

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING
June 8, 2020

Due to the COVID-19 pandemic, state of emergency and Governor Beshear's Executive Orders regarding social distancing, this meeting was held **via video 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 was not feasible to offer a primary physical location for the meeting.

- I. **ATTENDANCE** - Chair Branden Gross called the meeting to order at 1:30 p.m. **via video teleconference** from the Division of Planning, 7th Floor, 101 E. Vine Street, Lexington, KY 40507, on June 8, 2020. Members present **via video teleconference** were: Raquel Carter, Janice Meyer, Joan Whitman, Thomas Glover, Harry Clarke and Chad Needham. 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 and Donna Lewis.
- II. **APPROVAL OF MINUTES** – The Chair announced the minutes of the March 9, 2020 meeting, and the cancellations of the April 13, 2020 and May 11, 2020 meetings would be considered for approval at this time. The Chair announced the cancellations of the April and May meetings could be approved together.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried 6-0 (Whitman absent), to **approve** the minutes of the March 9, 2020 meeting.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 6-0 (Whitman absent), to **approve** the cancellations of the April 13, 2020 and May 11, 2020 meetings.

*Note – At 1:39 p.m., Ms. Whitman joined the meeting via video teleconference.

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **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 the applicant for **PLN-BOA-20-00023: KBJ CONSTRUCTION MGMT** – request for variances to 1) reduce the required front yard setback from 20' to 0'; 2) reduce the required rear yard setback from 20' to 11'; and 3) reduce the required side yard setback from 3' to 2' in order to construct a new house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 526 Michigan St. (Council District 2), wished to withdraw this application. Chair Gross acknowledged the withdrawal.

- B. **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 digitally 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**.
- 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-20-00017: 3609 PROPERTIES LLC** - requested a variance to reduce the required 25' setback for a front-facing garage to 20', in order to allow a new garage door to be installed in an Expansion Area Residential (EAR-2) zone on property located at 4517 Arum Park. (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. In fact, without a recessed garage door, the house will be more in character with other houses in the neighborhood. There is ample room in the driveway to park a vehicle without obstructing the sidewalk, and the space in the garage will be more functional with the new garage door.
- b. Granting the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance, since the home and garage were inspected and the Division of Building Inspection issued a Certificate of Occupancy several months before the applicant identified a setback problem.

- c. Strict application of the requirements of the Zoning Ordinance has created a hardship for the applicant as the recessed garage door has limited the usable interior space within the garage and resulted in an awkward exterior appearance, factors which have inhibited the applicant's ability to find a buyer for the house.
- d. The variance is not the result of a willful violation of the Zoning Ordinance, but came about due to a surveying error that was discovered after a Certificate of Occupancy had already been issued for the home. The original variance application was submitted voluntarily by the applicant after a mortgage survey identified a potential problem with regard to the location of the garage.

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

1. The garage door shall be installed in accordance with the submitted application materials and site plan.
2. All necessary permits shall be secured from the Division of Building Inspection prior to installation of the garage door.

Representation - Nick Nicholson, representation for the applicant, was present via video teleconference and having previously been sworn in, presented this case.

Board comments and questions – Mr. Glover had a question about the setback. Mr. Nicholson responded and explained. There were no further comments or questions.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 7-0 to **approve PLN-BOA-20-00017: 3609 PROPERTIES LLC** – request for a variance to reduce the required 25' setback for a front-facing garage to 20', in order to allow a new garage door to be installed in an Expansion Area Residential (EAR-2) zone on property located at 4517 Arum Park, based on staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-20-00018: KR LEX OZ LLC** - requested a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.56, (instead of 0.61 as was listed in the original request) in order to construct an addition to a single-family house with an existing FAR of (0.54, 0.57 was an error on staff's part) within the defined Infill & Redevelopment Area in High Density Apartment (R-4)/Historic Overlay (H-1) zones on property located at 244 N. Broadway. (Council District 1)

Staff Presentation - At this time, Ms. Goderwis informed the board that the applicant for this case had submitted a revised site plan after the notification letters were mailed out. She stated the revision did not change staff's recommendation of approval, but it would cause a bit of change to the language of the request. Ms. Goderwis presented the revised site plan as well as the original site plan on her screen which she shared with the board and those present via video teleconference. The original plan showed a 407 square foot sunroom addition. The new site plan shows a 298 square foot addition. Ms. Goderwis again stated that this does not change staff's recommendation as it is for a significantly smaller variance, but it does require changes to the conditions. The revised variance request and conditions are reflected below.

