

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 10, 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; Josh Dezarn, Division of Engineering and Stephen Parker, Division of Traffic Engineering. Staff members in attendance were: Traci Wade, Autumn Goderwis, Debbie Woods and Donna Lewis.

- III. **APPROVAL OF MINUTES** – The Chair announced that the minutes from the March 8, 2021 and the April 12, 2021 meetings would be considered at this time.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke, and carried 7-0 to **approve** the minutes from the March 8, 2021 and the April 12, 2021 meetings.

IV. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** - The Chair announced that he would administer the oath at this time to any applicant or objector who planned to speak to any appeal before the Board.
- 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

1. **PLN-BOA-21-00021: HOMESTEAD DEVELOPMENT** – requested a variance to reduce the amount of roof surface covered by 4:12 pitched roof from 75% to 0% in order to allow for a flat roof for one proposed multi-family residential structure within the defined Infill and Redevelopment Area in a High Rise Apartment (R-5) zone, on property located at 840 Angliana Ave. (Council District 3)

Representation – Mr. Jon Woodall, attorney for the applicant, was present via video teleconference and stated that the applicant wished to postpone their application to the June 14, 2021 meeting in order to work with staff on a revised plan of their roof pitches.

Action - A motion was made by Mr. Gross, seconded by Mr. Needham, and carried 7-0 to **postpone PLN-BOA-21-00021: HOMESTEAD DEVELOPMENT** – request for a variance to reduce the amount of roof surface covered by 4:12 pitched roof from 75% to 0% in order to allow for a flat roof for one proposed multi-family residential structure within the defined Infill and Redevelopment Area in a High Rise Apartment (R-5) zone, on property located at 840 Angliana Ave., to the June 14, 2021 meeting.

2. **PLN-BOA-21-00022: BALL HOMES LLC** – requested variances to reduce the required setback for free-standing identification signs from 10' to 6' for three signs and from 10' to 2' for two signs at property in a Planned Neighborhood Residential (R-3) and High Density Apartment (R-4) zones, on property located at 299 Squires Circle and 480 Squires Road. (Council District 7)

Representation – Mr. Nick Nicholson, attorney for the applicant, was present via video teleconference and stated that the applicant wished to postpone their application to the June 14, 2021 meeting in order to work on a revised site plan and justification.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman, and carried 7-0 to **postpone PLN-BOA-21-00022: BALL HOMES LLC** – requests for variances to reduce the required setback for free-standing identification signs from 10' to 6' for three signs and from 10' to 2' for two signs at property in a Planned Neighborhood Residential (R-3) and High Density Apartment (R-4) zones, on property located at 299 Squires Circle and 480 Squires Road, to the June 14, 2021 meeting.

3. **PLN-BOA-21-00020: RODALE PROPERTIES LLC** – requested an administrative appeal to increase the allowable size of an accessory structure from 834 square feet to 2,400 square feet in order to allow a recently constructed accessory structure to remain as constructed in a Single Family Residential (R-1B) zone, on property located at 523 Kingston Rd. (Council District 6)

Representation – Mr. Scott Schuette, attorney for the applicant, was present via video teleconference and stated that the applicant wished to postpone their application to the June 14, 2021 meeting in order to review comments from citizens and provide responses.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross, and carried 7-0 to **postpone PLN-BOA-21-00020: RODALE PROPERTIES LLC** – request for an administrative appeal to increase the allowable size of an accessory structure from 834 square feet to 2,400 square feet in order to allow a recently constructed accessory structure to remain as constructed in a Single Family Residential (R-1B) zone, on property located at 523 Kingston Road to the June 14, 2021 meeting.

