

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

October 14, 2019

I. **ATTENDANCE** – Chair Branden Gross called the meeting to order at 1:33 p.m. in the Council Chamber, 200 East Main Street, October 14, 2019. Members present were: Raquel Carter, Joan Whitman, Harry Clarke, Chad Needham, Jan Meyer and Thomas Glover. Others present were: Josh Dezarn, Division of Engineering; Tracy Jones, Department of Law; and Jim Woods, Traffic Engineering. Staff members in attendance were: Autumn Goderwis, James Marx and Donna Lewis.

II. **APPROVAL OF MINUTES** – The Chair announced the minutes of the September 9, 2019 meeting would be considered at this time.

Action - A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 6-0 (Gross abstained) to **approve** the minutes of the September 9th, 2019 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Swearing of Witnesses** – The 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.

B. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda with regard to items requiring no discussion. The Chair suggested it may be beneficial for any applicants present having opposition to their case to step out of the room to discuss to possibly reach an agreement. The applicant and opposition for **PLN-BOA-19-00060** and **PLN-BOA-19-00061** agreed to do so.

C. **Postponements and Withdrawals**

1. **PLN-BOA-19-00071: JAMES MCGEE** – requested a conditional use permit to operate a junk yard in a Heavy Industrial (I-2) zone, at 130 Lisle Industrial Ave. (Council District 2).

The Staff Recommended: Postponement, for the following reasons:

- a. The proposed conditional use could have a negative impact on the public health, safety, or welfare. Without additional information regarding the operation of this business, staff has concerns regarding the potential impacts this type of use may have on water quality, air quality, and public health. Staff requests that the applicant provide additional details regarding means of mitigating the potential negative impacts outlined in the staff report.
- b. This request is under review by LFUCG's Division of Water Quality and Division of Environmental Services. Additional time is needed to complete their review and provide technical input that will facilitate the Board's consideration of the conditional use.

The Chair asked if those in opposition of this application would be able to attend the December 9, 2019 hearing, if this application is postponed until then. They all stated they could.

Staff Comments – Mr. Marx mentioned this is a conditional use regarding an enforcement case, and that it would be best not to drag this case out too long.

Board Comments – Chair Gross asked staff to give an explanation of what the applicant is doing. Ms. Goderwis responded and explained.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 7-0 to **postpone PLN-BOA-19-00071: JAMES MCGEE** – request for a conditional use permit to operate a junk yard in a Heavy Industrial (I-2) zone, at 130 Lisle Industrial Ave. until the December 9, 2019 hearing.

D. **Abbreviated Hearings**

1. **PLN-BOA-19-00073: RALPH & DK TEMPLETON** - requested a variance to reduce the required side yard from 8 feet to 3.5 feet; and an administrative appeal to increase the total allowable square-footage of accessory structures from 769 square feet to 1,192 square feet in order to construct a new 240 square-foot carport in a Single Family Residential (R-1C) zone, at 523 Fairfield Dr. (Council District 10).

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

- a. Granting the requested variance and administrative appeal should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The carport will allow for the property owner to safely and comfortably get in and out of her vehicle.
- b. While the carport is proposed for an area that is technically within the side yard, it will be located behind the main portion of the house. Additionally, it will be open and unenclosed, and should have minimal visual impact on the streetscape.
- c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance as the applicant has applied for the variance and administrative appeal as soon as it was determined that one was needed during the permit process, and prior to beginning construction of the carport.

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.
3. The carport shall remain open and unenclosed.

Representation – Shane Umphries, contractor with Young Enterprise was present.

Board Comments and Questions – Ms. Carter had a question for Mr. Umphries. He responded and explained.

Chair Gross had questions for Mr. Umphries. Mr. Umphries responded and explained.

Mr. Glover had comments about a statement in the staff report. Ms. Goderwis explained.

Ms. Carter expressed concern that the property was already over the existing accessory structure allowance. She mentioned other cases the Board has heard which were not this out of proportion, which the Board did not approve. Ms. Goderwis responded and explained Staff's recommendation.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and passed 6-1 (Carter opposed), to **approve PLN-BOA-19-00073: RALPH & DK TEMPLETON** - request for a variance to reduce the required side yard from 8 feet to 3.5 feet; and an administrative appeal to increase the total allowable square-footage of accessory structures from 769 square feet to 1,192 square feet in order to construct a new 240 square-foot carport in a Single Family Residential (R-1C) zone, at 523 Fairfield Dr. for the reasons recommended by staff, and subject to the three conditions listed.

