

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

July 11, 2022

- I. **CALL TO ORDER** - Chair Raquel Carter called the meeting to order at 1:33 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.
- II. **ATTENDANCE** – Board members present were: Raquel Carter, Harry Clarke, Branden Gross, Carolyn Plumlee, Linda Tucker and Chad Walker. Chad Needham was absent. Others present were: Tracy Jones, Department of Law and Joseph Edmiston, Division of Traffic Engineering. Planning staff members present were: Traci Wade, Autumn Goderwis, Daniel Crum, and Donna Lewis.
- III. **APPROVAL OF MINUTES** – Ms. Carter announced that the minutes from the June 13, 2022 meeting would be considered for approval at this time.

Staff informed the Board that the minutes from the June 13, 2022 meeting were not available for consideration at that time.

IV. **PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** – Ms. Carter announced that any applicant or objector to any appeal before the Board who planned to speak, would be sworn in at this time.

The oath was administered to several members of the audience and Staff who planned to speak.

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

C. **Withdrawals**

1. **PLN-BOA-22-00022: HARPER WOODS** – requested a variance to reduce the required building setback from a floodplain, from twenty-five feet (25') to five feet (5') in order to build single family homes on property located in a Planned Neighborhood Residential (R-3) zone, on property located at 3509, 3513, 3573, 3577 Harper Woods Ln. and 2311 Armstrong Mill Rd. (Council District 8)

Staff comments – Mr. Crum advised the Board that the applicant elected to withdraw this application.

D. **Abbreviated Hearing**

1. **PLN-BOA-22-00024: RICH MAINS** – requested a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.55 on property located in the Infill and Redevelopment Area and a Historic District Overlay (H-1) in a Two-Family Residential (R-2) zone, on property located at 625 Sayre Avenue. (Council District 3)

The Staff Recommended: Approval. for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The proposed two-story garage with accessory living quarters will be located to the rear of the property and should have little to no impact on the appearance of the property from the public right-of-way.
- b. The variance request is generally reasonable, as the intent of the Infill and Redevelopment 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. The proposed construction is compatible with the existing neighborhood, as each of the five lots on the northern side of Sayre Avenue between East Bell Court and the 90-degree turn in Sayre Avenue have existing floor area ratios exceeding that allowed by the Zoning Ordinance, with a range from 0.4 to 0.7.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance because the requested Floor Area Ratio will not result in an increase in density in this location and 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 Divisions of Building Inspection and Historic Preservation prior to construction.
3. The accessory living quarters shall not contain kitchen facilities and shall not be rented.

Representation – Mr. Richard Mains, applicant and property owner, was present on behalf of his application for a variance. He indicated that he had reviewed Staff's recommendation and the conditions of approval and was in agreement with them. There were no questions or comments from anyone on the Board or in the audience.

Action – A motion was made by Mr. Gross, seconded by Mr. Clarke and carried 6-0 (Needham absent), to **approve PLN-BOA-22-00024: RICH MAINS** – request for a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.55 on property located in the Infill and Redevelopment Area and a Historic District Overlay (H-1) in a Two-Family Residential (R-2) zone, on property located at 625 Sayre Avenue, based on Staff's recommendation and subject to the three conditions as listed.

2. **PLN-BOA-22-00028: KEENELAND ASSOCIATION** – requested to amend an existing conditional use for a horse race track with accessory facilities in order to expand dining facilities at the Thoroughbred Club in the Agricultural Rural (A-R) zone, on property located at 3555 Rice Road. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. There are no uses on adjoining or nearby properties that might be adversely impacted by the building expansion or outdoor patio addition, and the proposed improvements will enable Keeneland to provide better service to its patrons and clientele.
- b. The proposed building expansion and patio will be screened from view from the public right of way by existing trees and landscaping to the south.
- c. All necessary public and private services are available and adequate for the proposed use.

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

1. The project shall be completed in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

Representation – Mr. John DeHart, was present on behalf of the owner of the Thoroughbred Club. He indicated that the applicant had reviewed Staff's recommendation and the conditions of approval and that they were in agreement with the conditions.

Board questions and comments – Ms. Plumlee asked how the size of the proposed project would fit with the Agricultural Tourism initiative. Mr. DeHart explained that the existing facility is just under 9,000 square feet and the applicant is adding 1,300 square feet of interior space which is restrooms, a service corridor, a janitor's closet and other amenities. He said that the outside patios are approximately 7,000 square feet, with the majority being for an event space which will expand their opportunities for outside events. Ms. Plumlee stated that she was concerned about the conditions. She added that she would like a third condition added, stating that if Keeneland no longer owned the property, this conditional use would be null and void. Mr. DeHart stated that he did not have the legal authority to agree to that condition, since Keeneland owned the property. He stated that he did not believe they would sell the property. Ms. Plumlee stated that her point was that in the A-R zone for Agricultural Tourism, 10,000 square feet is the limit, and the proposed project exceeds that limit. She added that the use may be appropriate for Keeneland, but not for the next owner, so she would really like to see the third condition added.

