

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

April 8, 2019

- I. **CALL TO ORDER** - 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 March 11, 2019 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-19-00012: JUSTIN DENTON** – requests a variance to increase the allowable floor area ratio from 0.35 to 0.5 in order to enclose existing patios within the defined Infill & Redevelopment area in the Two-Family Residential (R-2) and Historic District Overlay (H-1) zones, at 356 South Mill Street (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 alter the character of the general vicinity. The two areas to be enclosed are within the existing footprint of the house, and their enclosure will not be very noticeable from the outside.
- b. The lower elevation of the larger patio has resulted in drainage issues for the applicant. These issues constitute a special circumstance that justifies the need for a variance.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. Variances to the allowable floor area ratio are allowable where they will not result in an increase in density and the applicant is going through the appropriate process to seek the necessary approvals prior to construction.

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

1. Construction shall be in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Historic Preservation (and/or the Board of Architectural Review) prior to construction and occupancy.

2. **PLN-BOA-19-00015: JAMES JOHNSON** – requests a variance to reduce the required side yard setbacks from 3 feet to 0 feet in order to allow a fence to remain as constructed within the required side yard in a Planned Neighborhood Residential (R-3) zone, at 2820 Our Tibbs Trail (Council District 2).

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

- a. The need for a variance has come about because the fence was not installed in accordance with the approved fencing permit and despite correspondence between the contractor and building inspector which detailed the requirements of the Zoning Ordinance.
- 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. There are not compelling special circumstances that justify the need for the variances. There are other potential means to cover up the oil tanks which are located at the side of the applicant's house.

3. **PLN-BOA-19-00016: BARON GIBSON** – requests a variance to reduce the required side yard setback from 3 feet to 0 feet in order to construct an addition at an existing house within the Infill & Redevelopment area in a Single Family Residential (R-1E) zone, at 559 Maryland Ave. (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 alter the character of the general vicinity. There are a number of houses in the vicinity with similar setbacks and the applicant does not plan to enlarge the building footprint.
- b. The requested variance is generally reasonable as it allows for continued use of an existing residential structure within the defined Infill & Redevelopment area, and allows for an addition to make the house more desirable for potential tenants/buyers.

- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment regulations is to allow new construction that is compatible with existing development patterns in older, established neighborhoods. The Zoning Ordinance specifically states that BOA action may sometimes be required in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood. Additionally, the applicant has applied for the variance as soon as it was determined that one was needed during the permit process, and prior to construction of the second story.

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

1. Construction shall be in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

4. **PLN-BOA-19-00021: CITY CENTER** – request for variances to reduce the minimum required height of two wall mounted signs from 10 feet to 8 feet for two tenants within the Infill & Redevelopment area and the Courthouse Area Design Overlay in a Lexington Center Business (B-2B) zone, at 100 West Main Street (Council District 3).

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

- a. Granting the requested variances should not adversely affect the public health, safety, or welfare. The signs will be located just above the entry doors to the two businesses and should not cause issues with vertical clearance, nor should they have an effect on the character of the general vicinity, as there are many different sizes and types of signs in the area.
- b. The structural system of the building prevents installation of a wall sign at 10 feet, creating a special circumstance that justifies the need for the variances.

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

1. The signs shall be installed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection.

D. Conditional Use Appeals

1. **PLN-BOA-19-00019: BLUEGRASS GREENSOURCE, INC.** – requests a conditional use permit for ecotourism activities including an “outdoor classroom” and associated parking lot in a Light Industrial (I-1) zone, at 650 Setzer Way (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. The proposed ecotourism activities do not include any disturbing elements, and will provide environmental education and recreation for children and adults.
- b. More than adequate parking is proposed for the requested use and any traffic impacts should be minimal.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection, Traffic Engineering, Engineering, and Water Quality.

2. **PLN-BOA-19-00020: ARBOR DRIVE, LLC.** – requests a conditional use permit for a rehabilitation home in a Professional Office (P-1) zoned portion of a split-zoned (P-1/Townhouse Residential (R-1T) property, at 3500 Arbor Dr. (Council District 8).

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

- a. While staff is generally supportive of the proposed use in this location, several adjustments must be made to the site plan to insure compatibility with the nearby townhouse development. The applicant should consider the components required by a Final Development Plan, as well as consider additional buffering between the adjacent residential uses and the requested use. Removal of a 24' wide concrete drive at the southerly property border, along with removal of other pavement in that area, should be considered as part of an enhanced buffering plan.

