

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

December 14, 2020

- I. **CALL TO ORDER** – Acting Chair Thomas Glover 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: Raquel Carter, Harry Clarke, Thomas Glover and Chad Walker. Branden Gross was absent. Joan Whitman joined the meeting at approximately 1:45 p.m. and Chad Needham joined at approximately 3:35 p.m. Others present via video teleconference were: Tracy Jones, Department of Law; Steve Parker, Traffic Engineering; Joseph Bryant and George Dillon, Division of Building Inspection. Staff members in attendance were: Traci Wade, Autumn Goderwis, Stephanie Cunningham, Debbie Woods and Donna Lewis.

- III. **APPROVAL OF MINUTES** – Acting Chair Glover announced that the minutes of the November 9, 2020 meeting would be considered at this time.

Action - A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 4-0 (Gross, Needham and Whitman absent), to approve the minutes of the November 9, 2020 meeting.

IV. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** - The Chair announced that any applicant, objector, or anyone who planned to speak to any appeal before the Board, would be sworn in on a case-by-case basis.

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

Postponements - Ms. Goderwis advised the Board that the applicant for **PLN-BOA-20-00062: BAPTIST SEMINARY OF KENTUCKY** – request for a conditional use to utilize the former parish residence as office space associated with a place of religious assembly within the defined Infill and Redevelopment Area in Two Family Residential (R-2)/Historic District Overlay (H-1) zones, on property located at 536 Sayre Ave. aka 533 E. Main St. (Council District 3), wished to postpone to the January 11, 2021 meeting.

Representation – Mr. David Cassidy, President of the Baptist Seminary of Kentucky, was present via video teleconference and confirmed that they wished to postpone their application to the January 11, 2021 meeting.

Opposition – Mr. Kevin Murphy, 141 W. Bell Court, was present via video teleconference and stated he was aware that the case might be postponed until next month.

Action - A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 5-0 (Gross and Needham absent), to **postpone PLN-BOA-20-00062: BAPTIST SEMINARY OF KENTUCKY** – request for a conditional use to utilize the former parish residence as office space associated with a place of religious assembly within the defined Infill and Redevelopment Area in Two Family Residential (R-2)/Historic District Overlay (H-1) zones, on property located at 536 Sayre Ave. aka 533 E. Main St. to the January 11, 2021 meeting.

- C. **Abbreviated Hearings**

1. **PLN-BOA-20-00052: KEITH NATIONAL CORPORATION** – requested a variance to reduce the required front yard setback from 20' to 10' in order to construct a new building within the defined Infill and Redevelopment Area in a Light Industrial (I-1) zone, on property located at 858 and 862 W. Main St. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Provided that the recommended urban design standards are met, a more urban front yard setback is appropriate in this location. The reduced setback will allow for parking to occur behind the building and will allow for an activated pedestrian environment along an important gateway into downtown Lexington.
- b. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicants have applied for the variances as soon as it was determined that it was needed, and prior to beginning construction.

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

1. The site shall be developed in accordance with the submitted application materials. A revised site plan and elevations may be accepted illustrating the urban design standards required in the conditions below and revisions recommended by the Division of Traffic Engineering.
2. The primary wall plane facing West Main Street shall adhere to the following urban design standards:
 - a. A covered primary entrance for pedestrian access shall be provided.
 - b. There shall be at least one articulation along the primary wall plane which shall be a change of at least 5 feet in depth and 8 feet in length, at a minimum.
 - c. A minimum of 20% of the ground floor building face shall be transparent glass, including windows and pedestrian doors.
3. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Certificate of Occupancy, prior to opening the facility.

Representation – Mr. Richard Murphy, attorney for the applicant; Jeremy Mash and Ross Mash, applicants; and Steve Garland, Integrated Engineering, were present via video teleconference.

Mr. Murphy informed the Board that he needed a few minutes to converse with the applicants concerning a modification to the staff's conditions. He asked the Chair whether he should proceed or delay until later in the meeting. Chair Glover suggested that Mr. Murphy proceed. Mr. Murphy shared his screen and directed the Board's attention to the rendering of the proposed project. He explained the applicant's request for this variance and addressed the conditions in the staff report. Mr. Murphy explained that the floor of the building would be about 10 feet below the sidewalk along Main Street. He mentioned that the Planning Commission had required them to have a 5-foot sidewalk from Main Street down the eastern side of the building to get to the primary entrances along the rear of the building. Mr. Murphy continued with the presentation.

