MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

January 13, 2020

I. ATTENDANCE – Chair Branden Gross called the meeting to order at 1:30 p.m. in the Council Chamber, 200 East Main Street, January 13, 2020. Members present were: Raquel Carter, Joan Whitman, Janice Meyer, Harry Clarke, Thomas Glover and Chad Needham. Others present were: Josh Dezarn, Division of Engineering, Stephen Parker, Traffic 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 December 9, 2019 meeting would be considered for approval at this time.

Action - A motion was made by Mr. Glover, seconded by Mr. Clarke, and carried 6-0 (Meyer abstained), to approve the minutes of the December 9, 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

C. Postponements and Withdrawals

*Note – At this time, Ms. Goderwis informed the Board that the applicant for **PLN-BOA-19-00090: BRADFORD STENGEL** wished to withdraw this application.

D. Abbreviated Hearings

1. PLN-BOA-19-00088: LEXINGTON FINANCIAL CENTER, LLC – Requested an administrative appeal to transfer 21 square feet of allowable wall signage in order to erect a third free-standing sign at property within the defined Infill and Redevelopment Area in a Lexington Center Business (B-2B) zone, on property located at 250 W. Main Street.

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

a. Granting the request will not circumvent the Zoning Ordinance as the proposed signage will comply with the limitations outlined in Article 17-8(a). A wall sign will be foregone on the Mill Street façade, so the total number of signs on the property will not exceed the total number of signs that are allowed per the Zoning Ordinance.
b. The proposed sign will not have negative effects on the public health, safety, or welfare, nor will it alter the character of the general vicinity. The sign will be modest in size and will provide recognition to both motorists and pedestrians for a major tenant within the large building.

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

1. The sign shall be installed in accordance with the submitted application materials and site plan.
2. A sign permit shall be obtained from the Division of Building Inspection prior to installation of the sign.
3. Future signage on the Mill Street façade shall be limited to one wall sign.

Representation – Mr. Adam Linville, Integrated Sign and Graphic, was present.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried 7-0, to **approve PLN-BOA-19-88: LEXINGTON FINANCIAL CENTER, LLC** request for an administrative appeal to transfer 21 square feet of allowable wall signage in order to erect a third free-standing sign at property within the defined Infill and Redevelopment Area in a Lexington Center Business (B-2B) zone, on property located at 250 W. Main Street, based on the staff's recommendation and subject to the three conditions as listed.

E. Discussion Items

1. **PLN-BOA-19-00082: MARIYANA K. & DIYAN R. HRISTOV –** Requested 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, (Council District 12).

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

a. Granting the variance would result in construction that is out of character with the general vicinity. Front yard fences of any height are not present in the general vicinity and a 6-foot tall fence would be very unusual.

b. The recommendation of the Homeowners’ Association does not qualify as a special circumstance that justifies the need for a variance and it appears that extending the fence directly perpendicular to the house from the front right corner, without curving the fence could result in an area large enough to accommodate the basketball court, without the need for a variance.

c. A 4’ tall fence in the front yard, although not as desirable for the applicant, would provide a reasonable level of security for a basketball court. Pursuing this alternative (if the court cannot be reduced in size and/or reoriented; or if the curved fence is more desirable to the applicant than the option presented herein), is not considered as a significant hardship.

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

Board comments and questions – Chair Gross had a question about the distance of the applicant’s proposed fence and staff’s recommended proposed fence. Ms. Goderwis responded and explained.

Representation – Mr. Diyan R. Hristov, applicant and property owner, 3376 Scottish Trace presented his case, including a slide show of the proposed project.

Board comments and questions – Chair Gross had a question for the applicant about the distance from the right of way to the fence. Mr. Hristov responded and explained.
Ms. Carter asked the applicant if the orientation on the screen was correct. Mr. Hristov responded that it was the exact orientation. There was further discussion.
Mr. Clarke asked the applicant why the size of the proposed basketball court could not be reduced so that the section of fence in question is completely behind the plane of the house as recommended by staff. Mr. Hristov responded and explained. There was further discussion.
Chair Gross asked Mr. Hristov to go back the first slide and leave it on the screen.
Mr. Clarke asked why the court was not square. Mr. Hristov responded and explained. There was further discussion.
Mr. Marx asked if staff could take a moment to explain to Mr. Hristov which line on his drawing was making it not square. Ms. Goderwis and Mr. Marx met with Mr. Hristov at the side counter.
Ms. Carter asked the applicant if he was able to situate the court so the entire fence would be behind the front plane of the house. She asked if it was doable to move that section of the fence. Mr. Hristov responded it was not doable. There was further discussion.
Ms. Whitman asked the applicant what his reason was for not accepting sketch “A” that had been provided to the Board. Mr. Hristov responded.
Mr. Needham stated what the two key options for this application to be approved are, in his mind.
Mr. Glover asked staff about the 20’ setback. Ms. Goderwis responded and explained.

Action – A motion was made by Mr. Needham, seconded by Mr. Glover, and carried 7-0, to **disapprove 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, based on staff’s recommendation.

*Note – At this time, Ms. Carter recused herself, due to a conflict of interest with the next case.

2. **PLN-BOA-19-00091: VIBE PROPERTIES, LTD CO:** Requested a variance to reduce the required front yard from 20’ to 0’ in order to allow parking in the front yard in a Planned Neighborhood Residential (R-3) zone within the defined Infill and Redevelopment Area, on property located at 264 E. Loudon Ave., (Council District 1).

