

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 9, 2019

- I. **ATTENDANCE** – Acting Chair, Thomas Glover called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, September 9, 2019. Members present were: Raquel Carter, Joan Whitman, Harry Clarke, Chad Needham, Jan Meyer and Thomas Glover. Absent was: Branden Gross. Others present were: Josh Dezarn, Division of Engineering; Keith Horn and Chad Edwards, Department of Law; and Stephen Parker, Traffic Engineering. Staff members in attendance were: Autumn Goderwis, James Marx, Tammye McMullen and Donna Lewis.

- II. **APPROVAL OF MINUTES** – The Acting Chair announced that the minutes of the August 12, 2019 meeting would be considered at this time.

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried 6-0 (Gross absent) to **approve** the minutes of the August 12th meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Postponements and withdrawals** - The Acting Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

At this time, Ms. Goderwis stated Staff recommends **postponement of PLN-BOA-19-00063: LUFTRADE**, due to an error with the addressing of the notification package, and the surrounding property owners will need to be notified.

Representation – Brian Luftman, owner/applicant, was present and agreed to the postponement.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6-0 (Gross absent) to **postpone PLN-BOA-19-00063: LUFTRADE** – request for a conditional use permit for an extended stay hotel in the Historic Overlay (H-1)/Neighborhood Business (B-1) zones, at 402 South Broadway to the October meeting.

- B. **Sounding the Agenda** - In order to expedite completion of agenda items, the Acting Chair sounded the agenda.
- C. **Swearing of Witnesses** – the Acting Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn in. The oath was administered at this time to several staff members and other persons in the audience.
- D. **Abbreviated Hearings**

1. **PLN-BOA-19-00056: JASON ORTH** – requests a variance to reduce the required front yard setback from 65 feet to 25 feet in order to construct a new detached garage in the front yard in an Agricultural Rural (A-R) zone, at 5600 Kiddville Lane (Council District 12).

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

- Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Kiddville Lane is a short and narrow dead-end rural road with several existing structures located fairly close to the road. The tree buffer along the street will limit the visual impact of the structure.
- The topography of the lot, which slopes away from the street, and the need to maintain visual clearance between the house and animal pasture are special circumstances that justifies the need for the variance.
- The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance as the applicant has applied for the variance as soon as it was determined that one was needed during the permit process, and prior to beginning construction.

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

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

Representation – Jason Orth, applicant was present.

Board Question – Mr. Clarke asked why the garage would not fit on the side of the house. Mr. Orth responded and explained.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 6-0 (Gross absent) to **approve PLN-BOA-19-00056: JASON ORTH** – a request for a variance to reduce the required front yard setback from 65 feet

to 25 feet in order to construct a new detached garage in the front yard in an Agricultural Rural (A-R) zone, at 5600 Kiddville Lane, as recommended by the staff and subject to the two conditions.

2. **PLN-BOA-19-00058: MARRIOTT/RESIDENCE INN** – requests variances to increase the allowable lettering height from 2.5 feet to 3'7" for 2 wall-mounted signs located below 50 feet on the building within the defined Infill & Redevelopment area in the Lexington Center Business (B-2B) zone, at 121 West Vine Street (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety, or welfare, as the proposed signs are to be located more than 30' high on the building faces. They should not have an effect on the character of the general vicinity, as there are many different sizes and types of signs in the area.

This recommendation of approval was 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 - Adam Linville, applicant was present.

Board Question - Mr. Needham asked why the applicant felt the logo needs to be larger. Mr. Linville responded and explained.

Action – A motion was made by Mr. Needham, seconded by Ms. Meyer and carried 6-0 (Gross absent) to **approve PLN-BOA-19-00058: MARRIOTT/RESIDENCE INN** – request for variances to increase the allowable lettering height from 2.5 feet to 3'7" for 2 wall mounted signs located below 50 feet on the building within the defined Infill & Redevelopment area in the Lexington Center Business (B-2B) zone, at 121 West Vine Street, as recommended by the staff and subject to the two conditions.

E. Discussion Items

1. **PLN-BOA-19-00059: SANDRA CLEMENTS** – requests a conditional use permit for a home-based business (Pilates Instruction) in a Single Family Residential (R-1B) zone, at 307 Idle Hour Drive (Council District 5).

