

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 14, 2020

I. CALL TO ORDER – Chair Branden Gross 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, Thomas Glover, Joan Whitman, Harry Clarke, Raquel Carter, Chad Needham and Chad Walker. Others present via video teleconference were: Tracy Jones, Department of Law and Steve Parker, Traffic Engineering. Staff members in attendance were: Traci Wade, Autumn Goderwis, Hal Baillie, Stephanie Cunningham, Donna Lewis and Allison Morris.

III. APPROVAL OF MINUTES – Chair Gross announced that the minutes of the August 10, 2020 meeting would be considered at this time.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-0 (Gross abstained), to approve the minutes from the August 10, 2020 meeting.

III. PUBLIC HEARING ON ZONING APPEALS

A. Swearing of Witnesses - Chair Gross asked each person who wished to speak or offer testimony via video teleconference to raise their right hand, and also raise their hand on their electronic device, to be sworn in. The oath was administered to several staff members and others present via video teleconference at this time.

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.

C. Abbreviated Hearings

1. **PLN-BOA-20-00038: DAMON POWELL** – requested a conditional use for a home-based business, (personal training) in a Planned Neighborhood Residential (R-3) zone, on property located at 1121 Parliament Way. (Council District 8)

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. Providing that the following conditions are observed, it should not create disturbing levels of traffic, noise, or odors.
- b. Training sessions will occur during the typical workday, between 7:00 a.m. and 6:00 p.m., when traffic in the neighborhood is likely lightest. This schedule should reduce the potential impact from traffic and noise on nearby residents.
- 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 home-based business (personal training) shall be operated in accordance with the submitted application materials and site plan.
2. Training sessions shall be limited to a maximum of two clients per session, with sessions occurring Monday through Saturday, between 7:00 a.m. and 6:00 p.m.
3. All activity related to the training sessions shall be in compliance with local noise ordinances.
4. All activity related to the training sessions shall be conducted within the garage.
5. 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 use.
6. The conditional use shall become null and void should the applicant no longer reside at this location.

Representation – Mr. Damon Powell, applicant, was present via video teleconference and presented his application for a conditional use permit for personal training in his home.

Board comments and questions – Mr. Clarke had a question about traffic and parking at this home, based on a letter of opposition received by the Board. Mr. Powell replied that traffic and parking should not be an issue due to only one or two people being there at a time for training sessions.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 7-0 to **approve PLN-BOA-20-00038: DAMON POWELL** – request for a conditional use for a home-based business, (personal training) in a Planned Neighborhood Residential (R-3) zone, on property located at 1121 Parliament Way, based on staff's recommendation and subject to the six conditions as listed.

2. **PLN-BOA-20-00040: SOUTHERN HILLS METHODIST CHURCH** - requested a conditional use to increase the number of children in an existing childcare center from 158 to 318 at a split-zoned property in Single Family Residential (R-1C)/Professional Office (P-1) zones, on property located at 2356 Harrodsburg Rd. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed expansion of this use should not adversely affect the subject or adjoining/nearby properties. The use has been conducted in the church for a number of years and the new classrooms will be located in the existing building. Church properties are typically not used throughout the week, so are generally well suited for this type of use. This use will provide a useful service for the surrounding neighbors and broader community.
- b. More than adequate parking exists and is available on the subject property.
- c. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The childcare use shall be conducted 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 prior to the commencement of this use.
3. The days and hours of operation shall not exceed Monday through Friday, from 7:00 a.m. to 6:00 p.m. without further approval of by the Board of Adjustment.
4. The childcare facility shall be limited to 318 children.
5. A fenced and screened play area, containing a minimum of 25 square feet per child, shall be provided.
6. The facility shall be fully licensed and comply with requirements of the Kentucky Cabinet for Health and Family Services, Division of Regulated Child Care.

Representation – Mr. Richard Arnold, Business Administrator and Ms. Ann Fuqua, Director, Early Childhood Program were present via video teleconference, on behalf of Southern Hills Methodist Church's request for a conditional use to increase the number of children in an existing childcare center.

Board questions and comments – Mr. Clarke asked Mr. Arnold to clarify whether there was enough square footage of outdoor space for the children to play. Mr. Arnold responded that there are two playgrounds behind the church. One is for the smaller children and the other is for the older children. Ms. Fuqua stated that the children only go outside by age group. Mr. Arnold added there is also a grass area on the other side of the church where the children can play.

