

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

August 8, 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, Chad Needham, Carolyn Plumlee, Linda Tucker and Chad Walker. Others present were: Tracy Jones, Department of Law and Josh Dezarn, Division of Engineering. Planning staff members present were: Traci Wade, Autumn Goderwis, Meghan Jennings, Daniel Crum, and Donna Lewis.
- III. **APPROVAL OF MINUTES** – Ms. Carter announced that the minutes from the June 13, 2022 and the June 28, 2022 special meeting would be considered for approval; however, the minutes from the July 11, 2022 meeting were not available for consideration at that time.

Action – A motion was made by Mr. Gross to approve the minutes from the June 13, 2022 meeting and the June 28, 2022 special meeting.

Discussion on the motion – Prior to there being a second, Ms. Plumlee asked whether the minutes from those two meetings should be signed by the previous Chair, Thomas Glover, as Mr. Glover was serving as Chair when the two meetings had occurred. Ms. Wade stated that historically, it has been the Division of Planning's practice to have the minutes signed by the person who is serving as Chair at the time the minutes are approved.

Action – The motion made by Mr. Gross was seconded by Mr. Walker and carried 7-0 (Plumlee and Tucker abstained), to **approve** the minutes from the June 13, 2022 and June 28, 2022 meetings of the Board of Adjustment.

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 who indicated they wished 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.

Withdrawals

Mr. Crum informed the Board that the applicant for **PLN-BOA-22-00034: PALMER ENGINEERING** – request for a variance to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet, within the defined Infill and Redevelopment Area in a Highway Service Business (B-3) zone, on property located at 1001 and 1003 Winchester Rd., had withdrawn their request.

C. Variance Appeals

1. **PLN-BOA-22-00031: DISTINCTIVE DESIGN REMODELING** – requested a variance to reduce the rear yard setback from twenty (20) feet to eight (8) feet in order to construct additions to a single-family residence in a Residential Planned Unit Development (PUD-1) zone, on property located at 1712 Kenning Place. (Council District 9)

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 addition should have little visual impact to the surrounding properties as the proposed addition will involve the conversion of an existing sunroom to livable square footage.
- b. The restrictive size of the lot, the platted building lines, and twelve (12) foot sanitary sewer easement on the subject property are special circumstances that justify the need for the variance, as the property's buildable envelope is limited.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variance as soon as it was determined that it was needed during the permit process, and prior to beginning construction.

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

1. The addition shall be constructed in accordance with the submitted application materials and modified site plan.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Ms. Brandee Smith and Mr. Charles Penn, Distinctive Design Remodeling, were present on behalf of this application for a variance. Ms. Smith indicated that they had read Staff's recommendation for approval and agreed to abide by the conditions set forth.

Board question – Mr. Clarke asked if the proposed construction would replace what was previously there. Ms. Smith affirmed that to be correct.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 7-0 to **approve PLN-BOA-22-00031: DISTINCTIVE DESIGN REMODELING** – request for a variance to reduce the rear yard setback from twenty (20) feet to eight (8) feet in order to construct additions to a single-family residence in a Residential Planned Unit Development (PUD-1) zone, on property located at 1712 Kenning Place, based on Staff's recommendation and subject to the two conditions as listed.

2. **PLN-BOA-22-00032: AARON AND MEGHANN BIDARIAN** – requested a variance to reduce the side yard setback from twenty-five (25) feet to ten (10) feet in order to construct a single-family residence in an Agricultural Rural (A-R) zone, on property located at 1440 Deer Haven Ln. (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 of the general vicinity, nor alter the character of the general vicinity. The reduced side yard setback will not visually impact the surrounding properties as the closest neighboring principal structures are located over one-hundred and fifty (150) feet from the proposed residence.
- b. The non-conforming size of the lot in an Agricultural Rural (A-R) zone is a special circumstance that is unique to the subject property and justifies the need for the variance.
- c. Strict application of the Zoning Ordinance would create an unnecessary hardship for the applicant due to the required setbacks being more restrictive on the subject property than other lots in the same zone. Additionally, if urban zoning standards were applied to the subject property, the lot would meet the standards for a Single-Family Residential (R-1A) zone, which only requires ten (10) foot side yards, as well as the recommended Expansion Area Residential 1 (EAR-1) zone, which only requires five (5) foot side yards.
- d. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary 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. The front-facing garage shown on the submitted site plan shall be relocated to the side or rear of the structure in order to allow the two garages to share one driveway, and no additional paving for vehicular use area shall be permitted in front of the front wall-plane of the house.
2. Construction shall be in accordance with the submitted application materials and a modified site plan reflecting condition #1.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Representation – Mr. Aaron and Mrs. Meghann Bidarian were both present on behalf of their application for a variance. They indicated that they had reviewed Staff's recommendation, but they were not in agreement with the conditions. Ms. Carter asked the applicant to clarify their concerns with the conditions listed.

