

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING
March 9, 2020

- I. **ATTENDANCE** - Chair Branden Gross called the meeting to order at 1:30 p.m. in the Council Chamber, 200 East Main Street, March 9, 2020. Members present were: Raquel Carter, Janice Meyer, Thomas Glover, Harry Clarke and Chad Needham. Joan Whitman was absent. Others present were: Josh Dezarn, Division of Engineering; Stephen Parker, Traffic Engineering and Tracy Jones, 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 February 10 meeting would be considered for approval at this time.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke, and carried 4-0 (Whitman absent; Meyer and Glover abstained), to **approve** the minutes of the February 10, 2020 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. **Postponements and Withdrawals**

The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

Ms. Goderwis informed the Board that **PLN-BOA-20-00011: BANK OF AMERICA** - request for variances to increase the allowable maximum front yard from 20' to 55', and the allowable maximum side street yard from 20' to 30' in order to construct a new building in a Neighborhood Business (B-1) zone, on property located at 2197 Versailles Road, (Council District 2), withdrew their application via email on March 5, 2020.

Ms. Goderwis informed the Board that **PLN-BOA-00014: MAN O' WAR CHURCH OF GOD** withdrew their application after the notice letter had been sent, but prior to the publication of the legal ad.

Chair Gross asked if anyone in the audience was present for either of the two above-mentioned cases, and there was no response.

*Note – at this time, the applicant for **PLN-BOA-20-00010: REALTY UNLIMITED BLUEGRASS, LLC** – request for 1) an administrative appeal to allow construction of a temporary gravel parking lot (to be paved at a later date); 2) a variance to reduce the required vehicular use area perimeter landscape buffer from 5' to 0'; and 3) a variance to reduce the property perimeter landscape buffer where any zone abuts a railroad, from 15' to 0' at property located in a Highway Service Business zone (B-3), at 1760 N. Broadway, (Council District 1), wished to postpone his application until the April 13, 2020 hearing.

Chair Gross asked if anyone in the audience was present for that case. Several people raised their hands. Chair Gross asked the applicant to state his reason for requesting postponement. The applicant responded and explained. There was further discussion. Chair Gross asked the Law Department if the Board was allowed to postpone Administrative Appeals. Ms. Jones responded and explained. There was further discussion.

Chair Gross asked if anyone in the audience for this case would like to come forward and speak.

Opposition

Dave Danforth, 525 Dover Rd. agreed to come back next month if the application were to be postponed.

Patrick Watson, 525 High St., Ste. 325, Paris, KY, representing one of the adjoining property owners, agreed to come back in 30 days if the application was postponed. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried 6-0 (Whitman absent), to **postpone PLN-BOA-20-00010: REALTY UNLIMITED BLUEGRASS, LLC** – request for 1) an administrative appeal to allow construction of a temporary gravel parking lot (to be paved at a later date); 2) a variance to reduce the required vehicular use area perimeter landscape buffer from 5' to 0'; and 3) a variance to reduce the property perimeter landscape buffer where any zone abuts a railroad from 15' to 0', at property located in a Highway Service Business zone (B-3), at 1760 N. Broadway, until the April 13, 2020 hearing.

- C. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda with regard to any items requiring no discussion.

D. **Abbreviated Hearings**

1. **PLN-BOA-20-00003: LIU, HUIFANG & DENG** – requested a variance to increase the allowable height of a fence that is within 3' of the public right-of-way in a side street, side yard, from 4' to 6' in a Single Family Residential (R-1C) zone, on property located at 802 Cheryl Lane (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. While it is disconcerting that the work was completed without a permit, granting the variance should not adversely affect the public health, safety, or welfare, as there is still at least 28" between the public right-of-way and the fence at all locations. At some points, including each end section, the fence is just one to two inches short of the required 3' setback.
- b. Granting the variance should not have much effect on the character of the general vicinity. The requested variance is relatively minor (only 8"), and there are other similar 6-foot tall fences in the neighborhood that are less than 3' from the public right-of-way.