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

a. Granting the variance could have a negative effect on the character of the general vicinity. While there are a few houses in the vicinity with parking in the front yard, the majority have parking in the rear or utilize on-street parking, which is available along East Loudon Avenue.

b. Granting the variance could have a negative impact on the public health, safety, or welfare, as there would not be adequate space between the existing curb cuts on the adjacent properties. Additionally, the proposed driveway could conflict with existing stormwater infrastructure.

c. Strict application of the Zoning Ordinance will not create an unnecessary hardship. A house has existed on the property for many years without a parking space in the front yard. On-street parking is available in the vicinity and the applicant can pursue a private arrangement that would allow the continued use of the shared driveway as designated in the subject property's deed.

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

Board comments and questions – Mr. Clarke asked Ms. Goderwis if a 10' driveway would be acceptable. Ms. Goderwis responded and explained.
Mr. Glover also had questions about a 10' driveway as well as a paved walkway. Ms. Goderwis responded and explained.
Chair Gross asked if a survey had been done. Ms. Goderwis stated she was not aware.
Mr. Glover asked if there is parking behind the house. Ms. Goderwis responded and explained.

Representation – Marcellus Barksdale, applicant and property owner was present. Mr. Barksdale presented copies of photos of his property to the Board for their review, as well as a copy for the overhead projector.

Board comments and questions – Ms. Meyer asked the applicant if he had spoken with the owner of the house next door, 262 E. Loudon Ave., about using the shared driveway, and historically what the parking situation was for the property. Mr. Barksdale responded and explained.
Ms. Meyer asked staff if this situation is common with shared driveways. Ms. Goderwis responded and explained. Mr. Parker, Traffic Engineering, responded that this is common around campus where there are a lot of shared driveways with parking in the rear. There was further discussion.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 5-1, (Carter recused; Clarke voted No) to **disapprove** **PLN-BOA-19-00091: VIBE PROPERTIES, LTD CO** – request for a variance to reduce the required front yard from 20' to 0' in order to allow parking in the front yard in a Planned Neighborhood Residential (R-3) zone within the defined Infill and Redevelopment Area, on property located at 264 E. Loudon Ave., based on staff's recommendation.

*Note – At this time, Ms. Carter returned to the meeting.

3. **PLN-BOA-19-00089: GREER LAND CO SMYRNA #2 LLC** – Requested an administrative appeal to determine that a sign attached to a parapet wall is not a roof sign in a Neighborhood Business (B-1) zone, on property located at 1100 S. Broadway, (Council District 3).

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

a. Granting the request would circumvent the Zoning Ordinance, as the sign proposed clearly does not meet the definition of a "wall sign," but does meet the definition of a "roof sign." The Board of Adjustment does not have the authority to approve a roof sign in this location, as roof signs are specifically prohibited in all zones.
b. Disapproval of the request will not create an unnecessary hardship or unreasonable restriction. The proposed sign would be allowed as a wall sign if it were installed less than 3' lower than what is currently proposed.
Installing the sign at the allowable height will have minimal impact on the sign's visibility from the road. The business should be easily seen and recognized by passersby, as the subject property is a visible corner lot on a Major Arterial; and there will be several signs on the property.

*Note – At this time, Ms. Goderwis presented a letter of opposition to the Board for their review, then presented the staff report for this case.

Board comments and questions – Chair Gross had a question about the administrative process of the building permit and the sign permit for this project. Ms. Goderwis responded and explained. There was further discussion between the Board and staff.
Ms. Carter asked a question about a neighboring sign. Ms. Goderwis responded and explained.

Representation – Ross MacArthur, Wendy's restaurants, was present. Mr. MacArthur presented a photo of a nearby restaurant with a sign he felt was similar to what the applicant was requesting. There was further discussion concerning signs on nearby restaurants.

Board comments and questions – Chair Gross asked that the slide with the Zoning Ordinance be shown on the overhead again.
Mr. Clarke asked the applicant if he had a picture of the Wendy's restaurant on Nicholasville Rd. Mr. MacArthur responded he did not. There was further discussion.
Chair Gross asked if Legal had anything they wanted to add. Mr. Edwards responded that Legal would be happy to answer any questions the Board had, but Ms. Goderwis's explanation was correct and Legal had nothing to clarify.
Mr. Glover asked Legal if the Board had the authority to decide something other than what the staff recommended. Mr. Edwards responded and explained that the Board has the authority to disagree with the staff and interpret the

ordinance as they believe appropriate. The Board is entitled to disagree with staff if they would like. Discussion continued.

Action – A motion was made by Ms. Meyer, seconded by Mr. Gross and carried 5-2, (Carter and Glover voted No), to **disapprove PLN-BOA-19-00089: GREER LAND CO SMYRNA #2 LLC** – request for an administrative appeal to determine that a sign attached to a parapet wall is not a roof sign in a Neighborhood Business (B-1) zone, on property located at 1100 S. Broadway, based on staff's recommendation.

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

A. Election of Officers - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting. The current officers are: Chair – Branden Gross; Vice Chair – Thomas Glover; Secretary – Joan Whitman.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter, and carried 7-0 to **re-elect** the present officers as follows:

- Chair – Branden Gross
- Vice Chair – Thomas Glover
- Secretary – Joan Whitman.

V. STAFF ITEMS - The 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 Chair announced that the next meeting date will be February 10, 2020, at 1:30 p.m.

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

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Branden Gross, Chair

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Joan Whitman, Secretary