Board question – Chair Glover asked Mr. Murphy if the plan was to have no pedestrian entrance from the Main Street side. Mr. Murphy confirmed that the plan was to have a sidewalk accessible entrance along the rear. The front will have windows, as required by staff, and a hedge that will mimic the hedge and wall on the other side of the street. He said they are trying to make the project pedestrian friendly. Mr. Murphy reiterated that they do not want any entrances along the front, as the floor is 10 feet below the sidewalk.

Mr. Murphy continued with the presentation, including the requested changes to the staff's recommended conditions. He mentioned a long-term plan to have a turn lane to Buchanan Street at some point, and he briefly explained how that could impact their plan.

Board question – Chair Glover asked Mr. Murphy to explain the applicant's request for a reduced setback and their requested amended conditions. Mr. Murphy explained that they were requesting a change to condition 2(b) regarding articulation, but may not need it. There was further discussion. Chair Glover asked staff to clarify their recommendation of the setback.

Staff comments – Ms. Goderwis addressed the importance of the recommended articulation in condition 2(b), explaining that it was not only related to the potential widening of the street, but to the urban design principles of creating a more pedestrian friendly façade along Main Street. She stated that any variance that would be less than 20 feet, which is typically required, would cause staff to want to see that articulation. Discussion continued between the Board and staff regarding the variance of the front yard setback. Chair Glover stated that it seemed Mr. Murphy and the staff needed to talk further.

Mr. Murphy agreed and said he may need time to discuss this with his client. He asked if it would be possible to have this case deferred further down the agenda to allow him time to discuss the articulation with the applicants. After more discussion between the Board, staff and the applicant, the Chair indicated that the remainder of this case would be heard closer to the end of the docket to allow Mr. Murphy time to confer with the applicants.

*Note – This case was resumed at 5:00 p.m.

Board question – When the case was continued, Chair Glover asked Mr. Murphy if he had been sworn in. Mr. Murphy stated that he had not been sworn in previously, and neither had the applicant. At this time, the chair administered the oath to Mr. Murphy, Mr. Jeremy Mash, Mr. Steve Garland and Evan Jahn, Jahn Architecture.

Representation – Mr. Murphy continued with his presentation of the application. He stated the applicant wished to eliminate condition 2(a), which related to a covered pedestrian access on W. Main St., based on a request by the pedestrian planner. Mr. Murphy also requested to amend condition 2(b), which requested that the applicant articulate the building; have a differentiated setback of at least 5' in depth and 8' in width, minimum. He explained the applicant's reasons for wanting to amend this condition.

Mr. Jahn briefly explained the history of his firm and their involvement with this proposed project.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 5-0 (Gross and Walker absent), to **approve PLN-BOA-20-00052: KEITH NATIONAL CORPORATION** – request for a variance to reduce the required front yard setback from 20' to 10' in order to construct a new building within the defined Infill and Redevelopment Area in a Light Industrial (I-1) zone, on property located at 858 and 862 W. Main St., based on staff's recommendations, and subject to the three amended conditions as submitted by the applicant, as follows:

1. The site shall be developed in accordance with the submitted application materials. A revised site plan and elevations may be accepted illustrating the urban design standards required in the conditions below and revisions recommended by the Division of Traffic Engineering.
2. The primary wall plane facing West Main Street shall adhere to the following urban design standards:
 - a. There shall be at least one articulation along the primary wall plane, which shall be a change of at least 5 feet in depth and 8 feet in length, at a minimum. If the entire building is set back at least 15 feet, no articulation shall be required.
 - b. A minimum of 20% of the ground floor building face shall be transparent glass, including windows and pedestrian doors.
3. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Certificate of Occupancy, prior to opening the facility.

2. **PLN-BOA-20-00059: CENTRAL EQUIPMENT** - requested a variance to reduce the number of trees required within the Interior Vehicular Use Area Landscape Area from two trees to zero trees, in a Highway Service Business (B-3) zone, on property located at 791 Red Mile Rd. (Council District 11)

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 two trees will still be provided on the property, adjacent to the new parking area. The project will result in an overall increase in tree canopy on the property.
- b. The location of the public stormwater system connection is a special circumstance that resulted in the underground retention basin being designed with shallower than normal soil depth above the underground storage vault. This special circumstance justifies the need for the requested variance as there is not sufficient soil depth to support healthy trees above the underground stormwater storage vault.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicants have applied for the variance as soon as they were directed to by the Division of Environmental Services.

