MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 12, 2021

I. CALL TO ORDER – 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, Branden Gross, Chad Needham, Chad Walker and Joan Whitman. 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, Donna Lewis and Stephanie Cunningham.

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

IV. PUBLIC HEARING ON ZONING APPEALS

A. Swearing of Witnesses - Chair Glover announced that any applicant or objector to any appeal before the Board who wished to speak, would be sworn in prior to doing so.

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

There were no postponements or withdrawals.

C. Abbreviated Hearing

1. **PLN-BOA-21-00014: JULIUS PROPERTY LLC AND WILLIAMS ENTERPRISES LLC –** requested 1) a variance to reduce the required rear yard from 14' to 10' and 2) variances to reduce the required side yard setbacks from 5' to 3' in order to construct a new house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 351 Ross Ave. (Council District 1)

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 vicinity is characterized by similar small lots and the requested setbacks will be similar to other setbacks in the area.
b. The size of the lot is a special circumstance that justifies the need for the variances. Without any variances, the maximum building footprint would be only 987 square feet. Granting the variances will allow the applicant to utilize a currently vacant lot within the Infill & Redevelopment Area for needed housing.
c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment Area regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the variances as soon as it was determined that they were needed during the permit process, 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.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Mr. Craig Williams, applicant, Williams Enterprises, was present via video teleconference. There were no questions from the Board and no one present virtually to oppose this application.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke, and carried 7-0 to **approve <u>PLN-BOA-21-00014: JULIUS PROPERTY LLC AND WILLIAMS ENTERPRISES LLC</u> –** requests for 1) a variance to reduce the required rear yard from 14' to 10' and 2) variances to reduce the required side yard setbacks from 5' to 3' in order to construct a new house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 351 Ross Ave., based on staff's recommendation and subject to the two conditions as listed.

2. **<u>PLN-BOA-21-00015: CHAD NEEDHAM</u>** – requested 1) a variance to reduce the required front yard from 20' to 12', 2) a variance to reduce the required rear yard setback from 20' to 7', and 3) a variance to increase the allowable width of the driveway from 10' to 18' in order to construct a new house within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 108 E. Loudon Ave. (Council District 1)

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 front yard variance will allow for construction that is consistent with the existing setbacks along this portion of East Loudon Avenue. The rear yard and driveway variances will not be out of character in the general vicinity as the area is characterized by small industrial lots and does not have a consistent residential character.
b. The requested variances are generally reasonable as they will allow for construction of housing on a vacant lot within the defined Infill and Redevelopment Area. The variances will allow for construction of a house that is of a style desirable in today's market with a usable yard and garage.
c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment Area regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the variances as soon as it was determined that they were needed, prior to 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.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Traffic Engineering prior to construction and occupancy.

*Note – Mr. Needham recused himself from voting on this case, as he is the owner of the subject property.

Representation – Mr. Chad Needham, owner and applicant, was present via video teleconference and was sworn in by Mr. Glover.

Board questions – Mr. Glover asked Mr. Needham about the zoning of the property. Mr. Needham explained that his property is between a B-1 Zone and an I-1 Zone and that his property is in an R-3 Zone.

Action – A motion was made by Mr. Clarke, seconded by Ms. Carter and carried 6-0 (Needham recused), to **approve <u>PLN-BOA-21-00015: CHAD NEEDHAM</u>** – request for 1) a variance to reduce the required front yard from 20' to 12', 2) a variance to reduce the required rear yard setback from 20' to 7', and 3) a variance to increase the allowable width of the driveway from 10' to 18' in order to construct a new house within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 108 E. Loudon Ave., based on staff's recommendations and subject to the two conditions as listed.

*Note – Mr. Needham returned to his position of Board member.

3. **<u>PLN-BOA-21-00016: BALL HOMES, LLC</u>** – requested a conditional use for a childcare center in a Planned Neighborhood Residential (R-3) zone, on property located at 3157 Keithshire Way. (Council District 9)

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

a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The property can accommodate a child care facility along with its associated parking and outdoor play areas. This use will provide a convenient and beneficial service for the surrounding neighbors and broader community.
b. 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 and operation of the childcare facility shall be in accordance with the submitted application materials and site plan. Architectural changes made to the proposed structure and/or reconfiguration of the proposed parking area are permissible during the Final Development Plan process as long as all Zoning Ordinance requirements and conditions below are met.
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.
4. The days and hours of operation of the childcare facility may be expanded to operate 7 days per week from 7:00 a.m. to 7:00 p.m. without a new application to the Board of Adjustment.
5. Maximum enrollment shall be based on the capacity allowed by the Cabinet for Health and Family Services Division of Regulated Childcare, so long as local parking and outdoor play area requirements are met.

Representation – Nick Nicholson, attorney for the applicant and Rory Kahly, EA Partners were present via video teleconference and were sworn in.

Opposition – Mr. Tom Detzel, 460 Wellington Gardens Dr., was present via video teleconference and expressed his concern over the number of rooftops there would be if this application were approved, as well as the potential increase for traffic in the roundabout. He also mentioned that he was concerned as to whether the pedestrian walkway would be affected.

Rebuttal – Mr. Nicholson responded to Mr. Detzel's concern regarding the number of dwelling units. He explained that even though the property is in a residential zone, the subject property could not be used as residential with the number of residential properties currently in the area. That is why the applicant is considering the use of a childcare center there. Mr. Nicholson stated that the applicant will submit a final development plan, which will be reviewed by the Division of Traffic Engineering and the Bike and Pedestrian Planner, regarding the traffic concern.