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variances 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 a significant impact on the appearance of the house from the public rights-of-way. Additionally, each of the other five single family houses along N. Broadway between W. Third Street and New Street has a non-conforming Floor Area Ratio, with a range from 0.42 to 0.62.
- b. The request is generally reasonable because even though the property is in an R-4 zone, it is intended to remain as a single family residence and the addition of the sunroom will not result in construction that would encourage the creation of additional units on property.
- 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 revised conditions:

1. Construction shall be in accordance with the submitted application materials and revised site plan dated 6/3/2020.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Historic Preservation prior to construction and occupancy.

Representation – Joey Nolasco and Erin Stoffer, Integrity Architecture, were present via video teleconference, and having previously been sworn in, presented this case on behalf of the applicant.

Action – A motion was made by Mr. Clarke, seconded by Ms. Meyer and carried 7-0, to **approve PLN-BOA-20-00018: KR LEX OZ LLC** – request for a variance to increase the allowable Floor Area Ratio (FAR) from 0.35 to 0.56 in order to construct an addition to a single-family house with an existing FAR of 0.54, within the defined Infill & Redevelopment Area in High Density Apartment (R-4)/Historic Overlay (H-1) zones on property located at 244 N. Broadway, based on staff's revised recommendation and subject to the two revised conditions as listed.

3. **PLN-BOA-20-00019: STEADFAST COLLIN LPC LLC** – requested a variance to reduce the required setback for a free-standing sign from 20' to 10' in an Expansion Area Residential (EAR-3) zone on property located at 1825 Little Herb Way. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. The change in elevation along much of the property's frontage is a special circumstance that is unique to the subject property and justifies the need for the variance.
- b. Strict application of the Zoning Ordinance could result in an unnecessary hardship for the applicant because visibility of the sign would be significantly limited due to the change in elevation at the 20' setback.
- c. The need for the variance has not arisen due to actions of the applicant, nor does the request 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 necessary, prior to installation of the sign.
- d. Granting the variance should not adversely affect the public health, safety, or welfare, as the sign will be located outside of the required sight-distance triangle and should not have an effect on traffic visibility. It should not alter the character of the general vicinity, as the requested signage is not out of scale or overwhelming in this location.

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

1. The sign shall be installed in accordance with the submitted application and site plan.
2. All necessary permits for signage shall be obtained from the Division of Building Inspection, prior to erecting the sign.

Representation – Matt Carter, Vision Engineering, was present via teleconference, his video was not working. Having previously been sworn in, he presented this case on behalf of the applicant.

Action – A motion was made by Ms. Meyer, seconded by Mr. Clarke and carried 7-0, to **approve PLN-BOA-20-00019: STEADFAST COLLIN LPC LLC** – request for a variance to reduce the required setback for a free-standing sign from 20' to 10' in an Expansion Area Residential (EAR-3) zone on property located at 1825 Little Herb Way, based on staff's recommendation and subject to the two conditions as listed.

4. **PLN-BOA-20-00021: POSITIVE GROWTH LLC**– requested variances to 1) reduce the required front yard setback from 14' to 6', and 2) to reduce the required rear yard setback from 20' to 6' in order to construct a new house within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone on property located at 667 N. Martin Luther King Blvd. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- a. There are special circumstances that justify the need for the requested variances. The lot is both narrow and shallow, and the normally required front and rear yard setbacks would render the lot unbuildable.
- b. The requested variances are generally reasonable and their approval will allow the applicant to utilize a currently vacant lot within the Infill & Redevelopment area for needed housing.
- c. Granting the variances will not result in construction that is out of character with the general vicinity. The adjacent property to the left is approximately the same size and shape as the subject property, and contains a house with similar setbacks to what is being proposed.
- d. 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 variances as soon as it was determined that they were needed, prior to starting 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 – Vasil Leskiv, applicant, was present via video teleconference. Having previously been sworn in, he presented his case.

