



432 S Broadway Suite 2B - Lexington, KY 40508

859.309.4659 - jessica@thewinterslawgroup.com

www.thewinterslawgroup.com

**SENT VIA EMAIL AND
U.S. MAIL**

October 22, 2020

Division of Planning,
Board of Adjustment
LFUCG
Phoenix Building – 7th Floor
101 E. Vine Street
Lexington, KY
40507

Re: Appeal of Issuance of Building/Paving Permit, BLD-PAV-20-000627

Dear Board of Adjustment:

I write on behalf of my client, the Southern Heights Neighborhood Association (“SHNA”), which is filing this Appeal pursuant to Article 7-6(e) of the LFUCG Zoning Ordinance (“Zoning Ordinance”) as a party that has been aggrieved by an official action of the Division of Building Inspection in the enforcement of this Zoning Ordinance. Specifically, SHNA seeks review of the decision of the Division of Building Inspection to issue a paving permit, BLD-PAV-20-000627 on October 7, 2020 to Asphalt Paving and Maintenance (the “Applicant”) authorizing paving at 2020 and 1950 Nicholasville Road (the “Subject Properties”). Importantly, the work in question was performed before the application seeking this permit was even filed, and well in advance of the permit being issued.

Both Properties are owned by Great Financial Bank, and are occupied by U.S. Bank. Both Properties are zoned P-1. The Paving Permit at issue authorizes the continuation of work being performed by Asphalt Paving and Maintenance to connect the two properties by removing landscaping and a brick wall separating the properties and paving a rear portion of the properties and essentially creating an access road behind the buildings on each property stretching from Jesselin Drive through to Edgemoor Drive. Building Inspection issued the permit without

requiring the Applicant or Owner to file the proper applications that would have triggered the review and opportunity for notice and public comment required by the Zoning Ordinance. SHNA respectfully requests the BOA to determine that the Paving Permit be revoked and the area at issue restored to its previous state. As required by Article 7-(e), notice of this Appeal has been provided to all parties of record by mailing a copy of this Appeal Application, postage prepaid.

The Subject Properties are both zoned P-1; importantly however, the parcels have not been consolidated into a single Development Plan. The Property located at 1950 Nicholasville Road contains a residential structure historically used as administrative offices for U.S. Bank. Currently, the building appears to be unoccupied and used for storage. The property includes parking in the front of and behind the structure, and two entrances via driveways off Edgemoor Drive. 1950 Nicholasville Road is separated from 2020 Nicholasville Road by a 4-foot-high brick wall that runs the length of the property, with a sidewalk connecting the two properties on the west end of the wall. The property located at 2020 Nicholasville Road contains a US Bank branch with parking along the side of the building and in the rear, and entrances from both Jesselin Drive and Nicholasville Road. Two drive-through teller windows and a 24-hour ATM are located along the back side of the structure.

On September 11, 2020, SHNA members James Andrew Mead and Pace Cooke Emmons noticed that the brick wall separating the parking lots of the Subject Properties was being removed by the Applicant. The Applicant had already begun paving the opening, essentially creating a service road along the rear of the Subject Properties stretching from Jesselin Road through to Edgemoor Drive. This pass-through creates an additional exit for the property at 2020 Nicholasville Road, allowing traffic from the drive-through teller windows and ATM at the US Bank Branch at 2020 Nicholasville Road to continue through to the adjacent parcel and exit onto Edgemoor Drive, a local, residential street. Prior to the creation of this new exit and pass-through, traffic leaving the drive-through teller windows and ATM at the US Bank branch at 2020 Nicholasville Road circled around that building to the exit onto Nicholasville Road. The access road also allows traffic traveling on Jesselin Road (a minor arterial road) to cut through to Edgemoor Drive.

That same day, Ms. Emmons complained to the Office of Building Inspection that a paving project was underway at the Subject Properties without a required permit. By the end of the day on September 11, 2020, the new opening was paved, and concrete curbs had been poured. Applicable regulations require a permit for new paving, and no permit had been sought or obtained.

