

**MINUTES FOR THE BOARD OF ADJUSTMENT  
MEETING**

January 9, 2023

- 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, Chad Needham, Carolyn Plumlee, and Chad Walker (arrived at 1:47 p.m.) Board members Branden Gross and Linda Tucker were absent. Others present were: Tracy Jones and Brittany Smith, Department of Law and Stephen Parker, Division of Traffic 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 December 12, 2022 Board of Adjustment meeting would be considered for approval at this time.

Action – A motion was made by Ms. Plumlee, seconded by Mr. Needham and carried 4-0 (Gross and Tucker absent; Walker late), to **approve** the minutes from the December 12, 2022 Board of Adjustment meeting.

**IV. PUBLIC HEARING ON ZONING APPEALS**

- A. **Swearing of Witnesses** - Ms. Carter asked that any applicant, objector, or anyone who planned to speak to any appeal before the Board, please stand in order to be sworn in.

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.

There were no postponements or withdrawals.

**C. Abbreviated Hearing**

1. **PLN-BOA-22-00054: JOHN DEHART** – an amended request for a variance to increase the maximum front yard setback from twenty (20) feet to seventy-six (76) feet in order to construct a retail and office use in a Neighborhood Business (B-1) zone, on property located at 490 Southland Dr. (Council District 10)

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. Increasing the maximum front yard setback will ensure that the proposed building is in keeping with existing non-conforming setbacks of adjoining retail uses, and will preserve existing site access and circulation for vehicular and pedestrian users of the subject property and surrounding properties.
- b. The existing non-conforming setbacks of the adjoining retail uses, as well as the existing parking area and vehicular access, are special circumstances that limit the applicant's ability to develop the subject property in accordance with the Neighborhood Business (B-1) zone without adversely affecting the subject property and surrounding properties.
- c. 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 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 dated December 15, 2022.
2. The applicant shall document a cross-access easement for the proposed dumpster location.
3. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, Waste Management and Traffic Engineering prior to occupancy.

Applicant representation – Mr. John DeHart, applicant, was present on behalf of this application.

Board comments – Ms. Carter noted that this application had been postponed from the November 14, 2022 Board of Adjustment meeting. She added that since that meeting, the application had been amended to remove the request for a conditional use permit for accessory drive-through facilities, and only the request for a variance remained. Mr. DeHart confirmed that to be correct.

Action – A motion was made by Mr. Clarke, seconded by Mr. Needham and carried 4-0 (Gross and Tucker absent; Walker late), to **approve PLN-BOA-22-00054: JOHN DEHART** – an amended request for a variance to increase the maximum front yard setback from twenty (20) feet to seventy-six (76) feet in order to construct a retail and office use in a Neighborhood Business (B-1) zone, on property located at 490 Southland Dr., based on Staff's recommendation and subject to the three conditions as listed.

2. **PLN-BOA-22-00063: TERRENCE HICKS** – requested variances to 1) reduce the front yard setback from thirty feet (30') to seven feet (7'); 2) reduce the side street side yard from thirty feet (30') to six feet (6'); 3) reduce the side yard setback from six feet (6') to three feet (3') and 4) to reduce the rear yard setback from twenty feet (20') to ten feet (10') in order to construct a duplex within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 701 N. Upper Street. (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, nor alter the character of the general vicinity. The applicant's proposal is consistent with the location of the previous home on the subject property, and is similar to existing setbacks in the surrounding area.
- b. The restrictive configuration of the lot is a special circumstance that justifies the need for the variance, as the lot is a narrow lot that is bound on multiple sides by existing roadways.
- 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 and prior to construction.

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

1. Construction shall be in accordance with the submitted application materials and updated site plan.
2. The parking area shall be a maximum of 24-feet wide, and shall conform to the location and landscaping requirements of Article 16 and Article 18.
3. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

Applicant representation – Mr. Terrence Hicks, applicant and property owner, was present on behalf of this application. He confirmed that he had seen and read Staff's recommendations and the conditions of approval, and that he agreed to abide by them.