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 any future amendment to the Final Development Plan.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Environmental Services prior to installation of the landscaping and use of the parking lot.

Representation – Ms. Katie Pentecost Lindeman, landscape architect, and Mr. Jason Huber, applicant and property owner, were present via video teleconference. Ms. Lindeman briefly explained the proposed project, displaying renderings of the site on her screen, which she shared.

Board comments – Mr. Clarke commented that the Landscape Review Committee, of which he is a member, had recently reviewed this application and the members of the committee who were present were in approval of this project going forward.

Action - A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 5-0 (Gross and Needham absent), to **approve PLN-BOA-20-00059: CENTRAL EQUIPMENT** – request for a variance to reduce the number of trees required within the Interior Vehicular Use Area Landscape Area from two trees to zero trees, in a

Highway Service Business (B-3) zone, on property located at 791 Red Mile Rd., based on staff's recommendation and subject to the three conditions as listed.

3. **PLN-BOA-20-00061: KNOCKOUT DEVELOPMENT** – requested a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.70 in order to allow for the conversion of unfinished attic space into finished living space in a single-family dwelling unit within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 473 N. Martin Luther King Blvd. (Council District 1)

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

- a. Granting the variance will not represent an attempt to circumvent the Zoning Ordinance, but will meet the intent of the provisions of the Ordinance that allow for variances to FAR, as it will not create an opportunity for more units on the subject property than would be allowed by right.
- b. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Finishing the existing attic space will not have any impact on the appearance of the house from the public rights-of-way.
- c. The variance is reasonable, as the structures in the general vicinity, along this portion of North Martin Luther King are similar in size and the lots are configured similarly. The Zoning Ordinance specifically states that BOA action may sometimes be required within the defined Infill and Redevelopment Area in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood.

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

1. Construction shall be in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Ms. Shawna Corman, applicant; Mr. Sam Rock, attorney and general contractor; and Russ Clark, architect, were present via video teleconference on behalf of this application. Mr. Rock explained the proposed project and the request for a variance to increase the allowable floor area ratio.

Board question – Chair Glover asked staff why Article 7-6(b) of the Zoning Ordinance includes all of the residential zones except R-3. Ms. Goderwis explained that this type of request could be made in the R-3 zone where density would not be increased. For a single-family use such as this, the interpretation has been made that floor area ratio could be varied as long as it would not result in an increase in the overall units. Ms. Wade further explained.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 5-0 (Gross and Needham absent), to **approve PLN-BOA-20-00061: KNOCKOUT DEVELOPMENT** – request for a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.70 in order to allow for the conversion of unfinished attic space into finished living space in a single-family dwelling unit within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 473 N. Martin Luther King Blvd. based on staff's recommendation and subject to the two conditions as listed.

4. **PLN-BOA-20-00064: ROMANY MARKET, LLC** – requested variances to 1) reduce the side yard setback adjoining a more restrictive zone from 10' to 0' and 2) to reduce the required landscape buffer from 15' to 0' in order to construct a new building in a Neighborhood Business (B-1) zone, on property located at 344 Romany Rd. (Council District 5)

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. The relationship between the proposed structure and the neighboring property will be substantially similar to the conditions that have existed on the property for many years.
- b. The variance requests are generally reasonable as they will allow for the redevelopment of a property which has been vacant for several years. The proposed construction will meet the intent of the Zoning Ordinance for the B-1 zone by allowing for the re-establishment of neighborhood shopping facilities meant to serve the needs of the surrounding residential area.
- c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The applicants have applied for the variances as soon as it was determined that it was needed, and prior to beginning 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, or as amended by the Planning Commission on an amended final development plan.
2. Action of the Board shall be noted on the Final Development Plan.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Mr. Richard Murphy, attorney, and Mr. George Griffin, applicant, were present via video teleconference. Mr. Murphy stated that the applicant is in agreement with staff's condition on this application. He stated that this application was recently heard and approved by the Planning Commission, and was now pending approval by the Board of Adjustment. Given that, he suggested that rather than making another presentation, he would just like to respond to any questions or comments that may come up from the Board or anyone else present via video teleconference.