Mr. Bidarian stated that if the recommendations and conditions listed by Staff were implemented, it would be a drastic change in the design of their entire project, not to mention an increase in cost to re-design their project. Copies of the proposed project were distributed to the Board for their review and also displayed on the overhead screen. Mr. Bidarian described the project as it was originally submitted, and explained the revisions that would necessary to abide by the conditions listed by Staff.

Board question – Ms. Carter asked Mr. Bidarian to clarify the reduction in the side yard setback they requested in their application. Mr. Bidarian explained which side of the house they were requesting the variance for and why. Ms. Carter asked the Board if there were any other questions before Staff's presentation. There were no questions from the Board; however, Mr. Bidarian asked if there was a restriction on the amount of paving that was allowed on the subject property. He added that the house was to scale on the original site plan, but the driveways were not to scale on the original site plan.

Staff presentation – Ms. Jennings explained that Staff did recommend approval of the variance, but they had concerns over the amount of paving requested by the applicant for both garage accesses and especially in order to back their boat into the proposed basement garage. She added that Staff recommended a re-design of the home in order to consolidate the two garages and minimize the impervious paving on the site.

Board questions – Ms. Plumlee asked Ms. Jennings if Staff's recommendation was to use less concrete than proposed. Ms. Jennings confirmed that to be correct.

Mr. Needham asked if there was a restriction on the amount of concrete or impervious surface allowed on the subject property. Ms. Jennings responded that concerning driveways, the Zoning Ordinance states no more than fifty percent of the yard can be paved. She added that it did not appear that the applicant met that threshold; that Staff's concerns are from more of a design approach in general. Ms. Jennings stated that as this is a vacant lot, and a brand new build, there is still some flexibility in the design of the home and time to make changes.

Ms. Carter asked if the variance would be necessary if the applicant were to relocate the garage. Ms. Jennings stated that if the applicant shifted the floor plan and chose to move some rooms from the ground floor up to where the proposed garage is currently located; Staff would still approve that setback. Ms. Jennings stated that Staff is not in favor of the two garages and the amount of paving required. There was further discussion.

Mr. Clarke asked the applicant why they needed forty-six feet of concrete on the right side of the house to back their boat into the garage. He added that if the applicant were to move the garage fifteen feet to the right, they would not need a variance. Mr. Bidarian replied that the driveway dimensions were not to scale; they have not been staked out. He added that the reason they requested a driveway of that length was based on the lengths of their boat and their truck. Mr. Bidarian stated that a longer driveway would allow them to back straight in and not back in at an angle. He also mentioned proposed retaining walls on the property that need to be considered. There was further discussion.

Mr. Needham addressed the applicant, stating that the Staff had recommended approval of the applicant's request for a variance; however, the applicant was not willing to accept the conditions of approval.

Ms. Carter acknowledged that what Staff was asking for was not a minor adjustment. It would require a different plan. Ms. Bidarian commented that they, the applicants, were two years into the proposed project.

Mr. Gross asked if the applicant and Staff could work over the next thirty days to come up with a compromise and come back to the Board for their decision. He mentioned the application could be continued to the next month's meeting.

Ms. Carter asked the applicant if they could work with their engineer to come up with a plan that was to scale. Mr. Bidarian stated that they could do that. Ms. Carter added that she thought that would be a good idea, so that the Board would have more information to base their decision on.