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

1. The applicant shall submit corrected drawings showing the work as completed in order to obtain an after-the-fact fence permit from the Division of Building Inspection within 30 days of Board action.

There was one letter of opposition, which was given to the Board for their review.

Representation - Huifang Liu, applicant and property owner was present.

Board comments and questions – Ms. Meyer asked staff to walk the Board through the issues involved in this application. Ms. Goderwis responded and explained.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 6-0 (Whitman absent), to **approve PLN-BOA-20-00003: LIU, HUIFANG & DENG** – request for a variance to increase the allowable height of a fence that is within 3' of the public right-of-way in a side street, side yard, from 4' to 6' in a Single Family Residential (R-1C) zone, on property located at 802 Cheryl Lane, based on staff's recommendation and subject to the one condition as listed.

2. **PLN-BOA-20-00005: ANN MARIE AND RYAN SPOONAMORE** – requested a variance to decrease the required rear yard from 25' to 19' in order to construct an addition to a house in an Agricultural Rural (A-R) zone, on property located at 128 S. Baxter Blvd. (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 have much effect on the character of the general vicinity. The addition should not be visible from a public right of way, nor have an effect on neighboring houses.
- b. The need for the variance did not come about because of the applicants' actions and there has not been an intentional circumvention of the Zoning Ordinance. They went through the appropriate process to secure a building permit. The applicants were not aware of the required setback, as it was not noted on the approved drawings, nor on the building permit. The variance is generally reasonable as the area requiring the variance is only about 75 square feet.

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

1. Construction shall be completed in accordance with the submitted application materials and site plan.

Representation – Rodney Woodrum, Spectrum Contracting and Ann Marie Spoonamore, applicant, were present.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 6-0 (Whitman absent), to **approve PLN-BOA-20-00005: ANN MARIE AND RYAN SPOONAMORE** – request for a variance to decrease the required rear yard setback from 25' to 19' in order to construct an addition to a house in an Agricultural Rural (A-R) zone, on property located at 128 S. Baxter Blvd, based on staff's recommendation and subject to the one condition as listed.

3. **PLN-BOA-20-00012: EDSON GARCIA** – requested variances to 1) reduce the required front setback for additional paved parking from 6' to 0'; and 2) to reduce the required side yard setback for additional paved

parking from 2' to 1' in a Single Family (R-1C) zone, on property located at 441 Severn Way (Council District 10).

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

- a. Granting the variance should not have much effect on the character of the general vicinity. The property is not located within the defined Infill & Redevelopment area and there are varying driveway widths in the neighborhood.
- b. Granting the variance should not adversely affect the public health, safety, or welfare. The additional paving allows the applicant to access the required parking space behind the front building line safely and easily.
- c. While the requirements of the Ordinance could have been met in this location had the applicant gone through the process of applying for a paving permit prior to completing the work, there seems to have been confusion between the Division of Building Inspection and the applicant. Notes on the approved plans for the interior renovation indicated that the additional parking space behind the building line must remain. It is likely that the Plan Reviewer did not realize the paving did not already exist because it was not labeled as "new" or "proposed" on the drawings. It is also understandable based on that annotation that the applicant did not realize the paving did not meet the requirements of the Zoning Ordinance.

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

1. The applicant shall submit corrected drawings showing the work as completed in order to obtain an after-the-fact fence permit from the Division of Building Inspection within 30 days of Board action.

*Note – Ms. Goderwis presented one letter of support for this case to the Board for their review.

Representation – Edson Garcia, applicant and property owner was present.

Board comments and questions – Mr. Glover asked staff why this driveway was not in compliance. Ms. Goderwis responded and explained.

Ms. Carter asked why staff is recommending approval for this application, when often times the applicant must make corrective measures. Ms. Goderwis responded and explained.

Mr. Glover asked staff if the fact that the applicant is turning his garage into a living area makes a difference in this case. Ms. Goderwis responded and explained.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 6-0 (Whitman absent), to **approve PLN-BOA-20-00012: EDSON GARCIA** – request for variances to 1) reduce the required front setback for additional paved parking from 6' to 0' and 2) to reduce the required side yard setback for additional paved parking from 2' to 1' in a Single Family (R-1C) zone, on property located at 441 Severn Way, based on staff's recommendation and subject to the one condition as listed.