Ms. Carter asked Staff if the conditional use stayed with the property if it were sold, or if the conditional use went with the owner of the property.

Staff comments – Mr. Crum stated that the Board could limit the conditional use to void it on either the change of the ownership of the property or the change of the operator of the use. He added that Staff had seen both options in the past, in specific instances.

Board questions and comments - Ms. Carter asked if the proposed condition was not added, would this conditional use run with the property. Mr. Crum confirmed that to be correct.

Mr. Gross stated that he would oppose that additional condition.

Ms. Tucker asked how the applicant planned to increase their restrooms. Mr. DeHart replied that there was an existing septic tank. He added that they will replace the old tank with a new tank, but it is a septic system. Mr. DeHart said that most of Keeneland is not on a septic system, but this property is. He commented that the applicant is in the process of filing for permits. Ms. Carter mentioned that Condition #2 referred to those permits and they would be reviewed by the appropriate staff.

Ms. Plumlee asked if this project would increase the need for parking. Mr. DeHart stated that the membership of the club is not increasing; they are just providing better facilities for the existing members. He added there is ample parking now that exceeds the Zoning requirements, so there is no need to expand the parking. Ms. Plumlee asked if there would need to be more parking for the additional employees. Mr. DeHart stated that he did not think there were going to be additional employees.

Ms. Laura Gardner, Thoroughbred Club General Manager, responded that there would be additional employees but not enough to make an impact on the parking. She added they have a lot of overflow space.

Action – A motion was made by Mr. Gross, seconded by Mr. Walker and carried 5-1 (Needham absent; Plumlee opposed), to **approve PLN-BOA-22-00028: KEENELAND ASSOCIATION** – request to amend an existing conditional use for a horse race track with accessory facilities in order to expand dining facilities at the Thoroughbred Club in the Agricultural Rural (A-R) zone, on property located at 3555 Rice Road, based on Staff's recommendation and subject to the two conditions as listed.

3. **PLN-BOA-22-00030: CENTRAL BAPTIST CHURCH** – requested a conditional use permit to establish a school for academic instruction (seminary) in conjunction with an existing place of religious assembly on property located in a Planned Neighborhood Residential (R-3) zone, on property located at 110 Wilson Downing Road. (Council District 4)

The Staff Recommended: Approval, for the following reasons:

- The proposed use should not adversely affect the subject or adjoining/nearby properties. The use will be located in the existing building. Church properties are typically not used throughout the week, so are generally well-suited for this type of use.
- More than adequate parking exists and is available on the subject property during the week.
- 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:

- The school for academic instruction (seminary) shall be conducted in accordance with the submitted application materials and site plan.
- All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
- The days and hours of operation shall not exceed Monday through Friday, from 7:00 a.m. to 9:00 p.m. without further approval by the Board of Adjustment.

Representation – Mr. Mark Johnson, Minister, Central Baptist Church, was present on behalf of this application for a conditional use permit for a seminary. He gave a brief description of the Baptist Seminary of Kentucky and explained the purpose for this conditional use. Mr. Johnson stated that in 2004, the church obtained a conditional use permit for child care for up to one-hundred and twenty children and forty employees. However, due to COVID-19, they closed the child care operation and do not intend to re-open it. This resulted in a lot of unused space at the church, which is the space the seminary plans to occupy. Mr. Johnson introduced Dr. Dalen Jackson, the Academic Dean of the seminary, who was also present in the audience.

Board question – Ms. Carter asked Mr. Johnson if he had reviewed Staff's recommendation and the conditions of approval and if he was in agreement with them. Mr. Johnson indicated that he was in agreement with them.

Action – A motion was made by Mr. Clarke, seconded by Mr. Gross and carried 6-0 (Needham absent), to **approve PLN-BOA-22-00030: CENTRAL BAPTIST CHURCH** – request for a conditional use permit to establish a school for academic instruction (seminary) in conjunction with an existing place of religious assembly on property located in a Planned Neighborhood Residential (R-3) zone, on property located at 110 Wilson Downing Road, based on Staff's recommendation and the three conditions as listed.

*Note – Prior to hearing the next case, Mr. Gross recused himself due to a possible conflict of interest.

