

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

August 13, 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 July 9, 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-18-00046: MICHELLE MOREHEAD** – requests a variance to reduce the required front yard setback from 30 feet to 22 feet in order to expand the existing residence in a Single Family Residential (R-1C) zone, at 2120 Island Drive (Council District 5).

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

- This new addition and paving could have a negative impact on the character of the general vicinity's streetscape. While a mixture of driveway types (as well as front and side facing garages) exist in the general vicinity, the majority of driveways are 15' to 20' at the curb; and additional paved parking areas are further set back and/or located with significant landscaping that screens the paved areas from the street.
- While the desire to preserve a view of the lake at the rear of the home could be considered as a special circumstance (as noted in the original staff report), such a circumstance has wide applicability to many properties on the lake. In that context, alternative designs should be pursued that minimize additional front yard paving and other features that negatively impact the streetscape.
- An additional variance is needed to increase the total allowable paved area from 1,281 square feet (50% of the required front yard) to 1,373 square feet.

2. **PLN-BOA-18-00050: CHRIS KOPITZKE** – requests a variance to reduce the rear yard from 10 feet to 1 foot in order to construct a residence with an attached garage in a Planned Neighborhood Residential (R-3) zone, at 723 Downs Ave. (Council District 5).

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

- Strict application of the Zoning Ordinance would not deprive the property owner of reasonable use of their land, or create an unnecessary hardship. The property is a relatively large residential lot with nearly 150' of frontage and 100' in depth. The setback requirements of the R-3 zone do not seem to be overly restrictive on a property of this size and configuration.
- The applicant has not shown sufficient evidence that there are special circumstances unique to this property that would justify the variance. It appears that the structure could be moved forward toward the front lot line and meet all setback requirements. Alternatively, a new residence could be moved to the south, away from the gas line, in conjunction with moving the attached garage and/or redesigning the alignment with the new residence.
- While the character of the neighborhood is not clearly defined, given the mixture of uses on Downs Avenue, a structure located closer to the front property line, at the required front setback, would be more in character with the other residential uses across Downs Avenue.

3. **PLN-BOA-18-00055: DENNIS ANDERSON INV. 1700, LLC** – requests a variance to increase the maximum front setback from 20 feet to 74 feet in order to construct a coffee shop with a drive-through and a commercial building in a Neighborhood Business (B-1) zone, at 1745 Sharkey Way. (Council District 2).

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

- Granting the variance would likely have a negative impact on the character of the general vicinity. The applicant asserts that "Townley Center was designed to allow the commercial uses which are more dependent on automobile traffic to be clustered along Sharkey Way, while uses that rely more heavily on pedestrian

traffic are grouped in the shopping center along Towne Center Drive.” However, this plan does not seem to respect that configuration of uses, instead placing the drive-through facility on the corner and the other commercial building fronting on Sharkey Way.

- b. While a variance is not required along Towne Center Drive, this plan does not fit in with the other businesses located there. While developed prior to the setback limitation for B-1 properties, Towne Center Drive is an excellent example of how such a setback can create a vibrant, pedestrian-friendly commercial commons. Instead of embracing that, the proposed plan shows a narrowing of the pedestrian sidewalk adjacent to Town Centre Drive, and does not show pedestrian facilities from that sidewalk, creating a hazard for those crossing through the proposed drive-through aisle onto the subject property. Additionally, the drive-through lane (and likely location of the point of order) runs directly adjacent to the patio area for the A&W restaurant, whose users would likely find the drive-through traffic and noise disruptive.
- c. While there are other lots along Sharkey Way with a similar setback, there are no special circumstances unique to this property that justify the variance; nor will strict application of the Zoning Ordinance deprive the applicant of a reasonable use of his land. The size and shape of the property would allow for alternate arrangements of the two proposed buildings, their associated parking, drive aisles, and the drive-through lane. Such an alternative might require no variance, or a lesser variance, and could be in better keeping with the character of the development.
- d. Approval of the variance request could be interpreted as a circumvention of the provisions of the Zoning Ordinance. The argument that the application is a result of a change in the Zoning Ordinance that occurred after the initial development of Townley Center is not sufficient to support approval of the variance.
- e. Given the uncertainty of what use will go in the second commercial building, and how that might impact the overall design of the entire property, consideration of this variance request is premature.

D. Conditional Use Appeals

1. **PLN-BOA-18-00051: SPA NAILS I, LLC** – requests a conditional use permit to operate a cocktail lounge in order to serve wine by the drink in conjunction with a nail salon in a Neighborhood Business (B-1) zone, at 2358 Nicholasville Rd. Ste. 130 (Council District 4).

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

- a. Serving just wine by the glass as part of the salon’s operation 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. Any signage for the nail salon shall not include any reference to a cocktail lounge or the serving of wine.
2. Alcoholic beverages other than beer and wine shall not be served.
3. The use shall function as accessory to the nail salon, and the business shall not be open for the sale of alcoholic beverages outside of the normal operating hours for the nail salon, which are 10 am to 8 pm Monday-Saturday.
4. The conditional use for serving alcoholic beverages shall immediately cease upon the changing of ownership, or the primary operator, of the facility.
5. Should the operator decide that the sale of alcoholic beverages should 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.

2. **PLN-BOA-18-00054: THE PAIN TREATMENT CENTER OF THE BLUEGRASS** – requests a conditional use permit to construct a parking lot for use as additional parking in a Professional Office (P-1) zone, at 190 Pasadena Dr. (Council District 10).