Board comments - Mr. Clarke stated he was also concerned about traffic, given the fact there are schools nearby. Mr. Nicholson said that the applicant is more than happy to work with the Division of Traffic Engineering during the final development plan stage.

Mr. Gross asked staff to explain how the traffic issues are addressed during the development plan process. Mr. Stephen Parker, Traffic Engineering, responded that the proposed use is a low-intensity use, focused on time of day and that the speed limit at the roundabout area is 15 miles per hour. He stated that Traffic Engineering feels comfortable with the placement of the entrance and the proposed use as presented at this time. Mr. Parker said that Traffic Engineering will look at traffic counts that they feel would be generated by this type of use at the final development plan stage.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried 7-0 to **approve PLN-BOA-21-00016: BALL HOMES, LLC** – request for a conditional use for a childcare center in a Planned Neighborhood Residential (R-3) zone, on property located at 3157 Keithshire Way, based on staff's recommendation and subject to the five conditions as listed.

4. PLN-BOA-21-00011: EUGENE DULANEY AMMUNITION – requested an administrative appeal to determine whether firearms ammunition manufacturing is an allowable use in a Light Industrial (I-1) zone at a split-zoned property located in Light Industrial (I-1)/Warehouse Business (B-4) zones, on property located at 251 Price Rd. (Council District 2)

The Staff Recommended: **Approval,** for the following reason:
a. The manufacture of small arms ammunition is allowable in the I-1 zone because Kentucky Revised Statutes (KRS 100.325 and KRS 65.870) prohibit LFUCG and the Division of Planning from regulating the manufacture of ammunition, and from utilizing the zoning process to prohibit a federally licensed firearms manufacturer from locating at any place within the jurisdiction at which any other business may locate.

Staff comments – Ms. Goderwis informed the Board that staff had received one letter in support of this appeal.

Representation – Mr. Thomas Bullock, attorney and applicant, was present via video teleconference and was sworn in.

Board comments – Mr. Glover commented that, per the Staff Case Report, the Board of Adjustment had no discretion to deny the application. The only choice the Board has is to approve the application. Mr. Glover stated that according to legal counsel, the only jurisdiction the Board has is not to stand in the way of this project.

Mr. Gross stated that he would like to address that, and he recommended staff propose a text amendment stating that until that statute is amended or revoked, that this be a staff-level process rather than a Board process. Mr. Glover agreed with Mr. Gross.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 7-0, to **approve** **PLN-BOA-21-00011: EUGENE DULANEY AMMUNITION –** request for an administrative appeal to determine whether firearms ammunition manufacturing is an allowable use in a Light Industrial (I-1) zone at a split-zoned property located in Light Industrial (I-1)/Warehouse Business (B-4) zones, on property located at 251 Price Rd., for the following reason:

a. The manufacture of small arms ammunition is allowable in the I-1 zone because Kentucky Revised Statutes (KRS 100.325 and KRS 65.870) prohibit LFUCG and the Division of Planning from regulating the manufacture of ammunition, and from utilizing the zoning process to prohibit a federally licensed firearms manufacturer from locating at any place within the jurisdiction at which any other business may locate.

D. Variance Appeals

1. PLN-BOA-21-00004: THOMAS R. LAMBUTH – requested variances to 1) reduce the required rear yard setback from 10’ to 1’8”, and 2) to reduce the required side yard setback for a deep building from 8’ to 3’7” in order to construct an addition to an existing house in a Planned Neighborhood Residential (R-3) zone, on property located at 1522 Player Dr. (Council District 2)

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

a. Granting the variances could adversely affect the public health, safety, or welfare because the proposed addition encroaches into an existing sanitary sewer easement and does not currently meet the requirements of the Kentucky Residential Building Code.
b. There are not special circumstances that justify the need for the variances and 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 at the rear of the property that would comply the Zoning Ordinance and still provide some additional living space.

*Note – The Board took a brief recess from 2:16 p.m. to 2:21 p.m. in order for the staff to prepare the presentation for this application.

Staff presentation – Ms. Goderwis directed the Board’s attention to the presentation on her screen, which she shared. She noted that the second variance was incorrect; it actually should state from 5’11” to 3’7”. Ms. Goderwis continued to explain the application submitted by the applicant and staff’s reasons for their recommendation of disapproval.

Board comments – Mr. Gross mentioned the 7’ sanitary sewer easement noted on the site plan and asked Ms. Goderwis if the City would allow the applicant’s project to be enclosed over this sewer easement. Ms. Goderwis replied that the applicant would be required to secure an encroachment agreement, if the Board approves these variances. Ms. Goderwis stated that the fact that the proposed project is in one of the easements, is one of staff’s reasons of concern regarding this application.

Staff presentation – Ms. Goderwis continued with her presentation of the application and staff’s recommendation of disapproval.

Representation – Mr. Thomas Lambuth, applicant and property owner was present via video teleconference and was sworn in prior to presenting his application. He informed the Board that he does not intend to build across the rear property line, and encroach onto the golf course. Mr. Lambuth presented his justification for the proposed project.

Board questions and comments – Mr. Needham asked Mr. Lambuth to estimate how many other properties in the area he felt looked similar to what he wanted to do. Mr. Lambuth replied there were two to the left of his property and several others on the right side that had similar enclosures that had been added to their property.

