

MINUTES FOR THE BOARD OF ADJUSTMENT
MEETING

August 9, 2021

- I. **CALL TO ORDER** - Chair Thomas Glover called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.

Chair Glover introduced Division of Planning Director, Jim Duncan. Mr. Duncan remarked that this was the Division's first public meeting to be held in-person in the Council Chambers since March of 2020, due to the COVID-19 pandemic. He thanked the Board members, applicants and citizens for their indulgence over the past several months as the Division made alternative plans to conduct the business of the Board of Adjustment. He asked for their patience today as everyone adjusted to being back in Council Chambers. Mr. Duncan committed to remain in communication with the Board, the applicants and citizens should any new information arise, but for now, he welcomed everyone to the Chambers and wished for them a good meeting.

- II. **ATTENDANCE** – Members present were: Raquel Carter, Harry Clarke, Thomas Glover, Branden Gross, Chad Needham and, Chad Walker. Joan Whitman was absent. Others present were: Tracy Jones, Department of Law; Planning staff members Jim Duncan, Traci Wade, Autumn Goderwis, and Donna Lewis.

- III. **APPROVAL OF MINUTES** – Chair Glover announced that the minutes from the July 12, 2021 meeting would be considered at this time.

Action – A motion was made by Ms. Carter, seconded by Mr. Needham and carried 6-0 (Whitman absent), to **approve** the minutes from the July 12, 2021 meeting.

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 planned to speak, would be sworn in at this time.

Several audience members were sworn in at this time.

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

Postponements and Withdrawals

1. Mr. Jon Woodall, attorney for the applicant, requested a one-month postponement for **PLN-BOA-21-00039: THE ARCADIA COMPANY LLC** – request for conditional uses to establish a school for academic instruction and an accessory nursery school in an Agricultural Rural (A-R) zone, on property located at 5768 Bates Creek Rd. (Council District 12)

Mr. Tom Miller, attorney for the opposition, remarked that his witnesses had taken time away from work to attend the meeting and they would very much like to be heard today.

Mr. Woodall stated that he had not been made aware of any opposition, and given the fact that his clients were not present due to a Continuing Education obligation; he requested a one-month postponement to allow his clients to be present.

Mr. Glover asked Mr. Miller to explain the nature of his opposition. Mr. Miller stated he had expressed his opposition the previous week, and he explained that the opposition concerned the number of horses in the area surrounding the proposed school. He stated that the school would be a significant disruption for the horses, and actually create a danger for them and their handlers. Mr. Miller added that the proposed project would increase traffic in the area.

Mr. Glover asked Mr. Miller how many witnesses were present, and where those witnesses were from. Mr. Miller replied there were three witnesses present and they were all from Lexington. Mr. Glover asked the applicant to step to the podium.

Mr. Woodall commented that he had checked the Accela program that morning and did not see any letters of opposition uploaded to the case file. Ms. Goderwis responded, stating that letters of opposition are not typically uploaded to the Accela program. She did say that if the applicant wanted to know if there was any opposition to their application, they were welcome to reach out to staff, and that information would be provided to them.

Action – A motion was made by Ms. Carter, seconded by Mr. Clarke and carried 6-0 (Whitman absent), to **postpone PLN-BOA-21-00039: THE ARCADIA COMPANY LLC** – request for conditional uses to establish a school for academic instruction and an accessory nursery school in an Agricultural Rural (A-R) zone, on property located at 5768 Tates Creek Rd., to the September 13, 2021 meeting.

C. Variance Appeals

1. **PLN-BOA-21-00034: ANTHONY CHAPMAN** – requested a variance to reduce the required front yard setback from 50' to 12' in order to construct an addition to an existing house in an Agricultural Rural (A-R) zone, on property located at 7015 Old Richmond Rd. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety, or welfare as the front yard setback will not be further reduced.
- b. Granting the requested variance should not have an adverse effect on existing or future development of the subject property or the surrounding area. It will result in construction that will improve the character of the property by giving the structure a more residential style appearance, in keeping with other houses in the general vicinity.
- c. 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 construction of the addition.