E. Discussion Items

1. **PLN-BOA-22-00029: HEIDI FRAZIER** – requested a variance to increase the allowable height of a fence in the front yard from four feet (4') to six feet (6') on property located in a Single-Family Residential (R-1C) zone, on property located at 143 E. Lowry Lane. (Council District 3)

The Staff Recommended: Disapproval, for the following reasons:

- The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance. Four-foot tall fences in the front yard are typical across residential zones.
- The applicant has not provided sufficient information to determine that strict enforcement of the Zoning Ordinance will result in an unnecessary hardship or deprive the applicant of the reasonable use of their land. Fencing at the applicant's proposed height could be installed within the rear yard and side yard, up to the front wall plane of the

home without the need for a variance. Alternatively, the applicant could reduce the height of the fence to four feet where located in front of the primary wall plane in order to enclose the desired area without a variance.

- c. Approval of the requested variance could have a negative impact on the walkability of the immediate vicinity, as the property is located at a transitional point between the residential neighborhood and the neighborhood-serving commercial businesses to the west. Best practices regarding sidewalk design often discourage tall fences adjacent to pedestrian facilities, as pedestrians do not feel comfortable walking directly adjacent to a building wall or a fence.

Staff presentation – Mr. Crum directed the Board's attention to the overhead screen on which he displayed aerial views of the subject property and surrounding properties. He also presented a street view photograph from 2015 which showed the applicant's home and yard, and also the previous chain-link fence, which the applicant had removed. Mr. Crum explained Staff's reasons for recommending disapproval of this request for a variance.

Board questions – Mr. Clarke asked if there were other six-foot tall fences in the front of the houses in the applicant's neighborhood. Mr. Crum responded that this would be the only six-foot tall fence in the front yard in the immediate area.

Ms. Plumlee commented that the applicant's front yard seemed like a side yard and asked if the applicant could change it so that the side facing E. Lowry Lane could officially be the side yard and the side facing Dellwood could be the front yard. Mr. Crum stated that as the primary access point faces E. Lowry Lane, and as the property has historically been utilized and addressed, the front yard is considered to be on E. Lowry Lane.

Representation – Ms. Heidi Frazier, applicant and property owner of 143 E. Lowry Lane, was present on behalf of her application for a variance. She explained that she had hired a contractor and she thought that contractor had gotten the appropriate approvals for the fence, but he had not done so. Ms. Frazier explained her reasons for wanting a six-foot tall fence, citing privacy and security.

Board questions – Mr. Clarke asked the applicant why she had removed the previous chain-link fence. She responded that it was for privacy and security because people trespass in her yard. Ms. Frazier also explained that having the fence closer to the sidewalk would allow her to use more of her yard. Mr. Clarke empathized with Ms. Frazier, but stated that approving this variance would set a difficult precedent. He added that the Board has found that a well-constructed four-foot tall fence has proven to be successful in keeping people out of the yard. He asked Ms. Frazier how much of the six-foot fence has been built. She replied that all but two portions in the front part of the fence have been built.

Ms. Plumlee expressed empathy with the applicant and indicated that she would likely agree to approve her request for a variance.

Action – A motion was made by Mr. Clarke, seconded by Mr. Walker and carried 4-1 (Needham absent; Gross recused; Plumlee opposed), to **disapprove PLN-BOA-22-00029: HEIDI FRAZIER** – request for a variance to increase the allowable height of a fence in the front yard from four feet (4') to six feet (6') on property located in a Single-Family Residential (R-1C) zone, on property located at 143 E. Lowry Lane, based on Staff's recommendation.

*Note – Mr. Gross returned to the meeting at 2:07 p.m.

V. BOARD ITEMS

A. Presentation of resolution to Joan Whitman

Ms. Carter announced that, at this time, the presentation of a Resolution would be made to Ms. Joan Whitman in honor of her eight years of service to the Board of Adjustment. Ms. Carter thanked Ms. Whitman for her service and read the Resolution. Ms. Whitman was presented with a token of appreciation from the Board.

Ms. Whitman commented on how much she had learned from serving on the Board of Adjustment for eight years and also on the Planning Commission for eight years. She expressed her thanks and best wishes to the remaining members of the Board, to Ms. Carter in her new role as Chair and to the two newest members, Ms. Plumlee and Ms. Tucker.

B. Introduction of new Board members

Ms. Carolyn Plumlee remarked that it was an honor to be serving on the Board with the other members and that she was looking forward to working with everyone.

Ms. Linda Tucker stated that she was honored to be a member of the Board of Adjustment as well.

Ms. Carter welcomed both new members to the Board of Adjustment.

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

There were none.

VII. NEXT MEETING DATE – Ms. Carter announced that the next meeting date will be August 8, 2022 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.

VIII. ADJOURNMENT - As there was no further business, Ms. Carter declared the meeting adjourned at 2:14 p.m.

Raquel Carter, Chair

Harry Clarke, Secretary

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