Board comments – Ms. Carter noted that this application had been postponed from the December 12, 2022 Board of Adjustment meeting, to allow the applicant more time to prepare his application. Mr. Hicks indicated that to be true.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 5-0 (Gross and Tucker absent), to **approve PLN-BOA-22-00063: TERRENCE HICKS** – requests for variances to 1) reduce the front yard setback from thirty feet (30') to seven feet (7'); 2) reduce the side street side yard from thirty feet (30') to six feet (6'); 3) reduce the side yard setback from six feet (6') to three feet (3') and 4) to reduce the rear yard setback from twenty feet (20') to ten feet (10') in order to construct a duplex within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone,

on property located at 701 N. Upper Street, based on Staff's recommendation and subject to the three conditions as listed.

3. **PLN-BOA-22-00069: SHAWNA STIGALL** – requested a conditional use permit in order to operate a home-based beauty salon in a Single Family Residential (R-1C) zone, on property located at 809 Carneal Road. (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. The property is of a sufficient size to serve the limited number of clients 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 beauty 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 secondary access door required by the Board of Cosmetology shall be installed on the side of the home, and shall be connected to the driveway by a sidewalk.
5. The conditional use shall become null and void should the applicant no longer reside at this address.

Applicant representation – Ms. Shawna Stigall, applicant and property owner, was present on behalf of her application.

Board comments – Ms. Carter noted that the Board had received a copy of Ms. Stigall's amended site plan prior to the meeting.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 5-0 (Gross and Tucker

absent), to **approve PLN-BOA-22-00069: SHAWNA STIGALL** – request for a conditional use permit in order to operate a home-based beauty salon in a Single Family Residential (R-1C) zone, on property located at 809 Carneal Road, based on Staff's recommendation and subject to the five conditions as listed.

#### **D. Discussion Items**

1. **PLN-BOA-22-00068: HEIDI FRAZIER** – requested a variance to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet 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:

- a. 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.
- b. 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 images of the site plan submitted by the applicant and aerial images of the subject property and nearby residential and commercial properties. He explained that this property had been before the Board previously, in July of 2022, as a result of construction that had taken place on the applicant's fence without a permit. Mr. Crum gave a synopsis of that meeting, at which the Board denied the applicant's request for a variance for a six-foot tall fence in the front yard. He further explained that following the Board's denial of that application for a variance, the applicant filed for an early rehearing request, based on new information she had obtained. At the November 14, 2022 Board of Adjustment meeting, the Board voted to allow the applicant's request for an early rehearing of her request for a variance, resulting in the application before the Board at this time.

Mr. Crum presented Staff's recommendation for disapproval of this application for a variance once again. He also expressed that Staff was not of the opinion that the information submitted by the applicant was sufficient justification to prove special circumstances to warrant approval of the requested variance for the subject property. Mr. Crum added that four foot tall fences are a consistent requirement across residential zones. He mentioned that creating taller fences near active pedestrian corridors may create negative pedestrian experiences.

Applicant representation – Ms. Jessica Winters, attorney, was present on behalf of the applicant. She directed the Board's attention to the overhead screen on which she displayed several aerial images of the applicant's property and properties in the surrounding area. Ms. Winters cited various reasons the applicant believed her application demonstrated special circumstances, based on new information obtained by Ms. Frazier after her application was heard by the Board in July of 2022.

Board questions and comments – Mr. Needham asked what it would look like to have the six-foot fence along the sidewalk on Dellwood Drive. Mr. Crum explained that the setback for the side street side yard would be three feet. He added that the fence could be six feet tall there, but it would have to be three feet off of the side street property line. There was further discussion.

Mr. Clarke opined that a six-foot tall fence along the boundary separating a commercial zone was critical, but he was concerned about setting a precedent. There was further discussion.

Applicant representation – Ms. Frazier also spoke on behalf of her application. She stated that she was willing to move the fence further back onto her property if that was required by the Board. There was further discussion.

Board comments - Ms. Carter mentioned that the Board has reviewed several applications for variances for fences. She added that they often see that there is no proof of a difference in security between a six-foot tall fence and a four-foot tall fence. Ms. Carter asked whether this particular six-foot tall fence is actually adding to the new vagrant activity as it is providing cover by its height.

Applicant rebuttal – Ms. Winters mentioned the brush and overgrowth along the easement, adding that could be what is providing the cover; not the applicant's fence. There was further discussion.

Ms. Plumlee spoke in support of the applicant, stating that she felt that her application demonstrated special circumstances.