Board comments and questions – Mr. Glover had a question for staff about the size of the lot. Ms. Goderwis responded and explained. Mr. Glover also asked if there were any other similar lot sizes in this same neighborhood. Ms. Goderwis responded affirmatively.

Chair Gross asked Ms. Goderwis to share the aerial photograph of this property, 667 N. Martin Luther King Blvd., which she did. There was some discussion.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman, and carried 6-0 (Glover abstained), to **approve PLN-BOA-20-00021: POSITIVE GROWTH LLC** – requests for variances to 1) reduce the required front yard setback from 14' to 6', and 2) to reduce the required rear yard setback from 20' to 6' in order to construct a new house within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 667 N. Martin Luther King Blvd. based on staff's recommendation and subject to the two conditions as listed.

5. **PLN-BOA-20-00022: KBJ CONSTRUCTION MGMT** – requested variances to 1) reduce the required front yard setback from 20' to 0; 2) reduce the required rear yard setback from 20' to 11'; and 3) reduce the required side yard setback from 3' to 2' in order to construct a new house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone on property located at 524 Michigan St. (Council District 2)

Board comments – Chair Gross stated he and Ms. Carter would both be recusing themselves from this case. He reminded the board the other case that was related to this case had been withdrawn and they would need to keep that in mind when making a motion. Chair Gross appointed Mr. Glover Acting Chair for **PLN-BOA-20-00022: KBJ CONSTRUCTION MANAGEMENT**.

Staff Presentation - Ms. Goderwis presented a revised site plan for the variances, which she shared with the board and those in attendance via video teleconference. She explained a change in the request for this application, stating the applicant is now requesting variances to the required front yard setback from 20' to 16' and to reduce the required rear yard setback from 20' to 11'. Ms. Goderwis stated variance request number 3 as originally listed, has been withdrawn.

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 vicinity is characterized by similar small lots and the requested setbacks will be similar to other setbacks in the area.
- The size of the lot is a special circumstance that justifies the need for the variances. Without any variances, the maximum building footprint would be only 350 square feet. Granting the variances will allow the applicant to utilize a currently vacant lot within the Infill & Redevelopment for needed housing.
- The variance requests do 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 revised conditions:

- Construction shall be in accordance with the submitted application materials and revised site plan dated 06/01/2020.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Bishop Carter, applicant, was present via video teleconference and having previously been sworn in, presented his case.

Board comments and questions – Mr. Glover asked if the address was going to be 524 or 526 Michigan St., as the applicant is now building one house on two lots, whereas before, the applicant wished to build a house on each of the lots. Ms. Goderwis responded and explained. She also stated the wording of condition number one has been changed to reflect a revised site plan dated 06/01/2020. Mr. Glover asked the applicant how large the proposed house is. Mr. Carter responded and explained.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 5-0, (Gross and Carter recused), to **approve PLN-BOA-20-00022: KBJ CONSTRUCTION MGMT** – requests for variances to 1) reduce the required front yard setback from 20' to 16' and 2) reduce the required rear yard setback from 20' to 11' in order to construct a new house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 524 Michigan St. based on staff's recommendations and subject to the revised site plan and the two revised conditions as listed.

*Note – At 2:45 p.m., Chair Gross and Ms. Carter returned to the meeting via video teleconference, turning their video and audio back on. Mr. Glover turned the meeting back over to Chair Gross.

6. **PLN-BOA-20-00015: ALICIA D. CARSON** - requested a conditional use for a family childcare facility for up to 10 children in a single-family residential (R-1D) zone, on property located at 2365 Shandon Dr. (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. Adequate off-street and on-street parking is available. A fenced outdoor play area will be provided that is much larger than the minimum size required.
- 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 revised conditions:

1. Childcare for up to 12 children shall be provided in accordance with the submitted application materials and site plan.
2. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the childcare use beyond 6 children.
3. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
4. The conditional use shall become null and void should the applicant no longer reside at this location.

Representation – Alicia D. Carson, applicant, was present via video teleconference and having previously been sworn in, presented her case.

Board comments and questions – Mr. Glover stated he noticed staff had recommended approval for an increase from up to 10 children to up to 12 children, as that is what the regulations permit. He asked Ms. Carson if she was in agreement with that increase. Ms. Carson replied that she was.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover to **approve PLN-BOA-20-00015: ALICIA D. CARSON** – request for a conditional use for a family childcare facility for up to 12 children in a single-family residential (R-1D) zone, on property located at 2365 Shandon Dr., based on staff's recommendation and subject to the four revised conditions as listed.