The Staff Recommended: 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 was made subject to the following conditions:

1. The home-based business (individual Pilates instruction) shall be operated in accordance with the submitted application materials and site plan, with instruction only on an individual basis.
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 – Sandra Clements, applicant, was present.

*Note – At this time, Ms. Goderwis presented letters to the Board for review.

Board Questions – Mr. Glover brought up several of the concerns from the letters and asked for explanation. Ms. Clements responded and explained. Ms. Meyers had a question about the hours. Ms. Clements explained.

Citizen Comments – (sworn in at this time) Judith Endicott, resident of Idle Hour Drive and Dana Barrett – caregiver for Ms. Endicott expressed their concerns for the safety of people in wheelchairs and one blind person on the street.

Board Question – Ms. Meyer asked if Ms. Clements would be opposed to signs being put up to make drivers away of the handicapped residents. Ms. Clements responded she would not mind looking into it.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 6-0 (Gross absent), to **approve PLN-BOA-19-00059: SANDRA CLEMENTS** – request for a conditional use permit for a home-based business (Pilates Instruction) in a Single Family Residential (R-1B) zone, at 307 Idle Hour Drive based on Staff recommendation and subject to the three conditions as listed.

2. **PLN-BOA-19-00064: DELTA TAU DELTA CORP PMB 140** – requests a conditional use permit to expand an existing fraternity house; and a variance to increase the maximum allowable number of parking spaces from 15 to 42 within the defined Infill & Redevelopment area in the Single Family (R-1C)/ Planned Neighborhood Residential (R-3) zones, at 1410, 1419, & 1420 Audubon Ave. (Council District 3).

The Staff Recommended: Approval of a conditional use permit, for the following reasons:

- a. Granting the conditional use permit should not adversely affect the subject or surrounding properties. The fraternity has operated for many years at this location and the types of activities conducted on site will remain the same. No new beds will be added and the expansion is considerably smaller than the expansion that was approved by the Board in 2003.
- b. Negative traffic impacts are unlikely and sufficient parking will be available on the subject property.
- c. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommended: Approval of the requested variance, for the following reasons:

- a. Increasing the number of allowed off-street parking spaces should benefit the public health, safety and welfare without altering the character of the general vicinity by providing adequate parking for the use on the property.
- b. Granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance. Given the nature of the use at this location, and the need to reduce street parking in the adjoining residential areas, the request is reasonable.

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

1. The addition and parking lot shall be constructed in accordance with the submitted application materials and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The layout of the parking areas and access points shall be subject to approval by the Division of Traffic Engineering.
4. The parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
5. Any pole lighting for the parking lots shall be of a shoebox design with light directed downward to avoid disturbing adjoining residential areas.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. The southern edge of the proposed detention area, for a distance of approximately 125' from Nicholasville Road, shall be landscaped in a manner comparable to that required for a vehicular use area. Landscaping for this area shall be incorporated into the landscaping plan required for the overall expansion, subject to approval by the Landscape Examiner with the Division of Environmental Services.

Representation – Jacob Walbourn, attorney for the applicant and Rory Kahly with EA Partners

*Note – Ms. Goderwis distributed one letter of opposition for the Board's review.

Board questions and comments – At this time, there were questions by the Board concerning parking. Mr. Walbourn responded and then deferred to Mr. Kahly who presented a site plan and further explanation. The Board also had questions about the number of fraternity members living in the house. Mr. Walbourn and Mr. Kahly stated it was somewhere in the neighborhood of 20, and no more beds would be added.

Action - A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-0 (Gross absent), to **approve PLN-BOA-19-00064: DELTA TAU DELTA CORP PMB 140** – request for a conditional use permit to expand an existing fraternity house; and a variance to increase the maximum allowable number of parking spaces from 15 to 42 within the defined Infill & Redevelopment area in the Single Family (R-1C)/Planned Neighborhood Residential (R-3) zones, at 1410, 1419, & 1420 Audubon Ave. based on Staff recommendations and the seven conditions as listed.