4. **PLN-BOA-20-00007: CAPKY BLUEGRASS** – requested a conditional use to establish an extended stay hotel within the defined Infill & Redevelopment Area in a High Rise Apartment (R-5) zone, on property located at 353 Waller Avenue (Council District 3).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This use should be compatible with the surrounding uses. The property is located near institutions that will likely find this type of use to be a welcome amenity.
- b. Negative traffic impacts are unlikely and sufficient parking exists on the subject property.
- c. 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 extended-stay hotel shall be operated in accordance with the submitted site plan and application materials.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.
3. Action of the Board shall be reflected on the Final Development Plan for the property.

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

Representation – Rory Kahly, E.A. Partners, was present on behalf of the applicant.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham, and carried 6-0 (Whitman absent), to **approve PLN-BOA-20-00007: CAPKY BLUEGRASS** – request for a conditional use to establish an extended stay hotel within the defined Infill & Redevelopment Area in a High Rise Apartment (R-5) zone, on property located at 353 Waller Ave., based on staff's recommendation and subject to the three conditions as listed.

5. **PLN-BOA-20-00008: TIM COURTNEY** – requested a conditional use for a home-based business (mail order firearm customization/assembly) in a Single Family (R-1C) zone, on property located at 713 Troy Trail (Council District 4).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use will be conducted inside the house, and there will be no customers on site. The applicant will have a Federal Firearms License to conduct these activities as regulated by the Bureau of Alcohol, Tobacco, and Firearms.
- 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 use shall be conducted in accordance with the submitted site plan and application.
2. There shall be no on-site discharge or sale of firearms.
3. The applicant shall acquire and utilize a gun safe within the house.
4. The home-based business shall be limited to the area in the garage, as indicated in the application.
5. Signage for the business shall not be placed on the property or at any other location.
6. Should the applicant cease to occupy the subject property, the conditional use permit shall become null and void.
7. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
8. All of the proper governmental approvals from the Bureau of Alcohol, Tobacco, and Firearms shall be on file with the Division of Building Inspection prior to the issuance of a Certificate of Occupancy.

*Note – At this time, two letters of opposition were distributed to the Board for their review.

Representation – Tim Courtney, applicant, was presented and presented his case.

Board comments and questions – Ms. Meyer asked the applicant to explain exactly what he plans to do with this conditional use permit. Mr. Courtney responded and explained. Ms. Meyer asked if there would be ammunition. Mr. Courtney responded and explained. There was further discussion.

Mr. Glover asked Mr. Courtney if ammunition would be stored at the property. Mr. Courtney responded and explained. There was further discussion.

Mr. Clarke asked Mr. Courtney to explain exactly what it is he does. Mr. Courtney responded and explained.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover to **approve PLN-BOA-20-00008: TIM COURTNEY** – request for a conditional use for a home-based business (mail order firearm customization/assembly) in a Single Family (R-1C) zone, on property located at 713 Troy Trail, based on staff's recommendation and subject to the eight conditions as listed.

Board Discussion – Mr. Clarke asked staff what the Board's authority would be to reject this application. Chair Gross asked Ms. Jones from the Law Department to speak to this, and also to the KRS statute regarding this subject. Ms. Jones responded and explained.

Mr. Glover asked what the KRS citation was. Ms. Jones responded. There was further discussion.

Action – The motion carried 5-0 (Whitman absent; Meyer abstained) to **approve** the conditional use.

6. **PLN-BOA-20-00009: NATHANIEL MISSIONARY SOCIETY, INC.** - requested a conditional use to expand the existing place of religious assembly in order to include an accessory community center (Recovery Café), within the defined Infill & Redevelopment Area in a Warehouse Business (B-4) zone, on property located at 1109 Versailles Road (Council District 2).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. Adjoining or nearby land uses, largely of a commercial nature, are not likely to be disturbed by the proposed activities which will generally occur at times when there is little or no existing activity on the property. The nearest residential area is several hundred feet away and adequately buffered from the proposed site.
- 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 use shall be conducted in accordance with the submitted site plan and application.
2. The hours of operation for the community center shall be limited to Fridays and Saturdays, from 10:00 a.m. to 5:00 p.m.
3. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.