2. **PLN-BOA-19-00067: BOONE CONTRACTING, LLC** – requested variances to increase the allowable height of a fence located within a front yard from 4 feet, to 4 feet 10 inches in a Planned Neighborhood Residential (R-3) zone, at 1262, 1274, and 1302 Village Drive, 2051 Cummins Court, and 2048 Daniel Court (Council District 11).

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The fence is only 10" taller than what is allowed and matches fencing on nearby properties.
- b. The fence is largely open, so the additional height does not result in a fence that creates an oppressive streetscape, but rather is at a comfortable pedestrian scale.

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

1. The applicant shall obtain an updated fence permit from the Division of Building Inspection reflecting action of the Board.

Representation – John Latta, General Contractor, was present.

Board Comments and Questions – Mr. Glover had a question about the height of the fences. Mr. Latta responded and explained.

Chair Gross had questions about the enclosure of the entire property and the type of fencing. Mr. Latta responded and explained.

Mr. Clarke had a question concerning the purpose of the fence. Mr. Latta responded and explained.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 7-0 to **approve PLN-BOA-19-00067: BOONE CONTRACTING, LLC** – requests for variances to increase the allowable height of a fence located within a front yard from 4 feet to 4 feet 10 inches in a Planned Neighborhood Residential (R-3) zone, at 1262, 1274, and 1302 Village Drive, 2051 Cummins Court, and 2048 Daniel Court.

*Note – The next case is a postponement from the September 9, 2019 meeting.

3. **PLN-BOA-19-00063: LUFTRADE, LLC** – requested a conditional use permit for an extended stay hotel in the Historic Overlay (H-1)/Neighborhood Business (B-1) zones, at 402 South Broadway (Council District 3).

The Staff Recommended Approval, for the following reasons:

- The proposed conditional use should not adversely affect the subject or surrounding properties. The proposed use will complement nearby uses at the Lexington Center, University of Kentucky, and downtown area by providing a desired lodging type for groups traveling to Lexington.
- Negative traffic impacts are unlikely and more than sufficient parking to serve this use will be provided on the subject property.
- 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:

- The use shall be operated in accordance with the submitted site plan and application materials. There shall be a maximum of 7 units available for rent. Of those, a minimum of 4 units shall be rented no more than once per week. The remaining 3 units may be rented on daily basis.
- All necessary permits, including a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.
- The layout of the parking area and access points shall be subject to approval by the Division of Traffic Engineering.
- At least three street trees shall be provided along West Maxwell Street. These shall be from group A, B, or C as listed in the Planting Manual.

*Note – at this time, Ms. Goderwis presented letters in support of the applicant to the Board for review.

Representation – Brian Luftman, owner and applicant, was present.

Board Comments and Questions – Mr. Clarke asked a question about the 50 percent. Mr. Luftman responded and explained his plans for this project.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover, and carried 7-0 to **approve PLN-BOA-19-00063: LUFTRADE, LLC** – 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, based on Staff's recommendation and subject to the four conditions listed.

4. **PLN-BOA-19-00070: MARTINE'S PASTRIES** – requested a conditional use permit for a parking lot to provide parking for an existing non-conforming use within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 408 E. Third Street (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- The proposed use should not adversely affect the subject or surrounding properties. The parking lot will be located along the alley and will be screened in accordance with Article 18 of the Zoning Ordinance.
- The proposed use should not have a negative impact on traffic. The parking lot will provide needed parking spaces for Martine's, which is located on a busy street in an area that is seeing increased growth and investment.
- The proposed use will provide needed parking that complies with the recommendations of the East End Small Area Plan regarding parking for commercial uses.
- All necessary public services and facilities are available and adequate for the proposed use.

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

- The project shall be completed in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
- All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to paving and use of the parking lot.
- The final configuration of the parking lot, including any changes to the existing parking layout on the Martine's property, shall be subject to approval by the Division of Traffic Engineering.
- 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.
- Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.

*Note – at this time, Mr. Needham recused himself for this portion of the hearing.

Representation – Martine Holzman and Jim Holzman, owners of Martine's Pastries were present.

*Note – at this time, Ms. Goderwis presented a letter of support to the Board for their review.

Board Comments and Questions – Ms. Carter asked if the house would remain or be removed. The applicants responded and explained.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover and carried 6-0 (Needham recused), to **approve PLN-BOA-19-00070: MARTINE'S PASTRIES** – request for a conditional use permit for a parking lot to provide parking for an existing non-conforming use within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 408 E. Third Street, based on Staff's recommendation and subject to the five listed conditions.