Mr. Clarke asked the staff to address the neighboring homes, to which Mr. Lambuth had referred. Ms. Goderwis replied that through the research she had conducted, she was able to find permitting history for two properties. She stated that those properties were to the left of Mr. Lambuth’s property and were set back further from the rear property than his proposed structure, therefore they did not need variances. Ms. Goderwis noted that the Building Code is separate from the Zoning Ordinance and the Board of Adjustment does not have the authority to waive any Building Code requirements. She stated that should the Board approve these variances, Mr. Lambuth would still be unable to construct what he is proposing without making some significant changes. There was further discussion.

Ms. Carter raised a question about the sewer easement, as to whether Mr. Lambuth was planning to obtain an encroachment agreement with the City. Mr. Lambuth responded, stating that the sewer and the electrical were in the front of the property, and the utility easement with the phone line and cable line in it was in the rear. There was further discussion among the members of the Board, staff, and the applicant.

Ms. Wade directed the Board's attention to an aerial view of the subject property on her screen, which she shared. She explained the locations of the easements as depicted on this view and the existing sanitary sewer lines within the easement. There was further discussion.

Action – A motion was made by Mr. Gross, seconded by Ms. Carter and carried 6-0 (Whitman opposed), to **disapprove PLN-BOA-21-00004: THOMAS R. LAMBUTH** – request for variances to 1) reduce the required rear yard setback from 10' to 1'8", and 2) to reduce the required side yard setback for a deep building from 5'11" to 3'7" in order to construct an addition to an existing house in a Planned Neighborhood Residential (R-3) zone, on property located at 1522 Player Dr., based on staff's recommendation.

2. PLN-BOA-21-00010: GWENDOLYN ALCORN – requested a variance to increase the allowable height of an accessory structure from 14' to 20' at property located within the defined Infill and Redevelopment area in a Two Family Residential (R-2) zone, on property located at 930 Charles Ave. (Council District 2)

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 and duplexes with shorter accessory structures, which generally appear to meet the requirements of the Zoning Ordinance. The applicant has not provided compelling reasons for requiring a taller accessory than would be allowed by right on the subject property.
b. Granting the requested variance could have a negative impact on the surrounding neighbors. The requested variance would allow for a structure that is taller than many of the principal structures in the immediate vicinity to be located much closer to the side and rear property lines than a principal structure could be.
c. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. The applicant could lower the roof of the accessory structure in order to bring it into compliance and still provide some extra storage on the property.
d. 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. Had the applicant applied for a permit prior to construction, the need for a variance could have been avoided.

Staff comments – Ms. Goderwis informed the board that staff had received one letter of concern regarding this case. She directed the Board's attention to her screen, which she shared. Ms. Goderwis displayed an aerial view of the subject property and explained the application submitted by the applicant. She informed the Board that this application was the result of a complaint submitted to the Division of Building Inspection on April 7, 2020. The complaint stated that construction was occurring without a permit. At that time, the Division of Building Inspection issued a stop work order. The applicant applied for building permit on February 3, 2021, at which time they were informed they needed a variance.

Ms. Goderwis displayed photos of the building in question and explained staff's recommendation of disapproval of this variance request.

Board questions and comments - Mr. Glover asked if the only issues were the height and the fact that the applicant had not gotten a building permit prior to construction. Ms. Goderwis responded that other than the height, the accessory structure would meet the overall size requirements of an accessory structure for this property.

Mr. Needham asked if the Board had ever reviewed an application for an accessory structure that was taller than the primary structure. Ms. Goderwis said it was rare, but there have been applications in the past; however, with those applications, there were differences in the elevation that would have made it less noticeable.

Mr. Clarke asked how tall the accessory structure could be and still meet the building code. Ms. Goderwis answered that it could be 14' tall, which is the same height of the principal structure.

Representation – Mr. Benjamin Caudill, All Home Matters, was present via video teleconference on behalf of the applicant, and was sworn in by Mr. Glover prior to presenting his application. Mr. Caudill explained the history of the project and the facts leading up to him representing Ms. Alcorn.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 7-0 to **disapprove PLN-BOA-21-00010: GWENDOLYN ALCORN** – request for a variance to increase the allowable height of an accessory structure from 14' to 20' at property located within the defined Infill and Redevelopment area in a Two Family Residential (R-2) zone, on property located at 930 Charles Ave., based on staff's recommendation.

5. **PLN-BOA-21-00017: DAH INVESTMENTS LLC** – requested a variance to reduce the required side yard setback from 8' to 3' in order to construct a new house in a Single Family Residential (R-1C) zone, on property located at 1808 Clays Mill Rd. (aka 1810 Clays Mill 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 vicinity is characterized by lots of a similar size that contain one to two-story houses with detached garages and the requested setback will be similar to other setbacks in the area.
b. The variance request does not 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:

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.

Staff comments – Ms. Goderwis informed the Board that staff had received one letter of opposition to this application.

Representation – Mr. Chris Clendenen, attorney for the applicant, and Mr. Tom Harper, property owner and applicant were both present via video teleconference and were sworn in by Mr. Glover.

Board questions and comments – Mr. Glover asked if the proposed new house is going to be on the corner. Mr. Clendenen replied that it would be constructed on the vacant corner lot. He explained the application and the need for this variance.

