

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

July 8, 2019

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, July 8, 2019. Members present were: Branden Gross, Raquel Carter, Joan Whitman, Harry Clarke, Chad Needham, Jan Meyer and Thomas Glover. Others present were: Josh Dezarn, 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 June 10, 2019, meeting would be considered at this time.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 7-0 to **approve** the minutes of the June 10th 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.

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.

***Note** – At this time, Ms. Goderwis noted that the following item was withdrawn via email:

- a. **PLN-BOA-19-00038: ABRAHAM MARTH** – requests for variances to: 1) increase the allowable front yard setback from 20 feet to 60 feet; and 2) to decrease the required setback for a vehicular access door from a residential zone from 20 feet to 0 feet in order to construct an automobile service station on the B-1 portion of a split-zoned Neighborhood Business (B-1)/ Single Family Residential (R-1C) zone property, at 825 Lane Allen Road (Council District 11).
- b. **PLN-BOA-19-00040: KRISTOFER AND HELEN NONN** – request a conditional use permit for a child care facility within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 561 N. Limestone. (Council District 1).

Representation – Kristofer Nonn, applicant, requested a one-month postponement as recommended by the staff.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried 7-0 to **postpone PLN-BOA-19-00040: KRISTOFER AND HELEN NONN** to the August 12, 2019 hearing.

At this time, Mr. Walbourn, attorney on behalf of the opposition for item **PLN-BOA-19-00045: HORSESHOE BEND VINEYARD, LLC. (DBA JESTER'S PADDOCK)** noted that this case may be in need of a variance and requested that it be postponed until the next month hearing in order to get clarification instead of the case being heard twice. There was further discussion at the end of the hearing with regard to postponement.

a. ABBREVIATED HEARINGS:

1. **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 feet to 0 feet in order to relocate the landscape buffer to the existing property line; 2) to reduce the setback for buildings and structures from the Rural Service Area Boundary from 100 feet to 50 feet to allow the creation of buildable lots adjacent to the RSA where it intersects the existing property; and 3) to reduce the required front yard setback from 300 feet to 100 feet on the proposed A-R zoned lot at a split-zoned Expansion Residential 1/Agricultural Rural Area zone, at 4128 Todds Road (Council District 12).

The Staff Recommends: Approval of the requested variances for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety, or welfare. Granting the variances will allow for a development to be constructed that is in accordance with the Expansion Area Master

- Plan and provides housing options in the Expansion Area.
- The location of the Urban Service Boundary and the agreement between the two property owners regarding relocation of the landscape buffer area, as permitted by the Zoning Ordinance, are special circumstances that justify the need for the requested variances.
 - Strict application of the Zoning Ordinance could create an unnecessary hardship as the location of the Urban Service Boundary creates a configuration that would reduce the overall buildable area.
 - Granting the variance for the front yard setback on the proposed A-R zoned property will not result in construction that is out of character with the vicinity as other nearby houses have front yards of less than 300'.

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

- Development of the subject property shall be in accordance with the submitted application materials and site plan.
- Action of the Board shall be noted on a Final Development Plan.

Representation – Tom Hatfield with EAP Partners, was present on behalf of the applicant. Mr. Hatfield indicated that they had reviewed the conditions and agreed to abide by them.

Board Questions and Comments – Ms. Meyer noted that she had a concern about precedent and wondered if the findings needed stronger language. Mr. Clarke and Mr. Glover stated that they had the same concern, with comments by Ms. Goderwis and Mr. Edwards. There was further discussion by the Board, staff and the applicant with regard to changing the language of the reasons. The revised language goes as follows (placed on the overhead projector):

Based on the intersection of the urban service boundary through the subject property, strict application of the Zoning Ordinance could create an unnecessary hardship as the location of the Urban Service Boundary creates a configuration that would reduce the overall buildable area.

