

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

April 9, 2018

I. **CALL TO ORDER** - 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 March 12, 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.

B. **Swearing of Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board who plans to speak will be sworn in at this time.

C. **Variance Appeals**

1. **PLN-BOA-18-00023: PATRICIA MOSS** – requests a variance to allow an accessory structure to exceed the lot coverage of the building to which it is accessory by 316 square feet; and to increase the total allowable area of such an accessory building from 784 square feet to 1,536 square feet in a Single Family Residential (R-1B) zone, at 811 Stone Road. (Council District 10).

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 accessory structure will replace a recently demolished shed that was in disrepair and will provide a safe, usable storage space for the applicant's belongings/vehicles. Although much larger than the prior shed, it will not appear as out-of-scale on this large lot.
- b. Granting the requested variance should not have much, if any, effect on the character of the general vicinity. The proposed accessory structure will be located directly behind the principal structure, near the center of this long, narrow property, and will not be visible from the road.

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

1. The structure 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 beginning construction.
3. The applicant shall implement any measures recommended by the Urban County Engineer to mitigate the potential for increased water runoff from the property.
4. The new accessory structure shall be used for personal use only and not for any business activities

D. **Conditional Use Appeals**

1. **PLN-BOA-18-00003: GRANTHAM, LLC** – requests a conditional use permit to operate a home-based business (gunsmithing, and mail order and onsite retail sale for firearms and items that serve as accessories to 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 or offsite. The business will operate no more than 5 hours per week and any customers coming to the property will do so by appointment only.
- 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, application, and associated documents.
2. The property shall not feature a showroom/display room, and this business shall not be operated as a "retail sales establishment" as defined in the Zoning Ordinance. Retail sales of merchandise shall be by appointment only; goods shall not be available for immediate purchase and removal from the premises by the purchaser on a walk-in basis.
3. All business shall be conducted during the hours specified on the applicant's application for a Federal

Firearms License: Monday (5:00 p.m. to 7:00 p.m.) and Tuesday - Thursday (5:00 p.m. to 6:00 p.m.).

4. There shall be no on-site discharge of firearms.
5. The applicant shall acquire and utilize a gun safe within the house.
6. Signage for the business shall not be placed on the property or at any other location.
7. Should the applicant cease to own or occupy the subject property, the conditional use permit shall become null and void.
8. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, prior to opening the business.
9. 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-18-00024: GREATER LIBERTY BAPTIST CHURCH** – requests a conditional use permit to utilize the four listed properties as parking for the church in a Planned Neighborhood Residential (R-3) zone, at 318, 321, & 323 Chestnut Street & 367 East Third Street. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the public health, safety or welfare and will not cause a hazard or nuisance to the public or surrounding property owners. The parking lots will be paved to meet the requirements of the Zoning Ordinance and those of Traffic Engineering and Engineering. A stormwater management plan will be implemented to insure that there will be no adverse effects for the neighboring properties.
- b. The church has a need for additional parking that cannot be met by parking on the street, as parking is restricted to one side of Chestnut Street in this area.
- c. All necessary public services and facilities are or will be available and adequate for the use as parking lots.

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

1. The parking lots shall be established in accordance with the submitted application and the attached timeline, and amended site plan reflecting the requirements of the Divisions of Traffic Engineering, Engineering, Planning, and Water Quality.
2. The final design of the parking areas shall be subject to review and approval by the Division of Traffic Engineering.
3. Stormwater management shall be provided in accordance with the requirements of the Division of Engineering.
4. All necessary permits shall be obtained from the Divisions of Engineering, Planning, and Building Inspection.
5. All parking areas shall be paved, with spaces delineated (as appropriate based on type of surface) and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
6. Any pole lighting for the parking lots shall be of a shoebox or similar design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties.