E. Discussion Items

*Note – The first two cases are postponements from the September 9, 2019 meeting.

*Note – at this time, Ms. Goderwis presented letters of opposition for the Board's review.

1. **PLN-BOA-19-00060: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** – requested 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 Planned Neighborhood Residential (R-3) zone, at 754 & 756 Florence Ave. (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity, as a one-foot variance is minimal and unlikely to be easily noticed.
- b. The narrow width of the lots constitute a special circumstance that justifies the need for the variance. In addition, because the lots are located within the defined Infill & Redevelopment area, parking is prohibited in the front yard. Without the variances allowing for the creation of a shared driveway, the applicant would be unable to provide the required parking for duplexes. Granting the variance will allow the applicant to utilize two small, currently vacant lots within the Infill & Redevelopment area for needed housing.
- 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. While the Infill provisions of the Zoning Ordinance are intended to make development of single-family houses on existing small lots easier, they tend to offer very little relief for two-family dwellings. Additionally, the applicant has applied for the variance as soon as it was determined that one was needed during the permit process, and prior to 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.

Representation – Derek Thomas, with Fayette County Local Development Corporation was present.

Board Questions and Comments – Chair Gross had a question about the proposed parking. Mr. Thomas responded and explained the agreement reached by the opposition and himself.

Staff Comments - Ms. Goderwis stated there may be an issue with putting the parking lot in front of the duplexes as front yard parking is prohibited in the Infill & Redevelopment area. Therefore, the agreement reached may not be feasible.

Board Questions and Comments - Chair Gross requested a clearer drawing of what the applicant is proposing. Ms. Goderwis presented a more current depiction. It was then discovered the Board did not receive the most current site plan in their packet prior to the hearing. More discussion followed concerning the proposed parking lot.

Chair Gross asked staff to have the record reflect the most recent site plan is to be used by the applicant, not the site plan provided to the Board previously. Ms. Goderwis responded and explained the correct site plan would be reflected in the record, and submitted to Building Inspection for their approval.

Mr. Needham asked the applicant about other projects he had done with parking in the rear. Mr. Thomas responded and explained.

Opposition – Jim McKenzie, 3495 Greentree Rd., Lexington, KY 40517. Mr. McKenzie is a property owner in the area of Florence Avenue and expressed his concerns about the safety of the tenants if the parking was in the rear of the duplexes.

Staff Comments – Ms. Goderwis explained that moving the building back and having parking in the front would require a new set of variances.

Board Comments – Mr. Glover asked Mr. McKenzie if he understood correctly that Mr. McKenzie's main concern regarding a parking lot in the back, was crime in the area being a safety issue. Mr. McKenzie responded and further explained.

Ms. Carter stated this proposed project is one of many projects being done by the applicant in conjunction with the Urban League where they are trying to provide newer and nicer places for people to live.

Mr. Clarke expressed his concern for having to change the rules, based on where the property is in the city.

Chair Gross had questions for the applicant. Mr. Thomas responded and explained. There was further discussion.

*Note – The Chair called at brief recess at 2:43 pm. The hearing reconvened at 2:49 pm.

Staff Comments – Ms. Jones, Law Department, reminded the Board of the application at hand that is to be considered at this time.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke, and passed 5-2 (Meyer and Clarke opposed), to **approve PLN-BOA-19-00060: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** - requests 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 Planned Neighborhood Residential (R-3) zone, at 754 & 756 Florence Ave., based on Staff's recommendation and subject to the two listed conditions, including the amended Condition #1:

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

2. **PLN-BOA-19-00061: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** – requested 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).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Similar small lots, a number of which do not have off-street parking at all, characterize the vicinity.
- b. The size of the lot is a special circumstance that justifies the need for the variance. Without the variance, the applicant would be unable to provide the required parking for a duplex, which is four times that required for a single-family house. Granting the variance will allow the applicant to utilize a small, currently vacant lot within the Infill & Redevelopment area for needed housing.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the variance as soon as it was determined that one was needed during the permit process, and prior to 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.

Representation – Derek Thomas, Fayette County Local Development Corporation was present.

Board Questions and Comments – Mr. Glover asked the applicant why he wanted to decrease the number of parking spaces. Mr. Thomas responded and explained.