*Note – At this time, Ms. Goderwis informed the Board that the applicant for **PLN-BOA-19-00060 and PLN-BOA 19-00061: Fayette County Local Development Corporation** was still not present, however there was a member of the audience who was there in opposition of one of those cases. She asked whether they should allow the person in the audience to come forward to voice their opposition today. Ms. Goderwis also stated she had two letters pertaining to one of the cases. Mr. Glover requested the letters for Board review and asked the opposition to come forward and state their name for the record.

Opposition – Jim McKenzie, 758 Florence Ave. voiced his concerns over **PLN-BOA-19-00060, 754 & 756 Florence Ave.**

Board Comments – Mr. Glover recommended postponing applications, **PLN-BOA-19-00060** and **PLN-BOA-19-00061** to the October meeting.

3. **PLN-BOA-19-00060: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** – requests variances to reduce the required side yard setbacks from 6 feet to 5 feet in order to construct two duplexes within the defined Infill & Redevelopment area in a Two Family Residential (R-2) zone, at 754 & 756 Florence Ave. (Council District 2).

Representation – There was no representation for this application.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 6-0 (Gross absent) to **postpone PLN-BOA-19-00060: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** – request for variances to reduce the required side yard setbacks from 6 feet to 5 feet in order to construct two duplexes within the defined Infill & Redevelopment area in a Two Family Residential (R-2) zone, at 754 & 756 Florence Ave. to the October meeting, due to a no-show of the applicant.

4. **PLN-BOA-19-00061: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** – requests a variance to decrease the required number of parking spaces from four spaces to two spaces within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 364 Corral Street (Council District 1).

Representation – There was no representation for this application.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 6-0 (Gross absent) to **postpone PLN-BOA-19-00061: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** – request for a variance to decrease the required number of parking spaces from four spaces to two spaces within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 364 Corral Street, to the October meeting, due to a no-show of the applicant.

5. **PLN-BOA-19-00057: MARTIN'S PETERBILT** – requests a variance to decrease the required vehicular use area landscape buffer between a vehicle sales facility and a public street right-of-way from 5 feet to 0 feet and to increase the allowable height of a fence from 4 feet to 6 feet in the front and side street side yard in order to construct a 6-foot tall fence at a truck/equipment dealership in a Highway Service Business (B-3) zone, at 425 Rogers Road & 2353 Paris Pike (Council District 6).

The Staff Recommended: **Approval of the variance to increase the allowable height of the fence from 4' to 6 feet in the front yard,** for the following reasons:

- a. Granting the variance should not have a negative effect on the character of the general vicinity. While the previously approved variance was for a fence that was twice as far from Paris Pike, the proposed fence will still be about 50' from the edge of paving on Paris Pike. The change from black chain-link to a more decorative fence type should help to mitigate any effects on the streetscape of Paris Pike caused by moving the fence closer to the road.
- b. Granting the variance will not adversely affect the public health, safety, or welfare, and may help prevent nuisances or hazards by limiting engagement with the large equipment on site by passersby.

The Staff Recommended: **Approval of the variance to decrease the required vehicular use area buffer between a vehicle sales facility and a public right-of-way from 5 feet to 0 feet,** for the following reasons:

- a. Granting the landscape variance will not alter the essential character in the general vicinity as the required number of trees will still be provided in a group rather spaced every 50'. The applicant will maintain a 5' buffer area that includes an 18" tall hedge made up of boxwoods (or similar) at 3' on center.

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

1. The fence and landscape buffer shall be installed in accordance with the submitted application materials and site plan.
2. The types and final location of the trees and hedge shall be reviewed and determined to be appropriate by the Landscape Examiner with the Division of Environmental Services.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to installation of the fence.
4. Action of the Board shall be noted on an amended Final Development Plan.

*Note – several letters of opposition were distributed to the Board for their review.

*Note – Mr. Glover called a brief recess at 2:37 p.m. in order for the Board members to review the opposition letters. The meeting reconvened at 2:49 pm.

Representation – Matt Kerley, business development manager for Lexington.

Board Questions and Comments – Mr. Glover had questions about the two variances.

Mr. Kerley responded and explained.

Ms. Meyer asked why Mr. Kerley felt it necessary to have the reduction of the buffer.

Mr. Kerley responded and explained.

