

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

January 11, 2021

- 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: Raquel Carter, Harry Clarke, Thomas Glover, Branden Gross, Chad Needham and Chad Walker. Joan Whitman was absent. Others present via video teleconference were: Tracy Jones, Department of Law; Steve Parker, Traffic Engineering. Staff members in attendance were: Traci Wade, Autumn Goderwis, Debbie Woods and Donna Lewis.

- III. **APPROVAL OF MINUTES** – There were no minutes to approve.

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 at this time. The Chair administered the oath to staff members and several others in attendance via video teleconference.
- B. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda with regard to any postponements, withdrawals, and items requiring no discussion.

Postponements and withdrawals – Chair Gross stated that the applicant for **PLN-BOA-20-00066: SPEEDWAY, LLC** – request for a variance to increase the allowable front yard from 20' to 39' in order to construct a new fueling station in a Neighborhood Business (B-1) zone, on property located at 1318 and 1320 Versailles Rd., had withdrawn their application. Therefore, that application was not heard by the Board.

Staff comments – Ms. Goderwis advised the Board that prior to the publication of the agenda, two other applications had been withdrawn and would not be heard by the Board. Those applications were: **PLN-BOA-20-00069: TECH CENTER, LLC**, 904 N. Broadway; and **PLN-BOA-20-00062: BAPTIST SEMINARY OF KENTUCKY**, 536 Sayre Ave., which had been postponed from December 14, 2020.

C. Abbreviated Hearings

1. **PLN-BOA-20-00068: CHACEY AND ROMAIN MALHOITRE** - requested a variance to reduce the required side street side yard setback from 30' to 20' in order to construct an addition to a house in a Single Family Residential (R-1C) zone, on property located at 2003 Hart Rd. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- Granting a relatively minor variance of only 10' should not have a significant impact on the character of the general vicinity. While there are no other structures along Wallace Way with a setback of less than 30', there are only 4 houses along that street, each of which front on other streets. This pattern in the neighborhood lotting is a unique circumstance that reduces the impact of a variance to the side street side yard in this particular location.
- The variance request does not represent an attempt to circumvent the provisions of the Zoning Ordinance. The applicant has applied for the variance as soon as it was determined that one was needed during the permit process, and prior to beginning construction.

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

- Construction shall be in accordance with the submitted application materials and site plan.

2. The existing driveway shall be removed upon construction of the proposed driveway and replaced with grass and/or other vegetative groundcover.

Representation – Chacey and Romain Malhouitre, applicants and property owners, were both present via video teleconference, and presented their application for this variance.

Board questions – Mr. Glover asked the applicants what they were going to do with the trees on the side of the house. Mr. Malhouitre replied that there is only one big pine tree that will have to be removed, as it is in the middle of where the driveway is proposed to be. The hedge on the side and the pine trees on the side will stay. There was further discussion.

Action – A motion was made by Mr. Glover, seconded by Ms. Carter and carried 6-0 (Whitman absent), to **approve PLN-BOA-20-00068: CHACEY AND ROMAIN MALHOUITRE** – request for a variance to reduce the required side street side yard setback from 30' to 20' in order to construct an addition to a house in a Single Family Residential (R-1C) zone, on property located at 2003 Hart Rd., based on staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-20-00067: CHRIST THE KING SCHOOL** – requested a conditional use to expand a school for academic instruction in a Single Family Residential (R-1C) zone, on property located at 299 Colony Blvd. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed construction should not adversely affect the subject or adjoining/nearby properties. The addition will be relatively modest in size and will not result in an increase in the intensity of the use on the property.
- b. More than adequate parking exists and is available on the subject property, and the proposed addition will not increase the need for parking spaces.
- 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. Construction of the proposed addition shall be 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 construction and use of the addition.

Representation – Mr. Jeffrey Pearson, architect, Pearson and Peters Architects, was present on behalf of the applicant and indicated the applicant was in agreement with staff's recommendation and would abide by the conditions as listed.