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

1. The additions shall be constructed in accordance with the submitted application materials and site plan.
2. The eastern house shall be used as a farm employee dwelling unit maintained exclusively for the occupancy of employees and their families or the owner's immediate family, in connection with an agricultural use on the property.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to occupancy.

Representation – Mr. Anthony Chapman, applicant and property owner, and Mr. Robert Ryan, attorney for the applicant, were present on behalf of this application. Mr. Chapman indicated he was in agreement with the conditions listed in the staff report.

Action – A motion was made by Mr. Needham, seconded by Mr. Gross and carried 6-0 (Whitman absent), to **approve PLN-BOA-21-00034: ANTHONY CHAPMAN** – request for a variance to reduce the required front yard setback from 50' to 12' in order to construct an addition to an existing house in an Agricultural Rural (A-R) zone, on property located at 7015 Old Richmond Rd., based on staff's recommendation and subject to the three conditions as listed.

2. **PLN-BOA-21-00037: WENDY JO HOMES LLC** – requests a variance to reduce the required front yard setback from 30' to 10' in order to enclose the existing porch within the defined Infill and Redevelopment Area in a Single Family Residential (R-1D) zone, on property located at 860 E. Loudon Ave. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not have a significant impact on the character of the general vicinity, nor should it negatively affect the public health, safety, or welfare. Enclosing the porch will result in additional living space for the residents, and the requested variance is generally reasonable since it will not require the existing footprint or roof to be extended.
- b. The reduction in front yard that occurred in the mid-2000s due to the widening of E. Loudon Avenue is a special circumstance that is unique to the subject property and justifies the need for the variance.

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. Thomas Dailey, applicant, was present on behalf of this application for a variance.

Board question – Mr. Needham asked Mr. Dailey if work had begun on the proposed project. Mr. Dailey replied that he had begun the project, unaware that he needed a variance. He stated that he has since stopped work on the project.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6-0 (Whitman absent), to **approve PLN-BOA-21-00037: WENDY JO HOMES LLC** – request for a variance to reduce the required front yard setback from 30' to 10' in order to enclose the existing porch within the defined Infill and Redevelopment Area in a Single Family Residential (R-1D) zone, on property located at 860 E. Loudon Ave., based on staff's recommendation and subject to the two conditions as listed.

3. **PLN-BOA-21-00038: CORSER THOROUGHBREDS LLC** – requested a variance to reduce the required side yard setback from 300' to 60' in order to place a mobile home in an Agricultural Rural (A-R) zone, on property located at 4422 Bryan Station Rd. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- The proposed placement of the mobile home should not have an adverse influence on the subject property or the surrounding neighborhood. The proposed mobile home will be located more than 2,000 feet away from any existing residential use on other property.
- The variance is generally reasonable as it will allow for placement of a mobile home to be used as a farm employee dwelling unit in a location where the existing driveway can be utilized and operations of the farm will not be disrupted.
- The FEMA floodplain that exists on the subject property associated with the Avon Branch of the North Elkhorn Creek is a special circumstance that justifies the need for a variance in this location.
- The variance request does not represent an attempt to circumvent the provisions of the Zoning Ordinance. The applicant has applied for the variance as soon as it was determined that one was needed during the permit process, and prior to placement of the mobile home.

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

- The mobile home shall be placed in accordance with the submitted application materials and site plan.
- The mobile home shall be used as a farm employee dwelling unit only, maintained exclusively for the occupancy of employees and their families or the owner's immediate family, in connection with an agricultural use on the property.
- All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to occupancy.
- The septic system shall be reviewed and approved, as necessary, by the Fayette County Board of Health.

Representation – Mr. Anderson Dunn, applicant, was present on behalf of this application. Mr. Dunn informed the Board that he was not expecting to be present at the meeting today, until he received a phone call a few minutes prior to his arrival. He advised the Board that he and the applicant had evaluated the farm in search of an alternate location to place the proposed mobile home, but they were unable to identify a suitable location. Mr. Dunn stated that the entire front of the farm is in a floodplain and a portion of the rear of the property is located in a floodplain, as well. He said the remainder of the farm is running hills.