Representation – Ned Frazier, applicant representing Recovery Cafe, was present and presented his case. Dan Behr, Executive Director, Nathaniel Mission was also present.

Board comments and questions – Mr. Needham had a question about the days and hours of operation. Mr. Frazier responded and explained.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried 6-0 (Whitman absent), to **approve PLN-BOA-20-00009: NATHANIEL MISSIONARY SOCIETY, INC.** request for a conditional use to expand the existing place of religious assembly in order to include an accessory community center (Recovery Café), within the defined Infill & Redevelopment Area in a Warehouse Business (B-4) zone, on property located at 1109 Versailles Rd. based on staff's recommendation and subject to the three conditions as listed.

E. Discussion Items

1. **PLN-BOA-19-00066: JACK V. DRAKE** – requested a variance to reduce the front setback for additional paved parking from 6' to 0' in order to widen an existing driveway within the defined Infill & Redevelopment area in a Planned Neighborhood Residential/Historic Overlay (R-3/H-1) zone, on property located at 100 Goodrich Avenue (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare, as the areas to be paved are relatively small and will result in a more functional design.
- b. Granting this variance should not have much effect on the character of the general vicinity. While driveways of this width are not common in the neighborhood, two-car attached garages are also quite uncommon. In this case, approving the variance will allow the driveway to be the same width as the garage and will reduce debris, rutting and damage to the yard caused by vehicles driving through the "landscaped" gravel areas.

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

1. The driveway shall be paved in compliance with the application materials and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Building Inspection, and Historic Preservation prior to paving.

Representation – Jack V. Drake, applicant and property owner was present and presented his case.

Board comments and questions – Ms. Carter had a question for the applicant. Mr. Drake responded and explained.

Mr. Glover asked staff if this variance would have an adverse effect on the character of the general vicinity. Ms. Goderwis responded and explained.

Opposition – Tenlee Tarrier, 99 Goodrich Ave. was present and spoke in opposition of this application.

Rebuttal – Mr. Drake addressed Ms. Tarrier's concerns and questions from the Board.

Board questions and comments – Ms. Meyer had a question for staff concerning Infill regulations. Ms. Goderwis responded and explained. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 6-0 (Whitman absent), to **approve PLN-BOA-19-00066: JACK V. DRAKE** – request for a variance to reduce the front setback for additional paved parking from 6' to 0' in order to widen an existing driveway within the defined Infill & Redevelopment area in a Planned Neighborhood Residential/Historic Overlay (R-3/H-1) zone, on property located at 100 Goodrich Ave. based on staff's recommendation and subject to the two conditions as listed.

*Note – At this time, Chair Gross recused himself from the remainder of the meeting due to conflicts of interest in the remaining two cases, transferring the position of Chair to Mr. Glover.

2. **PLN-BOA-20-00004: ROYCE PULLIAM**– requested a variance to increase the allowable maximum front yard setback from 20' to 70' for a new building in a Neighborhood Business (B-1) zone, on property located at 1009 and 1017 Wellington Way (Council District 10).

The Staff Recommended: Approval of the variance for Building A only, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare. Approval of the variance for Building A will allow the applicant to construct the necessary underground detention and to maximize their use of the property.
- b. Granting this variance for Building A should not have much effect on the character of the general vicinity, as most buildings in the general vicinity have parking in the front.

- c. Granting the variance for Building A will not constitute a circumvention of the Zoning Ordinance, as the topography of the property and the need for underground detention are special circumstances that justify the need for the variance.

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

1. Construction shall be in accordance with an amended Final Development Plan which reflects that the front yard setback for Building B shall not exceed 20'.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection prior to construction and occupancy.
3. 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.
4. Action of the Board shall be noted on the Final Development Plan for the subject property.