Board questions – Mr. Glover asked if the new construction was going to be on the north side of the building. Mr. Pearson affirmed that to be correct; that the new construction would be along Cochran Rd. Mr. Glover asked if the parking spaces designated for removal are also on that side, where the entrance is proposed to be. Mr. Pearson affirmed that to be true, and stated they would lose seven spaces, but still have ample parking per the Zoning Ordinance.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 6-0 (Whitman absent), to **approve PLN-BOA-20-00067: CHRIST THE KING SCHOOL** – request for a conditional use to expand a school for academic instruction in a Single Family Residential (R-1C) zone, on property located at 299 Colony Blvd., based on staff's recommendation and subject to the two conditions as listed.

D. Discussion Items

1. **PLN-BOA-20-00070: OPPORTUNITY LEARNING CENTER, LLC** – requested 1) a variance to reduce the required side yard setbacks from 5' to 0'; and 2) a variance to reduce the required rear yard from 10' to 0' in order to construct an addition to the existing legally non-conforming structure; and 3) a variance to reduce the required number of parking spaces by 50% within the Defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 236 Lexington Ave. (Council District 3)

The Staff Recommended: Disapproval of the requested variances to reduce the side yard from 5' to 0' along the southern property line and to reduce the required rear yard setback from 10' to 0', for the following reasons:

- a. Allowing the expansion and conversion of the existing detached garage to dwelling units would represent an

intensification of the activities occurring on the subject property by increasing density directly on two property lines and in very close proximity to other existing multi-family structures, which could have a negative impact on the public health, safety, and welfare of those living in the structures.

- b. Strict application of the Zoning Ordinance will not deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant. If the applicant were to demolish the existing detached accessory structure, there appears to be adequate space to construct an addition that could meet the required setbacks and allow the applicant to provide the desired additional units.

The Staff Recommended: Approval of the requested variance to reduce the side yard from 5' to 0' along the northern property line, for the following reasons:

- a. Approval of the variance should not adversely affect the public health, safety, or welfare, nor alter the essential character of the general vicinity. Two and three-story structures are characteristic of much of the buildings stock along Lexington Avenue. The existing structure has existed on the property line for many years as a fraternity house. An increase in the height of the structure along this property line should have little impact on the general vicinity. The structure immediately adjacent is two stories and approximately 30' from the property line, and should not be negatively impacted by the increased height.
- b. The variance is generally reasonable because a modest increase in height, which meets the maximum height limitation of the Zoning Ordinance, will allow the applicant to reuse an existing building by converting it into units that are more desirable in the current market.

The Staff Recommended: Approval of the requested variance to reduce the number of required parking spaces by 50%, for the following reasons:

- a. Approval of the variance should not adversely affect the public health, safety, or welfare, nor should it create a hazard or nuisance to the public. This property has a Walk Score rating of 93, which is considered very walkable and a Bike Score of 89, which is considered very bikeable.
- b. Other parking is available in the area, including metered on-street parking and on-street parking for those with residential permits, which may be acquired through LexPark for residents of the street.
- c. The close proximity to the University of Kentucky, downtown major employers, and the transit center are special circumstances that increase the likelihood that residents who choose to live in this location will be less car dependent than average.

These recommendations of approval were made subject to the following conditions:

- 1. Construction of the third story shall be done in accordance with the submitted application materials, as well as other portions of the Zoning Ordinance, and a revised site plan which does not include a connection between the principal structure and detached accessory structure.
- 2. No dwelling units shall be provided in the detached accessory structure.
- 3. Parking shall be installed in accordance with the submitted application materials and a revised site plan, subject to approval by the Division of Traffic Engineering.
- 4. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
- 5. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering prior to construction and occupancy.

Staff Presentation – Ms. Goderwis advised the Board that the Division of Planning had received two letters of support for this application, as well as an email, all of which were available on the google drive for the Board to review. She directed the Board's attention to her screen, which she shared, and displayed a PowerPoint presentation of this application. Mr. Goderwis explained the applicant's requests for the three variances, as well as staff's recommendations of approval or disapproval for each variance.

