

MINUTES

**The Lexington Board of Zoning Appeals
Monday, May 20, 2024 – 6:00 p.m.
Community Meeting Room – City Hall
300 East Washington Street**

Board of Zoning Appeals:

Presiding: Jim Gianniny, Chair
Present: Gail MacLeod, Vice-Chair
Alexander Thymmons

City Staff:

Arne Glaeser, Zoning Administrator
Kate Beard, Planning Administrative Assistant

Absent: Robert Hull
Ross Waller

CALL TO ORDER:

Zoning Administrator Glaeser called the meeting to order at 6:00 p.m.

MINUTES:

The minutes from the September 18, 2023 meeting were unanimously approved as presented. (G. MacLeod / A. Thymmons)

NEW BUSINESS:

A. Election of Chair

G. MacLeod moved to nominate J. Gianniny as Chair of the BZA. A. Thymmons provided the second and the motion carried. (3-0)

B. Election of Vice-Chair

J. Gianniny moved to nominate G. MacLeod as Vice-Chair of the BZA. A. Thymmons provided the second and the motion carried. (3-0)

C. BZA 2024-01 – A variance request for the common area of Weatherburn subdivision located at 0 Chamberlain Loop.

1. Staff Report:

This application, submitted by Kathy Hills as President of the Weatherburn Homeowners Association, is a request to allow variances to 1) the number of allowable subdivision entrance signs, and to 2) the maximum allowable height and 3) the maximum allowable display area of said entrance signs. The subject signs are located at the intersection of Chamberlain Loop and Thornhill Road, in the open space for the Weatherburn subdivision at 0 Chamberlain Loop (TM #39-1-6 & TM #39-1-6B). Zoning Administrator Glaeser explained that four signs were constructed without permits: two at the entrance to the subdivision and two at the exit. The signs at the exit have been removed, but the applicant's request is to keep the two freestanding signs at the entrance. Each sign is approximately 6'3" in height and 22.25 square feet in area. However, the Lexington Zoning Ordinance (§ 420-13.7) allows only one freestanding sign per site entrance in the R-1, R-2, R-M and R-LC zoning districts, and a freestanding entrance sign cannot exceed 4 feet in height nor 16 square feet in area. Due to the fact that all four of the subdivision signs were installed without the

required sign permits, there is some uncertainty regarding the construction date of the signs at issue. The applicant maintains the signs were installed 15 years ago, though staff found evidence suggesting they were installed around 2016. The zoning requirements for freestanding signs in the residential zoning districts in 2016 were more restrictive than are the current requirements, though in either case, signs must meet the zoning requirements in place at the time they are permitted and not when they are constructed. After providing the state and city code requirements for the issuance of a variance, Director Glaeser recommended denial of the requested variances. He argued that the requests did not meet all of the variance criteria as required by State code, nor did they meet the standards found in the State definition of a variance.

2. Applicant Statement:

Kathy Hills, 25 Chamberlain Loop, said the HOA was made aware of the entrance sign non-compliance in late November 2023, when copied on a Notice of Violation sent to the former owner of the subdivision open space. Though the HOA attempted to deny acceptance of the property until the outstanding issues were resolved, the conveyance process did not allow for negotiation and the deed conveying the property to the HOA was recorded. Pointing to the fact that Weatherburn was a planned, city approved subdivision whose planning garnered significant attention, she questioned how the signs could have been installed without the required permits. She maintained that there was no evidence that the Weatherburn entrance signs were noncompliant at the time they were installed and should be considered legally nonconforming. She also commented that the length of time that the signs have been in place would indicate that they have not been an issue. She claimed that several other residential developments in the city had signage that does not comply with current sign regulations and asked if those developments would also be required to update their signs.

3. Public Comment:

None

4. Board Discussion & Decision:

Having been asked by G. MacLeod to respond to Ms. Hills' assertion that the signs be considered legally nonconforming, A. Glaeser explained the difference between a legally nonconforming sign and an illegal sign. Given the more restrictive nature of the sign regulations prior to the 2017 zoning ordinance update, he said he did not believe it could be established that the subject signs were legal at the time they were constructed. He then answered a question from A. Thymmons by explaining that he had used a feature of the Rockbridge County GIS system to obtain the dated aerial photographs which indicate the signs were installed circa 2016. J. Gianniny made the observation that the Sixty West subdivision had two signs, though they were smaller than the Weatherburn signs. He said that while he was unfamiliar with the PUD master plan approved in the early 1990's for Sixty West, he was on City Council when the PUD for Weatherburn was approved and there were no signs included in the PUD master plan. He said he found the Weatherburn signs to be attractive, but the challenge was to determine if the requested variances met the multiple criteria required by the State code. He said he believed the request did meet some of the criteria, but not all as required. He specifically cited a failure to prove the first State criteria that the strict application of the zoning regulations "would unreasonably restrict the utilization of the property or that the granting of the variance would alleviate a hardship due to a physical condition relating to the property or improvements thereon at the time of the effective date of the ordinance." **G. MacLeod moved to deny the variances, as requested in BZA 2024-01, to allow variances to 1) the number of allowable subdivision entrance signs, 2) the maximum**

allowable sign height, and 3) the maximum allowable display area of said entrance signs for Tax Parcels 39-1-6 & 39-1-6B. A. Thymmons seconded, and the motion passed unanimously. (3-0)

OTHER BUSINESS

None

ADJOURN:

The meeting adjourned at 6:33 pm with unanimous approval. (G. MacLeod / A. Thymmons)

J. Gianniny, Chair, Board of Zoning Appeals