Ms. Carter expressed empathy for the applicant's situation. She added that she did not see anything specifically unique enough to oppose Staff's recommendation for disapproval in this particular case. Ms. Carter cited additional reasons for her agreement with Staff's recommendation.

\*Note - The Board took a brief recess at 2:39 p.m. and reconvened at 2:44 p.m.

Action – A motion was made by Ms. Plumlee, seconded by Mr. Walker and carried 4-1 (Carter opposed; Gross and Tucker absent), to **approve PLN-BOA-22-00068: HEIDI FRAZIER** – request for a variance to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet in a Single-Family Residential (R-1C) zone, on property located at 143 E. Lowry Lane, based on the following findings:

- a. Allowing the construction of a six-foot tall fence in the applicant's front yard will not adversely affect the essential character of the neighborhood, because the six-foot fenced area in the front yard is immediately adjacent to the parking lot of a planned commercial development, with a landscape buffer between them. Thus, there are no residences immediately adjacent to the six-foot portion of the fence. There is also a three-foot buffer between the six-foot tall portion of the fence and the closest sidewalk, which will ensure continued walkability around the home.
- b. Allowing the construction of the six-foot tall fence will not negatively impact the public health, safety or welfare or create a nuisance for the residents, because the fence will act as a buffer for the increased intensity from the planned commercial development on adjoining property.
- c. The six-foot tall fence in the front yard is also justified by the special circumstances of the land and will not unreasonably circumvent the zoning requirements in Article 15, because the house is oriented toward E. Lowry Lane, with the largest yard frontage (approximately eighty-seven feet), also on E. Lowry Lane in the western side of the lot, abutting the commercial development. The rear lot faces Dellwood Drive, and that lot is only nine feet deep. Thus, the primary usable portion of the applicant's lot is the portion closest to the commercial development.

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

1. Construction shall be completed in accordance with the submitted application materials and site plan.
  2. All necessary permits and approvals shall be obtained by the Division of Building Inspection prior to completion of construction.
  3. The applicant will not fence the portion of the yard fronting Dellwood Drive.
2. **PLN-BOA-22-00070: BILL ROCK** – requested a variance to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet in a Commercial Center (B-6P) zone, on property located at 400-406 Park Place. (Council District 1)

The Staff Recommended: Disapproval, for the following reasons:

- a. 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 business zones.
- b. 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 structure 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 create a physical barrier along the edge of the parking lot 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 transition point between the industrial, personal service and neighborhood business uses in the immediate area.

Staff presentation – Ms. Jennings directed the Board's attention to the overhead screen on which she displayed aerial images of the subject property and surrounding vicinity. She explained that a variance was needed to allow for the construction of a six-foot tall fence around the parking lot in the front of the building on this property. Ms. Jennings also displayed a copy of the site plan which had been submitted by the applicant. The site plan identified a type of six-foot tall fencing that was allowable at the rear of the property. She stated that the applicant wished to install that fence along the rear of the property and continue it around to the front of the property in order to create a physical barrier to prevent people from cutting through their property. Ms. Jennings explained the reasons for Staff's recommendation of disapproval of this application.

Board questions – Mr. Clarke asked why the type of fence the applicant was considering would have a negative impact on the walkability in the area. Ms. Jennings responded that even though this type of fencing can be seen through; the negative impact is due to the general height of a six-foot tall fence.

Applicant representation – Mr. Bill Rock, applicant, was present on behalf of this application for a variance to allow for a six-foot tall fence. He asked if there had been any letters of opposition to his application from neighbors. Ms. Carter responded that there had not been any letters of opposition. Mr. Rock asked if

anyone on the Staff had been out to see the subject property. Mr. Clarke stated that he had been out see to the property. Mr. Rock explained the current uses for the building on the subject property, and why he was requesting a six-foot tall fence around the property. He cited concerns for the safety and security of his property and tenants.

Board comments and questions – Mr. Clarke expressed his understanding for the circumstances Mr. Rock explained. He asked Mr. Rock if he planned to have a security gate on the property. Mr. Rock indicated that he did not plan to have a security gate. There was further discussion.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke to **disapprove PLN-BOA-22-00070: BILL ROCK** – request for a variance to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet in a Commercial Center (B-6P) zone, on property located at 400-406 Park Place, based on Staff's recommendation.