Chair Gross asked Ms. Goderwis for a site plan with the driveway shown. Ms. Goderwis provided a copy of the site plan to be shown on the screen. She stated this plan is a slightly amended plan, which the applicant said Building Inspection recommended.

Ms. Meyer had a question about the pavers, which Building Inspection recommended. Mr. Thomas responded and explained. There was further discussion.

Action – A motion was made by Ms. Meyer, seconded by Ms. Carter and carried 6-1 (Glover opposed), to **approve 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 based on Staff's recommendation and subject to the two conditions.

*Note – Prior to the vote, Chair Gross asked that the records reflect the site plan approved today is the one that was shown today on the overhead, not the one they received in their packets. Mr. Glover asked if the plan that was shown today was significantly different than the one in the packets the Board members received prior to the hearing. Ms. Goderwis responded and explained.

3. **PLN-BOA-19-00072: VIKTOR CHEPAK** – requested a variance to reduce the minimum setback for additional paved parking from 6 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, at 2804 Satin Leaf Park (Council District 2).

The Staff Recommended: Disapproval, for the following reasons:

- The need for a variance has come about because the paving was not completed in accordance with the approved paving permit, which specifically detailed the requirements of the Zoning Ordinance.
- The majority of properties in the general vicinity have driveways that have not been widened. The subject property is located within a relatively new neighborhood where some areas are still developing, and while a desire for additional parking areas is understandable, creating a precedent for forgiveness of noncompliance could have lasting effects on the neighborhood's development.
- 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, as the majority of the length of the driveway would remain 24' wide, with a taper back down to 17'.

Staff Comments – Ms. Goderwis presented the Staff Report.

Board Comments and Questions – Chair Gross had questions about the application for Ms. Goderwis. She responded and explained. Ms. Meyer requested the site plan be shown on the overhead for the Board to see exactly what was out of compliance. This was done.

Representation – Viktor Chepak, applicant was present. Mr. Chepak explained his reasons for requesting a wider driveway and presented 43 pictures of other driveways in his neighborhood that have been expanded for the Board's review.

Board Comments – Chair Gross informed Mr. Chepak the Board would review the pictures and they would be kept as exhibits. Ms. Carter mentioned the 6' setback is applicable to additional paved parking. She mentioned some of the exhibits show sidewalks and pavers so she wanted Mr. Chepak to understand the distinction.

Staff Comments - Ms. Goderwis explained the driveway is the portion that is the width of the garage portion of the home.

Board Comments – Chair Gross asked Ms. Goderwis if all of the driveways in the photos were not in compliance, would Staff change their recommendation. Ms. Goderwis replied Staff would not change their recommendation. Mr. Clarke stated he thought it would be good for the staff to review the pictures presented by Mr. Chepak.

Staff Comments - After reviewing the photos, Mr. Marx stated it appeared some of the work shown in the photos may have been done without a permit and may be non-compliant, but it is difficult to tell without knowing the full history.

Board Comments – Ms. Carter brought up the fact that the applicant had obtained a permit and an approved plan from Building Inspection, but the actual project did not follow the permit and plan. Chair Gross asked if the permit that was submitted showed what the applicant needed to do. Ms. Goderwis responded and placed a copy of the permit on the overhead. Mr. Clarke commented that it seems to be fairly rampant that people are ignoring the rules for this type of project and asked that his comment be on the record.

Action - A motion was made by Ms. Meyer, seconded by Mr. Needham, and carried 7-0 to **disapprove PLN-BOA-19-00072: VIKTOR CHEPAK** – request for a variance to reduce the minimum setback for additional paved parking from 6 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, at 2804 Satin Leaf Park, based on Staff's recommendation and the reasons stated.

4. **PLN-BOA-19-00068: DARCI AND COLBY TIPTON** – requested a variance to reduce the required side yard from 25 feet to 15 feet in order to construct a new garage in an Agricultural Rural (A-R) zone, at 3840 Wyse Square (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- Granting the variance should not adversely affect the public health, safety, or welfare. An attached garage could be constructed in this location with no variances. Additionally, the applicant plans to construct the garage with materials similar to the existing house to ensure that it will not alter the character of the general vicinity.
- The requested variance appears to generally reasonable. While a relatively minor shift in location (placing the structure behind the rear building line of the principal structure), would alleviate the need for a variance, negative impacts resulting from approval of the requested variance are unlikely. The ability to provide a direct path for the covered walkway will be a convenience for the homeowner and the proposed location will require little to no additional paving as the driveway already exists in this location.
- 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 – Darci Tipton, applicant, was present.

