

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

November 9, 2020

- I. **CALL TO ORDER** – 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.

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, Raquel Carter, Harry Clarke, 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, Stephanie Cunningham and Donna Lewis.

- III. **APPROVAL OF MINUTES** – Chair Gross announced that the minutes of the October 12, 2020 meeting would be considered at this time.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 7-0 to approve the minutes of the October 12, 2020 meeting.

IV. **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, Chair Gross sounded the agenda with regard to any postponements, withdrawals, and items requiring no discussion.

Ms. Goderwis advised the Board that **PLN-BOA-20-00052: KEITH NATIONAL CORPORATION**, which was originally listed on the agenda to be heard today, had been removed due to the applicant's request for postponement to the December 14, 2020 meeting. The request was made prior to the publication of the legal ad, therefore that case was removed from the agenda and would not be heard this month.

Chair Gross asked if there was anyone in the audience who wished to speak on that case. No one was present.

Ms. Goderwis also mentioned that the applicant for **PLN-BOA-20-00054: NATHAN T. COOK**, had withdrawn the Administrative Appeal portion of his application.

- C. **Abbreviated Hearings**

***Note** – prior to hearing the first case, Chair Gross recused himself and Mr. Glover assumed the position of chair for that case.

1. **PLN-BOA-20-00056: JN HARRODSBURG, LLC** - requested variances to reduce the required front yard setback from 30' to 20' in order to construct a new house on each of 33 lots in a Single Family Residential (R-1D) zone, on property located at 4229-4299 Captains Ct. (formerly 4235 Harrodsburg Rd.) (Council District 10)

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. Approval of the variances will result in construction that is characteristic of the existing adjoining neighborhood. The majority of houses on the three streets that run parallel to Captains Court are set back 20' from the back of the sidewalk, due to the waiver that was approved for that subdivision in the 1990s.
- The 10' Tree Protection Area (TPA) along the boundary between the subject property and the Palomar View

Subdivision is a special circumstance that justifies the need for the variances on the western side of Captains Court, as the TPA is quite densely planted and includes a berm, limiting the amount of functional rear yard space for those lots. Allowing houses on those lots to move forward 10' will allow for larger, more usable rear yards.

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. The minimum rear yard shall be 20' for each lot. The revised front and rear lot lines shall be denoted on an Administrative Action Minor Subdivision Plat within 60-days of Board Action.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Mr. Darby Turner, attorney, was present via video teleconference on behalf of the applicant. Mr. Turner gave a brief explanation of the application, explaining the applicant's request for the proposed variances. Mr. Turner spoke to the concerns contained within a letter of opposition that had been received by the Board. He indicated that he had spoken with the sender of the letter, and the applicant had addressed the main concern of a larger back yard.

Board comments and questions – Mr. Glover asked if the request for these variances covered both sides of Captains Ct. or just the Northwest side. Mr. Turner responded that the request covered both sides to make the street consistent.

Mr. Clarke asked if all of the houses on Madrone Way and the streets that run parallel to Captains Ct. were 20' from the sidewalk. Mr. Turner stated he was not sure, but he thought so because those houses were built in accordance with a waiver that would have produced that result or close to that result.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 6-0 (Gross recused), to **approve PLN-BOA-20-00057: JN HARRODSBURG, LLC** – requests for variances to reduce the required front yard setback from 30' to 20' in order to construct a new house on each of 33 lots in a Single Family Residential (R-1D) zone, on property located at 4229-4299 Captains Ct. (formerly 4235 Harrodsburg Rd.), based on staff's recommendation and subject to the three conditions as listed.

*Note - At this time, Mr. Gross returned to the meeting and assumed the position of chair.

2. **PLN-BOA-20-00057: ANDERSON COMMUNITIES, INC** – requested a variance to reduce the required setback for a yard adjacent to a more restrictive zone where the proposed development abuts the existing Agricultural Urban (A-U) zone from 25' to 15' on a split-zone property in High Density Apartment (R-4)/Agricultural Urban (A-U) zones, on property located at 3330 Todds Rd. (Council District 7)

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. The transition between the two zones is relatively insular, and should only have an impact on the church and the new development. The character of the church property, which exists along its Todds Road frontage, will be maintained. The requested variance will not impact the relationship between the subject property and adjacent single family residences.
- b. There are special circumstances that are unique to this particular property that justify the need for the variance. The property is triangular, so it is necessary for much of the development to occur at the widest portion of the site, which is adjacent to the zoning boundary. Additionally, the requirement for a public street and access to the needed parking areas have resulted in the need to move the proposed buildings closer to the zoning boundary.