On September 14, 2020, city inspectors visited the Subject Properties and ordered that work on the cut-through be stopped. Inspectors further directed that barriers be placed to prevent the new exit from being used.

On September 28, 2020, SHNA complained in writing by letter directed to Jeff Neal, the Director of the LFUCG Division of Traffic Engineering, and requested that no permit authorizing the work in question be issued. In support of this request, SHNA argued that the residents of the Neighborhood would be adversely impacted by the additional traffic the access

road and new exit for 2020 Nicholasville Road would generate because Edgemoor Drive is a neighborhood street with no sidewalks. Additional traffic resulting from this cut-through will cause health and safety problems that have not been adequately assessed or ameliorated in connection with the project.

A Building Permit authorizing the paving was issued by Building Inspection on October 7, 2020 – after the work on the project had been substantially completed.

The construction of the access road cut-through combines the Properties and extends the impact of the drive-through teller windows and 24-hour ATM located at 2020 Nicholasville Road onto and through the property located at 1950 Nicholasville Road. Although both properties are zoned P-1, drive-through teller windows are only allowable in the zone as a conditional use with BOA approval. See Zoning Ordinance, Article 8-15(d)(1). This means that before the parcels are consolidated in this manner, extending the impact of the drive-through uses to the property at 1950 Nicholasville Road, a request for approval of the plans should have been submitted to the BOA and a public hearing should have been held on the request.

The P-1 zone furthermore requires a minimum side yard of twelve feet. See Zoning Ordinance, Article 8-15(f). The creation of a pass-through access road connecting 2020 Nicholasville Road and 1950 Nicholasville Road eliminates the side yard of the subject properties and impermissibly consolidates the two parcels without the required authorization.

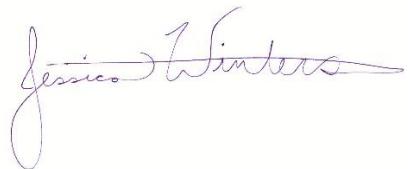
In addition, the Subject Properties were originally zoned residential, and the zoning was changed only through applications for map amendments. When the application was filed to change the zone to P-1 at 2020 Nicholasville Road, the applicant also submitted a request for a variance or exception to operate a drive-through bank on the property. The Division of Planning Services recommended approval of the variance/exception subject to the condition that all access to the property had to be approved by the City Traffic Engineer and the State Highway Department. A development plan was required in connection with both the zone change requests, and the Subject Properties are therefore subject to the requirements of Article 21 governing development plans and changes to development plans.

Article 21-7 of the Zoning Ordinance states that amendments to approved development plans can be made only by official Planning Commission action in a public hearing unless the amendments qualify as “minor amendments” as that term is defined by the Zoning Ordinance. The Ordinance specifically states that a minor amendment “shall not change the location or cross-section of any street and shall not increase the number, or change the location of street access points.” Id.at Art. 21-7(a)(4). The Ordinance further states that a minor amendment “shall not decrease the overall land area in yard, or other open spaces.” Id.at Art. 21-7(a)(1). As set forth above, the work in question not only decreased the overall land area in the yard and other open spaces, but also increased the number of access points to the property located at 2020 Nicholasville Road. As such, an application for amendment of the development plan relative to both 1950 and 2020 Nicholasville Road, accompanied by consideration by the Planning Commission in a public hearing, should have been filed and properly approved prior to the issuance of any permit authorizing the work.

Based on the foregoing, and in accordance with this Board's authority set forth in Article 7-6(a) relating to conditional uses, SHNA requests the Board to revoke the offending paving permit and order the closure of the access road and restoration of the wall and landscaping between the Subject Properties. See Article 7-6(a)(1)(“[T]he Board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.”).

I look forward to receiving a time and date of the hearing relating to this appeal. Please let me know if you need additional documentation.

Sincerely yours,

A handwritten signature in black ink that reads "Jessica Winters". The signature is fluid and cursive, with "Jessica" on the left and "Winters" on the right, connected by a line.

Jessica K. Winters, Esq.

Cc: Southern Heights Neighborhood Association, Parties of Record