Board comments – Mr. Clarke noted that this application was also before the Landscape Review Committee and that body had no objections to this project.

Chair Glover shared a concern about the section of the Zoning Ordinance, which states you cannot expand a non-conforming use. He asked staff and legal counsel if this application was proposing to expand a non-conforming use. Ms. Goderwis explained that the current structure is non-conforming but they are removing that structure and constructing a new building. By asking for the variance, the non-conformity is eliminated.

Audience comments – Ms. Amy Clark, 628 Kastle Road, was present via video teleconference and was sworn in at this time. She expressed her interest in this proposed project and asked if a site plan for the project could be shown on the screen for her to reference when making her comments. Staff presented a site plan for the proposed project via shared screen. Ms. Clark also requested that a letter, which she sent to Planning staff after the start of the meeting, be shared with the Board and others. Planning staff displayed the letter via shared screen. Ms. Clark expressed her concerns regarding issues with stormwater at this site. She stated she was in support of the proposed project, but with conditions.

Board comments – Chair Glover reminded Ms. Clark that this application had been slated for the non-contested portion of the agenda in order to facilitate the quick review for non-contested applications. However, her presentation seemed to be in opposition. Chair Glover stated that had he known what Ms. Clark was going to say, he would have slated this case closer to the end of the docket in order to hear her comments. He asked staff if they would like to address any of Ms. Clark's concerns. Ms. Wade reaffirmed that the development plan that goes along with this application was reviewed and received approval by the Planning Commission the previous week. She stated that two of the conditions related to the development plan are things that Ms. Clark mentioned. Ms. Wade further explained that the Planning Commission approves the development plans with conditions contingent on the Urban Forester and the Landscape Examiner signing off on that plan that it meets the requirements of the Zoning Ordinance. She addressed the other requirement that Ms. Clark mentioned which pertained to Engineering and Water Quality, which is also a condition of approval by the Planning Commission. The condition has to meet the water quality and stormwater requirements of the LFUCG Stormwater Manuals.

Representation – Mr. Murphy confirmed that the applicant is cognizant of the issues Ms. Clark brought up. He reaffirmed the development plan had been approved by the Planning Commission, subject to several conditions. He stated the applicant did not ask for a waiver of the tree canopy requirement, or of the tree requirement at all. Mr. Murphy mentioned there was some discussion of stormwater drainage and the applicant will submit their stormwater plans to the Division of Engineering for approval under the Stormwater Manuals prior to starting construction. Mr. Murphy introduced the applicant, Mr. George Griffin, and mentioned that he has had several meetings with the neighbors of this proposed project, and those meetings had gone well. He also mentioned that Mr. Bill McAlpin, engineer with Eagle Engineering, was also present via video teleconference and that Mr. McAlpin is currently working on the stormwater issues with the Division of Engineering. Mr. Murphy indicated that the applicant is in agreement with staff's conditions for this proposed project.

Mr. Griffin, applicant and property owner, expressed his eagerness for this project and his desire to be a "good neighbor".

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 5-0 (Gross and Needham absent), to **approve PLN-BOA-20-00064: ROMANY MARKET, LLC** – requests for variances to 1) reduce the side yard setback adjoining a more restrictive zone from 10' to 0' and 2) to reduce the required landscape buffer from 15' to 0' in order to construct a new building in a Neighborhood Business (B-1) zone, on property located at 344 Romany Rd., based on staff's recommendation and subject to the three conditions as listed.

D. Discussion Items

1. **PLN-BOA-20-00063: EASTERN AVE SOBER LIVING** – requested a variance to increase the allowable lot coverage from 25% to 47% in order to construct a new 2-story accessory structure within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 208 Eastern Ave. (Council District 1)

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the variance would constitute a circumvention of the Zoning Ordinance. Lot coverage cannot be varied in the R-3 zone when it could result in an increase in density on a property. Allowing additional lot coverage in this location would create an opportunity for more units on the subject property, which already contains a non-conforming structure.
- b. Construction of the garage would increase the non-conforming parking situation on the property. Currently, there is an informal parking area that appears to be large enough for about 4 vehicles to park. With the garage, there would only be 2 available parking spaces.
- c. Granting the requested variance alone would not be enough to allow for the construction of the requested structure. Other variances related to the size of the structure and required number of parking spaces would be required to satisfy the applicant's proposal. If the structure includes a dwelling unit, the property would have to meet the requirements for a Group Residential Project established by Article 9 of the Zoning Ordinance, which requires the Planning Commission's approval of a Development Plan. Given the size and configuration of the lot and existing structure, it is unlikely that the requirements for a Group Residential Project could be met on this site.

