

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

August 25, 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 July 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. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

C. **Variance Appeals**

1. **PLN-BOA-17-00046: JEFF GRAVES** - requests a variance to increase the allowable width of a driveway from 10 feet to 21 feet at a property within the defined Infill & Redevelopment Area in a Single Family Residential (R-1E) zone, at 509 Marquis Ave. (Council District 3).

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

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to installation of the driveway.
- b. The site is located within the Infill and Redevelopment area, which generally has more restrictive requirements regarding the amount of allowable paving and parking areas. Additionally, the subject property is located near the University of Kentucky campus, and creating a precedent to allow non-compliant paving would have negative impact on the character of the general vicinity.
- c. There is a substantial and recently improved parking area to the rear of the home, and temporary parking of medical personnel in a 10' wide driveway at the front of the home is feasible.

2. **PLN-BOA-17-00055: DEAN SKARVAN** – requests variances to reduce the side yard setback from 25 feet to 5 feet; and the front yard from 100 feet to 65 feet to construct an accessory building (workshop/garage) in the Agricultural Rural (A-R) zone, at 4224 Leestown Road (Council District 12).

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

- a. Granting the requested variances should not adversely affect the public health, safety, or welfare, since the 65' front yard is 25' more than typically required for a similarly sized and configured lot in the R-1A zone, and the 5' side yard is at least a few feet more than the 18" setback that is normally required for accessory buildings. The proposed accessory structure will also provide safer access than the existing accessory structure.
- b. Granting the requested variances should not have much effect on the character of the general vicinity. The subject property is located in a rural area where there is little uniformity in the character of the nearby properties.
- c. The slope of the property and location of a propane line and a septic field are special circumstances that at least to some extent justify the proposed location of the building.

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

1. The accessory structure shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.

3. **PLN-BOA-17-00056: JITENDRA AND NELAMBEN PATEL** - request a variance to reduce the required front setback for additional paved parking from 6 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, at 3877 Mooncoin Way (Council District 4).

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

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to installation of the driveway and parking area.

- b. The subject property is located within a new developing subdivision, and creating a precedent for forgiveness of noncompliance could have lasting effects on the neighborhood's development.
 - c. The site does not have special circumstances that justify the need for a variance. There appears to be sufficient space for a compliant parking area alongside the residence, which negates the need for the variance.
4. **PLN-BOA-17-00058: LESTER STUDER** - requests a variance to reduce the front setback from 6 feet to 0 feet for an additional paved area in a Single Family Residential (R-1C) zone, at 3407 Greentree Rd. (Council District 8).

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

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to installation of the driveway and parking area.
 - b. The site does not have special circumstances that justify the need for a variance, and there appears to be sufficient space for a compliant parking area.
5. **PLN-BOA-17-00059: DENNIS ANDERSON INV 1700 LLC.** – requests a variance to increase the allowable front yard setback from 20 feet to up to 67 feet in a Neighborhood Business (B-1) zone, at 124 Louie Place (Council District 2).

The Staff Recommends: **Approval** to increase the allowable front yard setback from 20 feet to 53 feet, for the following reasons:

- a. Granting the variance will not adversely affect the public health, safety, or welfare. The variance will allow for safe shared use of the existing access easement.
- b. The variance request does not attempt circumvention of the provisions of the Zoning Ordinance. The increased setback is appropriate based on the use of the property. An accessory drive-through facility was approved by the Planning Commission on the development plan. The increased setback allows for use of the shared access and accommodates two-way traffic throughout the parking area. With a 20' setback and a drive-through, configuring the circulation through the site would be quite challenging.

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

- 1. The building shall be constructed in accordance with the approved Final Development Plan, or as that plan is amended to address design requirements of the Divisions of Engineering, Traffic Engineering, or Building Inspection.
- 2. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- 3. Action of the Board shall be noted on the Final Development Plan for the subject property.

D. **Conditional Use Appeals**

1. **PLN-BOA-17-00057: BEHRS & DAWGS, LLC.** – requests a conditional use permit to allow indoor and outdoor live entertainment and dancing accessory to a cocktail lounge; and a variance to reduce the required setback of such a use from a residential zone from 100 feet to 30 feet within the defined Infill & Redevelopment Area in a Neighborhood Business (B-1) zone, at 385 South Limestone (Council District 3).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided the applicant complies with appropriate measures, as recommended. These include restrictions on the days, hours, and amplification of the entertainment.
- b. All necessary public facilities and services are available and adequate for the proposed live entertainment conditional use.
- c. Granting the requested variance will not adversely affect the public health, safety or welfare. It will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public provided there are limits on the hours of operation and amplification is prohibited. No physical change or expansion of the existing building is required or proposed by the applicant to accommodate this use.
- d. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because, although the residential zone is closer to the proposed use than 100', the nearest residential structure is over 100' away.