Opposition – Mr. Chris Clendenen, attorney, was present on behalf of Mr. Joe Navarro, prospective owner of the adjacent property at 4220 Bryan Station Rd. He informed the Board that the two properties share a property line. Mr. Clendenen directed the Board's attention to the overhead screen on which he displayed aerial views and images of the subject property and explained why his client was in opposition to the requested variance. He asked that the Board deny this request for a variance.

Board questions – Mr. Glover asked Mr. Clendenen how the placement of the proposed mobile home would affect his client. Mr. Clendenen responded that Mr. Navarro would be looking at the mobile home from the top of the hill where he is planning to build his home, and he would prefer not to look at it.

Ms. Carter enquired about the location Mr. Navarro plans to construct his home. Mr. Clendenen and Mr. Navarro clarified that his home would be approximately 1,000 feet from the proposed mobile home site. Ms. Carter asked Mr. Navarro if there were circumstances that prevented him from putting his residence on a different part of the land. Mr. Navarro stated he wanted to build on the highest point, as Mr. Corser did, in order to enjoy the view of Gainesway Farm.

Mr. Needham asked how much lower the fence line is than where Mr. Navarro plans to construct his home.

Mr. Navarro replied that the Corser Property drops down a little towards their barn. There was further discussion on possible screening.

Mr. Gross suggested a continuance of this application to allow both parties to discuss the application and any possible alternate locations to place the mobile home. Mr. Glover agreed. There was further discussion.

Rebuttal – Mr. Dunn stated that if the applicant chose to build a house, rather than place a mobile home, or modular home, they could build it 25 feet from the property line.

Ms. Carter stated that it would be helpful if the applicant could provide information showing there is no better location on the farm for the proposed mobile home, than the location shown on the site plan. There was further discussion.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 6-0 (Whitman absent), to **continue PLN-BOA-21-00038: CORSER THOROUGHBREDS LLC** – request for a variance to reduce the required side yard setback from 300' to 60' in order to place a mobile home in an Agricultural Rural (A-R) zone, on property located at 4422 Bryan Station Rd., to the September 13, 2021 meeting.

D. Conditional Use Appeals

1. **PLN-BOA-21-00042: BLEED BLUE INK LLC** - requested a conditional use to establish a tattoo parlor within the defined Infill and Redevelopment area in a Lexington Center Business (B-2B) zone, on property located at 102 W.High St. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood. The immediate vicinity is characterized by a mix of uses, several of which have similar (or longer) hours to those being proposed.
- b. The proposed use should not have a negative impact on traffic, as only 4-8 customers are expected per day.
- c. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The tattoo parlor use shall be established in accordance with the submitted application materials and siteplan.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to occupancy.

Representation – Mr. Ronny Barnes, owner and applicant was present on behalf of his application.

Staff comments – Ms. Goderwis informed the Board that the Division of Planning had received several letters of support on behalf of this application and Mr. Barnes, and that those letters were available to the Board members on the screens in front of them.

Board questions – Mr. Glover asked Mr. Barnes if the owner of a tattoo parlor was required to be licensed. Mr. Barnes replied that the business itself must have certain licenses with the health department. Each individual tattoo artist must be licensed by the local health department, and their licenses must be renewed every 12 months. He explained that if an artist changes shops, they must transfer their license to the new shop. Mr. Barnes also stated that if an artist works outside of the county, they must file a new license in that county.

Mr. Needham asked where the parking for this building was located. Mr. Barnes explained that there was limited parking. He said parking is available in the city's public parking garage across the street next to the Bank of the Bluegrass, and also directly across the street there is free parking after 5:00 p.m. on weekdays and all day on Saturday and Sunday.