Discussion on the motion – Chair Gross asked staff whether the motion should state that it is for up to 10 children as was the original request, or state the revised up to 12 children. Ms. Goderwis responded and explained.

Action – The board members voted and the motion carried 7-0.

7. **PLN-BOA-20-00016: LEXINGTON HISTORY MUSEUM** – requested a conditional use to establish a historic house museum within the defined Infill & Redevelopment Area in Two-Family Residential (R-2)/Historic Overlay (H-1) zones on property located at 317 and 321 S. Mill St. (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not adversely affect the subject or surrounding properties, nor should the use create traffic issues. The proposed museum will be open to the public only two days per week and by appointment. Required off-street parking will be provided on nearby property.
- 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. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.

Representation – Jessica Winters, attorney for the applicant, and Foster Ockerman, applicant, were present via video teleconference and had previously been sworn in.

Board comments and questions – Mr. Clarke asked a question about a portion of the application concerning existing dwelling units being removed. Mr. Ockerman responded and explained.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 7-0 to **approve PLN-BOA-20-00016: LEXINGTON HISTORY MUSEUM** – request for a conditional use to establish a historic house museum within the defined Infill & Redevelopment Area in Two-Family Residential (R-2)/Historic Overlay (H-1) zones on property located at 317 and 321 S. Mill St. based on staff's recommendation and the two conditions as listed.

E. **Discussion Items**

1. **PLN-BOA-20-00020: SEAN AND KRISTEN FOLEY** – requested variances to decrease the required minimum frontage from 750' to 353' for Lot 1 and from 750' to 166' for Lot 2, in order to subdivide an existing parcel into two parcels in the Agricultural Rural (A-R) zone on property located at 5021 Jacks Creek Pike. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not have much effect on the character of the general vicinity. There are a number of existing legally non-conforming lots in the vicinity that are smaller than the 40 acres now required in the A-R zone that also have less than the 750' of frontage now required. The northern frontage, in particular, is similar to that of several smaller lots in the vicinity.
- b. Granting the variance should not adversely affect the public health, safety, or welfare. There should not be any adverse impacts on traffic, as two existing entrances, permitted by the Kentucky Transportation Cabinet, already exist and no access between the two proposed lots exists without accessing Jacks Creek Pike.
- c. There are special circumstances that justify the need for the variances including the ravine and steep slopes that separate the two proposed lots. The unique configuration of the existing property, with two existing frontages separated by three 10-acre lots is also a special circumstance.
- d. The requested variances are not an attempt to circumvent the requirements of the Zoning Ordinance. The applicant has gone through the necessary processes and has received an approval for the Final Record Plat, pending approval of the variances.

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

1. The property shall be subdivided in accordance with the submitted application materials and site plan.
2. Action of the Board shall be noted on the Final Record Plat.
3. Any additional landscaping or fencing along the frontage of lot 2 shall be set back a minimum of 15' from the front property line to reduce potential traffic visibility issues at the 90 degree bend in Jacks Creek Pike.

Staff Presentation – At this time, Ms. Goderwis provided the Board with additional letters of support and opposition of this case for their review, via shared screen.

Representation – Sean Foley, applicant, and Richard Murphy, attorney for the applicant were present via video teleconference, and were sworn in previously. Mr. Murphy presented the case on behalf of the applicants.

Opposition – Ms. Pam Kaldas and her husband Amir, 5121 Jacks Creek Pike, were present via video teleconference. Ms. Kaldas spoke in opposition of the proposed decrease of frontage on the Foley's property.

Board comments – Chair Gross explained the difference between front yard setback and frontage.

Staff comments – Ms. Goderwis requested to share her screen to display the proposed site plan more clearly and explained the proposed frontage. She further explained that the applicant's request before the board today is to be allowed to subdivide the property into two lots.

Opposition – Ms. Kaldas stated she and her husband do not have any opposition to the applicants subdividing the property into two lots. Mr. Kaldas reiterated they do not have any opposition to the applicants subdividing into two lots; their only opposition is to the distance from the applicant's house to the Kaldas' lot line.

