# MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

December 9, 2019

**I. ATTENDANCE** – Chair Branden Gross called the meeting to order at 1:30 p.m. in the Council Chamber, 200 East Main Street, December 9, 2019. Members present were: Raquel Carter, Joan Whitman, Harry Clarke, Thomas Glover and Chad Needham. Janice Meyer was absent. Others present were: Josh Dezarn, Division of Engineering and Chad Edwards, Department of Law. Staff members in attendance were: Autumn Goderwis, James Marx and Donna Lewis.

**II. APPROVAL OF MINUTES** – The Chair announced the minutes of the November 11, 2019 meeting would be considered for approval at this time.

Action - A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 4-0 (Meyer absent; Glover abstained; Chair Gross did not vote), to approve the minutes of the November 11, 2019 meeting.

**III. PUBLIC HEARING ON ZONING APPEALS**

**A. Swearing of Witnesses** - The Chair asked all those present who would be speaking or offering testimony to stand and raise their right hand to 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 any postponements, withdrawals, and items requiring no discussion. The Chair had previously asked staff if there were any letters of support or opposition for any of the cases to which Ms. Goderwis responded.

**C. Postponements and Withdrawals**

*Note – At this time, Ms. Goderwis informed the Board that the applicant for **PLN-BOA-19-00082: MARIYANA K. & DIYAN R. HRISTOV** wished to postpone until the January 13, 2020 hearing, due to not being back in town from traveling.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter and carried 6-0 (Meyer absent), to **postpone PLN - BOA-19-00082: MARIYANA K. & DIYAN R. HRISTOV** – request for a variance to increase the allowable height of a fence located in the front yard from 4’ to 6’ in an Expansion Area Residential 2 (EAR-2) zone, on property located at 3376 Scottish Trace.

*Note – At this time, Mr. Jacob Walbourn approached the podium and informed the Board that the applicant for **PLN-BOA-19-00087: COMMUNITY VENTURES PROPERTIES, LLC** was requesting a two-month postponement and possibly a withdrawal of their application.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-0 (Meyer absent), to **postpone PLN-BOA-19-00087: COMMUNITY VENTURES PROPERTIES, LLC –** request for a conditional use to operate a private club (artists’ studio work space) at property within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 244 and 248 Race St., for two months, until the February 10, 2020 hearing.

*Note – At this time, Mr. Richard Murphy approached the podium and informed the Board that the applicant for **PLN-BOA-19-00080: LEXLIVE ENTERTAINMENT COMPLEX** wished to withdraw items 4 and 5 from their application.

**D. Abbreviated Hearings**

1. **PLN-BOA-19-00084: ALTORAC FARM, LLC** – requested a variance to reduce the required front yard setback from 300’ to 250’ in an Agricultural Rural (A-R) zone on property located at 5695 Sulphur Well Road, (Council District 12).

   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 the proposed tenant home will be located further from the front lot line than the existing tenant home, which is to be removed.
   b. The requested variance is generally reasonable because it will allow for the tenant home to utilize the existing driveway and septic system. The location of these features, along with the close proximity of the creek, are special circumstances that justify the need for the variance.
   c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicant has applied for the variance as soon as it was determined that it was 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. The existing tenant home and detached garage (labeled “1” and “2” on the site plan) shall be removed upon construction of the new tenant home.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection and the Rural Land Management Board prior to construction and occupancy.

Representation – Mr. David Baugh, applicant and property owner was present.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 6-0 (Meyer absent), to **approve PLN-BOA-19-00084: ALTORAC FARM, LLC** – request for a variance to reduce the required front yard setback from 300’ to 250’ in an Agricultural Rural (A-R) zone on property located at 5695 Sulphur Well Road, based on the staff’s recommendation and subject to the three conditions as listed.

**2.** **PLN-BOA-19-00083: DUNKIN’ DONUTS** – requested a conditional use to establish drive through facilities for a new restaurant in a Neighborhood Business (B-1) zone, on property located at 2213 Versailles Road, (Council District 11).

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

a. The proposed use should not adversely affect the subject or surrounding properties. The subject property is located in a commercial area on a busy corridor and other drive through facilities exist in the immediate vicinity.
b. The proposed drive-through should not have adverse effects on traffic at this location. There is adequate space available for the required vehicular stacking area and the subject property is near a signalized intersection (at Versailles Road and Village Drive).
c. 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:

1. The drive-through facility shall be established in accordance with the submitted application materials and site plan, with revisions allowed as required by the Division of Traffic Engineering.
2. The final design of the drive-through/parking lot shall be subject to review and approval by the Division of Traffic Engineering.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

Representation – Mr. Timothy Markham, applicant, was present on behalf of the property owner, Lexington Donuts.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter and carried 6-0 (Meyer absent), to **approve PLN-BOA-19-00083: DUNKIN’ DONUTS** – request for a conditional use to establish drive through facilities for a new restaurant in a Neighborhood Business (B-1) zone, on property located at 2213 Versailles Road, based on staff’s recommendations and subject to the three conditions as listed.

