

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

February 12, 2018

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 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 January 8, 2018 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-18-00005: BUDDY PRATHER** – requests a variance to reduce the required distance of an overhead door from 100 feet to 73 feet from a residential zone in a Wholesale and Warehouse Business (B-4) zone, within the defined Infill and Redevelopment Area at 488 Curry Ave. (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare; nor should it have much effect on the character of the general vicinity. The properties on either side of the subject property, both of which are owned by the applicant, have overhead doors facing the residential zone and are actually closer to the zone line than the one proposed with this request.
- b. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance because, although the overhead door will be closer to the residential zone than 100 feet, it will be more than 100 feet from the nearest multi-family building on the property across Curry Avenue.
- c. The size of the property limits its buildable area and dictates the location of an overhead door, which is a typical feature of a warehouse building. The property has been zoned B-4 and intended for use as a warehouse (a principal permitted use in the zone) for several years, long before the R-5 zoning was implemented on the other side of Curry Avenue and developed as multi-family residential.
- d. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process of applying for the variance prior to construction of the warehouse building.

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

1. The property shall be developed in accordance with the submitted application and 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 construction and occupancy.
3. Any use within the building, should it have the potential to create a noise or other disturbance, shall keep the overhead door closed during hours of business.

2. **PLN-BOA-18-00006: LEXINGTON HABITAT FOR HUMANITY** – requests a variance to reduce the required side street side yard from 30 feet to 10 feet in a Two-Family Residential (R-2) zone, within the defined Infill and Redevelopment Area, at 301 Ash Street (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it have any effect on the character of the general vicinity. The proposed residence will be similar to what was previously on the lot, and its footprint will accommodate the lot's irregular shape.
- b. Although the size of the property would generally allow construction of a residence without the need for a variance, its configuration, in conjunction with the easement at the rear of the property and its location on a corner, greatly limits its buildable area.
- c. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process of applying for the variance prior to construction of the residence. It is due to the fact that the property is a corner lot within the Infill and Redevelopment Area, which has special provisions and additional requirements applicable to single family residences within the R-2 zone. Additionally, without the variance, a habitable residence that blends with the surrounding neighborhood could not be built.

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

1. The residence shall be constructed in accordance with the submitted application and site plan.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. An administrative action plat, reflecting action of the Board, shall be submitted and approved prior to issuance of a building permit.
3. **PLN-BOA-18-00008: JASON FUTCH** – requests a variance to eliminate the required “zone to zone” landscape buffer between two properties in a Light Industrial (I-1) and Two-Family Residential (R-2) zone, at 742 and 744 Bellaire Ave. (Council District 1).

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

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it have much effect on the character of the general vicinity. There is currently very little landscaping on either property and this development should be an overall improvement to this portion of Bellaire Avenue.
- b. The configuration of this development and the location of the zoning boundary along the property line are special circumstances that justify the need for a variance. All other landscaping will be provided as required.
- c. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process of applying for the variance prior to construction.
- d. The Landscape Review Committee met on January 23, 2018 and recommended approval of this variance due to the configuration of the proposed development.

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

1. The property shall be developed in accordance with the submitted application and site plan.
 2. Action of the Board shall be noted on the final development plan.
4. **PLN-BOA-18-00009: WAYNE AND LINDA BUSSELL** – request a variance to increase the allowable height of a fence from 4 feet to 6 feet in a Single Family Residential (R-1C) zone, at 420 Chinoe Road (Council District 5).