Board questions and comments – Chair Gross asked Ms. Goderwis to display the aerial photo that shows the subject property and Hagerman Ct. Ms. Goderwis displayed that aerial photograph on her shared screen. Chair Gross asked for clarification of which property or properties, Mr. Hardin owned. Ms. Goderwis replied that Mr. Hardin owns 250 and 228 Lexington Ave. There was further discussion.

Representation – Mr. Richard Murphy, attorney; Mr. Paul Lea, architect, Studio A Architecture; and Mr. Craig Hardin, applicant and property owner, were all present via video teleconference. Mr. Murphy directed the Board's attention to the presentation on his screen, which he shared. He displayed a photograph of the existing building on the subject property, and its surroundings. Mr. Murphy explained the history of the property as well as the proposed project in this application. He displayed and explained the site plan and architectural renderings of the proposed project. Mr. Murphy informed the Board that the only condition that his client disagreed with staff's recommendation on pertained to renovating the garage, and he explained why this was so. He also presented a letter of support from a nearby property owner.

Mr. Murphy presented his proposed findings of facts regarding the renovation of the garage, as well as proposed revised conditions, should the Board approve this application. He thanked the Board for their consideration of the application.

Board questions and comments – Chair Gross asked what the purpose of the access from the accessory dwelling to the main building was, and also how wide that access was proposed to be. Mr. Murphy replied that the connection would be on the second floor and would connect to the egress point of the main building to the egress point of the second floor of what used to be the garage building. He also stated that the applicant is required to have all of the units in one building, and according to Building Inspection, the proposed project would be considered as one building if the proposed access were there. Mr. Lea replied that the proposed connection is 18' wide and the difference between the front of the garage and the back of the main structure is 18'-2". He stated that the second level would appear to be a large deck. Mr. Lea explained that the reason they designed it that way was so that there would not be two sets of steps from the second level, resulting in more outdoor living space.

Chair Gross commented that some could view this connection as a "party deck", and asked how the applicant planned to control the noise level from this proposed elevated deck, as there were no walls or trees to block the noise. Mr. Lea explained that although the connection is 18' by 18' but noted that the steps cover half of that. Therefore, the only accessible space is the 8'-9" by 18'. Mr. Lea also noted that a minimum of 4' was for traffic, stating the only usable space would be 4' wide by maybe 13'. He stated that although the space may look like a large deck, it would only have a very small occupancy load. Mr. Murphy displayed the second level floor plan for the proposed project. Discussion continued.

Mr. Glover asked if the applicant intended to keep the material on the exterior of the building. Mr. Hardin replied that it is not possible to save that material, as it is buckling. He also said that the foundation does not have a proper brick ledge, and that they are working with the architect on the design of the exterior of the building. There was further discussion.

Mr. Glover asked if the property had any existing water problems. Mr. Hardin responded that it has the EIFS system (exterior cladding), which is one problem, but currently there seem to be no major problems with the basement level, adding that the house itself is up about five feet above the grade.

Mr. Clarke asked about drainage in the back of the house. Mr. Hardin replied and explained the steps they would take, if necessary, to correct any drainage problems that arose. There was further discussion.

Mr. Needham had a question about the parking space if the applicant did not join the two staircases on the connection point. Mr. Lea said one of the reasons they do not want the stair to go all of the way down to that location is because it is over top of the stair leading to the basement. There was further discussion.