Mr. Glover had questions about the staff report.

Ms. Goderwis responded and explained.

Mr. Clarke had questions about the proposed grouping of the trees.

Mr. Kerley responded and explained. There was further discussion among the Board and Mr. Kerley.

Citizen Comments – The following citizens expressed their concerns with regard to the requested variance.

- Josie G. Jones, president of the Joyland Neighborhood Association presented a letter, but wanted to add more.
- Amy Clarke, 628 Kastle Rd. presented a Power Point presentation and further expressed her concerns.
- Katherine Perkins, 258 Swigert Ave., secretary of Joyland Neighborhood Association

Board Question – Mr. Clarke asked if Traffic Engineering was considered in the layout provided. Mr. Steven Parker, Traffic Engineering responded and explained.

Applicant Rebuttal – Mr. Kerley stated the last tree is in the spot approved by the City. There was further discussion between Mr. Kerley, the Board and staff regarding property lines, the access road and grouping the trees.

Citizen Comments – Ms. Clarke requested to make a petition to submit the complete record rather than just the details of what she had previously submitted.

Board Comments – Mr. Glover allowed the documents to be distributed to the Board for their review.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke, and carried 6-0 (Gross absent) to **approve** the portion of **PLN-BOA-19-00057** requesting a variance to increase the allowable height of a fence from 4 feet to 6 feet in the front yard for the reasons listed by Staff and based on any required conditions, in order to construct a 6-foot tall fence at a truck/equipment dealership in a Highway Service Business (B-3) zone, at 425 Rogers Road & 2353 Paris Pike.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 6-0 (Gross absent) to **disapprove** the portion of **PLN-BOA-19-00057** requesting a variance to decrease the required vehicular use area landscape buffer between a vehicle sales facility and a public street right-of-way from 5 feet to 0 feet in a Highway Service Business (B-3) zone, at 425 Rogers Road & 2353 Paris Pike, based on the following reasons:

*Note – Mr. Glover called a brief recess at 4:00 p.m. so that the Board could confer with Legal to draft their list of findings for disapproval. The meeting reconvened at 4:09 p.m. The findings for disapproval are as follows:

1. Granting the landscape variance will alter the essential character of the general vicinity as the required number trees would no longer be spaced every 50 feet;
2. Provide inadequate screening;
3. There are no special circumstances or other justification for modifying the requirements of the Zoning Ordinance in this situation; and
4. A 50-foot spacing of trees would not create a visual barrier to the applicant's site or potential customers.

*Note – At this time, Mr. Needham excused himself from the remainder of the meeting.

6. **PLN-BOA-19-00062: WANDA AND MITCHELL COOPER** – request a variance to increase the allowable width of a driveway from 10 feet to 17 feet within the defined Infill & Redevelopment area in a Single Family Residential (R-1C) zone, at 177 Rosemont Garden (Council District 3).

The Staff Recommended: Disapproval, for the following reasons:

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to installation of the driveway.
- b. The site does not have any special circumstances that justify the requested variance. There appears to be

sufficient space to serve the applicant's needs in the paved area that would remain if the noncompliant portion were removed.

- c. This neighborhood is characterized primarily by properties with 10' driveways, several of which widen behind the front building line to accommodate additional parking.

Representation – Mitchell Cooper and Wanda Cooper

Board Questions and Comments – Mr. Glover asked the applicants why they didn't build their driveway according to the Zoning Ordinance. Mr. Cooper responded and explained that they assumed the contractor had done his due diligence in getting the proper permit for the driveway prior to building it.

Ms. Goderwis presented the staff report recommending disapproval.

Mr. Clarke stated it appears the angle on the photo is not as severe as depicted in the drawing.

Mr. Parker explained that Traffic Engineering and Building Inspection work closely together in these circumstances and do allow some variance in some circumstances, for example, where the applicant is trying to build a connection from the driveway to the sidewalk. He stated it is very likely an application like this, showing such level of detail, would be accepted in anticipation of a pedestrian connection.