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

- a. There are no compelling special circumstances relating to the subject property that justify the variance. A 4-foot tall fence is allowed by the Zoning Ordinance and would likely offer a similar level of security and privacy. The applicants have lived at this property for over thirty years and for nearly 15 years since the wall along Cochran Road was erected. While a wall taller than 4' along Chinoe is desired, it is difficult to accept that the inability to maintain a taller wall will represent any type of hardship.
 - b. Any reliance on the permit issued in 2003 (nearly 15 years ago) should carry little weight as justification for the requested variance. The notion that elements of that permit relating to the front yard wall have been “grandfathered” is unreasonable and contrary to standard permitting practices. Similarly, any reference to a front yard wall on the building plans for the construction of the new residence should also contribute only minimally as justification, as those building plans were submitted specifically for the purpose of obtaining a permit for building construction, not for the purpose of obtaining a renewal permit for erection of a wall.
 - c. When the Zoning Ordinance was amended just a few years ago to reduce the allowable height of a fence or wall in the front yard from 6' to 4', there was a general awareness that some existing walls and fences would not comply with the new requirement. In this context, the presence of some front yard fences or walls greater than 4' in height in the vicinity of the subject property is not surprising, and does not contribute significantly to any justification for the variance. While such nonconforming structures are present, they do not define the overall character of the neighborhood. Most homes along the Chinoe Road corridor do not have any front yard fencing or privacy walls.
5. **PLN-BOA-18-00011: WYNNDAL DEVELOPMENT, LLC** – requests a variance to increase the allowable height of a fence from 4 feet to 6 feet in a High Rise Apartment (R-5) zone, at 260 Lexington Ave. (Council District 3).

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

- a. There are no special circumstances unique to this particular property that justify the variance. A 4-foot tall fence is allowed by the Zoning Ordinance and would provide an adequate level of security and privacy. The fence appears to be primarily decorative in nature, as it is open to the two building entrances along Lexington Avenue, with no gate and nothing to deter anyone from entering the yards at those entry points.
- b. This type of fence is not typical of the vicinity. There a number of other apartment buildings along Lexington Avenue, which do not have front yard fences of any kind. Even an allowable 4-foot tall fence would be somewhat unusual for this vicinity.
- c. Approval of the variance would allow an unreasonable circumvention of the Zoning Ordinance. Unless one of two circumstances existed (the property fronts on an alley or is a double frontage lot where the frontage is abutting an arterial highway or collector street where driveway access is prohibited), no residential zone allows for a 6-foot tall front yard fence.
- d. The applicant did not go through the appropriate process of securing a fencing permit prior to installation of the fence.

6. **PLN-BOA-18-00013: JIMMY EICHNER** – requests a variance to increase the allowable floor area ratio (FAR) from 0.35 to 1.02 in order to allow a 4,500 square-foot structure to remain as built and a variance to increase the allowable height of the building from 28 feet and 2 ½ stories to 28 feet and 3 stories in a Planned Neighborhood Residential (R-3) zone, within the defined Infill and Redevelopment Area, at 611 Elm Tree Lane (Council District 1).

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

- a. Compelling justification to support an increase of nearly three times the allowable floor area ratio has not been provided by the appellant, and no special circumstances relating to the property have been identified that relate to a reasonable need for such a significant increase.
- b. Approval of the requested variances will result in an adverse impact to the well-defined character of an established neighborhood, which is composed primarily of much smaller single-story or 1.5-story homes.
- c. The need for the variances has arisen as a direct result of the appellant proceeding with construction without the proper building permits. The only hardship resulting from the Board not granting the requested variances (having to remove a significant portion of the as-built structure) is appropriately considered as resulting from the appellant's own actions.

D. Conditional Use Appeals

1. **PLN-BOA-18-00003: GRANTHAM, LLC** – requests a conditional use permit to operate a home-based business (mail order retail sale and instruction in use of accessories for firearms; i.e., scopes, binoculars, etc.) in a Single Family Residential (R-1C) zone, at 103 Woods Ave. (Council District 5).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use will be conducted inside the house no customers will be on-site.
- 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. There shall be no on-site discharge of firearms and no retail sale of guns.
3. Should the applicant cease to own or occupy the subject property, the conditional use permit shall become null and void.
4. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
5. All of the proper governmental approvals from the Bureau of Alcohol, Tobacco, and Firearms shall be on file with the Division of Building Inspection prior to the issuance of a Certificate of Occupancy.