Action – A motion was made by Mr. Needham, seconded by Ms. Carter and carried 6-0 (Whitman absent), to **approve PLN-BOA-21-00042: BLEED BLUE INK LLC** – request for a conditional use to establish a tattoo parlor within the defined Infill and Redevelopment area in a Lexington Center Business (B-2B) zone, on property located at 102 W.High St., based on staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-21-00043: ANDERSON VILLAGE AT GREAT ACRES, LLC** – requested a conditional use to establish a parking area accessory to a commercial use in an adjoining business zone on property in a Planned Neighborhood Residential (R-3) zone, on property located at 2731 Leestown Rd. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood. The proposed parking area and immediate vicinity are part of the overall development of this 50-acre property, which will be a mixed-use development including residential and commercial uses. The proposed use should not impact any existing neighbors.
- b. The parking lot will be designed to appear as a part of the commercial area and there will not be a direct vehicular connection between this parking area and the parking area for the adjoining residential uses, so the use of the parking lot should not have a negative impact on future residents of the proposed apartments.
- c. The requirements of Article 16-3 for parking areas as a conditional use in the R-3 zone will be met.
- d. 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. The parking lot shall be established in accordance with the submitted application materials and site plan, subject to any alterations required during the Final Development Plan and permitting processes.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection, Planning, and Engineering prior to paving and use of the parking area.
3. The final configuration of the parking lot shall be designed in accordance with the recommendations of, and subject to approval by the Division of Traffic Engineering.
4. Approval by the Board shall be noted on the Final Development Plan.
5. The proposed parking area shall be limited to 40 parking spaces within the R-3 zone to the north of Building H.
6. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
7. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.

*Note – Ms. Goderwis informed the Board that the Division of Planning had received two letters in opposition of this application.

Representation – Mr. Richard Murphy, attorney, was present on behalf of the applicant and indicated that the applicant was in agreement with the seven conditions set forth by staff.

Board question – Mr. Glover asked why approval was needed to establish a parking lot in a business zone. Mr. Murphy clarified that the proposed parking lot was in a Planned Neighborhood Residential (R-3) zone, next to the business zone. He stated that rather than request a zone change for the small parking lot, the Zoning Ordinance allows the applicant the opportunity to request a conditional use permit to use part of the R-3 zone for parking for the business use, as long as it is immediately adjacent to the Highway Service Business (B-3) zone. Mr. Murphy stated there are six conditions in Article 16 that must be met, and as staff states in their report, the applicant does comply with all of those conditions.

Mr. Needham asked Mr. Murphy about a concern from a citizen regarding stormwater. Mr. Murphy replied that he was aware of that concern. He then displayed an image on the overhead screen, which illustrated the proximity of the floodplain to the proposed project. He stated the proposed parking lot does not impact the floodplain. Mr. Murphy further stated the applicant has been through the zone change process, two development plans; with yet another one before the Planning Commission, and this floodplain has been reviewed by FEMA, the US Army Corp of Engineers and extensively by the Division of Water Quality. He stated this application complies with the Division of Engineering's Stormwater Manuals and the level of flooding cannot be raised above the elevation where it is today. Mr. Murphy acknowledged that this area does flood; that is what a floodplain does.

Mr. Glover asked what a floodplain was. Mr. Murphy responded that it is where the Corp of Engineers or FEMA has determined that a stream will regularly leave its banks and flood the surrounding land.

Mr. Clarke asked how the parking lot drains. Mr. Murphy replied there is an existing pond on the property and Anderson Properties plans to use that pond as part of its retention and there will be additional retention in that area as well. Mr. Clarke asked if the parking is in the R-3 zone and if the commercial use is in the B-3 zone. Mr. Murphy confirmed that to be correct.

Mr. Glover remarked that the boundary line was odd, and asked if the B-3 portion was carved out of the residential portion. Mr. Murphy stated that originally, the entire property was zoned agricultural and when Dennis Anderson applied for a zone change, he had planned where the commercial portion would be. There was further discussion.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 6-0 (Whitman absent), to **approve PLN-BOA-21-00043: ANDERSON VILLAGE AT GREAT ACRES, LLC** – request for a conditional use to establish a parking area accessory to a commercial use in an adjoining business zone on property in a Planned Neighborhood Residential (R-3) zone, on property located at 2731 Leestown Rd., as recommended by staff and subject to the seven conditions as listed.