C. Abbreviated Hearing

1. **PLN-BOA-21-00019: JEREMY AND AMBER BACH** – requested a variance to reduce the required front yard setback from 300' to 200' in order to construct a new house in an Agricultural Rural (A-R) zone, on property located at 3601 Lemons Mill Pike. (Council District 12)

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, as a number of the houses in the immediate vicinity have setbacks less than 300 feet.
- b. The topography of the property is a special circumstance that is unique to the subject property and justifies the need for the variance. Placing the house at the 300-foot setback line could make the structure susceptible to flooding.
- c. Strict application of the Zoning Ordinance would create an unnecessary hardship for the applicants due to the high costs associated with constructing a house on steep slopes and potential drainage issues.
- d. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicants have applied for the variance 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.
2. The proposed septic system shall be reviewed and approved by the Fayette County Board of Health prior to construction and occupancy.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection and the Rural Land Management Board prior to construction and occupancy.

Representation – Mrs. Amber Bach, applicant and property owner, was present via video teleconference to present her application for this variance.

There were no questions from the Board and no discussion.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman, and carried 7-0 to **approve PLN-BOA-21-00019: JEREMY AND AMBER BACH** – request for a variance to reduce the required front yard setback from 300' to 200' in order to construct a new house in an Agricultural Rural (A-R) zone, on property located at 3601 Lemons Mill Pike, based on staff's recommendation and subject to the three conditions as listed.

2. **PLN-BOA-21-00024: KENTUCKY TRAINING CENTER, LLC** – requested 1) a conditional use to expand the training facility and 2) a variance to reduce the required front yard setback from 222' to 174' in an Agricultural Rural (A-R) zone, on property located at 3380 Paris Pike. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the conditional use and variance to allow expansion of the training facility should not adversely

affect either the subject property or surrounding properties. The Kentucky Training Center has operated in this location for many years and the proposed barns and changes to the parking area will improve the operation of the facility and increase its efficiency.

- b. The requested variance is generally reasonable as it will allow for the construction of 6 modernized barns with adequate space between each barn. Strict application of the Zoning Ordinance would create an unnecessary hardship as it would result in the loss of an additional 40 stalls.
- 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 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.
- 2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.
- 3. Any new and/or modified parking areas shall be paved and landscaped in accordance with Articles 16 and 18 of the Zoning Ordinance.

Representation – Mr. Nick Nicholson, attorney for the applicant, was present via video teleconference and stated that Mr. Jim Pendergest with the Kentucky Training Center was also present via video teleconference. Mr. Nicholson indicated that the applicant had read staff's recommendations and the conditions of approval and agreed to abide by them.

Board comments – Mr. Needham remarked that this was a good-looking project and probably much needed. Mr. Nicholson replied that it was much needed, and stated that he thought the existing barns were constructed in 1969.

Mr. Glover commented that it appeared the proposed barns were parallel to the track rather than parallel to Paris Pike. Mr. Nicholson confirmed that to be true, given the way the barns are angled, which offsets the visual impact it could have on the Paris Pike Corridor.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke, and carried 7-0 to **approve PLN-BOA-21-00024: KENTUCKY TRAINING CENTER, LLC** – requests for 1) a conditional use to expand the training facility and 2) a variance to reduce the required front yard setback from 222' to 174' in an Agricultural Rural (A-R) zone, on property located at 3380 Paris Pike, based on staff's recommendation and subject to the three conditions as listed.

- 2. **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)

Note: This is a continuation of the public hearing held on April 12, 2021 for the site. The applicant submitted revised materials and the staff revised their recommendation since that time.

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

- a. The proposed drive-through facilities should not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood. The proposed design of the restaurant and drive-through facilities meet the intent of the Neighborhood Business (B-1) zone and the stacking requirements of Article 16-9, and is appropriate in this location. All necessary public facilities and services that will be needed are, or will be, adequate to serve the proposed use.

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

- 1. Construction and operation of the restaurant and drive-through facilities shall be in accordance with the submitted **amended** application materials and site plan, dated April 23, 2021.
- 2. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Traffic Engineering prior to construction and occupancy.

Representation – Mr. Brandon Harp and Mr. Brandon Arnold were both present via video teleconference on behalf of Andy's Frozen Custard.

Board comments and questions – Mr. Gross asked Ms. Goderwis to display the original site plan, which was shown at the meeting last month, along with the revised site plan recently submitted by the applicant. Ms. Goderwis displayed both site plans on her screen, which she shared. Mr. Gross stated that he liked the revised plan much better. Mr. Glover stated the revised plan seemed like a safer design.