2. **PLN-BOA-18-00004: TYLER SCHILLING** – requests a conditional use to establish a bed and breakfast and to host weddings and events accessory to the facility in the Agricultural Rural (A-R) zone, at 2495 Bryan Station Road. (Council District 6).

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

- a. Bed & breakfast facilities are permitted as a conditional use in the A-R zone. The existing home, and the proposed and existing parking areas are large enough to accommodate the proposed use of a bed & breakfast without making major physical changes to the property. No adverse impacts to the neighborhood are expected as a result of this use; and allowing this use will create an opportunity for an adaptive use related to agritourism. There are currently no existing bed and breakfast facilities in this part of Lexington, and the proximity to both horse farms and downtown amenities would seem to make a promising location for this type of use.
- b. All public facilities are or will be available, adequate and in operation for the use of the property as a bed & breakfast facility.

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

1. The bed and breakfast facility shall be operated in accordance with the submitted application and site plan, limited to no more than five rooms.
2. All necessary permits and approvals, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, prior to operation of this use.
3. A Zoning Compliance Permit or Certificate of Occupancy shall not be issued until documentation is provided demonstrating that an owner with at least fifty-one percent ownership interest will be residing on the premises and operating the facility.
4. The septic system shall be reviewed and approved for this use, as necessary, by the Fayette County Board of Health.
5. Any signage for the bed & breakfast facility shall comply with Article 17 of the Zoning Ordinance, limited to two (2) square feet in size and not internally illuminated.

6. There shall be no special events or parties (i.e., weddings) held for a commercial purpose on the subject property.
 7. The facility shall comply with all of the eleven conditions listed under the Zoning Ordinance's Article 1-11 definition of a "bed and breakfast facility."
3. **PLN-BOA-18-00012: PARK EARLY CHILDHOOD CENTER** – requests a modification of previously approved conditions in order to allow infants under the age of 1 year to be cared for at a childcare facility, in a Planned Neighborhood Residential (R-3) zone, at 645 East High Street. (Council District 3).

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

- a. Granting the requested modification to the two conditions should have no adverse impact on any aspect of the existing facility. This is a minor request; and the only reason the applicant is before the Board is because a condition for approval in 2004 specified an age range of 1 to 10 years, and hours of operation differed by ½ hour in the morning and one hour in the evening than the current hours offered. In order to change any previously imposed condition for approval, official Board action is needed.

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

1. The childcare facility shall be operated according to the most recent application and site plan, to allow an age range of children from infant to 10 years of age and to allow hours of operation to be expanded to 6:30 a.m. until 7:00 p.m., Monday through Friday.
 2. Any necessary permit shall be obtained from the Divisions of Planning and Building Inspection prior to the accommodation of children under the age of one year.
4. **PLN-BOA-18-00014: ENSSLIN ENTERPRISES AND CONSULTING, LLC** – requests a conditional use permit to operate a home-based business (appraisal of firearms) in a Planned Neighborhood Residential (R-3) zone, at 2648 Idlewood Drive (Council District 10).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use will be conducted inside the house or offsite, and it is anticipated less than one customer per month will be on site. If any firearms are kept on the property overnight, or longer, they will be locked in a gun safe.
- 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. There shall be no on-site discharge or sale of firearms.
3. The applicant shall acquire and utilize a gun safe within the house.
4. The home-based business shall be limited to the area in the garage, as indicated in the application.
5. Signage for the business shall not be placed on the property or at any other location.
6. Should the applicant cease to own or occupy the subject property, the conditional use permit shall become null and void.
7. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
8. All of the proper governmental approvals from the Bureau of Alcohol, Tobacco, and Firearms shall be on file with the Division of Building Inspection prior to the issuance of a Certificate of Occupancy.

