

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

May 13, 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 April 8, 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-19-00023: WILLIAM AND BEN STRAMER** – request a variance to increase the allowable height of a detached accessory structure to 18 feet in order to construct a detached garage that exceeds the elevation of the principal structure in a Single Family Residential (R-1B) zone, at 1143 Athenia Drive (Council District 10).

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

- a. A variance allowing an 18' tall garage should not have a negative impact on the character of the general vicinity. The proposed garage will be located approximately 165' from the front property line, and will have little to no impact on the streetscape. Additionally, the closest house on an adjoining property is over 100' away from the proposed structure, and unlikely to be affected by the height increase.
- b. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary processes for this project by securing an encroachment agreement for the utility easement and applying for the variance prior to construction of the desired garage.

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

1. The building shall be constructed in accordance with the submitted site plan and application materials.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection, prior to construction.
3. Any vehicular drives and/or parking areas shall be paved in accordance with Article 16 of the Zoning Ordinance, as permitted by the Division of Building Inspection.

2. **PLN-BOA-19-00026: DAVID KING** – requests for variances to reduce the minimum required setback of a projection (deck) to 1.5 feet in the side street side yard, and 2 feet in the front yard within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 675 North Martin Luther King Blvd. (Council District 1).

The Staff Recommends: **Approval of the variances (with an amended site plan removing the portion of the porch that wraps around the house)**, for the following reasons:

- a. Variances allowing separate porches to be installed at the doors on N. Martin Luther King Blvd. and East 7th Street are generally reasonable because the design requirements of the Infill and Redevelopment area recommend projecting features to create an engaging streetscape. Additionally, this particular site has a considerably limited buildable area due to both its size and location on a corner, making it challenging to incorporate such design features.
- b. The grade of the site and the effect that it has on accessing the doors is a special circumstance that justifies the need for the variances.
- c. Porches to be installed at the two doors will not adversely affect the public health, safety, or welfare. Removal of the portion of the porch that wraps around the house will maintain the sight triangle requirements and improve visibility for cars and/or pedestrians.
- d. While the variance request is the result of the applicant's actions in that the porch was constructed without approval, the request does not appear to be an attempt to circumvent the Zoning Ordinance. The applicant's intent was to meet the design requirements of the Infill & redevelopment area, but he did not account for the typical requirements for projections.

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

1. The porches shall be constructed in accordance with the submitted application materials and an amended site plan, similar to that provided by the Division of Traffic Engineering. The porch along East 7th Street shall

- extend a maximum of 5' from the left side of the door frame toward N. Martin Luther King Blvd. The porch along N. Martin Luther King shall not extend past the right edge of the front plane of the house.
2. The portion of the porch that has already been constructed and is not in accordance with this approval shall be removed within 30 days.
 3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection within 30 days of Board action.
3. **PLN-BOA-19-00027: TIMOTHY CONDO** – requests a variance to increase the allowable height of a fence in the front yard from 4 feet to 6 feet in a Single Family Residential (R-1C) zone, at 659 Cardinal Lane (Council District 10).

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

- a. Granting a variance to allow a 6-foot tall fence in the front yard of this property should not have a negative impact on the character of the general vicinity. While the house fronts on Cardinal Lane, the majority of green space is between the house and Sheridan Drive. Fencing the narrower portion of the lot, adjacent to the house's back door, significant areas of paving, and the detached garage should have no more (or possibly less) impact on the character of the neighborhood than an allowable side street side yard fence along Sheridan Drive would have.
- b. There are special circumstances that justify the need for a variance because the property is somewhat irregular in shape; narrowing significantly from one end to the other and having a rather shallow rear yard. These circumstances result in available outdoor space for private use by the applicant being significantly limited.

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

1. The fencing shall be installed in accordance with the submitted application materials and site plan, except that the portion of fencing connecting the house and detached garage shall not extend past the front plane of the house.
 2. A fence permit shall be obtained from the Division of Building Inspection, prior to construction.
 3. No fencing exceeding 4' in height shall be installed in the side street side yard between the house and Sheridan Drive as long as the requested fence exists.
4. **PLN-BOA-19-00029: BALL HOMES, LLC** – requests a variance to reduce the required side yard setback for a fence or wall from 3 feet to 0 feet in order to construct a retaining wall in a Planned Neighborhood Residential (R-3) zone, at 2308 Armature Ct. (Council District 10).