Staff comments – Ms. Goderwis noted that the side yard setback for any house to be constructed on this lot would be 25 feet from the property line. She also stated the front yard setback would have to be 300 feet from the road to the front of the house. There was further discussion.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter and carried 7-0, to **approve PLN-BOA-20-00020: SEAN AND KRISTEN FOLEY** - request for variances to decrease the required minimum frontage from 750' to 353' for Lot 1 and from 750' to 166' for Lot 2, in order to subdivide an existing parcel into two parcels in the Agricultural Rural (A-R) zone on property located at 5021 Jacks Creek Pike, based on staff's recommendation and subject to the three conditions as listed.

2. **PLN-BOA-20-00024: COMMON GROUNDS** – requested a conditional use to establish a drive-through facility within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 399 Waller Ave. (Council District 3)

The Staff Recommended: Disapproval, for the following reason:

- a. While staff is sympathetic to the applicant's concerns regarding the operation of their business during the current health crisis, the proposed use is not appropriate at this particular location. The proposed drive-through would result in adverse traffic impacts. There is not sufficient space on the site to accommodate two drive through facilities. The proposed drive-through facilities would impede the use of the existing drive-through, create parking difficulties within the site, and would likely create traffic issues on Waller Avenue.

Staff Presentation – Ms. Goderwis shared her screen via video teleconference and presented the staff report for this application, displaying the site plan and aerial photos for this case.

Board comments and questions – Chair Gross had some questions about the vehicle stacking aspect of this application. Ms. Goderwis responded and explained. Mr. Glover had a question about the proposed point of order for this application. Ms. Goderwis responded and explained.

Representation - Mr. David Robinson, applicant, was present via video teleconference and having been previously sworn in, presented his case.

Board comments and questions – Chair Gross had some questions for the applicant regarding modifications to make the drive-through work. Mr. Robinson chose to **withdraw** the application at this time and indicated they would look for another site.

3. **PLN-BOA-20-00010: REALTY UNLIMITED BLUEGRASS, LLC** – requested 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).

The Staff Recommended: Approval of the variance to reduce the property perimeter landscape buffer where any zone abuts a railroad, from 15' to 0' for the following reasons:

- a. Granting the landscape variance along the railroad will not alter the essential character in the general vicinity as the applicant plans to plant a significant number of trees along the rear lot line abutting the railroad.
- b. The elevation change between the subject property and the railroad is a special circumstance that is unique to this property and justifies the need for a variance. The required landscape buffer would not create an effective buffer because the railroad is located at a significantly higher elevation.

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

1. Trees a minimum of two (2) feet height shall be planted along the rear lot line, where the property abuts the railroad in accordance with the submitted application materials and site plan.
2. The types and final location of the trees shall be reviewed and determined to be appropriate by the Landscape Examiner with the Division of Environmental Services.
3. Action of the Board shall be noted on the Final Development Plan.

The Staff Recommended: Disapproval of the administrative appeal to allow construction of a temporary gravel parking lot (to be paved at a later date) for the following reasons:

- a. Granting the administrative appeal would result in a circumvention of the Zoning Ordinance, as gravel is not an allowable paving material. Allowing a new gravel parking lot to be established in a commercial zone, for an extended and uncertain time period of 3-5 years, would set a dangerous precedent and would likely create enforcement issues.
- b. There are not special circumstances unique to the subject property that justify the need to utilize gravel. These circumstances are the result of the applicant's actions, as they are due to improper fill being installed on the site.
- c. Granting the appeal could adversely affect the public health, safety, or welfare. The Division of Engineering has expressed major concerns with the lack of water quality and quantity features that were shown on the construction plans, but not installed.

- d. The Royal Springs Wellhead Protection Committee (RSWC) has recommended that gravel not be utilized on this site in order to prevent contaminant discharge into the Royal Springs aquifer recharge area.

The Staff Recommended: Disapproval of the variance to reduce the required vehicular use area perimeter landscape buffer from 5' to 0' for the following reasons:

- a. There are not special circumstances unique to the subject property that justify the need to eliminate the required vehicular use area perimeter landscape buffer. The circumstances that the applicant has indicated make planting and fence installation difficult on the site are the result of the applicant's actions, as they are due to improper fill being installed on the site.
- b. Granting the variances would adversely impact the character of the general vicinity. While this property is not located within the Paris Pike Corridor overlay zone, it is a part of that corridor and a major entry point into Lexington. Easing the transition from the rural landscape to an urban streetscape is especially important in this location.