Action – A motion was made by Mr. Gross, seconded by Mr. Needham and carried 7-0, to **continue PLN-BOA-22-00032: AARON AND MEGHANN BIDARIAN** – request for a variance to reduce the side yard setback from twenty-five (25) feet to ten (10) feet in order to construct a single-family residence in an Agricultural Rural (A-R) zone, on property located at 1440 Deer Haven Ln., to the September 12, 2022 Board of Adjustment meeting.

3. **PLN-BOA-22-00036: BURR OAK CAPITAL** – requested a variance to reduce the side yard setback from three (3) feet to zero (0) feet, in order to construct additions to an existing, legally non-conforming structure within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 407 E. Fifth St. (Council District 1)

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 as it will allow the applicant to modernize an existing dwelling unit within the defined Infill & Redevelopment Area.
- b. Granting the requested variance should not have an adverse effect on the surrounding area. The construction is in keeping with other residential structures in the general vicinity. The general vicinity is characterized by similar lots and the requested setback will be similar to other setbacks in the area.
- c. The size of the lot and the existing configuration of the structure on the property are special circumstances that justify the need for the variance. Granting the variance will permit the applicant to increase the livable square footage of the existing structure on a lot of constricting size.
- d. The granting of this variance will not allow an unreasonable circumvention of the requirements 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.

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

1. The additions shall be permitted 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 the completion of construction.

Applicant representation – Mr. Chris Clendenen, attorney, was present on behalf of the applicant. He introduced Mr. Jeff Moore, Principal, Burr Oak Capital, who was also present. Mr. Clendenen indicated that the applicant had read Staff's recommendation and agreed to abide by the conditions of approval as set forth.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 7-0, to **approve PLN-BOA-22-00036: BURR OAK CAPITAL** – request for a variance to reduce the side yard setback from three (3) feet to zero (0) feet, in order to construct additions to an existing, legally non-conforming structure within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 407 E. Fifth St., based on Staff's recommendation and subject to the two conditions as listed.

D. Conditional Use Appeals

1. **PLN-BOA-22-00035: CARMAH LEWIS** – requested a conditional use permit in order to operate a home-based beauty salon within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 240 Race St. (Council District 1)

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. Adequate off-street parking is available to serve the limited number of customers to the home on a daily and weekly basis.
- b. 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. The home-based hair salon business shall be operated in accordance with the submitted application materials and site plan, with appointments only on an individual basis.
2. The use shall operate in accordance with the requirements of the Kentucky Board of Cosmetology.
3. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
4. The conditional use shall become null and void should the applicant no longer reside at this address.

Representation – Ms. Carmah Lewis, applicant, was present on behalf of her application for a home-based beauty salon. Ms. Lewis indicated that she had read Staff's recommendation and conditions of approval, and agreed to abide by them.

Board comments – Ms. Plumlee congratulated Ms. Lewis on the "charming structure" for her salon. She added that should the Board vote to approve the application; she wished her success.

Action – A motion was made by Ms. Plumlee, seconded by Mr. Gross and carried 7-0, to **approve PLN-BOA-22-00035: CARMAH LEWIS** – request for a conditional use permit in order to operate a home-based beauty salon within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 240 Race St., based on Staff's recommendation and subject to the four conditions as listed.

- V. **BOARD ITEMS** – Ms. Carter announced that any items a Board member wished to present would be heard at this time.

There were no Board items.

- VI. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

A. Presentation of Resolution to Retiring Board Member/Chair Thomas Glover

Ms. Carter thanked Mr. Glover for his three terms of service with the Board of Adjustment, totaling twelve years. She then read aloud his Resolution, expressing gratitude on behalf of the Board and Staff.

Mr. Glover expressed his thanks for the other Board members and Staff, stating that it had been a privilege to serve on the Board for twelve years. Mr. Glover stated that he had learned a lot and made a lot of friends over the years, and it was his opinion that each member of the community who had ever served on the Board had the best interest of the community at heart, and does their best to make the right decision on every case that came before them. Mr. Glover also thanked the Staff for the work that they do. He added that included the Planning Staff, the Law Department and Staff from other divisions within LFUCG.

- VII. **NEXT MEETING DATE** – Ms. Carter announced that the next meeting date will be September 12, 2022 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.

- VIII. **ADJOURNMENT** - There being no further business, Ms. Carter declared the meeting adjourned at 2:15 p.m.

Raquel Carter, Chair

Harry Clarke, Secretary