

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

June 14, 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, 7<sup>th</sup> Floor, 101 E. Vine Street, Lexington KY 40507. Mr. Glover announced that this Board of Adjustment meeting would be pre-empted by a press conference held by Governor Beshear from the mayor's office at 1:45 p.m. He stated that those watching on live television would experience the interruption; however, individuals watching the meeting via video teleconference would not notice anything whatsoever. Mr. Glover indicated that the meeting would be televised in its entirety on Saturday, June 19, 2021 at 1:00 p.m.

Due to the COVID-19 State of Emergency, this meeting is being held via live video teleconference pursuant to 2020 Senate Bill 150, and in accordance with KRS 61.826.

- 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: Jim Duncan, Traci Wade, Autumn Goderwis, Donna Lewis and Debbie Woods.

III. **APPROVAL OF MINUTES**

There were no minutes to approve.

IV. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – Mr. Glover administered the oath to all present via video teleconference who wished to speak to any appeal before the Board.
- B. **Sounding the Agenda** - In order to expedite completion of agenda items, Mr. Glover sounded the agenda with regard to any postponements, withdrawals, and items requiring no discussion.

1. **PLN-BOA-21-00022: BALL HOMES LLC** – requested variances to reduce the required setback for free-standing identification signs from 10' to 8' for two signs and from 10' to 6' for one sign, and from 10' to 4' for one sign 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.

**Representation** - Mr. Nick Nicholson, attorney for the applicant, was present via video teleconference and indicated that his client wished to postpone their application to the July 12, 2021 Board of Adjustment meeting. He stated they were late in submitting their revised site plan to staff and would like more time to work with staff towards an approval.

**Action** – A motion was made by Mr. Gross, seconded by Ms. Carter and carried unanimously (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 8' for two signs and from 10' to 6' for one sign, and from 10' to 4' for one sign 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.

C. **Variance Appeals**

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 12% 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)

**The Staff Recommended: Approval of a lesser variance to reduce the amount of roof surface covered by a 4:12 pitched roof from 75% to 25%, for the following reasons:**

- a. Granting the lesser variance should not have a negative impact on the character of the general vicinity, as residential development within the defined Infill and Redevelopment Area (including other new apartment

- buildings in the immediate vicinity) is characterized by pitched roofs and the new structure will appear to have a pitched roof from all sides.
- A lesser variance is generally reasonable because providing a pitched roof around the perimeter of the building will provide adequate screening for the 200 mechanical units proposed to be located on the roof. Without appropriate screening, these units could also have a negative impact on the character of the general vicinity.
  - Strict application of the Zoning Ordinance could create an unnecessary hardship as it would prevent the needed mechanical units from being located on the roof and would likely result in a reduction in usable open space at the ground level.

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

- Construction shall be in accordance with an amended site plan demonstrating that 25% of the roof surface will be covered by a 4:12 pitched roof.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.
- Action of the Board shall be noted on the Final Development Plan.

Representation – Mr. Jon Woodall, attorney, and Mr. Matt Canterbury, applicant and owner of the proposed project, were present via video teleconference. Mr. Woodall explained the application and the applicant's requests for these variances. He indicated that his client was in agreement with staff's recommendations and willing to abide by the conditions as listed.

Board comments – Mr. Glover commented on changes that were made to the design of the project. Mr. Woodall stated that the goal of the design was to shield the air conditioning condensers from view.

Action – A motion was made by Mr. Clarke, seconded by Ms. Whitman and carried 7-0, to **approve 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 12% 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., based on staff's recommendation and subject to the three conditions as listed.