Staff Presentation - Ms. Goderwis directed the Board's attention to the PowerPoint presentation on her screen, which she shared. She explained the proposed project and the basis for staff's recommendation of disapproval of this application for a variance.

Representation – Mr. Vernon Pressley, applicant, was present via video teleconference and was sworn in. Mr. Pressley explained his application for the proposed project and his request for a variance.

Board questions – Chair Glover mentioned that the current building is non-conforming, therefore any increase to the size or any additional structures, would be expanding the non-conforming use. He stated that was the reason for the project being problematic.

Mr. Clarke asked staff what the lot coverage of the existing structure currently is. Ms. Goderwis replied that the existing lot coverage is 32% and the allowable lot coverage is 25%. Chair Glover stated that is why the building is non-conforming; it is already outside of the maximum allowable dimensions for a residential zone. He commented that Mr. Pressley may not have a problem getting a project such as this approved on a different piece of property.

Applicant rebuttal – Mr. Pressley commented that there were already two garages, which look to be about 10 years old, near the property where he is proposing to build his garage. He questioned whether variances had been granted to build them. He stated the two garages currently there did not have apartments above them and if the apartment he was requesting was the issue, he would forego building the apartment. Mr. Pressley said he did not feel his project was that different from other properties nearby.

Board comments – Chair Glover reminded Mr. Pressley that those other properties were not what was before the Board at that time. He stated that to increase the density on the property as well as the size of the proposed building would not work on this property. Ms. Whitman asked staff to explain whether Mr. Pressley's suggestion of reducing the footprint from 30' by 30', to 22' by 22' would be allowable.

Ms. Wade responded that the Board of Adjustment could not vary lot coverage because it increases density. She stated that the Zoning Ordinance is clear about that. She explained that the best way to increase density, floor area and lot coverage is to go to a different zone. There was further discussion.

Action – A motion was made by Ms. Carter, seconded by Mr. Walker, and carried 5-0 (Gross and Needham absent), to **disapprove PLN-BOA-20-00063: EASTERN AVE SOBER LIVING** – request for a variance to increase the allowable lot coverage from 25% to 47% in order to construct a new 2-story accessory structure within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 208 Eastern Ave., based on staff's recommendation and the reasons stated in the staff report.

2. **PLN-BOA-20-00060: SOUTHERN HEIGHTS NEIGHBORHOOD ASSOCIATION – requested a third party appeal** to contest the issuance of a Paving Permit by the Division of Building Inspection in a Professional Office (P-1) zone, on property located at 1950 and 2020 Nicholasville Rd. (Council District 4)

The Staff Recommended: Disapproval of the third party appeal and to uphold the Division of Building Inspection's issuance of a Paving Permit, for the following reasons:

- a. The Division of Building Inspection has issued a paving permit in accordance with the requirements of Article 5-4(b).
- b. A Development Plan has not been certified for the subject property, nor is one required for the installation of paving that connects two adjacent lots.
- c. Although, the new paving does provide an additional means for customers using the drive-through facilities to exit, it does not expand the use of the drive-through, which has operated in this location for over 50 years and certainly before the current Zoning Ordinance was adopted in December 1983. The new paved connection between 1950 and 2020 Nicholasville Road does not constitute an expansion of the drive-through facilities, so a conditional use application is not required.

Staff presentation - Ms. Goderwis explained the request for this appeal and the history behind it. She directed the Board's attention to renderings of the subject site, as well as photographs of said property and other surrounding properties on her screen, which she shared. She indicated it was staff's recommendation to deny the appeal and to uphold the Division of Building Inspection's issuance of the paving permit, based on the reasons stated in the staff report.

Representation – Ms. Jessica Winters, attorney for the applicant, was present via video teleconference and explained the applicant's request for this appeal. She displayed a PowerPoint presentation on her screen, which she shared.