Mr. Gross asked how close the new house would be to the existing house. Ms. Goderwis stated that she would answer that question, as well as display a rendering of the plat on her screen, which she shared. There was further discussion. Mr. Gross asked if Mr. Harper owned both properties. Mr. Clendenen replied that Mr. Harper is affiliated with a holding company that owns both properties. There was further discussion.

Mr. Gross asked if the existing driveway that is between the two properties would remain. Mr. Harper confirmed that the driveway would remain. He stated that he was not sure how wide the driveway was, but that he thought it was ten or twelve feet wide. There was further discussion.

Mr. Clarke asked if the driveway was all contained on the 1808 Clays Mill Road property. Mr. Harper confirmed that to be correct.

Opposition – Mr. Brad Hawkins, 541 Reed Lane, was present via video teleconference. Mr. Hawkins referred to a letter or email of opposition, which had been sent to the Board from Mr. Jeffrey Huber, 545 Reed Lane. Mr. Hawkins stated he was in agreement with Mr. Huber, who was unable to attend the meeting. Mr. Hawkins expressed his concerns with, and objections to the proposed project. One of his objections referred to the closeness of the existing garage at the rear of 1808 Clays Mill Road, to the location of the proposed garage at 1810 Clays Mill Road. He stated the result would be two garages within three feet of each other, which could result in a hazardous condition. Mr. Hawkins stated the proposed project was out of character with other homes in the area and asked the Board to deny the requested variance.

Board questions and comments – Mr. Glover asked Mr. Clendenen to address Mr. Hawkins' comments concerning the location of the garages. Mr. Clendenen confirmed that, per the site plan, the proposed garage was to be built three feet from the property line. Ms. Goderwis noted that the variance does not have an impact on the proposed detached garage; the accessory structure can be within eighteen inches of the property line. Mr. Harper stated that the garages would be six feet apart, due to the existing garage being three feet from that property line.

Rebuttal – Mr. Clendenen addressed the comment Mr. Hawkins made regarding the proposed project being out of character with the neighborhood, stating the other lots that are along Clays Mill Road are roughly the same size. He stated the proposed project is in keeping with the Urban County Government's desire to make good use of undeveloped land inside the Urban Service Area boundary, and building needed housing. He stated the subject property, in its current state, is actually more out of character with the rest of the neighborhood as the lot is close to double the size of others nearby.

Board comment – Mr. Needham commented that the existing home, made of stone with an historical and classy look, as well as being on the corner of the street, lends character to the neighborhood. He encouraged Mr. Harper to take that into consideration when the vacant lot is being developed, and follow what is already in the neighborhood.

Mr. Gross agreed and said he would like to see what the proposed house is going to look like. He asked Mr. Harper if he was planning to build a Cape Cod. Mr. Harper replied that he was planning to build a Cape Cod or a two-story home. He also said that he appreciated Mr. Needham's comments and that the intention is to use all brick or stone to keep it in the character of the neighborhood. Mr. Harper stated that he lives in the neighborhood as well and has respect for it.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 7-0 to **approve PLN-BOA-21-00017: DAH INVESTMENTS LLC** – request for a variance to reduce the required side yard setback from 8' to 3' in order to construct a new house in a Single Family Residential (R-1C) zone, on property located at 1808 Clays Mill Rd. (aka 1810 Clays Mill Rd.), based on staff's recommendation and subject to the two conditions as listed.

*Note – Mr. Glover called for a brief recess at 3:34 p.m. The Board reconvened at 3:42 p.m.

D. Conditional Use Appeals

1. PLN-BOA-21-00013: ANDY'S FROZEN CUSTARD – requested a conditional use for drive-through facilities within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 1200 S. Broadway. (Council District 3)

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

a. The proposed design of the restaurant and drive-through facilities do not meet the intent of the B-1 zone, nor the stacking requirements of Article 16-9, and are inappropriate in this location. However, redesigned facilities, which take into account pedestrian access and neighborhood integration could be appropriate in this location.

Staff comments - Ms. Goderwis informed the Board that staff had received some letters of opposition to this application.

Representation – Brandon Harp, Civil Engineering Design Consultants, was present via video teleconference on behalf of the applicant and was sworn in by Mr. Glover.

Board question – Mr. Glover asked Mr. Harp if the applicant was interested in postponing his application as recommended by staff. Mr. Harp stated that his client did not wish to postpone, but to present their application at this time.

Applicant presentation – Mr. Harp directed the Board's attention to the presentation on his screen, which he shared. He explained the application for the proposed project, giving a brief description of Andy's Frozen Custard. Mr. Harp presented aerial photos and renderings of the subject property. Mr. Harp introduced Mr. Brandon Arnold of Andy's Frozen Custard, who was also present via video teleconference, and stated that Mr. Arnold would be happy to answer any questions the Board may have.

Board comment – Mr. Glover commented that as this application had been recommended for postponement by the staff, he would like to hear from staff with regard to their recommendation prior to hearing from Mr. Arnold.

Staff presentation – Ms. Goderwis directed the Board's attention to her screen, which she shared. She referred to Article 8 of the Zoning Ordinance, which related to drive-through facilities. Ms. Goderwis explained staff's concerns and reasons for recommending postponement of this application. She stated that if the applicant were not agreeable to postponing, staff would recommend disapproval at this time.

Board comments – Mr. Glover told the other Board members that he would like to hear their thoughts and comments about whether to hear the rest of this case or to vote for postponement. He commented that Ms. Goderwis had raised some good points and stated that he agreed with staff over some of the issues of concern such as the narrowness of the front part of the lot and the drive-through with cars on both sides. Mr. Glover stated that he would like to see a better plan also. He complimented Mr. Harp on his presentation as well.