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

- 1. The use shall be conducted in accordance with the submitted site plan and as further regulated below.
- 2. 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 establishing the use.
- 3. Amplified music/entertainment shall be limited to Thursday through Saturday nights, beginning no earlier than 9:00 p.m. and ending no later than 1:00 a.m.
- 4. All music/entertainment shall be provided in a manner that does not create a nuisance to the surrounding

neighborhood.

2. **PLN-BOA-17-00051: MACEDONIA CHRISTIAN CHURCH** – requests a conditional use permit to expand the parking lot at an existing church in the Agricultural Rural (A-R) zone, at 3101 Maria Dr. & 4551 Winchester Road (Council District 12).

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

- a. Granting the conditional use to expand the parking lot should not adversely affect the subject or surrounding properties. It is a relatively minor expansion, when compared to the size of the property. Additionally, the expansion of the parking area will allow a more efficient layout and circulation pattern.
- 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. The new parking areas shall be established in accordance with the submitted application and site plan, or as revised per Traffic Engineering requirements.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection prior to construction and occupancy.
3. The proposed parking lot shall be reviewed and approved by the Urban County Traffic Engineer prior to any development of the subject property.
4. The Urban County Engineer shall approve all storm water drainage or retention plans for the proposed development.
5. All parking areas shall be landscaped in accordance with the provisions of Article 18

3. **PLN-BOA-17-00052: FLORACLIFF NATURE SANCTUARY** – requests a conditional use permit to expand an existing nature sanctuary in the Agricultural Rural (A-R) zone, at 7950, 8000, 8030 Elk Lick Falls & 6350 Cedarcreek Lane (Council District 12).

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

- a. Granting the requested conditional use permit will not adversely impact the subject or surrounding properties, and should benefit the general public. With the expansion of the sanctuary to include an additional 59 acres, new opportunities to enjoy, appreciate and learn from this designated nature preserve will be forthcoming.
- b. This property is protected by a conservation easement conveyed to Floracliff by the Kentucky Heritage Land Conservation Fund, and all activities on the land must adhere to that easement.
- c. All necessary public facilities and services are available and adequate for the proposed use, with sewage treatment and garbage pick-up to be handled privately.

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

1. The proposed expansion to the nature preserve shall be done as described in the submitted application and in accordance with the submitted site plan.
2. 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 establishing the use.
3. All new vehicular use areas shall be paved or graveled in a manner that maximizes the potential for retaining permeability, with the new parking area to be bordered by railroad ties or another similar feature to prevent the spread of gravel.
4. The overall design of the new parking area shall be subject to review and approval by the Divisions of Engineering and Traffic Engineering.
5. The facility shall not have any outdoor lighting (other than for security purposes), loud speakers, retail sales, restaurants or food service.

4. **PLN-BOA-17-00053: BOARD & BRUSH** – requests a conditional use permit to establish a cocktail lounge in conjunction with an art studio in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road, Ste. 170 (Council District 10).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed cocktail lounge is a very specialized bar and limited access bar, which will be operated in conjunction with an artist's studio for painting classes. This use is about 250 feet away from the nearest residential zone, and should not cause noise or other disturbances.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted site plan and application.
2. 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 establishing the use.
3. The conditional use of a cocktail lounge is only valid when operated in conjunction with an artist's studio at this

- location.
4. This approval shall be considered null & void if the applicant should cease operating this use at this location.
 5. 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 at this location.

E. **Administrative Reviews**

1. **PLN-BOA-17-00047: JAMES MITCHELL** – an administrative appeal to change one legal non-conforming use (retail market) to another legal non-conforming use (restaurant) in a Planned Neighborhood Residential (R-3) zone, at 201 East Fifth Street (Council District 1).

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

- a. Approval of this change from a small retail market to a restaurant with food service taking place largely outside, in the parking lot or elsewhere would allow a non-conforming use to be enlarged and extended.
- b. Allowing a restaurant in which the food is primarily prepared outside of the building in food trucks would likely create disturbances to the residential neighbors and alter the character of the surrounding neighborhood.
- c. Parking required for a restaurant use is much greater than for a retail market, which would likely result in a more intense use at this location.
- d. Given the operational model proposed for the restaurant, with no commercial kitchen, it appears that alcohol sales proposed for the interior of the building might result in the property functioning more as a bar/nightclub than as a restaurant.

- 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 September 29, 2017.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.