3. **PLN-BOA-19-00022: ROMAN CATHOLIC BISHOP DIOCESE OF LEXINGTON** – requests a conditional use permit to expand a school for academic instruction in a Single Family Residential (R-1C) zone, at 2236, 2240 & 2250 Clays Mill Rd. and 598 Stratford Drive (Council District 10).

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

- a. Granting the requested conditional use should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The high school is an established use at this location and the additions should improve the campus. The proposed parking area will be landscaped in accordance with Article 18 of the Zoning Ordinance and will provide relief to the neighborhood by preventing students from parking on the street. The proposed building addition will be located between two existing school buildings and will provide modern services for the students.
- b. The proposed use should not have a major traffic impact. The new parking area will provide 36 additional spaces for existing students and staff. The proposed additions will not increase the school's capacity.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

1. Construction shall be 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 and Building Inspection.
3. The final configuration of the parking lot shall be subject to approval by the Division of Traffic Engineering.
4. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
5. The storm water management plan shall be updated and implemented in accordance with the requirements of the adopted Engineering Manuals, with due attention being given to any existing drainage problems. This plan shall be subject to acceptance by the Division of Engineering.
6. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.

E. **Administrative Reviews**

1. **PLN-BOA-19-00017: ATHENS PROPERTY, LLC.** – requests an administrative appeal to make changes to the conditions placed on an existing non-conforming use (antique shop with accessory restaurant) in order to expand the restaurant's operation and allow the facility to be open daily in the Agricultural Rural (A-R) zone, at 6251 & 6270 Athens Walnut Hill Pike (Council District 12).

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

- a. Operating a restaurant as a stand-alone use (not accessory to the antique sales), and to be open to the public on more days per month than originally approved by the Board, is reasonably considered as an expansion of a nonconforming use, contrary to the restrictive provisions of Article 4-3(a) of the Zoning Ordinance.
- b. Broadening the type of activities allowed to include special events such as parties and reunions is also reasonably considered as an expansion of a nonconforming use, which represents an additional aspect of the proposal that is contrary to Article 4-3(a).

2. **PLN-BOA-19-00018: ALAN CHAU** – requests an administrative review to determine whether a conditional use permit is necessary to establish the proposed use; and a conditional use permit to establish a place of religious assembly in a Single Family Residential (R-1C) zone, at 130 & 134 Northwood Dr. (Council District 6).

The Staff Recommends: **Disapproval of the Administrative Appeal**, for the following reasons:

- a. While small gatherings such as dinner parties, scout meetings, and the like may be conducted accessory to a residential use, the configuration of the recent addition, which very much resembles a sanctuary or auditorium typical of a place of religious assembly (with large open space and adjoining restrooms) and the documented parking issues indicates that the proposed use is of a higher intensity than a typical residential accessory use. Without further clarification of the actual scope of use, and evidence to determine that a conditional use is not warranted, staff is not in support of these activities taking place as an accessory use.
- b. Approval of the administrative review portion of this application would prohibit the applicant from constructing a parking lot on the vacant property at 134 Northwood Drive because parking is not allowed on lots with no principal structure in the R-1C zone. Congregation members coming to the residence for meals or other events would have to park on the street only, as parking on grass is prohibited. Based on the field observations made by Zoning Enforcement officers, and documentation by the neighbors, the parking area is needed to accommodate those visiting the house.

The Staff Recommends: **Approval of the Conditional Use**, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the public health, safety, or welfare, nor

alter the character of the general vicinity. The place of religious assembly will only hold gatherings on occasional Sundays throughout the year, (approximately 6 times) for a few hours at a time.

- b. Places of religious assembly are often located in residential areas and do not typically cause problems for neighbors, when adequate parking is provided. The proposed parking lot shows more than enough parking spaces to accommodate 25 current members, and modest growth in the size of the congregation.
- 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 condition:

1. The use shall be conducted in accordance with the submitted application materials, justification letter, and site plan.
2. Gatherings shall be limited to no more than 40 participants, once per month, on Sundays.
3. All necessary permits and approvals, including a Certificate of Occupancy shall be obtained from the Divisions of Building Inspection, Traffic Engineering, and Engineering prior to commencement of the use.
4. The final configuration of the parking lot, shall be subject to approval by the Division of Traffic Engineering.
5. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
6. Any pole lighting for the parking lot shall be of a shoebox or similar design, with light directed downward to avoid disturbing any adjoining or nearby properties.

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. BOA members training opportunity on April 10, 2019, to be held in the Phoenix Building 7th floor.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be May 13, 2019, at 1:30 p.m.

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