*Note – Prior to the presentation of this case, the applicant was having difficulty with his audio. The chair called for a short break while the issues with the applicant's audio was being resolved.

Staff Presentation – Ms. Goderwis shared her screen via video teleconference and presented the staff report, site plan and aerial photos for this application. She noted that this application was being continued from the March 9, 2020 hearing and that the applicant has since submitted a new site plan, which she presented. Ms. Goderwis briefly explained the variances requested by the applicant.

Josh Dezarn, Division of Engineering, was called upon via video teleconference, to give the recommendations of the Division of Engineering concerning this application. Mr. Dezarn stated it was the position of that division to side with and follow the recommendations of the Royal Springs Wellhead Protection Committee (RSWC) which has recommended that gravel not be utilized on this site in order to prevent contaminant discharge into the Royal Springs aquifer recharge area.

Board comments and questions – Chair Gross asked staff why it was necessary to pave the entire property if only five parking spaces were required, and those parking spaces would be paved. Ms. Goderwis responded and explained. Mr. Glover asked staff about the requirement to provide a landscape buffer. He mentioned the ingress and egress areas shown on the plan. Ms. Goderwis responded and explained. Chair Gross asked staff to explain what the applicant is planning to do about the trees in the landscape buffer mentioned in the first variance. Ms. Goderwis responded and explained. Ms. Carter had a question about gravel being allowable for parking. Ms. Goderwis referred to the prohibition in the Zoning Ordinance and explained. Mr. Needham mentioned some gravel parking lots throughout the city that were put in place prior to the current ordinance, which does not permit it. Mr. Needham asked staff when the current ordinance went into effect. Ms. Goderwis responded. Mr. Clarke had a question about the ordinance and the reference to gravel only pertaining to vehicles. Ms. Goderwis responded and explained. Mr. Glover asked staff for clarification of which portions of the lot Mr. Minniard was planning to pave. Ms. Goderwis responded and explained. Mr. Glover also asked if there was another article that refers to selling storage buildings or storage facilities, other than Article 16. Ms. Goderwis responded. Ms. Goderwis noted that this current plan is inconsistent with what had been approved by the Planning Commission. A parking lot was approved at this location and at that time the applicant was showing the lot as paved in its entirety. There was further discussion.

Representation – Mr. Matt Minniard, applicant, was present via video teleconference and was previously sworn in. Mr. Minniard asked for postponement of the gravel/pavement portion of his request until next month.

Chair Gross asked Mr. Minniard what the purpose of his request for postponement was. Mr. Minniard responded and explained. There was further discussion.

Staff comments – Ms. Goderwis mentioned there were people present today via video teleconference who were in opposition to this application and would like to speak.

Board comments and questions - Chair Gross mentioned those same individuals were also present at the March 9, 2020 hearing where this application was first presented. He asked for a show of hands from the Board if anyone was interested in a continuance of this case. Ms. Carter stated she was opposed to a continuance of this case, as three months had passed since the case had come before the Board and she felt that was enough time to come up with other solutions. Chair Gross asked the Board if the consensus was to oppose a postponement. Seeing that it was, Chair Gross informed Mr. Minniard there would not be another postponement and to continue with his presentation.

Mr. Minniard continued with his presentation. There was further discussion.

Board comments and questions – Chair Gross asked staff for background information on a “fill” that was referred to several times in the presentation. Ms. Goderwis deferred that question to Mr. Dezarn. Mr. Dezarn stated he did not receive any documentation on what the fill material was, but that it was reported at one time that people were illegally dumping on this site without permission and possibly Mr. Minniard could answer that.

Chair Gross requested Mr. Minniard to “unmute” himself so that he could speak. He asked Mr. Minniard how long he had owned this site. Mr. Minniard responded and explained the fill he had referred to was placed there by him. Chair Gross asked for clarification from Mr. Minniard that the fill that was brought to the site was fill he, Mr. Minniard, had brought there. The illegal dumping materials have been removed. Therefore, all of the fill that is there is fill Mr. Minniard brought onto the site. Mr. Minniard stated “exactly”. Discussion continued.