Mr. Needham asked how the proposed development was context sensitive. Ms. Goderwis responded and further explained, with comments by Mr. Hatfield.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-19-00035: HIGHGATES** – a request for variances to: 1) reduce the landscape buffer area between a residential zone and the Urban Service Boundary from 5 feet to 0 feet in order to relocate the landscape buffer to the existing property line; 2) to reduce the setback for buildings and structures from the Rural Service Area Boundary from 100 feet to 50 feet to allow the creation of buildable lots adjacent to the RSA where it intersects the existing property; and 3) to reduce the required front yard setback from 300 feet to 100 feet on the proposed A-R zoned lot at a split-zoned Expansion Residential 1/Agricultural Rural Area zone, at 4128 Todds Road, based on the staff's recommendations including the amended language to item c, and subject to the two conditions.

- PLN-BOA-19-00041: COPPER COWS, LLC.** – requests for variances to reduce the required rear yard setbacks from 20 feet to 6 feet in order to construct accessory buildings on two through lot properties within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 643 & 645 North Limestone (Council District 1).

The Staff Recommends: Approval of a lesser variance (from 20' to 10'), for the following reasons:

- Granting a lesser variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The lesser variance will allow a vehicle backing out to the garage to have a better view of any vehicles traveling on Harry Street.
- Approval of a lesser variance would not constitute a circumvention the provisions of the Zoning Ordinance. While Harry Street is a public street, it functions more like an alley, so a variance to allow application of the provisions for an accessory structure along an alley is generally reasonable.
- Approval of a lesser variance will not create an unnecessary hardship because the two properties are relatively deep and the additional 4' should not have an effect on the usability of the yard space between the houses and the accessory structures.

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

- Construction shall be in accordance with the submitted application materials and site plan, except that the minimum setback for accessory structures along Harry Street shall be 10'.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

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

Board Questions – Mr. Glover asked for the definition of an “alley”. Ms. Goderwis responded and further explained, with comments by Mr. Parker.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried 7-0 to **approve PLN-BOA-19-00041: COPPER COWS, LLC.** – a request for variances to reduce the required rear yard setbacks from 20 feet to 6 feet in order to construct accessory buildings on two through lot properties within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 643 & 645 North Limestone, based on the staff's recommendations and subject to the two conditions.

3. **PLN-BOA-19-00043: KYLE PLOMIN** – requests for variances to: 1) reduce the required side yard setback from 6 feet to 2 feet in order to construct a new detached garage; and 2) to reduce the required rear yard from 30 feet to 15 feet in order to construct an addition within the Defined Infill and Redevelopment area in a Two Family Residential (R-2) zone property, at 543 West Third St. (Council District 2).

The Staff Recommends: **Approval of a lesser variance to reduce the required side yard setback from 6 feet to 3 feet**, for the following reasons:

- a. Granting a lesser variance for a side yard setback of 3' should not adversely affect the public health, safety, or welfare as setbacks of at least 3' are generally preferred due to fire safety and building code requirements.
- b. The variance will not constitute a circumvention of the Zoning Ordinance and the variance is generally reasonable. If the garage were attached to the house, side yard averaging could be utilized per Article 15-2(b)(6) and a 3' setback would be allowed in this location.

The Staff Recommends: **Approval to reduce the required rear yard from 30 feet to 15 feet**, 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 addition will not be visible from Third Street, and while visible from Blackburn Avenue, should not have a major impact on the streetscape. Additionally, while this portion of W. Third Street is not part of an Historic Overlay (H-1) zone, the house was constructed around 1830, and preservation of its front façade will help to maintain the historic character of the neighborhood.
- b. Special circumstances that justify the need for the variance include the house's existing front yard and that of the adjacent property to the east, which are considerably deeper than most of the houses on the street. The adjacent property's setback contributes to a condition that would render a variance necessary to construct an addition of this size to either the front or back of the existing house.

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

1. Construction shall be in accordance with the submitted application materials and an amended site plan showing a 3' setback for the detached garage.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

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

Staff Comment – Ms. Goderwis noted that the applicant has stated that he did not need quite as large of a variance; he would actually be building at 22 feet, and the staff's recommendation would be the same since it is lesser.