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. Action of the Board shall be noted on the Final Development Plan.
3. All necessary permits and/or approvals shall be obtained prior to construction and occupancy.

Representation – Mr. Jon Strom, attorney, and Mr. Tony Barrett, Barrett Designs, were present via video teleconference, on behalf of the applicant. Mr. Strom addressed concerns stated in a letter of opposition, which had been received by the Board. He stated that the letter seemed to be in opposition to the development in general; however, he pointed out that the setbacks that are being affected by this variance are not the residential lots on either side of the triangle shaped development. The variance is only affecting the boundary between the new development and the Andover Baptist Church property.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 7-0 to **approve PLN-BOA-20-00057: ANDERSON COMMUNITIES, INC** – request for a variance to reduce the required setback for a yard adjacent to a more restrictive zone where the proposed development abuts the existing Agricultural Urban (A-U) zone from 25' to 15' on a split-zone property in High Density Apartment (R-4)/Agricultural Urban (A-U) zones, on property located at 3330 Todds Rd., based on staff's recommendation and subject to the three conditions as listed.

3. **PLN-BOA-20-00055: TATES CREEK CHRISTIAN CHURCH** – requested a conditional use to establish a childcare center accessory to a place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 3150 Tates Creek Rd. (Council District 5)

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 located in the existing building and a fenced outdoor play area will be provided. 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 during the week.
- 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 40 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 Pannell, Executive Minister, Tates Creek Christian Church, was present via video teleconference. He affirmed that he had read the conditions recommended by staff and agreed to abide by them.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-20-00055: TATES CREEK CHRISTIAN CHURCH** – request for a conditional use to establish a childcare center accessory to a place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 3150 Tates Creek Rd., based on staff's recommendation and subject to the six conditions as listed.

D. Discussion Items

1. **PLN-BOA-20-00053: SANDRA CLEMENTS** – requested a conditional use for a home-based business (personal Pilates instruction) in a Single Family Residential (R-1C) zone, on property located at 3420 Crimson King Ct. (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, as it should not create disturbing levels of traffic, noise, or odors. Adequate off-street parking is available.
- 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 home-based business (individual Pilates instruction) shall be operated in accordance with the submitted application materials and site plan, with instruction only on an individual basis.
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 use.
3. The conditional use shall become null and void should the applicant no longer reside at this location.

Representation – Ms. Sandra Clements, applicant and property owner, was present via video teleconference and gave a brief explanation of her application for a conditional use. She affirmed that she had seen the conditions recommended by staff and agreed to comply with them.

Opposition – Ms. Sara Grant, 3416 Crimson King Ct., was present via video teleconference and expressed some concerns she had regarding this request. She asked if there was enforcement of the conditions set forth. Ms.

Goderwis advised that if Ms. Grant felt that Ms. Clements was in violation of the conditions set forth, Ms. Grant could file a complaint with the Zoning Compliance section of the Division of Planning and an officer would investigate. Mr. Glover suggested Ms. Grant speak with the applicant prior to making a formal complaint.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 7-0 to **approve PLN-BOA-20-00053: SANDRA CLEMENTS** – request for a conditional use for a home-based business (personal Pilates instruction) in a Single Family Residential (R-1C) zone, on property located at 3420 Crimson King Ct., based on staff's recommendation and subject to the three conditions as listed.

*Note – Prior to hearing the next case, Chair Gross reminded the Board and all in attendance via video teleconference, that the applicant had withdrawn the second portion of their request, which was the request for an Administrative Appeal. Therefore, that portion would not be heard.

2. **PLN-BOA-20-00054: NATHAN T. COOK** – requested 1) a conditional use to extend the R-2 regulations into the B-1 zoned portion of the property in order to construct living quarters accessory to the single family dwelling unit, and 2) an administrative appeal to allow kitchen facilities in the proposed accessory living quarters within the defined Infill and Redevelopment Area in a Two Family Residential (R-2) zone, on property located at 140 Victory Ave. (Council District 5)

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

- a. Extending the R-2 zoning regulations approximately 20' to the side lot line is generally reasonable in this location and should not have adverse impacts on the subject or surrounding properties. The majority of the general vicinity is characterized by residential uses where accessory living quarters are allowable by right.
- b. Extending the R-2 zoning regulations will allow the entire lot to function more cohesively and will support the existing principal use located within the R-2 zoned portion of the lot.

