

**UNION BOARD OF ADJUSTMENT
BUSINESS MEETING
DECEMBER 5, 2023
6:00 P.M.**

Mr. Terry Kidwell called the meeting to order at 6:00 P.M.

BOARD MEMBERS PRESENT:

Mr. Terry Kidwell
Mrs. Karen O'Sullivan
Mr. George Eldridge

STAFF MEMBERS PRESENT:

Mr. Steven C. Lilly, Planner
Mr. Todd K. Morgan, AICP, Senior Planner
Mr. Michael Schwartz, Zoning Administrator

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

APPROVAL OF MINUTES

Mr. Kidwell stated the Board received copies of the minutes of the Union Board of Adjustment meeting of November 13, 2023. Mr. Eldridge moved to approve the minutes as written and Mrs. O'Sullivan seconded the motion. Mr. Kidwell called for a vote and it carried unanimously.

ELECTION OF OFFICERS

Mr. Wilson stated the Board needed to have a Chairperson, Vice-Chairperson, and Secretary per the Kentucky Revised Statutes. Mr. Kidwell asked what the Board wanted to do? After some discussion, the Board decided Mr. Kidwell would be Chairman, Mrs. O'Sullivan would be Vice-Chairwoman, and Mr. Eldridge would be the Secretary. Mrs. O'Sullivan made a motion to accept the officers as stated and Mr. Eldridge seconded the motion. Mr. Kidwell called for a vote and it carried unanimously.

ACTION ON REVIEWS

Mr. Morgan stated the Board was going to hear the second item on the agenda first because the entire applicant's team for the first agenda item was not present yet.

2. **Request of 9541 US 42, LLC, per Thomas J. Ackerman, on behalf of the City of Union, per Mayor Larry Solomon for an Appeal of the Zoning Administrator's decision. The applicant is appealing the Zoning Administrator's decision as to whether a change of design constitutes a major or minor change to an existing approved Concept Development Plan. The approximate 16.3 acre site (Lot 25 of**

Union Promenade) is located along the west side of Union Promenade and south of the Villas of Fowler Creek, Union, Kentucky. The parcel is zoned Union Commercial/Union Neighborhood Office/Urban Residential Two/Planned Development/ Concept Development Plan (UC/UNO/UR-2/PD/CD).

Mr. Michael Schwartz presented the Staff Report and his PowerPoint presentation. He added he had received an email from the Chair of the Villas Creek Home Owners Association after the Staff Report was finalized and it's part of the record (see Exhibit 1). The email indicates the H.O.A. has no concerns with the proposal and would support the request as a minor change.

Mrs. O'Sullivan asked if approving the application would set some kind of precedent? Mr. Schwartz responded it would not.

Mr. Eldridge asked why the change was proposed? Mr. Schwartz said they had some issues with grading. He added there was a more thorough explanation in the Staff Report.

Mr. Eldridge asked if a 25% increase in the number of units was proposed? Mr. Schwartz responded that a 25% increase is proposed to the attached single-family units (from 12 to 16 units) but the number of multi-family units has been decreased from 300 to 284 units.

Mr. Kidwell asked if anybody in the audience wanted to speak for or against the application? There was no response.

Mr. Kidwell said he believes the Staff determination should be followed because the applicant is changing the ballgame. He believes the request is a major change. He believes the City of Union should analyze the request through the Change in Approved Concept Development Plan application process. Mrs. O'Sullivan said she agreed with Mr. Kidwell and the Zoning Administrator. Mr. Eldridge said he agreed.

Mrs. O'Sullivan made a motion to affirm the Zoning Administrator's decision and Mr. Eldridge seconded the motion. Mr. Kidwell called for the vote and it carried unanimously.

- 1. Request of Holthaus Lackner Signs for three Variances. The Variances are to increase the height and square footage of the monument sign and to increase the square footage of two building mounted signs. The approximate 2.01 acre parcel is located at 9520 Union Promenade, Union, Kentucky. The parcel is zoned Union Commercial/Union Neighborhood Office/ Urban Residential Two/Planned Development/Concept Development Plan (UC/UNO/UR-2/PD/CD).**

Mr. Kidwell said the Board tabled the requests for the monument sign last month. Mr. Wilson stated a motion needed to be made to lift the applications from the table before getting into the merits. Mrs. O'Sullivan made a motion to lift the applications from the table and Mr. Eldridge seconded the motion. Mr. Kidwell called for the vote and it carried unanimously.