Board Question and Comment – Ms. Meyer stated that she wanted to understand that the applicant was replacing the current garage and reconstruct a new one. Mr. Plomin responded that was correct.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 7-0 to **approve PLN-BOA-19-00043: KYLE PLOMIN** – a request for variances to: 1) reduce the required side yard setback from 6 feet to 3 feet in order to construct a new detached garage; and 2) to reduce the required rear yard from 30 feet to 22 feet in order to construct an addition within the Defined Infill and Redevelopment area in a Two Family Residential (R-2) zone property, at 543 West Third St., based on the staff's recommendations and subject to the two conditions.

4. **PLN-BOA-19-00044: KEVIN EBBITT** – request for a variance to reduce the required side yard setback from 3 feet to 1 foot in order to construct an addition at an existing house within the defined Infill & Redevelopment area in a Single Family Residential (R-1E) zone, at 523 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.
- 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.

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

Board Question and Comment – Mr. Glover, referring to Article 15-2(B)(7) questioned if the Board had the authority to approve what has been applied for. Ms. Goderwis responded and explained.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover and carried 7-0 to **approve PLN-BOA-19-00044: KEVIN EBBITT** – a request for a variance to reduce the required side yard setback from 3 feet to 1 foot in order to construct an addition at an existing house within the defined Infill & Redevelopment area in a Single Family Residential (R-1E) zone, at 523 Maryland Ave., based on the staff's recommendation and subject to the conditions.

5. **PLN-BOA-19-00039: WINDY CORNER, LLC.** – requests a conditional use permit to continue use of an existing gravel parking lot in the B-1 portion of a split-zoned Neighborhood Business (B-1) and Agricultural Rural (A-R) zone property, at 943 Muir Station Rd. (Council District 12).

The Staff Recommends: Approval (with an amended site plan to include paving), for the following reasons:

- a. The proposed use of the subject property as a parking lot has occurred since at least 2013 and should not adversely affect the subject or surrounding properties. By paving the parking lot, it can be assured that the area will not unintentionally expand or "spread" beyond its current area. The parking lot will continue to provide overflow parking for Windy Corner Market.
- b. The proposed use should not have any major traffic impact. The parking lot is already in use. Aligning the entrance to the parking lot with the entrance to Windy Corner Market could reduce future traffic complications and make for safer vehicular movements and pedestrian crossing.
- 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 parking lot shall be paved in accordance with an amended site plan, subject to the review and approval by the Division of Traffic Engineering.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection, Planning, and Engineering prior to construction.
3. The parking lot shall be paved, with spaces delineated, in accordance with Article 16 of the Zoning Ordinance.

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 and Comment – Mr. Glover questioned the Zoning Ordinance where it states that gravel is not a suitable surface for parking. Ms. Goderwis responded and explained.

Mr. Clarke asked what the staff's reason was for recommending the entrance to the lot be across from the entrance that exists already, rather than closer to the intersection. Ms. Goderwis responded and explained, with comments by Mr. Parker.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried 7-0 to **approve PLN-BOA-19-00039: WINDY CORNER, LLC.** – a request for a conditional use permit to continue use of an existing gravel parking lot in the B-1 portion of a split-zoned Neighborhood Business (B-1) and Agricultural Rural (A-R) zone property, at 943 Muir Station Rd, for the reasons recommended by the staff and subject to the three conditions.

6. **PLN-BOA-19-00042: ROOD AND RIDDLE PARTNERS** – requests a conditional use permit to expand parking for an equine hospital at a split-zoned Agricultural Urban (A-U), Highway Service Business (B-3), and Planned Neighborhood Residential (R-3) zone property, at 2150 Georgetown Rd. (Council District 2).

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 is a well-established equine hospital with numerous facilities. The additional parking should serve existing users of the property.
- b. The adjacent property has B-3 zoning so allowing the applicant to place parking near the property boundary is unlikely to create any adverse effects on development of the adjacent property.
- c. All necessary public and private services 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.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.
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.