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

1. The accessory living quarters shall not be rented, but shall be for use by the property owner and/or his guests only.
2. Kitchen facilities as defined in Article 1 shall not be provided.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

The Staff Recommended: Disapproval of the Administrative Appeal, for the following reasons:

- a. Approval of kitchen facilities in accessory living quarters in this location would effectively create an Accessory Dwelling Unit (ADU). ADUs are currently only allowed in the Expansion Area. While there are pending regulatory changes that would likely allow an ADU in this location, those changes have not been approved. Since those regulatory changes are currently under review and consideration by a committee of the Urban County Council, it is not within the Board's purview to approve such a use at this location.

Representation – Mr. Nathan Cook and his wife, Ms. Renee Eddington, applicants and property owners, were present via video teleconference. Mr. Cook indicated he had read staff's recommendations and the proposed conditions and agreed to abide by them. He explained his and his wife's request for this conditional use.

Staff presentation – Ms. Goderwis directed the Board members' attention to the presentation on her screen, which she shared. She explained the particulars of the split-zone property.

Board question – Chair Gross asked whether overnight rental of the proposed living quarters would be permissible. Ms. Goderwis responded that it would not.

Staff presentation – Ms. Goderwis continued with her presentation, displaying the site plan for the property, which had been submitted by the applicant. She explained staff's justification for recommending approval of the conditional use, subject to the three conditions as discussed.

Board question – Ms. Carter asked about the size of the proposed addition. Mr. Cook responded that the proposed addition would be roughly 400 square feet and the height would be about 10 feet.

Ms. Carter mentioned that it could be confusing or misleading to people in the future, stating they may believe that it is a legal rental structure. Chair Gross responded that a Certificate of Land Use Restriction would be filed and that will set forth any restrictions on this property.

Mr. Needham asked what would prevent someone from adding a kitchen to the living quarters in the future. Ms. Goderwis responded and explained that the second kitchen would not be permitted; as that is a separate issue related to ADU's which are under consideration by the Urban County Council.

Opposition – Ms. Debra Madden, 137 Victory Ave. was present via video teleconference. She expressed her concern about the narrowness of the street and people currently parking on both sides of the street. She also expressed her concerns regarding kitchen facilities in the accessory structure and the possibility of the property owners renting the accessory structure out. Chair Gross informed Ms. Madden that the conditions of the approval prohibit both of those issues. There was further discussion regarding parking. Mr. Cook clarified that there is a driveway on his property in which two cars will fit. He added they could not park in the garage, which is one of the reasons they had to tear it down.

Frances Kurre, neighbor, was present via video teleconference and mentioned that some of her concerns had previously been addressed, but she was still concerned about an additional dwelling unit, especially if it included a kitchen. She was also concerned about renting the accessory unit out in the future and the setting of a precedent.

Action – a motion was made by Mr. Needham, seconded by Mr. Glover and carried 7-0 to **approve PLN-BOA-20-00054: NATHAN T. COOK** – request for a conditional use to extend the R-2 zone regulations into the B-1 zoned portion of the property in order to construct living quarters accessory to the single family dwelling unit within the defined Infill and Redevelopment Area in a Two Family Residential (R-2) zone, on property located at 140 Victory Ave., based on staff's recommendations and subject to the three conditions as listed.

3. **PLN-BOA-20-00058: JOSEPH FENWICK** – requested an administrative appeal to increase the allowable size of an accessory building from 690 square feet to 960 square feet in order to allow an addition to an existing detached garage to remain as constructed in a Single Family Residential (R-1C) zone, on property located at 2064 Rebel Rd. (Council District 9)

The Staff Recommended: Disapproval, for the following reasons:

- a. There are not special circumstances that justify the request. The general vicinity is characterized by single family homes with smaller accessory structures, which generally appear to meet the requirements of the Zoning Ordinance. The applicant has not provided compelling reasons for requiring additional space in an accessory structure above and beyond what would be allowed by right on the subject property.
- b. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. The applicant could construct a smaller addition to provide some extra storage while meeting the requirements of the Zoning Ordinance for accessory structures.
- c. The circumstances at hand are the result of actions taken by the applicant. Construction began without a permit, which could constitute a willful violation of the Zoning Ordinance. Approval of the request could result in the creation of a precedent for forgiveness of noncompliance coupled with a lack of justification. Such a precedent could have lasting effects on the immediate vicinity and similar neighborhoods.