E. Administrative Appeals

1. **PLN-BOA-21-00041: FARMERS FEED MILL INC** – requested an administrative appeal to determine whether solar arrays are a principal use under Article 8-22(b)(4) “Other industrial and manufacturing uses” in a Light Industrial (I-1) zone, on property located at 251 W. Loudon Ave. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- a. Solar arrays are a low impact form of power generation, which generally do not create significant hazards that could impact public health, safety, or welfare. They do not involve a potential nuisance in terms of smoke, noise, odor, vibration, heat, light, or industrial waste. Solar arrays that are installed to generate electricity beyond what is needed for private use, to serve a commercial purpose, are an industrial use and are not appropriate in non-industrial zones. This use best fits into the category of “other industrial and manufacturing uses” as listed in Article 8-22(b)(4) and should first be allowable in the Light Industrial (I-1) zone. Solar arrays which only generate electricity to serve the principal use of the property on which they are installed are allowable as an accessory use in other zones.

Representation – Brandyn Hurt, applicant, and Jared Pendleton, Manager, Farmers Feed Mill, were both present on behalf of this application.

Board questions and comments – Mr. Gross asked the applicant to explain the Kentucky Utilities program regarding solar energy. Mr. Hurt responded and explained how the program works and how the applicant would implement it for their usage.

Mr. Clarke asked about security on the property. Mr. Pendleton replied that Farmers Feed Mill already had security in place for all of their elevated areas and that the proposed project would be elevated. All access to the roof had locks and cages in place. He stated they are in the planning process for security on the ground, such as fencing.

Mr. Needham asked if the piece of land that the panels would be placed on was in a floodplain. Mr. Pendleton confirmed it was. Mr. Hurt replied they would obtain approval from civil engineers to ensure what they are putting there will suffice.

Mr. Glover asked why there were no conditions applied to this application. Ms. Goderwis explained that the question before the Board is whether this is a principal use in the zone, and principal uses cannot be conditioned by the Board. They are not uses that the Board typically would review; they are just permitted. She stated that should the Board make the determination that this is a principal use per Article 8-22(b)(4), “Other industrial and manufacturing uses”, the applicant would simply move forward with the permitting process.

Mr. Gross stated he was concerned with some of the wording in staff’s recommendation for approval; that it may make for a limited use of solar energy in the future. Ms. Goderwis explained staff’s reasons for wording the recommendation as they did. Discussion continued. Mr. Gross suggested that staff, Ms. Jones and himself convene to discuss a revision to the wording of the recommendation. There was further discussion.

*Note – At 2:20 p.m., the Board took a brief recess to discuss the findings of facts. The Board reconvened at 2:35 p.m.

Ms. Goderwis displayed the revised recommendation for approval on the screen for the Board members and applicants’ view. Mr. Gross explained the changes that had been made.

The applicants indicated their agreement with the revised recommendation.

Action – a motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Whitman absent), to **approve PLN-BOA-21-00041: FARMERS FEED MILL INC** – request for an administrative appeal to determine whether solar arrays are a principal use under Article 8-22(b)(4), “Other industrial and manufacturing uses” in a Light Industrial(I-1) zone, on property located at 251 W. Loudon Ave., as stated in the revised findings of fact listed below:

- a. Solar arrays are a low impact form of power generation, which generally do not create significant hazards that could impact public health, safety, or welfare. They do not involve a potential nuisance in terms of smoke, noise, odor, vibration, heat, light, or industrial waste. Solar arrays that are installed to generate electricity beyond what is needed for private use, to serve a commercial purpose best fit into the category of “other industrial and manufacturing uses” as listed in Article 8-22(b)(4). Solar arrays which are intended to primarily generate electricity to serve the principal use of the property on which they are installed are allowable as an accessory use in other zones.

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

Mr. Glover mentioned the prospect of having staff from the Long Range Planning Section of the Division of Planning speak to the members of the Board after either the September or the October meeting, to educate the members on what future events they may be aware of. He said he has also recommended that staff prepare a basic Zoning Ordinance education to help the members stay up to date on the Ordinance.

Mr. Glover also reminded the Board that Jan Meyer, a previous Board member would be asked back at a future meeting to be recognized for her service on the Board of Adjustment.

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

There were no staff items to discuss.

VII. NEXT MEETING DATE – Chair Glover announced that the next meeting date will be September 13, 2021, at 1:30 p.m.in the Council Chambers at 200 E. Main St.

VIII. ADJOURNMENT – As there was no further business, Chair Glover declared the meeting adjourned at 3:08 p.m.

Thomas Glover, Chair

Joan Whitman, Secretary

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