3. **PLN-BOA-18-00027: THE LEXINGTON SCHOOL** – requests a conditional use permit to construct an addition to an existing school in a Single Family Residential (R-1D) zone, at 1050 Land Allen Rd. (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. This is a well-established school, which has operated on this property for more than 40 years. The largest addition will be oriented toward the interior of the property, connecting two existing buildings. The clubhouse will be located near the eastern property line, but the two adjacent properties are also owned by the school, with the southeastern property containing the school's athletic fields. The kitchen addition is relatively small and new plantings will provide screening for the new loading area at the kitchen.
- b. The expansion of the existing parking appears to be a sensible continuation of the existing configuration, and should not adversely affect the subject or surrounding properties, so long as it is approved by the Division of Engineering (to address floodplain protection and stormwater management issues).
- c. All necessary public and private services are available and adequate for the proposed use.

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

1. Expansion of the school shall take place in accordance with the submitted application and site plan, or as amended due to the requirements of the Divisions of Traffic Engineering, Engineering, or Building Inspection.
2. All necessary permits shall be obtained from the Divisions of Building Inspection, Engineering, and Planning, including a Certificate of Occupancy.
3. No grading shall take place within the existing FEMA floodplain unless permitted and documented in accordance with the requirements of the Division of Engineering.
4. If floodplain revisions are made based on a new drainage analysis, a Letter of Map Revision (LOMR) shall be filed with the Federal Emergency Management Authority (FEMA) and approved prior to construction.

5. A storm water management plan shall be implemented in accordance with the requirements of the Engineering Manuals and accepted by the Urban County Engineer. This plan shall be designed and implemented to ensure that flooding problems in downstream areas are in no way worsened due to construction activity taking place on the school property.
 6. Traffic circulation and layout of the parking areas shall be approved by the Division of Traffic Engineering.
 7. All parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
 8. Any additional landscaping/screening, as determined to be necessary by the Landscape Examiner, shall be done in accordance with the requirements of Article 18 of the Zoning Ordinance.
4. **PLN-BOA-18-00028: DUKE ROAD PERSONAL CARE** – requests a conditional use permit to operate an assisted living facility in a Planned Neighborhood Residential (R-3) zone, at 319 & 327 Duke Road. (Council District 5).

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

- a. Granting the requested conditional use permit will not adversely affect the subject or surrounding properties, as the use will remain essentially the same; there will be only a slight increase in the number of residents that can be accommodated (from 20 to 24). As an assisted living facility, versus a personal care facility, small apartments rather than just individual rooms for residents will be provided. The facility will be modernized to better serve the residents and staff, and adequate parking to meet the Zoning Ordinance requirement will be provided in the rear of the property. The facility will be certified by the State of Kentucky (per KRS 194A.700-729) and will be inspected by all appropriate local government agencies.
- b. All public facilities and services continue to be available and adequate for the new facility.

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

1. That the property be developed according to the submitted application and site plan.
2. That any permits, including a Zoning Compliance Permit, a Land Disturbance Permit (if necessary), a Paving Permit, a Building Permit and a Certificate of Occupancy be obtained from the Divisions of Planning, Engineering and Building Inspection, as appropriate.
3. That, if not already done, all encroachment agreements be obtained from the Urban County Government, as well as all applicable utilities.
4. That the properties known as 319 and 327 Duke Road be consolidated via plat, submitted to the Division of Planning, prior to commencement of construction.
5. That the parking area be paved and screened, in compliance with Articles 16 and 18 of the Zoning Ordinance.
6. That design of the building comply with all requirements of the Chevy Chase ND-1 Overlay.