Ms. Carter asked if this case was going to be postponed or continue to be heard today, based on the amount of conversation. Chair Gross stated he was under the impression, based on previous comments, that no one on the Board wanted to continue this case until next month, but if anyone did, to please make a motion at this time. Seeing no motion to postpone, Chair Gross stated members of the public would now be allowed to speak.

Opposition – Mr. David Danforth, 525 Dover Rd., Lexington KY 40505, had a question about the proposed removal of the easements. He also expressed concern about gravel on that lot being unsafe, when attempting to come out of the lot into traffic on N. Broadway.

Staff comment – Ms. Goderwis stated that if the variances were to be approved, they would be tied to this application and the site plan and would transfer with the property; variances go with the land. The next potential owner would have to comply with these conditions.

Opposition - Mr. Patrick Watson, 525 High St. Ste., 325 Paris, KY 40361, attorney representing Gary and Sandy Ecklar, was present via video teleconference. He had a question regarding whether or not Mr. Minniard withdrew his request for a variance of the vehicle use area buffer. He asked for clarification.

Rebuttal – Mr. Minniard responded and stated that he wanted to withdraw the request for the variance to reduce the required vehicular use area perimeter landscape buffer from 5' to 0' and work closely with the Division of Environmental Services and share the recommendations from Environmental Services regarding this buffer with Mr. Watson. The Board accepted Mr. Minniard's request.

Opposition – Mr. Watson referred to the request for the approval of gravel, stating Mr. Minniard's initial plan, which was approved by the Planning Commission, stated that this would be for a parking lot. Mr. Watson also stated he did not feel there were any unique circumstances due to notes on the development plan indicating Mr. Minniard would need to wait two to three years before doing anything to the property and Mr. Minniard acknowledged that fact. Mr. Watson commented that pertaining to the variance on the back of the lot; they were in favor of approval.

Rebuttal – Mr. Minniard was given three minutes to present his rebuttal.

Board comments and questions – Mr. Glover reminded the Board that there were only two questions before them, and they were the request to allow construction of a temporary gravel parking lot, which he said has been discussed substantially. Staff has recommended approval for the other request, which is the variance to reduce the property perimeter, and landscape buffer that abuts the railroad.

Action – A motion was made by Ms. Carter, seconded by Mr. Glover and carried 7-0 to **disapprove PLN-BOA-20-00010: REALTY UNLIMITED BLUEGRASS, LLC** – request for an administrative appeal to allow construction of a temporary gravel parking lot (to be paved at a later date) and 2) to **approve** a variance to reduce the property perimeter landscape buffer where any zone abuts a railroad, from 15' to 0', on property located in a Highway Service Business (B-3) zone, at 1760 N. Broadway based on staff's recommendation and subject to the three conditions as listed, applicable to the perimeter landscape buffer abutting the railroad.

*Note - The request for a variance to reduce the required vehicular use area perimeter landscape buffer from 5' to 0' was previously withdrawn by the applicant.

4. **PLN-BOA-20-00025: AARON AND AMY JUTTE** – requested an administrative appeal to contest the Division of Building Inspection's issuance of a construction permit based on the Division of Planning's sign-off regarding the front and side street side yard setbacks of proposed construction within the Montclair Neighborhood Design (ND-1) overlay in a Single Family Residential (R-1C) zone, on property located at 1203 Summit Dr. (Council District 3)

Staff Presentation – Ms. Goderwis presented a chronology of events, displayed aerial photographs of the property, and other exhibits including the original 1933 plat for the property, via video teleconference, prior to the appellant's presentation.

Board comments and questions – Chair Gross had questions regarding orientation of the proposed house on the lot. Ms. Goderwis responded and explained. The chair asked if there were any other questions from the Board at this time. Chair Gross asked Ms. Goderwis to display the ND-1 guidelines on her shared screen, which she did. There was further discussion.

Representation – Mr. Aaron Jutte, appellant, was present via video teleconference and having previously been sworn in, spoke on behalf of his appeal.

Opposition - Mr. Matthew Vied, property owner, was present via video teleconference and having previously been sworn in, presented his case in opposition to the appeal.