Mr. Wilson said Mr. Kidwell was not present at the last meeting so he should state if he was able to familiarize himself with the record from the last meeting. Mr. Kidwell said he

reviewed the Staff Report and last month's meeting minutes so he is up to speed on the requests.

Staff Member, Steve Lilly, reviewed his PowerPoint presentation. He noted that the PowerPoint included some new illustrations that the applicant prepared. One of these shows the monument sign that would be permitted by the Union Town Plan. The second one shows the sign they are proposing and how it would be visible above the fence.

Mrs. O'Sullivan said she thought the sign was going to be outside the fence. Mr. Kidwell asked if the sign was proposed where the pedestal is now? Mr. Tim Kling, Director of Real Estate for United Dairy Farmers, said that was correct. They will have a smaller sign with manually changeable prices and ground illumination when the store opens this Friday. They are requesting the larger sign so it will be visible above the fence and to eliminate staggering the fence around the sign. The developer will also be seeking a Special Sign District to allow the sign to have other features which are currently not permitted. Mr. Kidwell asked if the proposed sign would fit the pedestal that is there now. Mr. Kling said the footing was made big enough to support the proposed sign. They will also need to add more brick.

Mrs. O'Sullivan asked if the Union Town Plan sign code only applied to this side of US 42? Mr. Lilly replied that it applied to entire Union Town Plan limits. She said Kroger has a nice brick sign that sits out by the road. Mr. Lilly said a sign location was shown at the last meeting but a couple things impacted that location. The first is a utility easement near US 42 and the second is the white fence they want to construct. As a result, the sign location has been moved further back than originally shown. Mr. Kling agreed and said the utility easement pushes the sign further into the site. This creates a hardship challenge to make the sign visible.

Mr. Eldridge asked if the original thought was to run the fence behind the sign? Mr. Kling said that was correct and added they decided against it because they felt it wouldn't be attractive to have to fence stagger in and out around the sign. They felt it would be much more attractive to make the sign taller and add nice landscaping around the base. He referred to a PowerPoint to show what the sign, fencing, and landscaping would look like.

Mrs. O'Sullivan asked if the monument sign would be illuminated like the signs on the building. Mr. Kling said this Board can only act on dimensional variances. Their plan is to construct the sign as presented and illuminate it from the ground. The developer will be submitting a Special Sign District application shortly for the entire subdivision and it will ultimately be acted on by the City of Union. That proposal will seek approval to allow the sign to be internally illuminated. It will also seek digital price panels that can be changed from inside the store. Mrs. O'Sullivan asked how long that process takes? Mr. Morgan replied about 5 months from the time the application is submitted.

Mrs. O'Sullivan said people are already complaining about the brightness of the red signs from across the street. She drove down US 42 last night and was surprised how far away the building mounted signs could be seen. She asked if there was a time that the store would turn off their lighting. Mr. Kling said a lot of times they will open a new store 24

hours a day and 7 days per week and see how things go. Staffing continues to be an issue though and a lot of store close between midnight and 1:00 A.M. Canopy lights and the monument sign would be shut down but safety illumination would be kept on around the lot.

Mr. Kidwell asked if anybody else in the audience wanted to speak for or against the request. There was no response.

Mrs. O'Sullivan said she has a problem with the request. She feels that they would be setting a precedent for everyone in the development. Mr. Kidwell said the Board is only looking at this one monument sign. Mr. Morgan added the Board needs to analyze each submitted application based on its own merits. Mr. Kidwell said he believes the fence creates a hardship for UDF. It does not mean a precedent is being set. Mrs. O'Sullivan said she doesn't think Union should have the same types of signs that Florence has. Mr. Eldridge said this sign is a low monument sign. Mr. Kidwell agreed and added the public will see signs.

Mr. Kidwell made a motion to approve the variance requests for the monument sign and Mr. Eldridge seconded the motion. Mr. Kidwell asked for a roll call vote and Mr. Kidwell and Mr. Eldridge voted 'yes' and Mrs. O'Sullivan voted "no". The motion carried 2-1.