Discussion on the motion – Ms. Plumlee opined that it was sad to have so much discussion over four-foot tall and six-foot tall fences to keep people out of properties for the reasons previously stated. She added that perhaps changes should be made to the Zoning Ordinance for today's society. Mr. Clarke agreed with Ms. Plumlee's point, and added that the Board is accountable to what the law says.

Action – Following discussion, the motion was voted on and carried 5-0 (Gross and Tucker absent).

3. **PLN-BOA-22-00065: ERFAN M. ALAMI** – requested variances to reduce the front yard setback from twenty (20) feet to zero (0) feet and to reduce the side street side yard setback from twenty (20) feet to zero (0) feet in order to construct additions to an existing non-conforming structure so that a dwelling unit may be provided on the proposed second floor within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 500-502 E. Seventh Street. (Council District 1)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity as the non-conforming commercial use will not be expanded, and the proposed additions will allow for one dwelling unit to be constructed, which is a principal permitted use in the Planned Neighborhood Residential (R-3) zone.
- b. Granting the requested variances should not have an adverse effect on the surrounding area. They will result in construction that will improve the character of the property by giving the structure a more residential-style appearance, and the proposed second story is in keeping with other two-story residential structures in the general vicinity.
- 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 variances. Granting the variances will allow the applicant to utilize the existing structure to make improvements and gain additional income from the proposed dwelling unit.
- d. The granting of these variances 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 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. Additionally, the applicant has applied for the variances as soon as it was determined that they were needed during the permit process, and prior to beginning construction.

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

1. The additions shall be constructed in accordance with the submitted application materials and modified site plan.
2. A landscape planting area shall be incorporated into the site plan along the Shropshire Avenue frontage in order to break up the existing pervious surface, prohibiting illegal parking along the side of the structure. Landscape materials shall be approved by the Landscape Examiner in the Division of Environmental Services.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

Applicant representation – Mr. Timothy L. Washabaugh, applicant's representative, was present on behalf of this application and was sworn in at this time, having arrived late to the meeting.

Action – A motion was made by Mr. Clarke, seconded by Ms. Plumlee and carried 5-0 (Gross and Tucker absent), to **approve PLN-BOA-22-00065: ERFAN M. ALAMI** – request for variances to reduce the front yard setback from twenty (20) feet to zero (0) feet and to reduce the side street side yard setback from twenty (20) feet to zero (0) feet in order to construct additions to an existing non-conforming structure so that a dwelling unit may be provided on the proposed second floor within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 500-502 E. Seventh Street, based on Staff's recommendation and subject to the three conditions as listed.

## **V. BOARD ITEMS**

- A. Election of Officers** - Ms. Carter announced that the Board would now hear nominations for the positions of Chairperson, Vice-Chairperson and Secretary for the upcoming year.

Action – A motion was made by Ms. Plumlee to vote as a slate; to re-elect the current officers to serve a second term in their current positions for the upcoming year. The motion was seconded by Mr. Clarke and carried 5-0 (Gross and Tucker absent), to elect officers as follows for the 2023 calendar year:  
Chair – Raquel Carter; Vice Chair – Chad Needham; Secretary – Harry Clarke.

- VI. STAFF ITEMS** – Ms. Carter asked if there were any items a Staff member wished to present at this time.

There were no Staff items.

- VII. NEXT MEETING DATE** – Ms. Carter announced that the next meeting date will be February 13, 2023 at 1:30 p.m. in Council Chambers, 2<sup>nd</sup> Floor, 200 E. Main St., Lexington, KY 40507.

- VIII. ADJOURNMENT** – There being no further business, Ms. Carter declared the meeting adjourned at 3:12 p.m.

---

Raquel Carter, Chair

---

Harry Clarke, Secretary

The media and public may view the hearing on LexTV Spectrum channel 185, MetroNet channel 3, or via live stream at the following link: [http://lfucg.granicus.com/MediaPlayer.php?publish\\_id=12](http://lfucg.granicus.com/MediaPlayer.php?publish_id=12)

For further information on these matters, or for persons with a disability who may need assistance in order to participate in the above meeting, please contact the Division of Planning, 101 E. Vine St., Lexington, KY, at 859-258-3160.