative impact on the character of the general vicinity. Several other houses in the vicinity that border the cemetery are closer than 25' to the shared property line. The applicant is proposing a 15' side yard which should be a sufficient to buffer between the cemetery and the proposed duplex.
- b. The requested variance will not adversely affect the public health, safety, or welfare. Approval of the variance will allow the applicant to utilize a currently vacant lot within the defined Infill & Redevelopment area for the creation of four affordable residential units.
- c. 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.

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

1. The project shall be completed in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

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

At this time, Mr. Gross, Ms. Carter, and Ms. Whitman recused themselves from this case due to conflict of interest. Mr. Gross turned the meeting chair over to Mr. Glover at this time.

Board Question – Mr. Needham asked if the structure being built was similar to the one being built across the street from it. Mr. Michul responded that it would just be two duplexes.

Action – A motion was made by Mr. Needham, seconded by Ms. Meyer and carried 4-0 (Gross, Carter, Whitman recused) to **approve PLN-BOA-19-00036: LEXINGTON HOME OWNERSHIP COMMISSION II, INC.** – a request for a variance to reduce the required side yard setback from 25 feet to 15 feet in order to construct a duplex within the defined Infill and Redevelopment Area in a Two Family Residential (R-2) zone, at 369 Glen Arvin Ave., based on the staff's recommendations and subject to the two conditions.

At this time, Mr. Gross returned to chair the remainder of the hearing.

3. **PLN-BOA-19-00034: LEXINGTON UNIVERSAL ACADEMY, INC.** – requests a conditional use permit to expand an existing school for academic instruction in the Agricultural Urban (A-U) zone, at 4590 Nicholasville Rd. (Council District 9).

The Staff Recommends: Approval (excluding the "Alternate Site Plan"), for the following reasons:

- a. The proposed addition should not adversely affect the subject or surrounding properties. The new addition will be located in the same portion of the property where previously approved additions were proposed.
- b. The proposed addition should not have any traffic impact. The applicant does expect an increase in enrollment

- 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 project shall be completed in accordance with the submitted application materials and site plan (excluding the "Alternate Site Plan"), subject to any alterations required throughout the permitting process.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.
3. Any future expansion of the parking lot shall require a new application to the Board of Adjustment.

Representation – Chris McCoy and Mary Domigan, were present on behalf of the applicant. Mr. McCoy indicated that they had reviewed the conditions and agreed to abide by them; however, he asked the staff as to why it was recommended to exclude the alternate site plan. Ms. Goderwis referred this question to Traffic Engineering and Mr. Parker responded and explained.

Ms. Domigan asked if they would be able to discuss with Traffic Engineering in the next couple of weeks as to what they can present for a recommended approval. At this time, there was some discussion by the Board and the applicant with regard to the "alternate plan" and what can be done to get it approved.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 7-0 to **approve PLN-BOA-19-00034: LEXINGTON UNIVERSAL ACADEMY, INC.** – a request for a conditional use permit to expand an existing school for academic instruction in the Agricultural Urban (A-U) zone, at 4590 Nicholasville Rd., based on the staff's recommendations and subject to the three conditions.

b. **Discussion items:**

1. **PLN-BOA-19-00037: CENTRAL DEALERS, LLC.** – requests an administrative review of Building Inspection's decision to delay the permitted demolition of a building at a property within the defined Infill and Redevelopment area in a Historic District Overlay (H-1) and a Downtown Business Center (B-2B) zones, at 120 W. High Street (Council District 3).

The Staff Recommends: Disapproval of the appeal and to uphold the decision of Building Inspection to stay the issuance of a demolition permit, for the following reasons:

- a. The Division of Building Inspection has acted based on the advice of the Department of Law. The issuance of a Certificate of Appropriateness is not sufficient to warrant issuance a demolition permit, as all other requirements of law must be met. It is the opinion of the Department of Law (based on their interpretation of the Zoning Ordinance) that the requirements of law are not being met while the property is involved in the Court of Appeals process.
- b. The time limitations that the applicant references for issuance of a Building Permit are specified in the Code of Ordinances, a document outside of this Board's purview.

Representation – Nick Nicholson and Bill Lear with Stoll Kennon Odgen, PLLC, attorneys on behalf of the applicant were present. Mr. Nicholson presented a PowerPoint presentation on the overhead projector and further discussed their request for the administrative review.

Mr. Gross referenced Article 13-8(b) and asked Mr. Nicholson to further explain.

Mr. Lear presented documentation to the Board for review and commented on their requested application.

Board Questions – Mr. Gross asked who the parties were to the litigation. Mr. Lear responded, Central Dealers, the Government, and Bluegrass Trust, and further explained.

Mr. Gross asked if they have ever heard of Article 13-8(B) being used as a "stay" after someone appeals. Mr. Lear responded, no, and further discussed.

Mr. Needham asked if when it went through BOAR, if the staff recommended disapproval. Mr. Nicholson responded and further explained.

Ms. Carter noted that she would like more clarity on what's being approved or disapproved for this application, with comments by Mr. Gross. Mr. Nicholson responded and further explained, with comments by Mr. Horn. At this time, there was further discussion by the Board, the staff, and the applicant with to the requested administrative review and possible findings and conditions if this application were to be approved.

Note: Mr. Gross declared a brief recess at 2:36 p.m. in order for the Board to discuss possible findings and conditions. The meeting reconvened at 2:44 p.m., with the same members in attendance.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter and carried 6-1 (Clarke nay) to **approve PLN-BOA-19-00037: CENTRAL DEALERS, LLC.** – a request for an administrative review of Building Inspection's decision to delay the permitted demolition of a building at a property within the defined Infill and Redevelopment area in a Historic District Overlay (H-1) and a Downtown Business Center (B-2B) zones, at 120 W. High Street, based on the following:

1. Issuance of a demolition permit is a ministerial task governed by Section 5-20 of the Code of Ordinances.
2. The approval of Certificate of Appropriateness for a demolition permit by the Board of Architectural Review and/or the Planning Commission requires the Division of Building Inspection to issue a demolition permit upon receiving a proper application.
3. Section 13-8(b) of the Zoning Ordinance does not create an automatic stay on the issuance of a demolition permit if an appeal is filed to the Fayette Circuit Court.

With one condition as follows: (presented on the overhead projector)

Building Inspection shall issue the demolition permit; however, the applicant shall take no action related to the demolition of the property until July 10th or in accordance with an order from the Fayette Circuit Court.

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 July 8, 2019.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:48 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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