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

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 7-0 to **approve PLN-BOA-19-00042: ROOD AND RIDDLE PARTNERS** – a request for a conditional use permit to expand parking for an equine hospital at a split-zoned Agricultural Urban (A-U), Highway Service Business (B-3), and Planned Neighborhood Residential (R-3) zone property, at 2150 Georgetown Rd., based on the staff's recommendations and subject to the four conditions.

b. **Discussion items:**

1. **PLN-BOA-19-00045: HORSESHOE BEND VINEYARD, LLC. (DBA JESTER'S Paddock)** – requests a conditional use permit to host special events accessory to a small farm winery in the Agricultural Rural (A-R) zone, at 4688 Paris Pike (Council District 12).

The Staff Recommends: Approval for the following reasons:

- a. The requested uses (limited special events and a bistro) are clearly incidental and subordinate to the operation of the small farm winery and should not adversely affect the subject or surrounding properties. No new structures are needed to accommodate these uses and adequate parking will be provided.
- b. 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. Construction shall be in accordance with the submitted application materials and an amended site plan addressing condition #3 below.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to operation.
3. 30 parking spaces shall be provided, each with independent access (no tandem parking). 15 shall be paved, striped, and landscaped in accordance with the requirements of the Zoning Ordinance. The remaining 15 spaces shall utilize permeable grass pavers or turf reinforcement mesh and shall be clearly identified. The driveway, circulation, and parking design as well as the specific type of grass paver used shall be subject to approval by the Division of Traffic Engineering.
4. Special events shall be limited to the Winery Production and Tasting Building and the 1.42-acre "Proposed Outdoor Event Space." The existing house and barn shall not be utilized for special events.
5. Events shall be limited to no more than 150 participants, and no more than two times per month.
6. Any lighting for events shall be shielded and directed downward to avoid disturbing the surrounding properties.
7. Temporary structures, such as tents, shall be permitted for this use for up to 180 days, provided approval is obtained from the Division of Building Inspection.
8. For events, approval for the septic system and/or any portable toilets as well as for any food services offered, shall be obtained from the Fayette County Health Department.

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

Mr. Gross asked who all in the audience had planned to speak today, and there were several persons who stood up. Mr. Walbourn noted that he and Mr. Barkley were attorneys and were representing several person in opposition, and if easier, they could speak on behalf of all.

Representation – Brian Parnell, operations manager on behalf of the applicant, was present, and requested a one-month postponement in order to discuss whether or not this application is in need of a variance

Citizen Comment – Mr. Walbourn noted that he believed that the BOA staff's had indicated that the variance is not needed, and since all parties were present for the hearing, that they would like for the application to move forward today with comments by Mr. Parnell, as well as Ms. Goderwis who noted that the variance is not needed. At this time, there was further discussion as to whether or not to hear this case today or postpone until the next month hearing.

Mr. Gross asked the applicant, that since BOA staff has noted that a variance is not needed, was he prepared to be heard today. Mr. Parnell said yes, and the he agreed to abide by the conditions recommended by the staff.

Note: Mr. Gross declared a brief recess at 2:20 p.m. in order for the Board members to review the opposition letters. The meeting reconvened at 2:42 p.m., with the same members in attendance.

Upon return, Mr. Gross announced that the applicant would like to renew his request for a postponement, with comments by Mr. Parnell stating he would like to do so in order to discuss some of the issues that are at hand and to seek legal counsel and address them specifically, as well as comments by Ms. Goderwis. Mr. Walbourn noted that his side is in agreement with the postponement. Mr. Clay Barkley representing Hardscuffle Inc., noted that they had no objection to the postponement.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 7-0 to **postpone PLN-BOA-19-00045: HORSESHOE BEND VINEYARD, LLC. (DBA JESTER'S PADDOCK)** until the August 12th hearing.

IV. **BOARD ITEMS**

- a. Mr. Horn noted that a previous case (High Street demolition property) has filed for an appeal through Circuit Court and further discussed.

V. **STAFF ITEMS**

None to be discussed.

VII. **NEXT MEETING DATE** – The Chair announced that the next meeting date would be August 12, 2019.

VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 2:49 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

GTV3 broadcasts live government meeting coverage, original programing and bulletin board information: <https://www.lexingtonky.gov/departments/gtv3>

You can find us on cable channel 3, view our [live stream](#) and [archived meetings](#) online or watch programming on our [YouTube](#) channel.