5. **PLN-BOA-18-00029: HILL N DALE CHRISTIAN CHURCH** – requests a conditional use permit to operate a preschool accessory to a church in a Single Family Residential (R-1C) zone, at 371 Hill N Dale Rd. (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, being confined to an existing building and fenced play area. This church site is well suited to use as a preschool, as the church building has classroom spaces that are not utilized throughout the week, and a preschool could provide a useful and convenient service for the surrounding neighbors.
- b. More than adequate parking exists and is available on the property.
- c. A fenced play area exists as required, and is large enough to accommodate up to 144 students.
- d. 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 preschool shall be established in accordance with the submitted application (noting conditions #3 and #4 below) and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
3. The preschool's days and hours of operation shall not exceed Monday through Friday, from 6:00 a.m. to 6:00 p.m. without further approval by the Board of Adjustment.
4. Should the operators of the preschool wish to expand it in the future, it may provide services for no more than 60 students, without further approval from the Board of Adjustment.
5. The facility shall be fully licensed by and comply with requirements of the Kentucky Cabinet for Health and Family Services, Division of Regulated Child Care.

6. **PLN-BOA-18-00032: FAYETTE COOPERATING PRESCHOOL** – requests a conditional use permit to operate a childcare center/nursery school accessory to a church in a Single Family Residential (R-1C) zone, at 371 Hill N Dale Rd. (Council District 10).

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

- The proposed use should not adversely affect the subject or adjoining/nearby properties. The use has been conducted in the church on the adjacent property for a number of years and the new classrooms will be located in an existing building with a fenced play area. Church properties are typically not used throughout the week, so are generally well suited for uses such as a preschool. This property is located near residential properties, and a preschool could provide a useful service for the surrounding neighbors.
- More than adequate parking exists and is available on church-owned adjacent/nearby properties.
- A fenced play area exists as required, and is large enough to accommodate more than 200 students.
- 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:

- The preschool use shall be conducted in accordance with the submitted application, site plan, and the listed conditions.
- All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
- The preschool's days and hours of operation shall not exceed Monday through Friday, from 6:00 a.m. to 6:00 p.m. without further approval of by the Board of Adjustment.
- Should the operators of the preschool wish to expand class size in the future, it may provide services for no more than 21 students on the subject property, without further approval from the Board of Adjustment.
- The facility shall be fully licensed and comply with requirements of the Kentucky Cabinet for Health and Family Services, Division of Regulated Child Care.

E. **Administrative Reviews**

1. **PLN-BOA-18-00026: MINNIE SHARP** – requests an administrative appeal to allow placement of a mobile home unit on a property less than 40 acres with no principal structure in the Agricultural Rural (A-U) zone, at 5942 Sulphur Well Road. (Council District 12).

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

- Granting the requested appeal would set a dangerous precedent that, over time, could adversely affect the quality and character of Fayette County's rural area by allowing an accessory residential structure without a principal residential structure. The Zoning Ordinance states specifically that a mobile home shall not be permitted as a principal residence, and a tenant home is described as being accessory throughout the Zoning Ordinance.
 - In addition to the lack of a principal residence, the property is approximately one-quarter of the required size to allow a mobile home as an accessory tenant home.
 - While a mobile home did exist on the property previously, staff cannot justify the placement of a new mobile home as a replacement of the previous one, given the length of time since its removal, at least 8 years ago.
2. **PLN-BOA-18-00031: ANDY CHANG** – requests an administrative appeal to allow construction of a new residential structure within the Defined & Redevelopment area without a primary entrance for pedestrian access along the primary wall plane & without a one-story projection on the primary wall plane in the Agricultural Rural (A-U) zone, at 155 Transcript Ave. (Council District 3).

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

- The applicant has not provided compelling reasons that strict enforcement of the Zoning Ordinance will cause a hardship or unreasonable restriction. The applicant's request for relief from these provisions appears to be based primarily on the applicant's personal preferences, rather than any unique characteristics of the property.
- While the adopted Residential Infill & Redevelopment Design Standards document does state that the Board has the authority to hear appeals related to its standards, the specific intent statements clarify the reasons for those standards and are meant to provide guidance in considering if the intent can be met by other methods. The applicant has not provided evidence that the intent of design standards of the Infill and Redevelopment Area will be met by an alternative method.

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 May 14, 2018.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.