Chair Gross asked Ms. Goderwis to address the requirements of spacing and the amount of square footage per child. Ms. Goderwis replied that the requirement is actually a mirror of a requirement that the State has, so there will be another entity ensuring that the proper amount of outdoor play space is provided. It is part of the State licensure process that 25 square feet per child be available. Ms. Goderwis clarified that the outdoor play space must be fenced in. Chair Gross asked if the parking lot could be counted as part of the required space to play. Ms. Goderwis replied it could not.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 7-0 to **approve PLN-BOA-20-00040: SOUTHERN HILLS METHODIST CHURCH** – request for a conditional use to increase the number of children in an existing childcare center from 158 to 318 at a split-zoned property in Single Family Residential (R-1C)/Professional Office (P-1) zones, on property located at 2356 Harrodsburg Rd., based on staff's recommendation and subject to the six conditions as listed.

D. Discussion Items

1. **PLN-BOA-20-00039: L O P 1 LTD** – requested a variance to reduce the required setback for a projection into a side street side yard from 10' to 5' in order to construct a new deck within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 200 Race St. (Council District 1)

The Staff Recommended: **Approval of a lesser variance to reduce the required setback for a projection into a side street side yard from 10' to 8'**, for the following reasons:

- a. There do not appear to be special circumstances that justify the need for the variance as requested, nor will strict enforcement of the Zoning Ordinance deprive the applicant of the reasonable use of their land. However, the recommended lesser variance is generally reasonable as it will allow the applicant to project 4' into the required side street side yard, which should be sufficient to accommodate a stoop and steps used to access a grade-level patio, or a smaller deck. A stoop and grade level patio could provide a similar space for outdoor dining and entertaining in the proposed location.

This recommendation of **approval of a lesser variance to reduce the required setback for a projection into a side street side yard from 10' to 8'** was made subject to the following condition:

1. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Lauren Major was present via video teleconference on behalf of the applicant and presented their application for the proposed variance.

Staff presentation – Ms. Goderwis directed the Board's attention to her shared screen on which she presented the site plan and renderings of the proposed project submitted by the applicant, as well as aerial photos of the property. She explained staff's reasons for recommending a lesser variance than what the applicant had requested.

Board comments and questions – Ms. Carter asked about the distance of the concrete retaining wall with regard to the sidewalk. Ms. Goderwis explained the location of the retaining wall in relation to the property line. There was further discussion.

Mr. Glover had questions regarding staff's recommendation of an 8' setback and the size of deck allowable given that setback. Ms. Goderwis explained that an 8' setback would allow for a 4' projection or deck. Mr. Glover stated he felt that a 4' deck was too small, and he was inclined to grant a smaller setback to allow the applicant to build a wider deck. He said as a compromise, he would recommend a 6½' setback, which would allow the applicant to build a 5½' deck, as 5½' by 28' seemed to be more reasonable. Ms. Goderwis explained that staff's recommendation was based primarily on the thought that in lieu of a deck, the applicant would most likely opt to choose a stoop or at-grade patio. She elaborated further on staff's reasoning. Mr. Glover asked if the applicant would need a permit for an at-grade patio as well as a raised structure. Ms. Goderwis responded that a patio would not be considered a projection; however, it would need to meet the paving limitations in a side street side yard. Chair Gross commented that it would be necessary to ensure a patio would not be turned into a parking space. Ms. Goderwis confirmed that to be true.

Mr. Clarke stated he agreed with Mr. Glover's suggestion, even to the point of allowing the 5' setback as requested by the applicant. Mr. Clarke further stated he felt a patio would not allow the privacy that a deck would on that corner lot. He asked Ms. Goderwis what precedent would be set if the Board approved this request for a variance. Ms. Goderwis responded and explained it would depend on the specific findings for approval and the conditions placed on the approval. She reminded the Board that they would want to be sure an approval was based on certain characteristics of this property. Ms. Goderwis said staff did not find special circumstances in this case and that is why they did not recommend approval of the full variance. However if the Board did, that was the purview of the Board.

Rebuttal – Ms. Major responded to the questions and comments of the Board.

Board comments – Mr. Needham commented that he would be in favor of an at-grade patio because of the knee wall and the elevated side yard. There was further discussion.

*Note – At 2:33 p.m., the Board took a short recess. The Board reconvened at 2:48 p.m.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter to **approve PLN-BOA-20-00039: L O P 1 LTD** – request for a variance to reduce the required setback for a projection into a side street side yard from 10' to 5', in order to construct a new deck within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 200 Race St. based upon testimony heard today, discussion among the Board members that we have heard and may continue to hear, and based on the amount

of green space that is in the side yard that is within the concrete knee wall shown on the plan, based on the narrowness of the lot, and also based on the fact that funding is coming from the Affordable Housing Trust Fund, which is intended to enhance Lexington's effort to address affordable housing, with the following conditions:

1. The construction be conducted based on the site plan filed with the application.
2. All necessary permits and Certificate of Occupancy be obtained from the Divisions of Planning and Building Inspection prior to commencing the approved construction.

Discussion on the motion – Prior to calling for a vote, Chair Gross asked Ms. Major if the applicant was agreeable to abide by those two conditions as read into the record. She affirmed that they were.