Mr. Gross asked whether the Board would vote for a continuance rather than postponement at this time, given they had already heard much of the case and it contained a lot of information. Mr. Glover agreed that it would be a continuance rather than a postponement, should the Board choose to vote that way.

Mr. Gross stated that he was not opposed to a drive-through at this location; however, he would like to see some changes. Mr. Gross stated he would like to see the applicant and staff work together. He stated he would like to see a continuance.

Ms. Carter stated that she did not feel the need for a continuance and that she did not have an issue with the drive-through at this location. She said felt it was very similar to a drive-through that the Board approved not long ago at another location, but on what seemed to be a smaller lot. Ms. Carter stated that having some place to eat outside might attract pedestrians to this area. She mentioned the large number of parking spots and the possibility of configuring the drive-through differently.

Mr. Clarke added that he liked the project and did not feel that one more drive-through would be a problem. He said he thought it would be a good addition to the property. Mr. Clarke said he thought the biggest problem for redesign was the fact that the zoning of the residential property prohibits the use for stacking in the drive-through. He said that unless the zoning was changed, he did not see how Mr. Harp could substantially change the things that have been addressed.

Mr. Glover asked for clarification as to whether the parking lot was zoned differently that the piece of the property along the street. Ms. Goderwis replied that the parking lot is a non-conforming use on a residential lot.

Mr. Needham commented that he felt the plan could be changed. He said he did not even see the need for a drive-through. He said that he liked the idea of using the parking lot with a walk up facility away from cars for pedestrians to walk up, order their treats and sit in a nice lot. Mr. Needham further stated he felt that if an applicant is given the opportunity to postpone, and they do have a path forward with Planning, they should take it.

Ms. Whitman stated that she was not opposed to the drive-through. She mentioned several other drive-through facilities in that area. She said she was very much in favor of this plan.

Mr. Gross asked staff whether there would be standard sign-offs from other divisions should the Board approve the drive-through today. Ms. Goderwis confirmed that to be true. She stated Traffic Engineering would have input about traffic. She commented that the menu board would need to be relocated as part of the permitting process in order to accommodate the five stacking spaces. The site plan needed to be revised to reflect that change prior to the Board approving it as is.

Stephen Parker, Division of Traffic Engineering was present via video teleconference and expressed that division's concerns for the plan as is. He stated one solution for the applicant, since they own both lots, would be to re-zone and divide that portion through an amended plat process and a development plan process. Mr. Parker brought up another safety concern regarding walking through the drive-through, which was very unsafe, and he said the Division of Traffic Engineering always tries to avoid that situation. He gave other reasons that the Division of Traffic Engineering was not in support of this application at this time.

<u>Rebuttal</u> – Mr. Harp addressed some of Mr. Parker's comments and asked the Board to allow Mr. Brandon Arnold to speak prior to the Board voting on this application.

<u>Board comments and questions</u> - Mr. Gross asked staff to clarify whether it was staff's position that the only way to make this application work was the process of a zone change. He stated he would not be in favor of that. Ms. Goderwis stated that was one option to go forward, but a zone change is a long process. She stated there were other potential redesign aspects that could occur without rezoning that lot and Planning staff would be happy to work with the applicant on those.

<u>Rebuttal</u> – Mr. Brandon Arnold, Andy's Frozen Custard, was present via video teleconference and sworn in by Mr. Glover at this time. He addressed some of the comments previously made and provided further justification for the applicant wanting to go forward with the proposed project, rather than postpone or continue to next month.

<u>Action</u> – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 5-2 (Carter and Whitman opposed), to **continue <u>PLN-BOA-21-00013: ANDY'S FROZEN CUSTARD</u>** – request for a conditional use for drive-through facilities within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 1200 S. Broadway, to the May 10, 2021 meeting, based on the reasons provided by staff.

<u>Discussion</u> – Ms. Carter questioned why this application for a drive-through was different from the case she referred to earlier in the discussion, which the Board had approved. Mr. Needham stated he felt that it was due to the fact that the previous case involved an existing building, as well as other factors. There was further discussion.

3. **PLN-BOA-21-00018: LEXINGTON RESCUE MISSION, INC.** – requests a conditional use for a community center within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 203 E. Fourth St. (Council District 1)

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

a. The proposed use should not adversely affect the subject or adjoining/nearby properties. Activities on the site are similar to the activities which have occurred under the previous conditional use. Additionally, such activities will occur during normal business hours throughout the week and daytime hours on the weekends.
b. The proposed use should not create adverse traffic impacts. There is adequate parking available on the property and it is located in an area with sufficient pedestrian and bike infrastructure.
c. The proposed use will allow for the continued use of a large, historic structure to provide needed community services.
d. 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. Establishing the community center shall be done in accordance with the submitted application materials and site plan.
2. All necessary permits, including a Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to occupancy.
3. The existing parking lot and vehicular use area buffer shall be maintained in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. The 7-foot fence along the northern property line shall be maintained.
5. The subject property shall not be utilized for any residential purposes or overnight shelter.
6. Hours of operation shall be limited to 9 a.m. to 6 p.m. Monday through Friday, and from 9 a.m. to 2 p.m. on Saturday and Sunday.
7. Any pole lighting for outdoor areas shall be of a shoebox design with light directed downward and away from adjoining properties to prevent any disturbance to area residents.
8. Should the applicant cease to either own or occupy the subject property, this conditional use shall become null and void.