Representation – John Woodall, on behalf of the applicant, presented the application.

Board comments and questions – Mr. Clarke asked for clarification that the applicant is now requesting a variance for only Building A. Mr. Woodall confirmed they are only requesting a variance for 1009 Wellington Way, Building A.

Opposition – Doug Martin, 2213 Chamblee Lane. Mr. Martin has an office in the building at 1031 Wellington Way and expressed his concerns regarding this application.

Board comments and questions – Ms. Carter had a question for Mr. Martin concerning the drive-thru he referred to. Mr. Martin responded and explained.

Mr. Clarke asked Mr. Martin about the turn lane on Wellington Way. Mr. Martin responded and explained. There was further discussion.

*Note – At this time, Ms. Goderwis mentioned that this project is subject to a final development plan, which has not been certified yet. Therefore, the vast majority of the issues that Mr. Martin raised are development plan issues. The matter before the Board today is only the setback variance.

Rebuttal – Mr. Woodall agreed that the majority of Mr. Martin's concerns will be addressed with the development plan.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 5-0 (Whitman absent; Gross recused), to **approve PLN-BOA-20-00004: ROYCE PULLIAM** – request for a variance to increase the allowable maximum front yard setback from 20' to 70' for a new building in a Neighborhood Business (B-1) zone, on property located at 1009 Wellington Way, based on staff's recommendation and subject to the four conditions as listed.

3. **PLN-BOA-20-00013: NEW CIRCLE INVESTMENTS, LLC** – requested a variance to increase the allowable height of a new building in an Adaptive Reuse Project from 48' to 78' in order to construct a new hotel within the defined Infill & Redevelopment Area in a Light Industrial (I-1) zone, on property located at 941 Manchester Street (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. The adjacent properties, as well as those immediately across the street are mostly commercial; and the property is bounded by the railroad along the rear property line. Adequate parking will be provided on the property and across Manchester Street.
- b. Granting this variance should not have a negative effect on the character of the general vicinity. A mixture of uses including the commercial uses in the adaptive reuse project, industrial uses, vehicle storage, the railroad, and residential uses exist in the area. This mixture of uses is characterized by many different building materials, setbacks, and degrees of lot coverage.
- c. Granting the variance will not result in an unreasonable circumvention of the Zoning Ordinance. Hotels are allowed to be at least 75' tall in other zones where they are permitted, and other buildings in the I-1 zone that are not within an Adaptive Reuse area are permitted to be 75' tall.

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

1. Construction shall be in accordance with the Final Development Plan as approved by the Planning Commission.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, Traffic Engineering, and Building Inspection prior to construction and occupancy.
3. Action of the Board shall be noted on the Final Development Plan for the subject property.

Representation – Jake Michul, counsel for the applicant, was present and presented this application.

Board comments and questions – Mr. Glover asked Mr. Michul if there was a brand for the hotel yet. Mr. Michul responded and explained.
Mr. Clarke asked how many floors there would be. Mr. Michul responded and explained.

Opposition – Libby McCarty, owner, Riley Oil Co. expressed her opposition of this application.

Rebuttal - Mr. Michul addressed Ms. McCarty's concerns.

Board comments and questions – Mr. Clarke asked if the applicant was creating parking spaces. Mr. Michul responded and explained. Discussion continued.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried 5-0 (Whitman absent; Gross recused), to **approve PLN-BOA-20-00013: NEW CIRCLE INVESTMENTS, LLC** – request for a variance to increase the allowable height of a new building in an Adaptive Reuse Project from 48' to 78' in order to construct a new hotel within the defined Infill & Redevelopment Area in a Light Industrial (I-1) zone, on property located at 941 Manchester Street, based on staff's recommendation and subject to the three conditions as listed.

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

There were none.

- 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 April 13, 2020, at 1:30 p.m.

- VII. **ADJOURNMENT** - The Chair declared the meeting was adjourned at 3:10 p.m.

Branden Gross, Chair

Joan Whitman, Secretary