

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

May 19, 2017

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.

II. **APPROVAL OF MINUTES** – The Chair will announce that the minutes of the April 28, 2017 meeting will be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

B. **Variance Appeals**

1. **PLN-BOA-17-00024: WESTON LYONS** – requests a variance to reduce the required setback of a 6-foot tall fence (to replace an existing 4-foot fence) in a side street side yard in a Single Family Residential (R-1C) zone, at 345 Dudley Road (Council District 5).

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. Similar situations exist in the area and the existing landscaping will be maintained, preserving the streetscape.
- b. Strict application of the Zoning Ordinance would create a visually awkward circumstance by creating a gap between the retaining wall and fence. This would also reduce the amount of usable back yard space for the applicant.
- c. Due to the location of the existing retaining wall the 6' fence will be situated about 3' back from the sidewalk, thereby satisfying the intent of the Zoning Ordinance.

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

1. The fence shall be constructed in accordance with the submitted application and site plan.
2. The applicant shall obtain a fence permit from the Division of Building Inspection prior to installation of the fence.
3. The applicant shall maintain the existing landscaping between the fence and sidewalk.

2. **PLN-BOA-17-00031: ROMANY ROAD IGA SUPERMARKET** – requests a variance to reduce the minimum required front yard from 10 feet to 4.5 feet in a Neighborhood Business (B-1) zone, at 344 Romany Rd. (Council District 5).

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The proposed use is appropriate to the vicinity and will utilize a currently vacant property.
- b. Strict application of the Zoning Ordinance would prevent the expansion of the existing building due to the existing configuration of the building and parking areas.

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

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Certificate of Occupancy, prior to opening the facility.

C. **Conditional Use Appeals**

1. **PLN-BOA-17-00016: IMMANUEL BAPTIST CHURCH** – requests an amended conditional use permit to expand the on-site parking; and a variance to reduce the minimum setback from 40 feet to 18 feet at in a Single Family Residential (R-1B) zone, at 3100 Tates Creek Road (Council District 5).

Based on a recently submitted amended site plan (dated May 3, 2017) that eliminates the necessity of a variance, the following revised findings and conditions for **Approval** are recommended:

Finding:

- a. Granting the requested amended conditional use permit to expand the parking lot should not adversely affect the subject or surrounding properties, provided that storm water management requirements are met.
- b. All necessary public services and facilities are or will be available for the proposed use.

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

1. The new parking areas shall be established in accordance with the submitted application and site plan.
 2. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
 3. An updated storm water management plan shall be implemented as part of the parking lot expansion. This plan, subject to acceptance by the Division of Engineering, shall address existing drainage problems in the immediate area, as required by the adopted Engineering Manuals.
 4. Any outdoor play area (in association with a child care use), of at least 25 square feet per child, shall be fenced and screened as required by the Zoning Ordinance.
 5. All parking areas shall be landscaped in accordance with the provisions of Article 18.
2. **PLN-BOA-17-00021: NEWTON'S ATTIC, LLC.** – requests a conditional use permit to construct and occupy an additional building as a school for academic instruction, expanding the existing use, in the Agricultural Rural (A-R) zone, at 4974 Old Versailles Road (Council District 12).

(The above application has been withdrawn via email on 5/8/17)

3. **PLN-BOA-17-00023: FAIRHAVEN BAPTIST CHURCH** – requests a conditional use permit to expand the existing church in an Agricultural Urban (A-U) zone, at 2265 Liberty Road (Council District 6).

The Staff Recommends: **Postponement**, for the following reasons:

- a. The proposed addition does not comply with Article 8-4(i), which requires a minimum side yard of 25 feet. The proposed addition should be redesigned to meet the requirements of Article 8-4(i), or a variance must be requested to decrease the required side yard.
4. **PLN-BOA-17-00027: WILLIAM CRANK** – requests a conditional use permit to operate a cocktail lounge in order to allow the applicant to serve beer by the glass in a bicycle shop in a Neighborhood Business (B-1) zone, at 439 Southland Drive (Council District 11).

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

- a. Serving just beer by the glass as an accessory use should not adversely affect the subject or surrounding properties, nor should it disturb the adjoining property owners, as no significant increase in traffic is anticipated and live entertainment will not be provided.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to opening the facility.
2. Any signage for the bicycle shop shall not include any reference to a cocktail lounge or the serving of beer.
3. Alcoholic beverages other than beer and wine shall not be served.
4. The facility shall function as accessory to the bicycle shop, and shall not be open for the sale of alcoholic beverages outside of the normal operating hours for the bicycle shop, which are 10 am to 6 pm Monday-Friday and 10 am to 5 pm Saturday.
5. The conditional use for serving alcoholic beverages shall immediately cease upon the changing of ownership, or the primary operator, of the facility.
6. Should the operator decide that the sale of alcoholic beverages become the primary use for the property, the applicant shall return to the Board of Adjustment to evaluate the appropriateness of a full-fledged cocktail lounge and to address potential requirements for additional parking.

D. Administrative Reviews

1. **PLN-BOA-17-00026: COHEN BROTHERS** - an administrative appeal to change the use on the property from one legal non-conforming use (scrap iron storage) to another legal non-conforming use (junk yard) in a Light Industrial (I-1) zone, at 757 East Seventh Street (Council District 5).

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

- a. The proposed non-conforming use is in the same classification as the current legal non-conforming use and will not result in a more intense use of the property than the current use. Additionally, the proposed use should be less noisy than the current use.
- b. The property is a mostly interior lot, with little street frontage, so the proposed change in use will have little

effect on the character of the surrounding neighborhood.

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

1. The facility shall be developed in accordance with the submitted application and site plan.
 2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Certificate of Occupancy, prior to opening the facility as proposed.
 3. The facility shall be operated Monday through Friday from 8 am to 5 pm, as specified in the submitted application.
 4. Any outdoor pole lighting shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing nearby residential properties.
 5. All fluids shall be drained from vehicles when they arrive on site in a designated "pre-treatment" area.
 6. All activities associated with the operation of the pull-apart junk yard use shall be limited to the subject property and shall not spill over onto the adjacent properties sharing the same owner.
2. **PLN-BOA-17-00028: RODNEY D. & SEAN MCMULLIN** - an administrative appeal to determine that applying eyelash extensions is a permissible home occupation and is not equivalent to a beauty parlor; and a conditional use permit for a home occupation (application of eyelash extensions) in a Planned Neighborhood Residential (R-3) zone, at 2111 Patchen Lake Lane (Council District 6).

The Staff Recommends: **Disapproval**, for the following reasons:

- a. Application of eyelash extensions is a service that is typically provided at a beauty parlor. As such, it is appropriate to consider the application of eyelash extensions as substantially similar to a beauty parlor, which is first permitted on a limited basis in the Professional Office (P-1) zone, and is specifically excluded from consideration as a home occupation by Article 1-11 of the Zoning Ordinance.
- b. Application of eyelash extensions is a service that, if done as a home occupation, would require that individuals desiring this service travel to a home. Customers traveling to and from the applicant's home would potentially disrupt the neighborhood with increased traffic, and would be contrary to the intent of the Zoning Ordinance's regulation of home occupations.

- IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.
- V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be June 30, 2017.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.