Staff comments – Ms. Goderwis advised the Board that she and Ms. Jones had spoken and that they were not comfortable with the portion of Mr. Glover's findings which stated who was funding or in charge of this application. She stated they were not comfortable with tying that to a reason for approval.

Board comments - Chair Gross indicated he agreed with Ms. Goderwis and Ms. Jones. He said he would feel more comfortable with the fact that the utility strip is located behind the sidewalk in this area. Chair Gross stated the knee-wall creates an elevation difference and other characteristics of the land itself are appropriate to be used in the finding, rather than the user or the funder.

Mr. Glover stated he was not uncomfortable with striking that finding from the motion. Mr. Clarke indicated his agreement to striking that statement as well.

Action – The amended motion passed 6-1 (Gross opposed) to **approve PLN-BOA-20-00039: L O P 1 LTD** - request for a variance to reduce the required setback for a projection into a side street side yard from 10' to 5' in order to construct a new deck within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 200 Race St., based upon the testimony heard today, discussion among the Board members, based on the amount of green space that is in the side yard that is within the concrete knee wall shown on the plan, and based on the narrowness of the lot.

2. **PLN-BOA-20-00042: DOUG VESCIO** – requested a conditional use for a plant nursery in order to construct a new building at an existing plant nursery in an Agricultural Urban (A-U) zone, on property located at 901 Old Todds Rd. (Council District 7)

The Staff Recommended: Approval of the Conditional Use, for the following reasons:

- a. Expanding the existing use to allow for an additional 1,020 square of buildings should not adversely affect the subject or surrounding properties. Construction of the proposed building will help to clean up the property by allowing the applicant to store equipment and materials indoors and to perform vehicle maintenance tasks indoors.
- b. The proposed building will not increase the intensity of the existing use on the property. The number of employees, days and hours of operations, and types of activities occurring will not change.
- c. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted application materials and site plan. Buildings on the property shall be limited to the existing office building and the proposed 6,360 square-foot storage building. Any existing accessory structures shall be removed and the applicant shall return to the Board of Adjustment if any additional structures are desired in the future.
2. All necessary permits and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to occupying the proposed building.
3. All materials and equipment shall be stored inside the proposed storage building or on the concrete storage area shown at the rear of the property. The concrete storage area shall not be expanded beyond its existing footprint.
4. A landscape plan shall be submitted for approval by the Divisions of Planning and Environmental Services. A 15' average buffer shall area shall be provided along the side lot lines where adjacent to the proposed storage building, extending to and including the rear lot line. This buffer area shall include 1 tree every 40' of linear boundary, or fraction thereof, from Group A or B, plus 1) a double row of 6' high hedge, or 2) a 6' high fence, wall, or earth mound.

Representation – Doug Vescio, applicant and property owner was present via video teleconference and presented his application for a conditional use for a plant nursery.

Board comments and questions – There was discussion between the Board and the applicant regarding the conditions recommended by staff. Based on this discussion, Chair Gross informed Mr. Vescio that he could request a continuance of his application to next month to allow him more time to work with Planning staff regarding his application and the recommended conditions. Mr. Vescio indicated his agreement to a continuance.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 7-0 to continue this application for one month to the October 12, 2020 hearing of the Board of Adjustment.

3. **PLN-BOA-20-00043: ECTON FARM, LLC** - requested a conditional use to establish a plant nursery in an Agricultural Rural (A-R) zone, on property located at 7524 Old Richmond Rd. (Council District 12)

The Staff Recommended: Approval of the Conditional Use, for the following reasons:

- a. The proposed use should not adversely affect the subject or surrounding properties. There will be no on-site sales and activity on the site is expected to be relatively infrequent.
- b. The small size of the property greatly limits any full-scale agricultural use, and the proximity of both Interstate 75 and Old Richmond Road do not make for a desirable residential use. This type of low-impact agricultural use is well-suited to this challenging lot and will make use of the existing greenhouse structure.
- c. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The plant nursery shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to commencing the approved use.
3. Hours of operation shall be limited to Monday through Friday from 7:30 a.m. to 6:00 p.m., Saturdays from 8:00 a.m. to 4:00 p.m. and Sundays from 12:00 p.m. to 4:00 p.m.
4. A portion of the driveway shall be paved from the access point on Old Richmond Road to one car length past the turn. Additionally, one parking space shall be paved to meet accessibility requirements and shall include the paving of a sidewalk from that space to the building entrance. The access to Old Richmond Road shall be improved in accordance with recommendations of the Division of Traffic Engineering and with a permit issued by the Kentucky Transportation Cabinet. The remaining required parking spaces shall be graveled or paved.
5. The final design of the driveway, circulation and parking layout shall be subject to review and approval by the Division of Traffic Engineering.
6. The following landscape elements shall be provided and a landscape plan submitted to and subject to approval by the Divisions of Planning and Environmental Services:
 - a. A cluster of lower growing evergreen trees (such as, but not limited to, Pfitzer Junipers) shall be planted along Old Richmond Road, from the access point to the southern property line.
 - b. Lower growing evergreen trees along Old Richmond Road from the access point to the north, for the length of the greenhouse, shall be planted to fill in gaps left by the existing right-of-way trees to create a visual screen for the adjacent property across Old Richmond Road.
 - c. Evergreen trees shall be planted to the north of the greenhouse in order to screen the parking area.
 - d. Two medium to tall trees shall be planted along the western property line in the gap between the two tall trees that exist along the I-75 frontage to screen the building from the Interstate.
7. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
8. Any pole lighting for the parking and loading areas, or any other outdoor areas, shall have a maximum height of 12', and shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing nearby properties.
9. Sanitary sewer treatment and garbage pick-up shall be privately provided.