3. Request of Riegler Blacktop, Inc. for a Conditional Use Permit. The Conditional Use Permit is to allow the Union Pet Hospital to construct a parking lot addition. The 0.8125 acre site is located on the west side of Old Union Road and immediately to the north of 9842 Old Union Road, Union, Kentucky. The parcel is zoned Agricultural Estate/Union Town Overlay (A-2/UTO).

Mr. Todd Morgan presented the Staff Report and PowerPoint presentation.

Mr. Eldridge asked how many parking spaces were currently on-site? Mr. David Taylor, with Riegler Blacktop, replied 26. The business employs 8 doctors and 24 other Staff members. Double parking can occur with customers. The 36 proposed spaces would eliminate the parking shortage because it would allow the doctors and other Staff to park in the new lot. Mr. Morgan asked if the 8 doctors and 24 staff members all work at the same time. Mr. Taylor replied that they come and go. He added that the existing topography would be used. There may be times where water backs up into the lot since the site is located in the flood plain. He believes the parking condition will get worse as the population and business grows.

Mrs. Sullivan asked why Staff thinks 20 spaces is okay. Mr. Morgan said he thinks the new parking lot should be limited to 20 stalls if the Board approves the request. He added that this area was originally laid out as greenspace in Westbrook Estates but it's separated from the rest of the subdivision by the creek. The Board needs to analyze if the proposal is appropriate. Union Pet Hospital clearly has a parking problem. The proposed lot would be well buffered by existing trees that would be retained. Mr. Taylor agreed and said they want to preserve as many trees as possible.

Mrs. O’Sullivan asked how much lighting was proposed? Mr. Taylor replied two light poles were proposed. Mr. Morgan asked if he was okay with his lighting recommendations? One of them would limit the poles and fixtures to 15’. Mr. Taylor said he wasn’t sure until an analysis could be done by a lighting consultant. Mr. Morgan said he is trying to eliminate impacts on the neighbors. Mr. Morgan asked if the lights would be on all night or if they are on a timer? Mr. Stan Hastings, property owner, said the existing and proposed lights would be on a timer. They currently turn off at 11:00 P.M.

Mr. Kidwell asked if anybody in the audience wanted to speak for or against the request?

Ms. Jill Charles said she lived at 9105 Diamond Trace in the back of Westbrook Estates. She understands that the parking lot is an accessory use to the pet hospital. The existing pet hospital is great but it doesn’t mean that this expansion is right. The parcel was designated as green space in the 2000 Union Town Plan. It contains natural vegetation and is in a flood plain. It serves as a wildlife habitat, storm water controller, and a buffer. A parking lot is about the worst thing you could put on an area that is forecasted for green space. There will be increased storm water runoff and it will contain pollution from vehicles and pet feces. She believes elected officials should protect land that is designated as greenspace and the application should be denied. However, she believes the application will be approved and would ask that appropriate conditions be imposed. She asked if a study could be done to verify that the runoff will be no more than it is now? She realizes that only 35 parking spaces are proposed but this a green area within a flood plain. She would recommend that the parking lot be limited to 20 stalls if the application is approved. She believes that lighting should be provided and it should be on all night. There will be a lot of foot traffic this part of Union in the future. It would be easy for people to park in this lot at night and be isolated from view. The lighting will stop people from loitering in the parking lot. She would also like to see a fence to stop people from accessing homes in Westbrook Estates.

Mr. Taylor said he doesn’t believe a fence will do anything because there is a creek to the rear of the property. Nobody will cross the creek to get to Westbrook. They have done everything they can to minimize impacts and make a successful business function.

Ms. Charles asked if there is a particular type of material that could be used that would absorb water? Mr. Kidwell said there proposal is for blacktop and he believes that is the safest thing that can be used.

Mrs. O’Sullivan asked about the existing runoff. Mr. Taylor said it all runs towards the creek. He said they will be required to analyze storm water once they submit plans to Boone County Planning Commission to construct the parking lot.

Mr. Eldridge asked for confirmation that there is existing 10’ drop off from one side of the property to the other and that it would remain that way if the parking lot was constructed. Mr. Taylor agreed.

Mr. Kidwell asked the audience if they have observed flooding in the area. Mr. Zachary Long said he lives behind the Union Pet Hospital on Rainbow Terrace. He has seen water

come up into the parking lot with heavy rains. He also once saw a dumpster from a restaurant moved down the creek once in the 9 years he has lived in his home. He has no concerns with people crossing the creek and getting onto his property. His biggest concerns are preserving the trees and the lighting. He takes his dog to this business and has experienced the parking problem.