*Note – Mr. Needham joined the meeting at 3:35 p.m.

Staff rebuttal – Ms. Goderwis addressed some of the specific points Ms. Winters made in her presentation, clarifying them for the Board and others present via video teleconference.

Board comments and questions – Ms. Carter asked Ms. Goderwis to clarify exactly what the Board was to vote on. Chair Glover responded that this was an administrative appeal, appealing the issuance of a paving permit that was issued after a substantial portion of the paving had been completed. He stated that the question before the Board was whether notice was required for the issuance of a paving permit. Chair Glover stated that the answer was “no”, and that is what is being contested by the applicant in this appeal. There was further discussion.

Ms. Carter asked if she was correct in her thoughts that the Division of Building Inspection was the authority that looked at the project after the fact and made the determination that it was not expanding use, and it was not required to be added to the development plan. Ms. Goderwis responded that there would have been a Division of Planning sign-off as well, as part of the paving permit application. She elaborated that the appeal was to contest the issuance of the paving permit, which was issued by the Division of Building Inspection. She also stated that there were a number of conclusions that the Board could come to. Ms. Goderwis said the Board could act to disapprove the appeal, which is what staff recommended. That decision would uphold the Division of Building Inspection's issuance of the paving permit. She said that another conclusion, which would be based on Ms. Winters' argument, could be that the permit was issued in error because there should have been a development plan, or that the permit should not have been issued because there should have been a conditional use application. There was further discussion.

Staff rebuttal – Mr. Joseph Bryant and Mr. George Dillon, Division of Building Inspection; and Mr. Stephen Parker, Division of Traffic Engineering, were present via video teleconference and were previously sworn in. Mr. Bryant explained the steps and responsibilities of the various agencies involved in the sign off and issuance of permits.

Board question – Chair Glover asked Mr. Parker if this project was a concern for the Division of Traffic Engineering. Mr. Parker replied that it was not a concern, and further explained the opinions of the Division of Traffic Engineering regarding this paving project.

Applicant rebuttal – Ms. Winters summarized the applicant's arguments as being that:

1. The paving permit should not have been issued until the Planning Commission considered what the applicant believed was a major amendment to the development plan for this site.
2. If the development plan did not apply to this situation due to the fact that the plan was old and did not

have an official certified development plan when the zone change was approved in the 1960's, the applicant felt there was an issue of a conditional use. Ms. Winters stated that a drive-through teller is not being permitted in a P-1 zone unless it was a conditional use, which would have required going before the Board of Adjustment, which did not occur.

Citizen comments – Mr. Andy Meade, 121 Edgemoor Drive, was present via video teleconference and expressed his concerns that this project was going to cause more traffic in the neighborhood. Mr. Meade stated he and his wife initiated the complaint that led to the appeal of the paving permit.

Mr. Jamie Gage, EMCOR Facilities Services, was present via video teleconference, and was sworn in. Mr. Gage stated that he was the project manager for the contractor of the paving project, and APM Paving was the subcontractor. He gave a brief history of the project.

Board question - Mr. Clarke asked Mr. Gage what the real purpose for the pavement was and the fact that it opens up an avenue between the two roads. He asked what the benefit was to the bank. Mr. Gage stated he was told that it was for additional parking for staff in the rear parking lot. Mr. Clarke asked Mr. Gage if he thought the bank was aware of the problem that opening that avenue up would create for the neighborhood. Mr. Gage stated he did not think that the bank thought it would be significant, due to the fact that there are two separate means of egress. He said those concerns were not thoroughly discussed between the members of the bank and himself until Mr. Parker became involved and at that point they were addressed.

Citizen comments - Ms. Kim Combs Gersony, 205 Tahoma Road, was present via video teleconference, and was sworn in. Ms. Gersony stated she served on the board of the Southern Heights Neighborhood Association and she was there in support of the appeal. She expressed her concern over the statements regarding the purpose of the paving being for additional parking for the bank staff. She also expressed concern over this project being used as a cut-through to Nicholasville Road. Photographs of the subject site, which had been submitted by Ms. Gersony, were previously displayed.