Mr. Steve Parker, Traffic Engineering, was present via video teleconference and addressed some of the previous comments regarding the proposed parking spaces. He stated that if this plan moved forward, Traffic Engineering would need to see a complete redesign of the parking because it is not feasible as it currently is. Discussion continued.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 6-0 (Whitman absent), to **approve PLN-BOA-20-00070: OPPORTUNITY LEARNING CENTER, LLC** – requests for 1) a variance to reduce the required side yard setbacks from 5' to 0'; and 2) a variance to reduce the required rear yard from 10' to 0' in order to construct an addition to the existing legally non-conforming structure; and 3) a variance to reduce the required number of parking spaces by 50% within the Defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 236 Ave., based on staff's approval of the requested variance to reduce the side yard from 5' to 0' along the Northern property line, and also based on staff's approval of the requested variance to reduce the number of required number of parking spaces by 50%. Also included in the motion was the recommendation for approval of the requested variance to reduce the side yard from 5' to 0' along the Southern property line and reduce the required rear yard from 10' to 0', based on the revised findings and subject to the five revised conditions submitted and as follows:

- a. Approval of the variance will not adversely affect the public health, safety or welfare, nor alter the essential character of the general vicinity. The building is already constructed at a zero setback on the right side of the property line and the rear property line. It is constructed of concrete blocks and has no windows or doors facing either the property on the right or the rear. By having the doors and windows facing the existing larger structure, noise, light and other activity should be directed inward to the subject property, rather than outward. In addition, it will allow an accessible dwelling unit to be constructed in the existing rear building.

- b. The variance is generally reasonable because the building has existed at a zero setback for 35 years and there will be no windows or doors on the sides facing the properties to the right or the rear. As mentioned above, it will allow construction of an accessible unit.

These recommendations of approval are made subject to the following revised conditions:

1. Construction of the third story shall be done in accordance with the submitted application materials, as well as other portions of the Zoning Ordinance
2. Parking shall be installed in accordance with the submitted application materials and a revised site plan, subject to approval by the Division of Traffic Engineering.
3. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
4. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering prior to construction and occupancy.
5. No doors or windows for the two rear units shall face the right or rear lot lines

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

A. Appoint a new member to the Landscape Review Committee.

The Tree Board had previously submitted a recommendation to appoint member Dan Stever to the Landscape Review Committee.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-0 (Whitman absent), to appoint Dan Stever to the Landscape Review Committee.

B. Election of Officers – The Board's By-Laws state that officers shall be elected at the first regular meeting in January of each year. The Board shall elect a Chairperson, a Vice-Chairperson and a Secretary.

The current officers were:

Chairperson – Branden Gross

Vice-Chairperson – Thomas Glover

Secretary – Joan Whitman

Chair Gross expressed his gratitude for the opportunity to serve as the Board of Adjustment's Chair over the past three years and thanked Mr. Glover for standing in as Chair in his absence.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 6-0 (Whitman absent), to nominate Mr. Glover to the position of Chair for the 2021 term.

Chair Glover assumed the position of Chairperson at this time and called for a nomination for the position of Vice-Chairperson.

Action – A motion was made by Mr. Clarke to nominate Mr. Needham to the position of Vice-Chair for the 2021 term. There was discussion on the motion. The motion was seconded by Mr. Gross and carried 5-0 (Whitman absent and Needham abstained).

Chair Glover informed the Board that Ms. Whitman had expressed her willingness to remain in the position of Secretary for the upcoming term.

Action – A motion was made by Chair Glover, seconded by Ms. Carter and carried 6-0 (Whitman absent), to nominate Ms. Whitman to the position of Secretary for the 2021 term.

C. Delegation of Secretary's Duties – In the past, the duties of the Secretary have been delegated to the Planning Services Manager and staff member(s) appointed by the Manager. The Chair will request action on this item.

Chair Glover recommended the Board continue with the delegation of the duties of the Secretary to the Planning Services Manager and staff member(s) appointed by the Manager as in the past.

The recommendation was voted on and approved 6-0, (Whitman absent).

Chair Glover thanked Mr. Gross for his service as Chair over the past years, commenting on how much his leadership was appreciated.

- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be February 8, 2021, at 1:30 p.m.
- VII. **ADJOURNMENT** - The Chair declared the meeting adjourned at 3:17 p.m.

Branden Gross, Chair

Joan Whitman, Secretary

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