3**.** **PLN-BOA-19-00086: THE MISSION CHURCH OF LEXINGTON** – requested a conditional use for a place of religious assembly in order to expand the parking lot at an existing church in a Single Family Residential (R-1D) zone, on property located at 3288 Beaver Creek Dr., (Council District 7).

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

a. The proposed use should not adversely affect the subject or surrounding properties and will provide needed parking spaces for the growing church. The parking lot will be landscaped in order to create a buffer between the vehicular use and the residential neighborhood.
b. A parking lot expansion should not have any major traffic impact on the general vicinity. The church is located adjacent to Man o’ War Boulevard and will typically generate activity on only two days per week.
c. 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:

1. The project shall be completed in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.
3. The final configuration of the parking lot, including any changes to the church’s existing parking layout, 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.
5. 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.

6. 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.

Representation – Elizabeth McCullough, applicant, was present.

*Note – At this time, Ms. Goderwis presented a letter of concern for the Board to review.

Board comments and questions – Chair Gross stated the letter mentioned landscaping that was of concern. Ms. McCullough responded and explained. There was further discussion concerning the landscaping, shrubbery and trees on the property.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover and carried 6-0, (Meyer absent), to **approve** **PLN-BOA-19-00086: THE MISSION CHURCH OF LEXINGTON** – request for a conditional use for a place of religious assembly in order to expand the parking lot at an existing church in a Single Family Residential (R-1D) zone, on property located at 3288 Beaver Creek Drive, based on staff's recommendation and subject to the six conditions as listed.

**E. Discussion Items**

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

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

a. The applicant has not provided details regarding means of mitigating the potential negative impacts (outlined in the previous staff report sent to them prior to the October 2019 Board of Adjustment Meeting), nor has any information been provided regarding overall management of the site.
b. The proposed conditional use could have a negative impact on the public health, safety, or welfare. Without improved management and mitigation efforts, staff has serious concerns regarding the potential impacts this type of use may have on water quality, air quality, and public health.

*Note – At this time, Ms. Goderwis presented the staff report for this application.

Board comments and questions – Chair Gross had questions about the prior use of this property. Ms. Goderwis responded and explained.
Chair Gross had questions about the uses of other properties in the neighborhood. Ms. Goderwis responded.
Mr. Glover asked how long the current business has been operating in this location. Ms. Goderwis responded it has been operating since 2005, according to the application. Mr. Glover asked why this was just now coming to the attention of the Board. Ms. Goderwis responded and explained it was due to a citizen complaint.
Ms. Carter asked about the storage of the materials. Ms. Goderwis responded and explained. There was further discussion. Aerial photos of the property and surrounding area were shown and discussed.

Representation – Mr. James B. McGee, applicant, was present and approached the podium.

Board comments and questions – Mr. Glover asked Mr. McGee to describe his business. Mr. McGee described his business. Discussion between Mr. Glover and Mr. McGee continued.
Ms. Carter asked the applicant about overnight storage of materials he brings in. Mr. McGee responded and explained.
Mr. Glover had a question about drainage of the property. Mr. McGee responded and explained.
Mr. Clarke had questions about sorting and separating the materials. Mr. McGee responded and explained.
Mr. Glover asked why this is not a transfer station rather than a junk yard. Ms. Goderwis responded and explained.
Chair Gross asked if the dump pile was on dirt. Mr. McGee stated that it was.
Ms. Carter asked if the applicant needed to make some changes in order to make this property acceptable to operate as a junk yard. Ms. Goderwis responded and explained that he would need to make some effort for mitigations of the environmental impact, as well as other items in the staff report, which have been recommended.
Ms. Carter asked the applicant where he was in the process of addressing some of those things. Mr. McGee stated he could hire a firm to do all that.
Mr. Glover had questions about the possible environmental impact. Ms. Goderwis responded and explained.
Chair Gross asked if the Division of Water Quality had any comment. No representative from that division was present, however Mr. Josh Dezarn, responded with input from the Division of Engineering regarding this case.
Chair Gross expressed his concern about hazardous materials that may erroneously be placed in the trucks to be dumped. He asked the applicant if he had made any effort to reach out to the various governmental entities to discuss the items staff had recommended. Mr. McGee responded that he had not.
Ms. Carter mentioned that the applicant was given a deadline of December 16, 2019, per the Notice of Violation, to register with the Energy and Environment Cabinet. Ms. Carter asked Mr. McGee if he had started that process. Mr. McGee replied he had not.