Mr. Kidwell asked how many parking spaces were proposed. Mr. Taylor responded 36 spaces exist but there are 32 employees. Mr. Morgan said he was interested to know how many employees could be present at the same time. Mr. Hastings said he never thought about that. He just knows they are filling up every parking spot. Mr. Morgan said the question is does the business really need 36 more parking stalls. Has there ever been a scenario where they were 36 spaces short? Mr. Hastings said they could need more parking in the future and Mr. Morgan replied they would have the right to come back to the Board again. Mr. Morgan said his perspective is that they are in an environmentally sensitive area and a lot of parking is being proposed in the floodplain. The flow to the creek will increase once the impervious surface is added. Mr. Kidwell agreed. Mr. Hastings said they want to build the lot to meet their future needs. Mr. Morgan said they haven't demonstrated that 20 additional stalls will not meet their needs. The applicant has the right to come back later with another request if the Board doesn't approve all 36 stalls. Mr. Kidwell said they will have 46 stalls if the Board allows 20 additional stalls. Mr. Morgan said he really needs to know how many vehicles are illegally parked in the parking lot at any time. Mr. Hastings said he believes they can get by with 20 additional spaces for the next two years but he isn't sure beyond that. The building is two stories and they are expanding upwards. He doesn't see how 20 stalls is significantly different than 36. They are only taking out 1 tree and are trying to be environmentally sensitive. Mr. Taylor said there will be additional costs if the build 20 stalls and come back later to ask for 16 more.

Mrs. O'Sullivan asked Staff for their opinion. Mr. Wilson reminded the Board that it was their decision to make. Mr. Kidwell said his thought was that the additional blacktop will speed up the storm water flow and could cause erosion. He would rather approve 20 and look at this issue again if needed. The Board cannot go back if they grant approval for all 36 stalls. This could cause problems for people that live in the area.

Mr. Eldridge said he has seen flooding issues at Florence Promenade. This project seems miniscule to that project. This is a tough decision.

Mr. Taylor indicated they could install stone or geo mats at the end of the parking lot to slow the water down and mitigate erosion. Mr. Morgan added that all the storm water issues will be analyzed by the Planning Commission's Engineer when a Major Site Plan application is submitted for review.

Mr. Morgan said the Board does not have to go with his recommendations. They can go with whatever parking stall number they feel is appropriate. Mr. Hastings indicated that he anticipates having 10 doctors in the next 5 years. There are usually 3-5 Staff people for each doctor.

Mrs. O’Sullivan said they should go with roughly 18 parking stalls. Mr. Kidwell said 36 seems awfully high to him. They can always come back to this Board if the business grows. Mr. Eldridge thinks they should approve 20 stalls at a minimum. Mr. Morgan said he would recommend setting a maximum number so he can enforce the conditions.

Mr. Eldridge made a motion to approve the request with the following conditions:

1. A maximum of 20 parking spaces shall be permitted on the 0.8125-acre parcel.
2. The parking lot shall only be used by customers or employees of Union Pet Hospital, or any future business located at 9842 Old Union Road.
3. Accessory structures, outside storage, trailer storage, etc. shall be prohibited on the 0.8125-acre parcel.
4. The preserved tree lines along the northern, eastern, and western property lines shall generally comply with the submitted Concept Plan.
5. The two light poles and fixtures shall meet the following requirements:
 - Maximum height – 15 feet.
 - Fixture Orientation - Downwards and inwards towards the proposed parking lot.
 - Footcandle measurements shall comply with the requirements of the Boone County Zoning Regulations.

Mrs. O’Sullivan seconded the motion. Mr. Kidwell called for the vote and it carried unanimously.

OTHER

No other business was discussed.

ADJOURNMENT

Mr. Eldridge made a motion to adjourn the meeting and Mrs. O’Sullivan seconded the motion. The meeting was adjourned by unanimous consent at 8:32 P.M.

APPROVED

Mr. Terry Kidwell

ATTEST:

Todd K. Morgan, AICP
Senior Planner

Exhibits

1. Email from the Chair of the Villas Creek Home Owners Association