Representation – Mr. Doug Martin, attorney, was present via video teleconference on behalf of the applicant. Mr. Martin advised that the applicant, Mr. Mike Ecton was also present via video teleconference. Mr. Martin directed the Board's attention to aerial photos of the subject property on his screen, which he shared. He displayed a site plan, which had been submitted by the applicant, and explained Mr. Ecton's application for a conditional use to establish a plant nursery.

Board questions and comments – Chair Gross asked Mr. Martin if it was correct that the applicant had purchased the subject property at the Master Commissioner's sale in August of 2020 and that anyone could have bid on that property. Mr. Martin confirmed that was correct. Chair Gross asked Mr. Martin if the applicant had previously been involved with the prior owner of said property. Mr. Martin stated his client had not. Mr. Martin reiterated this is a new project with a new owner who had nothing to do with the previous owners or projects at all.

Representation – Mr. Martin continued with the presentation.

Objection – Dr. Lisa N. Gannoe, 7525 Old Richmond Rd. was present via video teleconference and expressed her objections to this application for a conditional use, as well as those of some of her neighbors.

Mary Diane Hanna, president of the Old Richmond Road Neighborhood Association, was present via video teleconference and sworn in at this time. Ms. Hanna read aloud a letter of opposition on behalf of the neighborhood association.

Staff comments – Ms. Goderwis addressed some of the comments made by those in opposition to this application and clarified them.

Board comments and questions – Chair Gross asked Ms. Jones of the Law Department, to clarify whether a variance remains with the land once it is granted. Ms. Jones confirmed that is correct and is stated as such in the Zoning Ordinance.

Rebuttal – Mr. Martin addressed statements made by the opposition and assured the Board that Mr. Ecton would comply with all applicable rules and regulations, should this application be approved.

Board comments and questions – Mr. Clarke asked for clarification from the applicant as to how he plans to conduct his business, regarding the nature of the plants he intends to grow.

Mr. Martin responded to Mr. Clarke's questions and further explained the proposed use of the greenhouse and subject property.

Mr. Clarke asked whether trees would be planted on the property outside of the greenhouse. Mr. Martin stated trees would be started inside the greenhouse, and when they are strong enough, moved outdoors and planted to grow larger. Mr. Clarke asked if there was water on the property or if it needed to be brought in. Mr. Martin replied there is city water on the property.

Chair Gross asked if the applicant intended to store mulch, rock or any other landscaping materials that would be used for commercial landscaping purposes. Mr. Martin replied that the applicant would not store any such materials; it would only be a plant nursery.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter and carried 6-1 (Clarke opposed), to **approve PLN-BOA-20-00043: ECTON FARM LLC** - request for a conditional use to establish a plant nursery in an Agricultural Rural (A-R) zone, on property located at 7524 Old Richmond Rd., based on staff's recommendation and the testimony heard today and subject to the nine conditions as listed.

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

Chair Gross noted that it was nearing the time to set the schedule for the 2021 Board of Adjustment public hearings. He asked if any Board member wished to discuss the day and time of the meetings. Mr. Glover indicated that he is satisfied with the 1:30 p.m. time on the second Monday of the month. Mr. Clarke indicated he was as well. Ms. Goderwis said staff will work on a calendar for 2021.

Chair Gross also mentioned that January 2021 would be the time to elect new officers.

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

Ms. Wade reminded Mr. Walker of new member orientation scheduled for the upcoming Friday, September 18, 2020. She also mentioned training by Mr. David Pike, which is scheduled for October. This training will be available for all Board members via video teleconference.

VI. NEXT MEETING DATE - The Chair announced that the next meeting date will be October 12, 2020, at 1:30 p.m. via video teleconference.



VII. ADJOURNMENT - The Chair declared the meeting adjourned at 4:45 p.m.

Branden Gross, Chair

Joan Whitman, Secretary