Mr. Harp asked if the applicant chose to pursue a zone change in the future, to work with the south parking lot and drive-through, would that zone change override what was being decided on today? He also inquired whether the applicant would be required to come back before the Board of Adjustment for a variance request. Ms. Goderwis stated that if the applicant does not change the operation or layout of the drive-through, they would not need to come back before the Board. Mr. Glover asked Mr. Harp if he was only referring to a zone change for the parking lot. Mr. Harp stated that was correct. There was further discussion.

Mr. Clarke stated he really liked the new plan. He asked whether it was possible to make a change so that cars exiting the drive-through would not have to cross in front of cars entering the drive-through. Mr. Harp replied that the Zoning Ordinance requires there to be five cars after the menu board, and the applicant has met that requirement. He added that a traffic study was not required as part of this application; however, the applicant had added a stop-bar or stop sign, so the cars exiting the drive-through would stop and wait for the cars entering to come in. Mr. Harp stated they have added a "do not block" area so that cars could come out of the drive-through and get back out on the public street. There was further discussion.

Mr. Glover asked Mr. Harp if they had considered reversing the traffic arrows so that cars entering and exiting the line would pass on the right side rather than on the left side. Mr. Harp stated that he did not know if the applicant would be agreeable to that idea or not; however, it is opposite from what the general public typically views as staying on the right side of traffic. He suggested he and the applicant work with staff on that solution. Mr. Glover recommended Mr. Harp work with Mr. Parker and Ms. Goderwis, and that he did not believe that the recommendation of the Board would prevent the applicant from making that change.

Ms. Wade suggested that condition number one be revised to say, "or as amended by the Planning Commission". She added that if Mr. Harp and his group do plan to go to the Planning Commission through the process for a zone change, then there would be a development plan on the site and they would likely amend the circulation for the drive-through. There was further discussion.

Mr. Needham commented that he thought this plan was much better and he appreciated the applicant taking the extra month to work on it. He asked Ms. Goderwis about one of the points in the staff report, which referenced Sustainability Policy #5 and drive-through facilities. Ms. Goderwis replied that the Sustainability Policy is from the 2018 Comprehensive Plan, which is a guiding document for basically everything the Division of Planning does. She added that the Board would need to continue to look at that going forward.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham, and carried 7-0 to **approve PLN-BOA-21-00013: ANDY'S FROZEN CUSTARD** – 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, based on staff's recommendation and subject to the two conditions as listed, with the addition of the phrase "or as amended by the Planning Commission", in condition number one.

E. Administrative Appeals

1. **PLN-BOA-21-00023: NEST A LEXINGTON LLC** – requested an administrative appeal to allow construction of an addition to a legally non-conforming single-family house within the defined Infill and Redevelopment Area in a Wholesale and Warehouse Business (B-4) zone, on property located at 862 Angliana Ave. (Council District 3)

The Staff Recommended: Disapproval, for the following reasons:

- a. Approval of the administrative appeal would represent a circumvention of the provisions of the Zoning Ordinance. The subject property contains a non-conforming use (single family dwelling unit). Allowing the construction of a dormer, resulting in additional floor area to include an additional bedroom and bathroom on this property would represent an expansion of the scope of the non-conforming use. Such an expansion would be in opposition to the requirements of Article 4 which relates to the regulation of non-conforming uses, structures, and lots, particularly the intent statement in Article 4-2 and Article 4-3(a) and (g) related to the regulation of non-conforming uses.
- b. Encouraging the survival of a non-conforming single family dwelling unit is not appropriate in this location. While there have been changes in the general vicinity resulting in an increase in residential use along Angliana Avenue, this portion of the street is still largely characterized by industrial and warehousing uses.

Staff presentation – Ms. Goderwis directed the Board's attention to the presentation on her screen, which she shared. She gave an overview of the application and explained staff's reasons for recommending disapproval.