Board comments – Mr. Clarke expressed his appreciation for the staff in making the applications that come before the Board understandable. He said he appreciates the constrictions on them and their responsibility to follow the Zoning Ordinance, as they should. Mr. Clarke also stated he thought Ms. Winters made a good presentation as well. Mr. Clarke stated that he spent a lot of time studying this application and had made on-site visits. He stated he was not in favor of the paving project. There was discussion among the Board members and staff.

*Note – The Board took a recess at 4:28 p.m. and reconvened at 4:50 p.m. Mr. Walker did not return following the recess.

Action – A motion was made by Mr. Clarke to **approve PLN-BOA-20-00060: SOUTHERN HEIGHTS NEIGHBORHOOD ASSOCIATION – request for a third party appeal** to revoke the issuance of a Paving Permit by the Division of Building Inspection in a Professional Office (P-1) zone, on property located at 1950 and 2020 Nicholasville Rd., based on the fact that the paving permit was issued by the Division of Building Inspection in error because the paving creates an expansion of the drive-through facilities associated with the bank located at 2020 Nicholasville Rd. and an amended conditional use permit should have been requested from the Board of Adjustment prior to the issuance of a paving permit. There was no second, therefore the motion died.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 4-1 (Clarke opposed, Gross and Walker absent), to **disapprove PLN-BOA-20-00060: SOUTHERN HEIGHTS NEIGHBORHOOD ASSOCIATION – request for a third party appeal** to contest the issuance of a Paving Permit by the Division of Building Inspection in a Professional Office (P-1) zone, on property located at 1950 and 2020 Nicholasville Rd., based on staff's recommendations.

3. **PLN-BOA-20-00065: LISA GANNOE** – requested a third party appeal to contest the issuance of a Temporary Certificate of Occupancy by the Division of Building Inspection in an Agricultural Rural (A-R) zone, on property located at 7524 Old Richmond Rd. (Council District 12)

The Staff Recommended: **Disapproval of the third party appeal and to uphold the Division of Building Inspection's issuance of a Temporary Certificate of Occupancy**, for the following reason:

- a. The Division of Building Inspection has issued a Temporary Certificate of Occupancy in accordance with Article 5-5(a) of the Zoning Ordinance to allow the property owner to ready the greenhouse and property for use as a plant nursery. The property owner is actively making efforts to establish his business in accordance

with the Board's approval of a conditional use permit for a plant nursery, subject to 9 conditions, and is in the process of applying for the necessary permits.

Staff presentation – Ms. Goderwis directed the Board's attention to the PowerPoint presentation and renderings on her screen, which she shared. Ms. Goderwis presented a brief history of this project and explained staff's reasons for recommending disapproval of this appeal to contest the issuance of a Temporary Certificate of Occupancy by the Division of Building Inspection, for this property.

Mr. Joseph Bryant, Division of Building Inspection, provided an update on the process of issuing a Temporary Certificate of Occupancy. Mr. Bryant stated that as of the date of this hearing, Mr. Ecton, the property owner, had completed all of the site requirements for this project; therefore, a Final Certificate of Occupancy was issued earlier that day.

Board question – Ms. Carter asked if the case before the Board today was now moot, as the appeal was for the issuance of a Temporary Certificate of Occupancy and now a Final Certificate of Occupancy had been issued.

Chair Glover asked Ms. Jones to speak to this question. Ms. Jones stated that the newly issued Final Certificate of Occupancy could also be appealed; however, she was not sure what the remedy for the Temporary Certificate of Occupancy would be now as the Final Certificate of Occupancy superseded it. She stated that to continue with the hearing of the appeal before the Board today could only reveal whether the Temporary Certificate of Occupancy had been issued in error. The issuance of the Final Certificate of Occupancy would not be affected without an appeal of such. There was further discussion. Chair Glover asked if any other Board members had any legal questions of a procedural nature for Ms. Jones.

Representation – Dr. Lisa Gannoe, appellant and property owner at 7525 Old Richmond Road, was present via video teleconference, and was previously sworn in. She stated that she had waited a month to be heard about the Temporary Certificate of Occupancy, and she expressed her desire to be heard at this point.

Chair Glover assured Dr. Gannoe that she would have an opportunity to be heard, but first he wanted to ask the members of the Board if they had any questions for Ms. Jones about the procedural effect of the issuance of the Final Certificate of Occupancy. There was further discussion about the process and procedure of the issuance of the Temporary Certificate of Occupancy. Chair Glover asked Ms. Jones whether the Board could hear Dr. Gannoe if she wanted to address the issuance of the Final Certificate of Occupancy at this hearing. Ms. Jones stated they could not, as that was not the appeal before them at this time.

