

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

October 8, 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 September 10, 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-18-00065: MATTHEW STINNETT & TONYA JERNIGAN** – request a variance to reduce the required setback of a 6 foot tall fence in a side street side yard from 36 inches to 21 inches in a Single Family Residential (R-1C) zone, at 766 Hildean Drive (Council District 4).

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

- a. While it is disconcerting that the fence was constructed in a location other than what was shown on the approved permit plans, and that a variance was not requested prior to construction, the existing tree line justifies a reduction in the normally required setback.
- b. While fences of this height so close to the right-of-way are not common in this vicinity, the size and configuration of the property are such that the requested variance should not have an effect on the overall character of the general vicinity. The property is triangular, and has approximately 525' of street frontage. The length of fence requiring the variance is only about 125', just under 25% of the total frontage. As constructed the fence is still set back nearly two feet from the edge of the sidewalk.

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

1. The applicant shall submit corrected drawings showing the work as completed in order to obtain an updated fence permit from the Division of Building Inspection within 30 days of Board action.

2. **PLN-BOA-18-00068: JONES AND SOUTHERN PROPERTIES, LLC.** – requests a variance to reduce the required side yard setback from 5 feet to 3 feet in order to construct a four-plex within the defined Infill & Redevelopment area in a High Density Apartment (R-4) zone, at 530 Merino St. (Council District 3).

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

- a. The special circumstance that justifies the need for the variance is the 15' sewer easement on the eastern side of the property, which renders 30% of the property unbuildable.
- b. Granting the variance should not have an adverse effect on the character of the general vicinity, as there is not a well-defined streetscape, due to a number of the surrounding properties being vacant/undeveloped. Where there are houses nearby, on the same side of Merino, they have rather narrow side yards.
- c. Granting the variance will not allow an unreasonable circumvention of the Zoning Ordinance. The applicant is going through the appropriate process and has applied for the variance prior to commencing construction. Additionally, the variance will allow the applicant to create a higher density project, meeting the intent of the R-4 zone which is "primarily for multi-family dwellings, but at a higher density than the R-3 zone."

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

1. The four-plex shall be constructed in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering prior to construction and occupancy.

D. **Conditional Use Appeals**

1. **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.

2. **PLN-BOA-18-00066: BEREA CHRISTIAN CHURCH** – requests a conditional use permit to expand a church parking lot in the Agricultural Rural (A-R) zone, at 3894 Iron Works Pike (aka 2689 Berea Rd.) (Council District 12).

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

- a. While staff is supportive of the applicant's request for additional parking, there are significant questions related to the overall design of the parking area that is currently proposed. The applicant should confer with the Division of Traffic Engineering to identify potential changes to the proposal in order to address these issues prior to the Board's consideration of this request.

3. **PLN-BOA-18-00070: CLARK'S CENTRAL, LLC** – requests a conditional use permit for a drive-through accessory to a convenience store in a Neighborhood Business (B-1) zone, at 1419 Versailles Rd. (Council District 11).

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

- a. The proposed drive-through will is unlikely to have adverse effects on public safety due to the anticipated level of use and adequate vehicle stacking area provided. While the configuration may cause some congestion on the subject property, it is unlikely to have a significant impact on the public streets. The applicant plans to provide striping and signage to mitigate for potential negative impacts relating to parking and turning movements.
- b. Except for the neighbor directly to the rear, the drive-through is on the opposite side of the building from most of the nearby residences. The drive-through window should not create a noise nuisance for the nearby neighbors, as there will be no menu board, amplified speaker, or microphone device at the window. Additionally, the applicant is proposing an 8-foot tall fence and landscaping along the rear property line to reduce potential noise and headlight disturbances.

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

1. The drive-through use shall be established in accordance with the submitted application materials and site plan.
2. There shall be no menu board, amplified speaker, or microphone devices associated with the drive-through window.
3. The applicant shall maintain an 8-foot tall, solid fence at the rear property line, as shown on the approved site plan.
4. The applicant shall maintain landscaped screening at the rear property line, consisting of American Arborvitae or similar plantings, with an initial planting height of at least three feet.
5. The applicant shall maintain all proposed striping, pavement markings, and directional signage, as shown on the approved site plan
6. All necessary permits including a Zoning Compliance Permit shall be obtained from the Division of Planning prior to initiation of the use.
7. The conditional use shall become null and void should any portion of the building change from a convenience store/gas station to another use.

4. **PLN-BOA-18-00071: JAMES FENDER** – requests a conditional use permit to operate a funeral home in conjunction with a place of religious assembly in the Agricultural Urban (A-U) zone, at 1545 Russell Cave Rd. (Council District 1).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use has been conducted on the property for several years without creating a problem.
- b. More than adequate parking exists and is available on the mosque's properties.
- 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 funeral home use shall be conducted in accordance with the submitted application materials and site plan. No embalming shall occur on the subject property.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the continuation of this use.
3. The facility shall be fully licensed and comply with requirements of the Kentucky Board of Embalmers and Funeral Directors.

E. **Administrative Reviews**

1. **PLN-BOA-18-00067: JOSEPH HUDSON** – requests an administrative appeal to increase the allowable size of an accessory structure from 831 square feet to 1,260 square feet; and a variance to decrease the required side yard setback for an accessory structure from 18 inches to 1 inch in order to construct a new 2-story garage within the defined Infill & Redevelopment Area in a Two Family Residential (R-2) zone, at 280 Bassett Ave. (Council District 5).

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

- a. There are not any special circumstances that justify the need for the setback variance. The subject property is of a size and configuration that would allow a fully compliant, 2-story garage to be constructed at the required setback.
- b. There are not any special circumstances that justify the need for an increase in allowable square-footage of the accessory structure from 831 square feet to 1,260 square feet. While this type of appeal has been approved from time to time, the scale of the accessory structure in relation to the lot is a very important consideration. Approval of these types of requests have typically been in locations where the subject property is a much larger lot, with more rural character.
- c. Granting the variance and appeal could have an adverse effect on the character of the general vicinity. While detached garages are not uncommon in the general vicinity, they are mostly modest in size and only one story. No variances for accessory structure setbacks have been requested or granted in the immediate vicinity.
- d. Granting the variance will could allow an unreasonable circumvention of the Zoning Ordinance. The applicant began construction without obtaining the proper permits and without regard to the requirements of the Zoning Ordinance.

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.

- a. Reminder: David Pike, All-Day Training, Friday, October 12, 2018, 3rd Floor, Phoenix Building.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be November 12, 2018.

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