

MINUTES
BOARD OF ADJUSTMENT
July 13, 2020 Meeting

I. CALL TO ORDER - The Chair called the meeting to order at 1:30 p.m. **via video teleconference**.

Due to the COVID-19 pandemic, state of emergency and Governor Beshear's Executive Orders regarding social distancing, this meeting is being held via teleconference pursuant to Senate Bill 150 (as signed by the Governor on March 30, 2020) and Attorney General Opinion 20-05, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting.

II. ATTENDANCE - Members present **via video teleconference** were: Branden Gross, Chair; Raquel Carter; Thomas Glover; Harry Clarke; Chad Walker and Chad Needham. Joan Whitman joined the meeting at 1:38 pm. Others present **via video teleconference** were: Josh Dezarn, Division of Engineering and Tracy Jones, Department of Law. Staff members in attendance were: Autumn Goderwis, Traci Wade, Hal Baillie, Stephanie Cunningham and Donna Lewis.

III. APPROVAL OF MINUTES

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-0 (Whitman absent), to approve the minutes from the June 8, 2020 Board of Adjustment hearing.

IV. PUBLIC HEARING ON ZONING APPEALS

- A. Swearing of Witnesses** - The Chair asked all those present **via video teleconference** who would be speaking or offering testimony to raise their right hand, and also raise their hand on their electronic device, to be sworn in. The oath was administered at this time to several staff members and other persons present **via video teleconference**.
- 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.

There were no postponements or withdrawals.

***Note** – Ms. Whitman joined the meeting at 1:38 p.m.

C. Variance Appeals

- 1. PLN-BOA-20-00029: THOMAS D. and CHRISTINA AURORA PARRISH** – requested a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.52 in order to construct a new addition, based on a revised site plan, to an existing single family residence within the defined Infill & Redevelopment Area in Planned Neighborhood Residential (R-3)/Historic District Overlay (H-1) zones on property located at 260 Clay Avenue. (Council District 5)

The Staff Recommended: Approval of a lesser variance, to increase the allowable FAR from 0.35, revised to 0.50, for the following reasons:

- a. Granting the lesser variance will not represent an attempt to circumvent the Zoning Ordinance, but will meet the intent of the provisions of the Ordinance that allow for variances to FAR, as it will not create an opportunity for more units on the subject property than would be allowed by right.
- b. Granting the lesser variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. A relatively small addition to the rear of the house will not have much, if any, impact on the appearance of the house from the public rights-of-way.
- c. The lesser variance is generally reasonable, as the subject property is somewhat larger than many within the defined Infill and Redevelopment area and allowing some additional floor area on this particular lot will not result in construction that is out of character with the general vicinity. The Zoning Ordinance specifically states that BOA action may sometimes be required within the defined Infill and Redevelopment Area in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood.

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

1. Construction shall be in accordance with the submitted application materials and a revised site plan to reflect the lesser variance allowing an FAR of 0.50.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Zach Cato, attorney, was present on behalf of the applicant. Mr. Thomas D. Parrish, applicant, was also present. Mr. Parrish indicated he was in agreement with staff's recommendation and would comply with the two conditions as recommended by staff.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-20-00029: THOMAS D. AND CHRISTINA AURORA PARRISH** – request for a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.50 in order to construct an addition to an existing single family residence within the defined Infill and Redevelopment Area in Planned Neighborhood Residential (R-3)/Historic District Overlay (H-1) zones on property located at 260 Clay Avenue, based on staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-20-00028: OGDEN HILLIARD** - requested a variance to reduce the required side street side yard setback from 30' to 10' in order to construct a new attached garage and covered patio in a Single Family Residential (R-1B) zone on property located at 2068 Manor Drive. (Council District 5)

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the variance would result in construction that is out of character with that of the general vicinity. There are not similar setbacks on other corner lots within the neighborhood, and there are no other structures along Seeley Drive with a setback of less than 30'.
- b. The strict application of the Zoning Ordinance would not result in an unnecessary hardship for the applicant, nor are there special circumstances that justify the need for the requested variance. The property is one-third of an acre and already contains both an attached garage and a detached garage. Additionally, there is sufficient space on the property to construct an addition that would meet the setback requirements of the Zoning Ordinance and plat of record.

Staff Presentation – Ms. Goderwis directed the Board's attention to her shared screen, on which she showed aerial photos and site plans of the subject property. Ms. Goderwis explained the requested variance.