*Note – prior to hearing this case, Mr. Walker stated it was necessary for him to recuse himself due to a possible conflict of interest. Mr. Walker excused himself from this case.

Representation – Mr. Richard Murphy, attorney, and Ms. Laura Carr, Executive Director, Lexington Rescue Mission were present via video teleconference and were sworn in by Mr. Glover at this time. Mr. Murphy presented and explained the application on behalf of the applicant. He stated that the applicant agreed with all of the conditions present by staff. Mr. Murphy noted that based on conversations with neighboring property owners and citizens, he and the applicant had devised additional conditions that they were willing to abide by.

The first condition they are willing to abide by is to forego the feeding ministry on this site, based on the objections presented. The applicant had original stated they would have a feeding ministry, but they are now giving that up.

The second condition they are agreeable to give up is the worship service for The Church Under the Bridge, which had previously been held on the front lawn of this property.

Mr. Murphy directed the Board's attention to his screen, which he shared, on which he displayed a listing of the two additional conditions proposed by Lexington Rescue Mission, should the Board approve this application. He continued with his presentation describing the history of the building on the subject property and the ministry of Lexington Rescue Mission in general. Mr. Murphy also presented several letters of support from other agencies in the area.

Ms. Laura Carr, applicant, gave a presentation on behalf of Lexington Rescue Mission, further describing it's history, goals and the services it provides.

Board comments and questions – Mr. Needham asked where the three transitional homes that Ms. Carr had mentioned were located. Ms. Carr replied that The Potter's House is located at 649 N. Limestone, The House of Hope is at 629 N. Broadway and Grace Place, which is for women is at 301 S. Mill St. Mr. Needham asked how many people were housed at those locations. Ms. Carr responded that there were 20 beds at each of the men's houses and 11 beds at the women's house.

Ms. Carter asked if they planned to continue to operate the Glen Arvin Ave. facility. Ms. Carr confirmed they would continue to provide all of the regular services at that location; the 203 E. Fourth St. location is only an expansion.

Ms. Whitman spoke in support of the work Lexington Rescue Mission does.

Mr. Murphy informed the Board that two members of the board for the Lexington Rescue Mission, Mr. Kaleb Heitzman and Mr. Mark Dunn were available to speak via video teleconference, if allowed. He also said that a client of the Mission, Mr. Brian Lewis, was present virtually and wished to speak on behalf of the applicant.

Ms. Carter mentioned that Councilmember James Brown, 1st District, was present virtually and normally it is the case to recognize Councilmembers to let them speak earlier. Mr. Glover asked if Councilmember Brown was in support of or opposed. Ms. Goderwis replied that according to a letter from Mr. Brown, it appeared he was in tentative support, with the revised conditions. She also mentioned that Mr. Richard A. Getty, attorney, was representing the Martin Luther King Neighborhood Association and would likely want to speak prior to members of that association.

Mr. Glover called on Councilmember Brown, 1814 Marlboro Drive, to speak at this time. Mr. Brown stated that he was not speaking in support of the application, but was actually speaking in support of the neighborhood, which was opposed to the application. Mr. Brown expressed his concerns and those of the Martin Luther King, East End and Northside neighborhoods. He stated he wanted to go on record with his concerns of oversaturation of human service agencies in the 1st District, and as an advocate for the neighbors that would be speaking with regard to this application.

Mr. Glover asked those present via teleconference, who wished to speak in support of the applicant, to raise their hand electronically, so they could be called on to speak, and those who wished to speak in opposition to lower their hands at this time to avoid confusion. He mentioned that those wishing to speak would be limited to three minutes each. He asked that the public limit their comments to matters that had not already been commented on.

<u>Support of application</u> – Mr. Kaleb Heitzman, member of the Lexington Rescue Mission board and volunteer of six years, spoke on behalf of the clients the Lexington Rescue Mission has helped in the past.

Mr. Mark Dunn, member of the Charity Board of the First Southern National Bank, the Lexington Rescue Mission board and pastor at Broadway Christian Church, Lexington, KY spoke on behalf of the Lexington Rescue Mission. He stated that he is actively involved in mentoring some of the men at the residential houses, many of whom are now attending his church and actively serving in different aspects there.

Mr. Brian Lewis, client of the Lexington Rescue Mission, presented his story of success on behalf of the Lexington Rescue Mission.

Mr. Steve Kay, Vice-Mayor of Lexington, KY, spoke as an owner of property in the area of the proposed project. He mentioned having conversations with Mr. Murphy and Ms. Carr in which they discussed the two additional conditions which Mr. Murphy presented earlier. Mr. Kay stated that he is in support of this application, as long as the two additional conditions are abided by, and asked that the application be approved.

Ms. Jennifer Isaacs, citizen volunteer at the Lexington Rescue Mission spoke in support of the application.

Ms. Tanya Torp, 552 Elmtree Lane, Executive Director, Step by Step; Associate Pastor, Embrace United Methodist Church and Diversity, Equity, Inclusion and Accessibility Consultant, stated she had previously provided a letter on behalf of the Lexington Rescue Mission, stated she had additional information she wanted to share.

Ms. Coraddie Robinson, Minister, Living Waters Church, 216 Eastern Ave., stated she lives on Glen Arvin, down the street from the Lexington Rescue Mission. Ms. Robinson spoke on behalf of Lexington Rescue Mission.