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

- a. There should be no adverse traffic impacts on the surrounding neighborhood, with no increase in traffic, as the lot will provide additional parking for an existing business.
- b. The proposed use should not have an adverse effect on the public health, safety, or welfare. There is an existing sidewalk along the frontage of the property that provides a safe path for those who will be parking on the subject property and walking to work at the Pain Treatment Center.
- c. 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 parking lot shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits shall be obtained from the Divisions of Building Inspection, Engineering, and Planning.
3. A storm water management plan shall be implemented in accordance with the requirements of the

Engineering Manuals and accepted by the Urban County Engineer.

4. Traffic circulation and layout of the parking areas shall be approved by the Division of Traffic Engineering.
5. All parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.

3. **PLN-BOA-18-00057: FRANK'S DONUTS, LLC** – requests a conditional use permit for a drive-through facility within the defined Infill & Redevelopment Area, in a Neighborhood Business (B-1) zone, at 547 & 549 East Third Street (Council District 1).

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

- a. The proposed use should not adversely affect the subject or surrounding properties. The subject property is located near neighborhoods and a number of employers downtown, and this type of drive-through would provide a convenient amenity to people who work or live in this area.
- b. The proposed drive-through should not have adverse effects on traffic at this location. The drive-through design is enhanced by having separate entry and exit points on East Third Street and Grinstead Street, leaving space for customers who park to go inside the donut shop. There is more than adequate space available for the required vehicular stacking area.
- c. 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 drive-through facility shall be established in accordance with the submitted application materials and site plan, with revisions allowed as required by the Division of Traffic Engineering.
2. The final design of the drive-through/parking lot shall be subject to review and approval by the Division of Traffic Engineering.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

4. **PLN-BOA-18-00058: ROMAN CATHOLIC DIOCESE OF LEXINGTON** – requests a conditional use permit to occupy an existing structure as offices for a place of religious assembly in a Single Family Residential (R-1D) zone, at 185 Toronto Road (Council District 9).

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

- a. The proposed use should not have a negative effect on the surrounding properties. The residential character of the structure will not be altered, and the uses proposed are not anticipated to be disturbing in nature.
- b. There should not be adverse traffic effects on the surrounding neighborhood, as access will be restricted to the rear of the property, through the existing church parking lot. There should be no increase in traffic on Toronto Road and parking will not be allowed in front of the structure.
- c. 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 use shall be conducted in accordance with the submitted application materials 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 occupancy.
3. No signage shall be placed on the property along Toronto Road.
4. No exterior modifications shall be made to the existing structure.
5. Church activities at this location shall not include any form of live entertainment (e.g., youth bands) or special events.

E. **Administrative Reviews**

1. **PLN-BOA-18-00052: DV8 KITCHEN, LLC** – requests an administrative appeal to change one non-conforming use (cocktail lounge) to another non-conforming use (bakery) within the defined Infill & Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 185 Eastern Ave. (Council District 1).

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

- a. Granting the requested change in non-conforming use from a cocktail lounge to a bakery should not adversely affect either the subject or surrounding properties. This change in use will allow a positive change, as it will provide an amenity for residents of the neighborhood with less potential for disturbance than the prior use.
- b. There should not be adverse impacts on traffic. The required parking will be provided on site.
- c. The proposed use is in a more restricted zoning classification than the previous 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 a bakery shall be done in accordance with the submitted application materials and site plan.
 2. All necessary permits shall be obtained from the Division of Planning and the Division of Building Inspection prior to occupancy of the property as a bakery.
 3. Traffic circulation and layout of the parking areas shall be approved by the Division of Traffic Engineering.
 4. All parking areas shall be paved, with spaces delineated and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
2. **PLN-BOA-18-00053: CROSSROADS CHRISTIAN CHURCH** – requests an administrative appeal to transfer 64 square feet of unused signage to construct a 92 square-foot free-standing sign in an Expansion Area Residential (EAR-1) zone, at 4128 Todds Road (Council District 12).

The Staff Recommends: **Approval of a lesser transfer to allow a 64 square-foot free-standing sign**, for the following reasons:

- a. The requested sign is nearly 3 times the size that is permitted by the Zoning Ordinance without a transfer. While a 32 square-foot sign is perhaps a bit small for a property with such expansive frontage, a 92 square-foot sign is a dramatic increase and could have a negative impact on the character of the general vicinity.
- b. This church is not located in a commercial zone; and allowing such a large sign at this location could set a precedent for allowing much larger signs in residential zones, where very few signs of this size are typically located. A 64 square-foot sign, double what is allowed by the Zoning Ordinance, should provide sufficient visibility to motorists at this location.
- c. Since there is limited need for a freestanding sign on I-75, as there are no access points, a single larger freestanding sign of 64 square feet along the Todds Road frontage seems reasonable.

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

1. The freestanding sign shall be no more than 64 square feet and located on the property as shown on the submitted site plan.
2. All necessary permits for signage shall be obtained from the Division of Building Inspection prior to installation of the sign.
3. A sign permit for construction and placement of the sign shall not be issued by the Division of Building Inspection until the applicant has demonstrated, to the satisfaction of LFUCG, that they are in compliance with the System Improvement Design and Construction Memorandum dated September 24, 2004.

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 10, 2018.

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