Opposition – Nicole Horseman, Commander of the VFW Post 680, located at 1494 Leestown Rd. was present. She expressed concerns with the debris pile located on Mr. McGee's property. She stated the members of the VFW are opposed to this application, and stated reasons for their opposition.
Jacob Walbourn, representing Winmar Corporation, was present. He presented slides of aerial views of this property depicting the debris pile, water runoff and other concerns of his client.
Mr. Glover asked Mr. Walbourn how close this property, which is in an Industrial zone, is to the nearest Residential Zone. Mr. Walbourn responded and explained.
Mr. Vance Evans, owner of 203/205 Lisle Industrial Ave. was present and spoke in opposition of this application.
Mr. Gary Young, maintenance coordinator for the box making facility behind the property in question was present and expressed his concerns about this application to the Board.
There was further discussion among the Board.

Rebuttal – Mr. McGee advised the Board he could clean the debris up in a couple of months.

Board comments and questions – there was further discussion between the Board and staff.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 5-0 (Meyer & Needham absent), to **disapprove PLN-BOA-I19-00071: JAMES B. MCGEE –** request for a conditional use to operate a junk yard in a Heavy Industrial (I-2) Zone on property located at 130 Lisle Industrial Ave., based on staff's recommendation.

*Note – At this time, Chair Gross recused himself from the next case to be heard and appointed Mr. Glover as Acting Chair.

**F. Administrative Appeals**

1. **PLN-BOA-19-00085: MATT BURTON** – requested an administrative appeal to re-establish a legal non-conforming use (parking lot) on property within the defined Infill and Redevelopment Area in Two Family Residential (R-2)/Historic Overlay (H-1) zones, on property located at 421 and 425 S. Mill St., (Council District 3).

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

a. While the use of the for parking has been limited in scale, there does not appear to have been any intent to abandon the commercial nature of the subject property. The use of the lots for parking will be a less intense use than that of the commercial businesses which have historically operated on the property.
b. The changes being proposed should not adversely affect the subject or surrounding properties. The adjacent properties have commercial uses and parking areas are common along this portion of Plunkett Street. It is unlikely that these two parcels would be utilized for residential construction until the time that the non-conforming business uses on either side cease.
c. The use of this property as a parking lot will provide relief for businesses in an area with limited parking availability.
d. All necessary public services and facilities are or will be available and adequate for the uses.

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

1. The uses shall be conducted in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.
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 Articles 16 and 18 of the Zoning Ordinance.
5. 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.

Representation – Mr. Richard Murphy, attorney for the applicant was present and distributed handouts to the Board. He presented photos and an explanation of the application.

Board comments and questions – Mr. Glover had a question for Mr. Murphy concerning potential residential use. Mr. Murphy responded and explained.
Mr. Clarke had questions about the fences and a proposed gate. Mr. Murphy responded and explained. There was further discussion. Mr. Clarke asked a question about requests from the neighborhood association. Mr. Murphy responded and explained.

Opposition – Jean Scott, representing Historic South Hill Neighborhood Association, was present and spoke in opposition to this application.

Board comments and questions – Mr. Needham had a question for Ms. Scott. She responded.

Public comment – Mr. Rhett Constantine, owner of Old School Coffee Co. spoke in support of a parking lot at this location.

Rebuttal – Mr. Matt Burton, owner of Dudley Square and the lots in question on Mill St. introduced himself and gave a brief background of this application.

Board comments and questions – Mr. Glover asked Mr. Burton how they lost 40 percent of the parking when he purchased Dudley Square. Mr. Burton responded and explained. Mr. Clarke had a question about the parking lot across Maxwell St. Mr. Burton responded. There was further discussion.

Rebuttal – Mr. Murphy reiterated that the applicant is not asking for a declaration that commercial uses can be constructed on the property, only that the parking use has continued as demonstrated by the photos previously shown. Mr. Murphy reiterated that the only building that will ever be built on this property will be residential; they just don't know when that may be.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 5-0 (Gross recused; Meyer Absent), to **approve PLN-BOA-19-00085: MATT BURTON** – request for an administrative appeal to re-establish a legal non-conforming use (parking lot) on property within the defined Infill and Redevelopment Area in Two Family Residential (R-2)/Historic Overlay (H-1) zones, on property located at 421 and 425 S. Mill Street, as recommended by staff and subject to the five conditions as listed.

IV. **BOARD ITEMS** - The acting Chair announced that any items a Board member wished to present would be heard at this time.

There were none.

V. **STAFF ITEMS** - The acting Chair announced that any items a Staff member wished to present would be heard at this time.

There were none.

VI. **NEXT MEETING DATE** - The acting Chair announced that the next meeting date will be January 13, 2020, at 1:30 p.m.

VII. **ADJOURNMENT** - The acting Chair declared the meeting adjourned.

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Branden Gross, Chair

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Joan Whitman, Secretary