Mr. Julius Johnson, Director, Lexington Rescue Mission, spoke on behalf of the Lexington Rescue Mission referring to the respect they give their clients.

Mr. Miller Tucker, 447 Glen Arvin Ave., spoke on behalf of the Lexington Rescue Mission as someone who has benefitted from their services.

Mr. Sean Gladding, 457 Johnson Ave., and MLK Neighborhood Association member, spoke on behalf of the Lexington Rescue Mission and stated he would like to see it in the neighborhood.

Mr. Drew Bowling, social worker and resident of the East End, spoke in favor of the Lexington Rescue Mission and would like to see it at the proposed location.

<u>Board comments</u> – Mr. Glover asked that all those present via video teleconference raise their hand electronically if they wished to speak.

Opposition – Mr. Richard A. Getty, property owner and attorney representing the Martin Luther King Neighborhood Association, spoke in opposition to the application. He addressed the oversaturation of service organizations in the area.

Mr. John Morgan, N. Limestone resident and property owner spoke in opposition to the application.

Mr. Jim Burton, 448 Martin Luther King Blvd., asked to provide a point of information to Ms. Whitman, on the Board, if allowed. Mr. Glover advised Mr. Burton that the Board was not taking questions from the public; just hearing comments. Mr. Burton stated that he wanted it on record that his request was denied. He spoke in opposition to the application.

Mr. Stephen Manella, Sayre School, spoke in opposition to the application.

Ms. Esther Harvey, 443 Silver Maple Way and 434 Silver Maple Way, spoke in opposition to the application.

Ms. Sabrina Oaks, 200 Campsie Place, spoke in opposition to the application.

Ms. Christy Razavi, 407 Silver Maple Way, spoke in opposition to the application.

Ms. Lori Halligan, Executive Director Living Arts and Science Center spoke in opposition to the application, on behalf of the Living Arts and Science Center. She expressed her concern over parking issues and safety issues concerning students attending the Center for various reasons.

Ms. Linda Miller and Mr. Fred Miller, 456 N Martin Luther King Blvd., spoke in opposition to the application and expressed their concerns for their neighborhood should this application be approved.

Ms. Lendy Brown, 114 E. Third St., spoke in opposition to the application.

Rebuttal – Mr. Murphy noted that Ms. Carr had attended several neighborhood meetings, talked with several neighbors individually and had reached out to the other service agencies in the area to see if they felt the Lexington Rescue Mission was needed and to avoid an overlap of services. He mentioned the letters of support received from some of the local agencies and organizations.

Mr. Murphy noted that the Episcopal Mission House is currently located at the subject property, and even though it has been less active during the COVID-19 pandemic, programs such as Church Under the Bridge and others have attracted people to the property. Lexington Rescue Mission would not be an addition to those programs and services; it would be in place of them. He continued by stating that with the additional conditions the Lexington Rescue Mission has agreed to, the footprint of the Lexington Rescue Mission would be no greater than that of the Episcopal Mission House. Mr. continued with his rebuttal.

Board comments – Ms. Carter commented on the “great work” done by the Lexington Rescue Mission, but expressed her concerns over their partnership with the New Life Day Center. She also expressed her concerns regarding the concentration of services in the area of the proposed project, and her concern over the project’s proximity to the nearby schools.

Mr. Clarke noted that the house at 203 E. Fourth St. was actually built in 1810 by Matthew Kennedy, and he gave a brief history of the property. Mr. Clarke stated that this house is historically credible and valued, and he was concerned that a non-profit organization may not be able to maintain the historical value of this house. There was further discussion.

Action – A motion was made by Ms. Whitman to **approve PLN-BOA-21-00018: LEXINGTON RESCUE MISSION, INC.** – request for a conditional use for a community center within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 203 E. Fourth St., based on staff’s recommendation and subject to a total of ten conditions. There was no second, therefore, the motion failed.

Discussion – Mr. Gross stated he would make an alternative motion, but would need findings of facts to do so. Mr. Glover stated that if the motion on the floor did not receive a second, the motion would die. Seeing no second, he stated he would entertain a new motion. There was further discussion.

Mr. Clarke noted that he must leave at 7:30 p.m.

*Note – Mr. Glover called for a short recess at 7:00 p.m. The Board reconvened at 7:25 p.m.

Discussion – Mr. Murphy commented that he and Ms. Carr had spoken during the recess and agreed to have a night watchman on the premises to avoid some of the issues that had been raised about after hour activities. He added that the programs that are conducted in cooperation with the New Life Center could be conducted at the New Life Center to cut out the cross-traffic that had been discussed.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 4-2 (Glover and Whitman opposed; Walker recused), to **disapprove** **PLN-BOA-21-00018: LEXINGTON RESCUE MISSION, INC.** – request for a conditional use for a community center within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 203 E. Fourth St. based on the following reasons:

1. The proposed use will have an adverse effect on the adjoining properties and the nearby neighborhoods due to the concentration of social services being provided in the immediate area. The applicant's proposed use and services are duplicative of social services being provided by agencies and organizations in the neighborhood.
2. The addition of another social service and community center leads to public health, safety and welfare concerns. Police and fire emergency services will be additionally burdened due to increased activities at the site.

*Note – Following the vote on the case above, Mr. Clarke excused himself from the remainder of the meeting. Mr. Walker did not return.