Opposition – Bill Allen, President of the Westmoreland Neighborhood Association.

Board Questions and Comments – Chair Gross asked Mr. Allen if the neighborhood's objection was to the side yard variance and not the garage itself. Mr. Allen responded and explained.

Ms. Carter asked for clarification of the applicant's prior approval from the neighborhood association. Mr. Allen responded and explained.

Mr. Clarke asked Mr. Allen if you can tell where one lot ends and the next begins. Mr. Allen responded and explained.

Ms. Meyer asked if there are a lot of mature trees in the neighborhood. Mr. Allen responded.

Rebuttal – Ms. Tipton addressed the comments and concerns of Mr. Allen and the Board.

Board Questions and Comments – Ms. Carter commented if the garage in question was an attached garage, this would be a different issue. Ms. Goderwis responded and explained.

Chair Gross asked if the applicant would consider moving the garage back behind the house. Ms. Tipton responded and explained. There was further discussion.

Action – A motion was made by Mr. Glover and seconded by Mr. Clarke and passed 4-3 to **approve PLN-BOA-19-00068: DARCI AND COLBY TIPTON** – request for a variance to reduce the required side yard from 25 feet to 15 feet in order to construct a new garage in an Agricultural Rural (A-R) zone, at 3840 Wyse Square, based on Staff's recommendation and subject to the two conditions as stated.

5. **PLN-BOA-19-00069: KIET DO AND ANA RUZIC** - request for variances: 1) to reduce the rear yard setback from 50 feet to 14 feet in order to construct an addition to an existing house; and 2) to reduce the required side yard setback from 6 feet to 3 feet in order to construct a detached garage within the required side yard in a Two Family Residential (R-2) zone, at 136 McDowell Rd. (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The impact on the streetscape will be minimal as a garage existed in front of the house in the past and the setback from the road will be nearly 150'.
- The odd configuration of the existing structure and paving on the site are special circumstances that justify the need for the requested variances.
- While the rear addition will be closer to the rear lot line than other houses in the vicinity, the properties backing up to the subject property have relatively deep backyards with accessory structures near the property line. The house will still be approximately 100' from the houses behind it. These circumstances indicate the requested variance is generally reasonable and unlikely to have a negative impact on the adjacent properties.

- d. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance as the applicant has applied for the variances 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:

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.
3. A minimum grouping of at least three trees from Group A of the Planting Manual shall be planted in the western portion of the front yard to screen the proposed garage.

*Note – at this time, Ms. Goderwis presented one letter in opposition to the Board for their review.

Representation – Scott Dreyer, contractor/architect for the project was present.

Board Questions and Comments – Ms. Carter had a question about a current addition on the back of the house. Mr. Dreyer responded and explained.
Mr. Glover asked about the history of this house. Mr. Dreyer responded and explained.

Opposition – Ben C. Kaufmann, 125 Sycamore Rd., Lexington KY 40502.

Rebuttal – Mr. Dreyer addressed the comments and concerns of Mr. Kaufmann and the Board.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and passed 4-3 to **approve PLN-BOA-19-00069: KIET DO AND ANA RUZIC** – request for variances: 1) to reduce the rear yard setback from 50 feet to 14 feet in order to construct an addition to an existing house; and 2) to reduce the required side yard setback from 6 feet to 3 feet in order to construct a detached garage within the required side yard in a Two Family Residential (R-2) zone, at 136 McDowell Rd. based on Staff's recommendations and subject to the conditions as listed.

6. **PLN-BOA-19-00074: JEREMY YOUNG** – requested an appeal of the Division of Building Inspection's issuance of a building permit for an accessory building (accessory to an existing non-conforming apartment building) within the defined Infill and Redevelopment Area in a Single Family Residential (R-1D) zone, at 904 Bates Creek Rd. (Council District 3).

The Staff Recommended: Disapproval of the appeal, and to uphold the decision of Building Inspection to issue a Commercial Accessory Building Permit, for the following reasons:

- a. The existing non-conforming use, an apartment building housing 4 dwelling units, will not be increased in scope or area of its operation because no expansion of the number of dwelling units or of any living space will occur on the site. The proposed accessory structure does not alter the fundamental activity for the non-conforming use, and does not intensify the non-conforming activities on the subject property. Thus, the proposed structure can be permitted and should not be considered an enlargement of a non-conforming use.
- b. Construction of an accessory structure for the existing apartment building does not extend the life, nor encourage the survival of the actual non-conforming use, as the permitted structure is a common and customary feature of both single-family and multi-family residential properties.
- c. The proposed accessory structure could be constructed at this location, at the same scale as what is proposed, if the principal structure was a conforming single-family house rather than four smaller apartments.