- PLN-BOA-21-00028: ANTHONY AND DENISE PATRICK** – requested a variance to reduce the required side yard from 8' to 5' in order to construct an addition to an existing house in a Single Family Residential (R-1C) zone, on property located at 4998 Tynebrae Road. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- Granting the variance should not have a significant impact on the character of the general vicinity. The deeper front yard setback of this house is a unique circumstance and allowing the variance to the side yard will maintain the existing front and side street side yard setbacks, preserving the character of the existing farm house.
- Strict application of the Zoning Ordinance could create an unnecessary hardship as it could require the reconfiguration of the existing driveway, curb cut, and interior floorplan.
- Approval of the variance will allow for the preservation of the existing large tree located in the side street side yard, between the house and Hartland Parkway.
- 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.
- The existing building setback along the Hartland Parkway frontage shall be maintained in order to allow for preservation of the large tree located within the side street side yard.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Mr. Jeremy Dewitt, contractor, was present via video teleconference on behalf of the applicants.

Board questions – Mr. Glover asked if the neighbor on the side of the proposed addition was going to speak in opposition at the meeting. Mr. Dewitt replied that to his knowledge, no one has had an issue with the proposed addition and that the Patrick's have a good relationship with the neighbor.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 7-0 to **approve PLN-BOA-**

**21-00028: ANTHONY AND DENISE PATRICK** – request for a variance to reduce the required side yard from 8' to 5' in order to construct an addition to an existing house in a Single Family Residential (R-1C) zone, on property located at 4998 Tynebrae Road, based on staff's recommendation and subject to the three conditions as listed.

3. **PLN-BOA-21-00029: RANDY AND LINDA DEITRICH** – requested a variance to reduce the required rear yard from 10' to 5' in order to construct an addition to an existing house in a single family residential (R-1D) zone, on property located at 193 Manitoba Lane. (Council District 9)

The Staff Recommended: Approval, for the following reasons:

- Granting the requested variance should not have a significant impact on the character of the general vicinity. The new addition will be the same size and constructed in the same location as a screened-in porch, which has existed on the property for at least thirty five years.
- 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.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

Representation – Mr. Jon Penn, contractor, was present via video teleconference on behalf of the applicants.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 7-0, to **approve PLN-BOA-21-00029: RANDY AND LINDA DEITRICH** – request for a variance to reduce the required rear yard from 10' to 5' in order to construct an addition to an existing house in a single family residential (R-1D) zone, on property located at 193 Manitoba Lane, based on staff's recommendation and subject to the two conditions as listed.

\*Note – Ms. Goderwis reminded Mr. Glover that those viewing the meeting live on television would soon be interrupted by the governor's press release. Mr. Glover shared the video teleconference login information for anyone interested in watching the rest of the meeting via video teleconference.

#### **D. Conditional Use Appeals**

1. **PLN-BOA-21-00025: DUNKIN'** – requested 1) a conditional use for drive-through facilities and 2) modifications to the existing conditional use for parking within the R-3 portion on split-zoned property located within the defined Infill & Redevelopment Area in Neighborhood Business (B-1)/Planned Neighborhood Residential (R-3) zones, on property located at 507 S. Limestone. (Council District 3)

The Staff Recommended: Postponement, for the following reasons:

- The proposed design of the restaurant and drive-through facilities do not meet the intent of the Infill and Redevelopment area, B-1 zone, or the recently adopted Imagine Nicholasville Road Corridor Plan, which all call for more urban types of development in this location, with considerations for pedestrian access. The proposed use, as presented, would likely result in adverse impacts to the public health, safety, and welfare. Adequate pedestrian facilities are not shown and the restaurant is completely surrounded by vehicular use areas. The proposed drive-through layout could create a hazardous traffic situation, as vehicles utilizing the drive-through would likely enter the stacking area from both the S. Limestone access as well as the first Colfax Street access. This creates an additional point of conflict and increases the likelihood that traffic could back up onto S. Limestone. However, redesigned drive-through facilities which take into account pedestrian access and neighborhood integration could be appropriate in this location.

Staff comments – Ms. Goderwis indicated that the applicant for this case had indicated to her that they wished to postpone their application to the July 12, 2021 Board of Adjustment meeting. The applicant was not present to request postponement.

Board comments – Mr. Gross advised that he would recuse himself from hearing this application, should it be heard today.