E. Administrative Appeals

1. PLN-BOA-21-00012: THE OLD RICHMOND ROAD NEIGHBORHOOD ASSOCIATION – requested a third party appeal regarding the enforcement of conditions of approval associated with a conditional use in an Agricultural Rural (A-R) zone, on property located at 7524 Old Richmond Rd. (Council District 12)

Representation – Ms. Jessica Winters, attorney for The Old Richmond Road Neighborhood Association, was present via video teleconference. She directed the Board's attention to a PowerPoint presentation on her screen, which she shared. Ms. Winters explained the applicant's reasons for this appeal and their justification for such.

Opposition – Mr. Doug Martin, attorney on behalf of the property owner, Ecton Farm, was present via video teleconference and explained the uses of the business on the property in question. Mr. Martin explained the various steps his client has taken to appease the applicants of this appeal, some of them resulting in damage and loss of property for the owner.

Mr. Martin also explained that because his client has ceased using the grow lights in his greenhouse, and does not intend to use them again, that issue is now moot. He then referred to the issue of the landscaping plan. Mr. Martin noted that there was an error in the letter he had sent staff earlier. In that letter, Mr. Martin had inadvertently stated that LFUCG had approved the landscaping plan in 2020, but it should have stated the plan was approved on March 8, 2021. He continued with his presentation, explaining the process of the landscaping plan.

Board comments and questions – Ms. Carter noted that this case had no staff recommendation and she was somewhat confused as to what the issue of this appeal was. She stated that she would like to have more information prior to hearing from anyone else on the applicant's side or the side of the opposition. Mr. Glover explained the issue was whether the Board felt the inspector who investigated the complaint about the interior lighting of the greenhouse had acted appropriately in his determination of taking no regulatory enforcement action against the property owner. That inspector based his findings on the fact that the interior lights are not part of the conditions imposed when this conditional use was granted.

Ms. Wade clarified that the appellant was questioning two conditions. The first condition questioned was the indoor lighting and the second condition was the landscaping. Mr. Glover stated that the landscaping question is now moot because the landscaping has been installed. Ms. Goderwis affirmed that to be correct because staff had been notified by the Division of Environmental Services on March 8, 2021 that the landscaping requirements had been met. She said that it is typical as part of the landscaping plan, that trees are shorter when planted and allowed to grow into their full size.

Ms. Carter asked what the Board would vote on if both questions were now moot. Ms. Goderwis replied that a vote of approval would be an agreement with the appellant, meaning that the Division of Planning acted incorrectly and that the grow lights are not in compliance of one of the conditions. She further stated that if the Board should approve the appeal, it would mean that the landscape plan was not installed correctly, in accordance with that condition.

Mr. Glover added that the question raised by the appellant was whether the use of interior grow lights are limited by the hours of operation. Ms. Goderwis concurred. Mr. Gross suggested Ms. Wade discuss what lighting is regulated. Ms. Wade referred to Articles 16 and 18 of the Zoning Ordinance because those generally apply to development plans but not necessarily to a conditional use application. She explained further.

Support of appeal – Dr. Lisa Gannoe, 7525 Old Richmond Road, was present via video teleconference and spoke in support of this appeal. Dr. Gannoe argued that she was also part of the appeal before the Board today and wished to be seen on screen. She addressed some of the comments previously made by Mr. Martin. Dr. Gannoe gave her reasons for being in support of this appeal.

Ms. Winters echoed the objection by Dr. Gannoe and stated that she thought that earlier in the day, witnesses were allowed to have their faces shown on screen. Mr. Glover corrected Ms. Winters, stating that the attorney for the neighborhood association in a previous case was not shown on screen. He was allowed to speak, but his face was not shown. Mr. Glover stated that typically, attorneys who are representing, or the principal representative themselves, are allowed to be shown on screen.

Support of appeal - Ms. Mary Diane Hanna, 6398 Old Richmond Road, president of The Old Richmond Road Neighborhood Association, was present via video teleconference and spoke in support of this appeal.

Closing comments – Ms. Winters echoed the comments of Dr. Gannoe and Ms. Hanna and expressed her concern over previous comments made by Mr. Martin. She further expressed the concerns of her clients and their reasons for filing this appeal.

Mr. Martin once again stated that his client has agreed to no longer use the grow lights and has installed the landscaping plan exactly has required.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 5-0 (Clarke and Walker absent), to **deny PLN-BOA-21-00012: THE OLD RICHMOND ROAD NEIGHBORHOOD ASSOCIATION** – request for a third party appeal regarding the enforcement of conditions of approval associated with a conditional use in an Agricultural Rural (A-R) zone, on property located at 7524 Old Richmond Rd., based on staff's report and testimony heard today.

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

Mr. Gross commented that he would like the Board to discuss allowing witnesses that have the ability to use their cameras during meetings if they chose. Mr. Glover stated the goal is to be consistent. Ms. Goderwis stated that when the Division of Planning first began to use video teleconference as a platform for their meetings, they made the decision that non-applicants would not be seen on camera. That decision was primarily made in the beginning due to the transition in using Zoom and concerns about privacy issues and things being visible in the background. She stated that those videos are going to be around forever and Planning Staff wanted to be conscientious of individuals' privacy.

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 was scheduled for May 10, 2021, at 1:30 p.m. via teleconference.

VII. ADJOURNMENT - The Chair declared the meeting adjourned at 8:37 p.m.

____
Thomas Glover, Chair

____
Joan Whitman, Secretary

MINUTES 04/12/2021

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