E. **Administrative Reviews**

1. **PLN-BOA-18-00007: MICHAEL BOOTH** – requests an administrative review to determine that events such as family reunions, birthday parties, and weddings should be considered a conditional use in the A-R (Agricultural-Rural) zone: if determined to be so, a conditional use to offer these events, as well as seasonal activities, and to establish a church in the Agricultural-Rural (A-R) zone, at 4010 and 4026 Haley Road. (Council District 12).

The Staff Recommends: **Disapproval** (of the administrative appeal), for the following reasons:

- a. Article 8-1(e) 25 clearly states that special events, parties, festivals, and concerts related to a commercial purpose are prohibited in the A-R zone.
- b. The question of what the ordinance should say is not an appropriate topic for an appeal to the Board, but would be appropriate as a proposed text amendment should the appellant want to pursue having the current ordinance language changed.

The Staff Recommends: **Disapproval** (of the conditional use for special events), for the following reason:

- a. Hosting stand-alone special events for a commercial purpose is not listed as a conditional use in the A-R zone, and such uses are actually prohibited per Article 8-1(e)25 of the Zoning Ordinance.

The Staff Recommends: **Postponement** (of the conditional use for a church and seasonal activities), for the

following reasons:

- a. It is doubtful that the main barn intended for use as a church building can meet code requirements for an assembly use. The appellant should consult with the Division of Building Inspection to determine what those requirements are, and whether or not it is even feasible to retrofit the barn in lieu of having to construct an entirely new building.
 - b. More detailed and comprehensive information is needed regarding how the church will operate (days and times of services, etc.) and how special events will be integrated into church activities. Such information should address the question of what activities are reasonably treated as accessory to the church and what activities are more accurately considered as not accessory to the church.
 - c. More detailed and comprehensive information is needed regarding the type of seasonal farm activities to be offered to the public, the time of year to be provided and their location on the farm.
 - d. The extent to which any driveways and the proposed 75-space and 400-space parking areas are paved or otherwise improved/designed must be clarified by the appellant, along with a description of how storm water will be managed.
 - e. Existing and/or proposed restroom facilities for the church and for seasonal farm activities open to the public must be identified, along with a description of how sewage treatment will be provided and where any new septic fields will be located.
 - f. As is feasible and appropriate, additional information and details relating to the above should be incorporated into an amended site plan for consideration by the Board.
2. **PLN-BOA-18-00010: MICHAEL STUART** – requests an administrative review to change one legal non-conforming use (auto repair) to another legal non-conforming use (window washing business) in a Single Family Residential (R-1D) zone, at 449 Robertson Street. (Council District 2).

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

- a. Granting the requested change in non-conforming use from an auto repair business to a window-washing business should not adversely affect either the subject or surrounding properties. This change in use will allow a positive change, as it will lessen the scope of operation due to less traffic, more regular business hours, no customers coming to the property and less potential for noise or other disturbances to surrounding property owners.
- b. The proposed use is in the same zoning classification as the existing use, and therefore qualifies for approval per Article 4-3(e).

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

1. The change in use to an office-type business (office and equipment storage for a window-washing business) shall be done in accordance with the submitted application and site plan.
2. Days and hours of operation shall generally be limited to Monday through Friday, from 7:30 until 5:00 p.m. (as noted in the application materials), unless an occasion arises that requires weekend work.
3. All necessary permits shall be obtained from the Division of Planning and the Division of Building Inspection prior to occupancy of the property as the window washing business.
4. The parking area(s) for the company vehicles, employees and any other related business activity shall be limited to the western half of the lot, as generally shown on the submitted site plan. The eastern half of the lot shall remain as residential in character, with open space to be grassed or otherwise landscaped.

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

- a. Election of Officers - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting. This was inadvertently omitted from the January agenda. The present officers are: Chair – Branden Gross; Vice Chair – Thomas Glover; Secretary – Joan Whitman.

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 March 12, 2018.VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.