Board Questions – Mr. Glover asked Ms. Goderwis if there was an attached garage as well, and if, as a result of constructing the new proposed garage, the applicant would convert some of that space into living area. Ms. Goderwis confirmed Mr. Glover's understanding and explained. Mr. Needham asked Ms. Goderwis if any other homes in the neighborhood had two driveways. Ms. Goderwis replied that she did not believe there were any in the immediate vicinity.

Representation – Mr. Clive Pohl and Mr. Justin Ostrander were present on behalf of the applicants. Ogden and Beth Hilliard, applicants, were also present. Mr. Pohl presented the proposed project, including drawings, photos and site plans. Ms. Beth Ogden, applicant, presented her personal reasons for desiring the proposed addition.

Board Questions – Mr. Glover had a question about the setbacks on Seeley and Manor Drives. Mr. Pohl responded and explained. Mr. Clarke why the garage could not go at the rear of the house. Mr. Pohl responded and explained the applicants' reasons for not wanting the garage elsewhere on the site. Chair Gross mentioned that the drawing Mr. Pohl had been referring to was not the same drawing that was in the packets sent out to the Board members. Mr. Pohl agreed and stated this drawing was a fall back plan. Mr. Glover asked Mr. Pohl if they had given any thought to raising the level of the garage. Mr. Pohl replied they had, but that was not a viable option. Discussion continued among the members of the Board.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 5-2 (Needham and Walker opposed), to **disapprove PLN-BOA-00028: OGDEN HILLIARD** – request for a variance to reduce the required side street side yard setback from 30' to 10' in order to construct a new attached garage and covered patio in a Single Family Residential (R-1) zone on property located at 2068 Manor Drive, based on staff's recommendation.

3. **PLN-BOA-20-00026: JOSHUA CAMERON MARCUM** – 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 1990 Mark Avenue. (Council District 2)

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

- a. Approval of the variance would allow an unreasonable circumvention of the requirement of the Zoning Ordinance, as the need for a variance has come about as the result of the applicant's actions. The fence was not completed in accordance with the approved fence permit and approved site plan, both of which specifically detailed the requirements of the Zoning Ordinance. Additionally, the applicant received an email on June 12, 2019 from the Division of Building Inspection that stated that the fence must be 3' from the sidewalk.
- b. Granting the variance could have adverse effects on the public health, safety, or welfare, as the subject property is located just across the street from a public park. When considering access to public facilities like neighborhood parks, the pedestrian experience is particularly important. Best practices regarding sidewalk design often reference a "shy" distance. This refers to a gap in between pedestrian facilities and buildings or fences, as pedestrians generally do not feel comfortable walking directly adjacent to a building wall or a fence. A one-foot setback does not allow for a sufficient distance between a fence or wall and the pedestrian zone.
- c. There are not special circumstances that justify the requested variance. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land, as relocating the fence would not greatly reduce the usable space in the rear yard.

Representation – Joshua C. Marcum, applicant, was sworn in at this time (1:20 p.m.)

Staff Presentation – Ms. Goderwis directed the Board's attention to her shared screen, on which she showed aerial photos and site plans of the subject property. Ms. Goderwis explained the requested variance.

Board Questions – Mr. Glover had a question about sidewalk placement and widths. There was some discussion.

Rebuttal – Mr. Marcum presented his case.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 7-0 to **disapprove PLN-BOA-20-00026: JOSHUA CAMERON MARCUM** – 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 1990 Mark Avenue, based on staff's recommendations.

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

- A. Landscape Review Committee** – Ms. Goderwis explained what the Landscape Review Committee does and that there was a vacancy on the committee due to Jan Meyer fulfilling her commitment to the Board of Adjustment and no longer filling the position on the LRC.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 7-0 to appoint Mr. Clarke to the Landscape Review Committee, representing the Board of Adjustment.

- B. Welcome New Member** – Chair Gross welcomed Chad Walker to the Board of Adjustment and asked him to tell a little bit about himself.

V. STAFF ITEMS - The Chair asked staff if there was any idea of when in-person meetings would resume. Ms. Wade replied that there was no definite date at this time. Chair Gross asked if the meeting next month would be held via video teleconference. Ms. Wade replied that it would be.

VI. NEXT MEETING DATE - The Chair announced that the next meeting will be August 10, 2020, at 1:30 p.m. via video teleconference.

VII. ADJOURNMENT - The meeting was adjourned at 3:20 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

LexTV broadcasts live government meeting coverage, original programing and bulletin board information. You can find us on Spectrum channel 185, view our [live stream](#) and [archived meetings](#) online or watch programming on our [YouTube](#) channel.

Archived videos and minutes can be viewed at <https://www.lexingtonky.gov/public-meetings-videos>.