Applicant presentation – Dr. Gannoe informed the Board of the various documents that she had submitted on behalf of her appeal. She explained the nature of her appeal. Dr. Gannoe directed the Board's attention to the slide presentation on her screen, which she shared, and she explained the slides for the Board.

At the end of Dr. Gannoe's presentation, Chair Glover asked if any Board member had any questions for Dr. Gannoe.

Rebuttal – Mr. Doug Martin, attorney, and Mr. Matt Carter, Vision Engineering, were present via video teleconference on behalf Ecton Farm, LLC, owner of the subject property at 7524 Old Richmond Rd. Mr. Martin and Mr. Carter were both sworn in at this time. Mr. Martin explained his client's project and the process required for obtaining a Certificate of Occupancy. Mr. Martin also addressed some of Dr. Gannoe's concerns.

Matt Carter explained his role in the Ecton Farm project and the permits he was instrumental in obtaining on behalf of the property owner to assist in the completion of the project.

Applicant rebuttal – During her rebuttal time, Dr. Gannoe responded to some of the statements made by Mr. Martin in his presentation on behalf of his client.

Board comments – Chair Glover stated that he felt the Board had been generous in giving everyone an opportunity to speak and present testimony about this issue. He asked if anyone else would like to speak to this appeal or ask questions. Chair Glover stated that it was his opinion that given the fact that the Final Certificate of Occupancy had been issued earlier that day, this appeal was now moot. He stated that the Department of Law had given support to that opinion as well. Chair Glover continued, saying that he wanted to let those in the audience who had been patiently waiting have their turn to submit their evidence for the record. He asked if any of the members of the Board wished to give their opinion of what should be done with this appeal.

Ms. Carter commented that she was under the impression that the Board did not need to make a motion, as the appeal was moot. Chair Glover responded, stating that there needed to be some resolution to this appeal. He asked Ms. Jones to respond.

Ms. Jones responded that because the Board heard the appeal, the Board did need to take some action. She stated the Board could take the action to disapprove the appeal because the permanent Certificate of Occupancy has been issued. If there are issues about the permanent one that are separate and aside from the appeal that is already pending in Circuit Court, for the conditional use, that would also have to be appealed to the Board as an administrative hearing.

Ms. Jones reminded the Board that, as Ms. Goderwis had previously stated, the Board could only consider the procedural aspects of that because the conditional use that granted this use on the property is currently on appeal and in the jurisdiction of the Fayette Circuit Court. She also advised the Board that another alternative would be that based on the issuance of the Final Certificate of Occupancy and what the Board had heard today, they find the appeal to be moot and if the Board agrees, that could be their course.

Ms. Jones reiterated that whatever action the Board takes, the Temporary Certificate of Occupancy has been overridden by the final one.

Ms. Whitman asked if the Board could move to take no action. Chair Glover stated he did not think they could move to take no action, but they could declare that the Temporary Certificate of Occupancy no longer exists because of the reasons stated.

Action – A motion was made by Ms. Whitman, seconded by Chad Needham and carried 4-1 (Clarke opposed, Gross and Walker absent), to **disapprove PLN-BOA-20-00065: LISA GANNOE** – request for a third party appeal to contest the issuance of a Temporary Certificate of Occupancy by the Division of Building Inspection in an Agricultural Rural (A-R) zone, on property located at 7524 Old Richmond Rd., due to the fact that a Final Certificate of Occupancy has been issued, making the issuance of a Temporary Certificate of Occupancy moot.

- V. **BOARD ITEMS** - Chair Glover stated this is the last meeting of the calendar year and according to the bylaws, at the first meeting of the new year, the Board would elect new officers, as necessary.
- VI. **AUDIENCE ITEMS** – Ms. Amy Clark requested to speak. She apologized for causing the Board to take a case out of order and stated that was not her intent.
- VII. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time. There were none.
- VIII. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be January 11, 2021, at 1:30 p.m. via video teleconference.
- IV. **ADJOURNMENT** – As there was no further business, the Chair declared the meeting adjourned at 6:33 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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