Mr. Glover commented that in light of the applicant's absence, he recommended postponement of this application to the July 12, 2021 Board of Adjustment meeting.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 6-0, (Gross recused), to **postpone PLN-BOA-21-00025: DUNKIN'** – requests for 1) a conditional use for drive-through facilities and 2) modifications to the existing conditional use for parking within the R-3 portion on split-zoned property located

within the defined Infill & Redevelopment Area in Neighborhood Business (B-1)/Planned Neighborhood Residential (R-3) zones, on property located at 507 S. Limestone, to the July 12, 2021 Board of Adjustment meeting.

#### **E. Administrative Appeals**

1. **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)

The Staff Recommended: Disapproval, for the following reason:

- a. Approval of the administrative appeal would represent a circumvention of the provisions of the Zoning Ordinance. The subject property is a non-conforming lot, containing non-conforming structures and a non-conforming use. Allowing the construction of an additional accessory structure on this property 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.

Staff presentation – Ms. Goderwis directed the Board's attention to the presentation on her screen, which she shared. She informed the Board that this request was the result of a complaint about the structure being constructed without a permit. Ms. Goderwis displayed aerial views of the subject property, which showed the structures on the property prior to the construction of the subject structure. Ms. Goderwis explained staff's reasons for recommending disapproval of this application.

Representation – Mr. Scott Schuette, attorney, and Rob Whalen, applicant on behalf of Rodale Properties, LLC, were present via video teleconference. Mr. Schuette spoke on behalf of the applicant, acknowledging that the applicant felt the building was more aesthetically pleasing, as a place to store the large equipment, buses and trailers, than just leaving them out on the property.

Board questions and comments – Mr. Clarke asked a question about the type of business that was reportedly operating at this location. Mr. Schuette replied that per the staff report, that was a false report. He stated there was no business operating at this residence. Ms. Goderwis added that a complaint was investigated and it was determined that no business was operating on the property. Mr. Schuette confirmed that to be correct, as did the applicant, Mr. Whalen.

Mr. Gross asked what type of vehicles were stored on the property. Mr. Whalen replied he has a 40' RV there and his father, who lives in the guesthouse, has a pull behind camper. He stated the subject building was constructed in order to store those vehicles out of the weather.

Mr. Glover asked what other structures were on the property. Mr. Whalen stated he has some storage containers on site that contain the remaining parts to finish the building. Those will be gone as soon as the building can be completed. Mr. Glover asked what the building was made of. Mr. Whalen replied it was made of metal. Mr. Glover asked what the dimensions of the building were. Mr. Whalen replied it was 40' x 60'.

Mr. Clarke asked if the building was fully enclosed like a shed. Mr. Whalen responded that the front is not on the building yet, but it is intended to be enclosed.

Mr. Gross asked if a building had been torn down on the property. Mr. Whalen replied that they did tear down one building. Ms. Goderwis asked if the 1,500 square foot barn was still on the property. Mr. Whalen replied that it was.

There was further discussion.

Action – A motion was made by Ms. Carter, seconded by Ms. Whitman and carried 7-0, to **disapprove 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 Rd., based on staff's recommendation and the testimony heard today.

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

There were none.

**V. STAFF ITEMS** - The Chair announced that any items a staff member wished to present would be heard at this time.

Mr. Jim Duncan, Director, Division of Planning, provided an update of the upcoming meetings of Boards and Commissions. Mr. Duncan announced that the July meetings will be conducted via video teleconference. In-person meetings will resume in August, 2021, in the Council Chambers. He asked if there were any questions. Mr. Gross mentioned that he thought it was helpful for members of the public to attend the meetings via video teleconference. Mr. Duncan responded that Planning staff had started working on that method pre-pandemic. There was further discussion.

**VI. NEXT MEETING DATE** - The Chair announced that the next meeting date will be July 12, 2021, at 1:30 p.m. via video teleconference.

**VII. ADJOURNMENT** - The meeting adjourned at 2:30 p.m.

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Thomas Glover, Chair

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Joan Whitman, Secretary

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