Board comments and questions – At this time, Chair Gross reminded Mr. Vied that what was before the Board today was not whether the Vieds could apply for and receive a variance or whether they could potentially ask for an amendment to the ND-1 Overlay Zone Design Standards. He stated what was before the Board today was which building line should be used. Should it be the 1933 plat building line, or has the ND-1 ordinance, as adopted by City Council, trumped that 1933 plat, and therefore they would need to use the more recent building line setback which would cause Mr. Vied's building line to be non-compliant.

Opposition – Mr. Vied continued to present his case.

Board comments and questions – Chair Gross stated that at some point it would be necessary for Ms. Tracy Jones from the Law Department to tell the Board what the legal question before them was. Ms. Carter had a question about the house next to the property at 1203 Summit Dr. Ms. Goderwis displayed the aerial photographs of the properties on her shared screen. There was some discussion. Mr. Clarke had a comment about how the house would look if set back far enough to satisfy the ND-1.

At this time, Chair Gross opened the discussion up for public comment. Ms. Goderwis suggested the public keep in mind what is at hand and that is whether Planning's interpretation is correct, not whether they think the house should be further back for aesthetic purposes.

Public comment – Mr. Preston Cecil, attorney, was present via video teleconference and spoke on behalf of one of the property owners on Summit Dr. He stated he felt it important that Mr. Jutte's plat, which he had displayed earlier on his screen, be made part of the record. There was further discussion.

James Bean, resident of Montclair neighborhood, 1248 Eldemere Rd., was present via video teleconference and spoke in approval of the house being built as is.

Ms. Dabney Parker, member/secretary of the Neighbors of Montclair Board, was present via video teleconference and spoke on her own behalf, not the Board's. Ms. Parker stated she supported the building permit application.

Mr. Jerry Price, 1262 Kastle Rd., present via video teleconference was sworn in at this time. Mr. Price had a question about the minimum building lot size in the ND-1 Overlay. He also asked where the garage and the driveway were going to be. He spoke in support of the appeal.

Board comments and questions – Chair Gross informed Mr. Price that the questions about the garage and driveway were covered earlier in the presentation, prior to Mr. Price joining. Chair Gross asked Ms. Goderwis to address Mr. Price's question about the building lot size. Ms. Goderwis responded and explained.

Public comment – Eugene McFadden, 1230 Summit Dr., was present via video teleconference and sworn in at this time. Mr. McFadden spoke in support of the appeal.

Ken Donworth, 1251 Eldemere Rd., was present via video teleconference and sworn in at this time. Mr. Donworth stated he lives across from Mr. Bean. Mr. Donworth spoke in support of the appeal.

Clyde Kirtley, 1212 Eldemere Rd., was present via video teleconference and sworn in at this time. Mr. Kirtley stated he and his wife live a short distance from the construction site. He expressed his concern for the long-term effect of the decision the board would make today. Discussion followed.

Rebuttal – Mr. Vied addressed previous comments that had been made in support of, and also in opposition to his building permit.

Mr. Jutte also presented closing comments on behalf of his appeal.

Board comments and questions – Chair Gross opened the discussion back up for comments and questions from the Board. There was discussion among the members. Ms. Jones was asked for fact-finding comments.

*Note – At this time the Chair called for a 5 minute recess. At 6:30 p.m., the meeting reconvened with all members present via video teleconference, except for Ms. Whitman.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-0, (Ms. Whitman absent), to **disapprove PLN-BOA-20-00025: AARON AND AMY JUTTE** – request for an administrative appeal to contest the Division of Building Inspection's issuance of a construction permit based on the Division of Planning's sign-off regarding the front and side yard setbacks of proposed construction within the Montclair Neighborhood Design (ND-1) overlay in a Single Family Residential (R-1C) zone, on property located at 1203 Summit Dr., based on the following findings:

The recorded plat in 1933 created, on this lot, curved geometry at the corner of Summit Drive and Cooper Drive. The building line as shown by the plat that was approved by the Planning Commission is followed by the residential construction permit application. The granting of the residential construction permit was appropriate in upholding the goals and intent of the ND-1 Overlay Zone, but also the underlying plat of record approved by the Planning Commission.

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

Chair Gross announced this is the end of Ms. Meyer's third term of serving on the Board of Adjustment and thanked her for her service.

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

- VII. **ADJOURNMENT** - The Chair declared the meeting was adjourned at 6:37 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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