Staff presentation – Ms. Goderwis directed the Board's attention to the presentation on her screen, which she shared. Included in the presentation were renderings of the accessory building, aerial photos of the property and photos of the property, which the applicant had submitted. Ms. Goderwis explained the application and the applicant's request for this administrative appeal, as well as staff's reasons for recommending disapproval.

Board questions and comments – Chair Gross asked Ms. Goderwis if it was her opinion that staff would have recommended disapproval of this project if the applicant had requested a building permit prior to starting construction. She replied that she believed staff would still have disapproved the permit due to lack of justification provided by the applicant.

Mr. Needham asked Ms. Goderwis to explain what the construction of a smaller building, attached to the garage, would have looked like. She explained that the existing structure was about 576 square feet, but the total allowable size for an accessory structure for this property would be 690 square feet, which is half of the total square footage of the house. The allowable square footage that the applicant could have constructed was 114 square feet. Anything beyond that would exceed the allowable size of an accessory structure.

Mr. Needham asked if she was referring to an accessory structure attached to the home or to the garage. Ms. Goderwis clarified by stating that she was only referring to the garage. She added that a 114 square foot addition to the original garage would have been acceptable. She mentioned that the applicant would have the option to construct an addition to the house, as the more house you have, the more accessory building you can have.

Chair Gross asked if the applicant could do an expansion to the house to save the garage. Ms. Goderwis confirmed that technically he could do that. She elaborated by saying that the point of having an accessory

structure is that it is accessory to the primary structure; that is where the 50 percent size limitation applies. Discussion continued.

Representation – Mr. Joseph Fenwick, applicant and property owner, was present via video teleconference, and explained his application for an administrative appeal and why he did not obtain a permit before construction of the accessory building began.

Board questions and comments – Ms. Carter asked the applicant if the company he owns was the contractor on this project. Mr. Fenwick confirmed that it was.

Mr. Glover expressed his concerns about starting a precedent if the Board approved this application. There was further discussion between the Board members and the applicant.

Chair Gross asked Ms. Goderwis if the Board did deny Mr. Fenwick's application, would staff allow the applicant extra time to pursue constructing an addition to his residence, rather than tearing the subject accessory structure down. Ms. Goderwis stated that if the applicant was ready to apply for a permit in a timely manner, she did feel that staff would allow him extra time.

Mr. Clarke commented that it was his opinion that if Mr. Fenwick decided to add to his house, this request for a variance would be moot. He continued by saying if the Board denied the application, staff could work with Mr. Fenwick on the plan to increase the size of his house and the garage would be contingent upon that.

Ms. Whitman asked Mr. Fenwick if there was a possibility of moving a wall that would reduce the size of the addition, given the fact that the addition was not completed. Mr. Fenwick stated that was going to be his next question for the Board. There was further discussion. Ms. Whitman asked Ms. Goderwis to give her feedback on the possibility of the applicant moving a wall. Ms. Goderwis replied it was possible, as long as the enclosed square footage was reduced to 690 square feet total. There was further discussion.

Support – Ms. Lindsey Luker, 2060 Rebel Rd., was present via teleconference and expressed her support of Mr. Fenwick's application.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried 7-0, to **disapprove PLN-BOA-20-00058: JOSEPH FENWICK** – request for an administrative appeal to increase the allowable size of an accessory building from 690 square feet to 960 square feet in order to allow an addition to an existing detached garage to remain as constructed in a Single Family Residential (R-1C) zone, on property located at 2064 Rebel Rd., based on staff's recommendation.

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

Ms. Whitman suggested to the Planning staff that they do a campaign, as a public service announcement, about getting a permit prior to building, similar to the campaign by the utility companies to call before you dig. She noted that many people are not aware that a permit is necessary, and the Board has heard several similar cases recently resulting in financial hardships and unhappiness for the applicant, as well as time and energy spent by the Board and staff.

Ms. Wade stated she would bring Ms. Whitman's suggestion before the One Stop Shop coordinator, Craig Bencz, as this would help the Division of Building Inspection as well.

Mr. Glover asked about the status of a case which had come before the Board several months ago, involving an 8' tall brick wall on the corner of Chinoe Rd. and Cochran Dr. He said he believed the case might be in court at this time. Chair Gross asked Ms. Jones if she thought it necessary for the Board to go into closed session for this discussion. She stated she did not think they needed to go into closed session, and confirmed that the case is still in court.

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 December 14, 2020, at 1:30 p.m. via video teleconference.

VII. ADJOURNMENT – There being no further business, the Chair declared the meeting adjourned at 3:11 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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