Board comments – Ms. Carter remarked that she struggled with the recommendation of disapproval for this application. She said there are houses on both sides of the subject property and she did not think that the

addition of 46 square feet constituted an expansion, but more of a more comfortable living space. Ms. Carter commented that the nature of the area in question is changing. Ms. Goderwis replied that the area is changing but that the zoning has not changed yet. She added that this property is considered a non-conforming use in a Warehouse and Wholesale Business zone and while warehousing may not be the future of Angliana Avenue, it is currently zoned for that. Ms. Goderwis said that a zone change may be more appropriate for this area, to allow for residential development there. She added that the language in the Zoning Ordinance related to non-conforming uses is specific about not continuing the non-conforming use beyond its existing capacity. There was further discussion.

Mr. Needham asked how long the subject area had been zoned B-4. Ms. Goderwis replied she was not sure. Discussion continued.

Representation – Mr. Ryan Diaz, site planner for the applicant, Jeffrey Moore, was present via video teleconference. He presented the application, explaining the applicant's request for the addition of 46 square feet, to update the home and improve its functionality.

Ms. Carter asked how many bathrooms were on the first floor. Mr. Diaz replied there was currently only one.

Mr. Glover stated that the Board did not have the authority to expand a non-conforming use. He added that the use of this property was residential even though it was in a B-4 zone. Mr. Glover said that he was hesitant to endorse this application because it may set a precedent; however, he was sympathetic to Ms. Carter's characterization, as well as the description given by Mr. Diaz.

Mr. Gross said he was also sympathetic to Ms. Carter's opinions, as did Ms. Whitman. Mr. Needham remarked that a good portion of Angliana Avenue is currently used as residential. There was further discussion.

Ms. Wade mentioned the option of the applicant pursuing a zone change, which would allow them to be in a residential zone and expand to fit that zone, as opposed to continuing in a non-conforming status.

Mr. Clarke asked Mr. Diaz if this was a rental property or owner occupied. Mr. Diaz replied that the owner, Mr. Moore, will use the property as a rental property.

There was further discussion among the Board members and staff regarding whether approval of this application would be precedent setting. Ms. Goderwis gave examples of similar applications which had been before the Board in the past. She explained the similarities and the differences in the applications.

*Note – At 2:40 p.m., Mr. Glover called for a recess. The Board reconvened at 3:10 p.m. Mr. Glover announced that LexTV was experiencing technical difficulties and was unable to do a live broadcast of the remainder of the meeting. However, the meeting in its entirety, including the remainder, would be available for viewing on Saturday, May 15, 2021 at 1:00 p.m. on Spectrum channel 185.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman, and carried 7-0 to **approve PLN-BOA-21-00023: NEST A LEXINGTON LLC** – request for an administrative appeal to allow construction of an addition to a legally non-conforming single-family house within the defined Infill and Redevelopment Area in a Wholesale and Warehouse Business (B-4) zone, on property located at 862 Angliana Ave.

This recommendation of approval was based on the following reasons:

- a. The non-conforming use is not being expanded or enlarged because construction of a dormer to the second story of the residence will not occupy a greater area of land than was occupied at the date of adoption of the Zoning Ordinance.
- b. The non-conformity of the use will not be expanded in scope or operation because the structure was built as a single family residence and will continue to be occupied as a single family residence, despite the number of bedrooms or bathrooms within the home.
- c. The change to the non-conforming use will not have an adverse impact because this portion of Angliana Avenue has been utilized for single-family residential land use since the 1930s, and the use will continue in the same manner.

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.

IV. **BOARD ITEMS** – Mr. Glover announced that any items a Board member wished to present would be heard at this time.

There were none.

V. **STAFF ITEMS** – Mr. Glover announced that any items a Staff member wished to present would be heard at this time.

There were none.

VI. **NEXT MEETING DATE** – Mr. Glover announced that the next meeting date will be June 14, 2021, at 1:30 p.m. via teleconference.

VII. **ADJOURNMENT** - The meeting adjourned at 3:35 p.m.

Thomas Glover, Chair

Joan Whitman, Secretary

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