Staff Comments – Ms. Goderwis presented the Staff Report for this application, explaining Staff's reasons for their recommendation of disapproval.

Board Questions and Comments – Chair Gross had a question concerning the distinction between a single-family residence and a multi-family residence and the construction of a garage. Ms. Goderwis responded and explained.
Mr. Glover had a question about Article 4-3a of the Ordinance. Ms. Goderwis responded and explained.
Mr. Glover had a question for Legal regarding who can appeal the issuance of a building permit. Ms. Jones responded and explained.

Representation – Jeremy Young, 906 Bates Creek Rd., Lexington KY 40502, appellant, was present and explained his reasons for the appeal.

Opposition - Ryan Atkins, 2140 Palomar Trace, Lexington KY 40513, property owner, was present and explained the project.

Board Questions and Comments – Chair Gross had some questions about the size of the garage and the laundry room. Solomon Rivera, Frontier Construction, the builder on site was present and answered the questions. Chair Gross asked if there was off-street parking readily available. Mr. Rivera responded and explained. Mr. Glover asked if there were laundry facilities in the apartment. Mr. Rivera replied there were not. Mr. Glover asked if it was fair to say that building the laundry facilities would enhance the utility of the apartment units. Mr. Atkins responded and explained. Chair Gross and Mr. Glover had questions about the size of the units and the size of the building itself. Mr. Atkins responded.

Support of Applicant - Amy Clark, 628 Kastle Rd., Lexington KY 40502, presented documents to the Board for their review. At this time, Ms. Clark was sworn in by Chair Gross, as she was not present at the earlier swearing in.

Board Questions and Comments – Chair Gross had a question for staff regarding the property owner asking to build an 800 square foot addition to the house for laundry. Ms. Goderwis responded and explained. Mr. Marx commented as well. Mr. Glover asked what made this building non-conforming. Ms. Goderwis responded and explained. Ms. Jones added to the explanation. There was further discussion.

Rebuttal – Mr. Young asked that his appeal be approved based on reasons and findings he had presented.

Board Questions and Comments – Ms. Carter asked for clarification of the appeal, and what a motion of approval or disapproval would mean. Ms. Jones responded and explained. Mr. Glover had further questions and comments. Ms. Jones responded and explained. Chair Glover suggested calling a recess if any board member would like to move to approve the appeal, prior to making a motion, in order to work with Legal and come up with their findings so they would have the basis for the motion. Ms. Jones agreed, and recommended discussing what those findings are. There was further discussion among the board members.

*Note – The Chair called at brief recess at 5:03 pm. The hearing reconvened at 5:13 pm.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 7-0 to **approve PLN-BOA-19-00074: JEREMY YOUNG** – request for an appeal to reverse the decision of Building Inspection to issue a commercial accessory building permit (accessory to an existing non-conforming apartment building) within the defined Infill and Redevelopment Area in a Single Family Residential (R-1D) zone, at 904 Tates Creek Rd. for the following reasons:

- a. The existing non-conforming use, an apartment building, housing 4 dwelling units, will be increased in scope and extend or enlarge the use of the dwelling units by providing the dwellers in the apartments with the additional living uses of laundry and storage and garages.
- b. Construction of the accessory structure encourages the survival of the non-conforming use, which is inconsistent with the zoning ordinance intent in Article 4-2.

IV. **BOARD ITEMS**

Mr. Glover recommended the Board's continuing education include an overview of the Zoning Ordinance, possibly a refresher course every couple of years. Mr. Clarke agreed it would be helpful.

V. **STAFF ITEMS**

Staff Comments – Mr. Marx stated it may be appropriate for Legal to explain what the decision of the previous case, PLN-BOA-19-00074, will mean to the original applicant and their project. Ms. Jones responded and explained. Mr. Atkins asked for clarification on how he should proceed with his project. Mr. Glover responded. There was further discussion.

A. Consideration of the Meeting & Filing Schedule for 2020

*Note - It was decided to wait until the November hearing to vote on the 2020 Meeting & Filing Schedule.

- VI. **NEXT MEETING DATE** – The Acting Chair announced that the next meeting date would be November 11, 2019.
- VII. **ADJOURNMENT** - There was no further business. The Acting Chair declared the meeting adjourned at 5:23 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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