*Note – Mr. Glover called a brief recess at 4:26 p.m. to discuss their findings. The meeting reconvened at 4:36 p.m.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried 5-0 (Gross & Needham absent) to **approve PLN-BOA-19-00062: WANDA AND MITCHELL COOPER** – request for a variance to increase the allowable width of a driveway from 10 feet to 17 feet within the defined Infill & Redevelopment area in a Single Family Residential (R-1C) zone, at 177 Rosemont Garden, based on the following reasons:

1. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity.
2. Strict application of the Zoning Ordinance could create an unnecessary hardship for the property owner.
3. The non-compliant area is less than 75 square feet, so the benefit of removal would be minimal.
4. The applicant has demonstrated no intent to circumvent the ordinance.

This approval is made subject to the condition that the applicant obtain an after-the-fact paving permit from the Division of Building Inspection within 30 days.

7. **PLN-BOA-19-00065: GATEWOOD ARNOLD CONSTRUCTION, INC.** – requests variances 1) to reduce the required front yard setback from 50 feet to 25 feet; 2) to reduce the rear yard setback from 25 feet to 24 feet; 3) to reduce the side yard setback from 30 feet to 6 feet on the northern side; and 4) to reduce the side yard setback from 30 feet to 5 feet on the southern side in order to construct a single family residence in an Agricultural Rural (A-R) zone, at 7380 Athens Boonesboro Pike (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity as the applicant plans to build a modestly sized single-family house, which should not have a significant impact on the rural landscape.
- b. Strict application of the Zoning Ordinance could create an unnecessary hardship for the property owner, as they would be unable to construct a dwelling on the property. Without any variances, the maximum buildable area would be extremely limited.
- c. The size and odd configuration of the lot are special circumstances that justify the need for the variances, as they are not typical of properties in the A-R zone. These factors limit the buildable area, especially when coupled with the site and distance requirements for a septic system.
- d. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The applicant has applied for the variances as soon as it was determined that they were needed, and prior to beginning construction.

This recommendation of approval was 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.

*Note – Ms. Goderwis informed the Board there were several letters of opposition to this application. She distributed them to the Board for their review.

Representation – Gatewood Arnold, applicant

Board Questions and Comments – Mr. Glover had a question about the lot size. Mr. Arnold responded. There was further discussion about the topography of the lot and whether or not someone was going to live on the property. A google Earth map was placed on the overhead projector for review.

Ms. Meyer had a question about the feasibility of a septic tank on the property. Mr. Arnold responded and explained.

Mr. Glover had a question about the water supply. Mr. Arnold answered and explained.

Citizen Comments – The following citizens expressed their concerns with regard to the requested variance.

- Dana Denniston, 7356 Athens Boonesboro Road
- Melissa Brown, 823 McCalls Mill Road, President of the Boone Creek Neighborhood Association

Applicant rebuttal – Mr. Arnold stated the house will not be in the utility line; it will not be underneath it. He had a document from the Health Department stating the requirement for the well is 70 feet and they will be well over that. Mr. Arnold addressed other points brought up by Ms. Denniston and Ms. Brown.

There were questions and comments from the Board.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 3-2 (Gross and Needham absent), to **approve PLN-BOA-19-00065: GATEWOOD ARNOLD CONSTRUCTION, INC.**— request for variances 1) to reduce the required front yard setback from 50 feet to 25 feet; 2) to reduce the rear yard setback from 25 feet to 24 feet; 3) to reduce the side yard setback from 30 feet to 6 feet on the northern side; and 4) to reduce the side yard setback from 30 feet to 5 feet on the southern side in order to construct a single family residence in an Agricultural Rural (A-R) zone, at 7380 Athens Boonesboro Pike, based on Staff's recommendation and subject to conditions listed.

IV. **BOARD ITEMS**

Mr. Clarke asked a question about the PVA website, on the behalf of Mr. Needham, who left the meeting earlier. The question was whether or not it was going to cost board members to search the site. Ms. Goderwis responded and explained. She stated she would find out more about the matter and email the Board.

V. **STAFF ITEMS**

None to be discussed.

VI. **NEXT MEETING DATE** – The Acting Chair announced that the next meeting date would be October 14, 2019.

VII. **ADJOURNMENT** - There was no further business. The Acting Chair declared the meeting adjourned at 5:45 p.m.

Thomas Glover, Acting Chair

Joan Whitman, Secretary