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

- a. The variance should not adversely affect the public health, safety, or welfare. The retaining wall will allow for the creation of elevations that will provide safe, accessible side yards for both the subject property and the adjacent property.
- b. The variance will not have a negative impact on the character of the general vicinity. While this is a newly developing area, there is already a precedent for this type of structure on an immediately adjacent property.
- c. There are special circumstances that justify the need for a variance because the property is situated on sloping land which creates challenges for full utilization of the site.

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

1. The retaining wall 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 Division of Building Inspection, prior to construction.

D. **Conditional Use Appeals**

1. **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.

2. **PLN-BOA-19-00025: MARCUS CAMMUSE** – requests a conditional use permit for a home-based business (private yoga instruction) in a Planned Neighborhood Residential (R-3) zone, at 334 East High St. (Council District 3).

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. Adequate off-street parking is available.
- 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 home-based business (yoga and wellness instruction) shall be operated 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 initiation of the use.
3. The conditional use shall become null and void should the applicant no longer reside at this location.

3. **PLN-BOA-19-00030: SCHLICH & DEBOOR, LLC.** – requests a conditional use permit to expand an existing animal hospital; and a variance to reduce the required side yard setback from 25 feet to 20 feet in order to construct a new addition in the Agricultural Urban (A-U) zone, at 4570 Nicholasville Road. (Council District 9).

The Staff Recommends: **Approval of the conditional use (with an amended parking arrangement)**, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the public health, safety, or welfare. The business has been in operation for many years at this location. The proposed expansion is relatively modest and will allow an existing business to modernize and better utilize its property.
- b. Adequate parking will be provided and any traffic impacts should be minimal.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

- a. The addition will maintain the existing side yard setback at the rear of the building and should not have an effect on the character of the general vicinity.
- b. A greater variance that was approved for the existing structure previously is a special circumstance that justifies the need for this variance.

This recommendations of approval are made subject to the following conditions:

1. The use shall be conducted in accordance with the submitted application materials and site plan, allowing for changes to the parking configuration to meet the requirements of Condition #3.
2. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection, Traffic Engineering, and Engineering.
3. The final configuration of the parking lot, including any changes to the existing parking layout, shall be subject to approval by the Division of Traffic Engineering. The setback of the existing parking area shall be maintained with that area either being reconfigured to contain 14 spaces, or with the new parking spaces being located at the rear of the building.
4. 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.

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: **Approval (excluding special events)**, for the following reasons:

- a. While the restaurant will no longer be accessory to the antique sales, no new use is being introduced. The restaurant's operation along with the antique sales will continue to be a less intense use than the original use as a school, which served up to 400 students on weekdays, as well as some nights and weekends for most of the year.
- b. The restaurant's hours will be limited to breakfast and lunch, which will be quite similar to the daily hours of operation of an elementary school.
- c. The building is currently set up for operation as a restaurant and antique shop. The proposed changes are to

- the frequency of the restaurant use and will not result in any changes to the building.
- d. The changes being proposed should not adversely affect the subject or surrounding properties. The Athens Rural Settlement is made up of a mixture of agricultural, residential, and business uses; and it is unlikely that allowing restaurant service of breakfast and lunch throughout the week will create a significant disturbance.
 - e. The continued use of the property for a restaurant and antique sales will continue to utilize an historic building that has been recommended for preservation. The historic school building will be preserved and maintained, with no external changes to take place.
 - f. Adequate off street parking is available in the existing paved areas.
 - g. All necessary public services and facilities are or will be available and adequate for the uses.

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

1. The uses 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 prior to the commencement of the restaurant use by its new operator.
 3. Existing paved parking areas on both 6251 and 6270 Athens Walnut Hill Pike shall be re-stripped in accordance with the recommendations of the Division of Traffic Engineering. The intent of this condition is not to require a total reconfiguration, but to mirror historical patterns to the maximum extent possible while addressing any specific areas of concern (e.g., number and location of handicapped parking spaces) based on the continued use of the property. Any additional areas for paving or graveling is strictly prohibited.
 4. The septic system shall be reviewed and approved, as necessary, by the Fayette County Board of Health.
 5. The 15' wide landscape buffer shall be maintained along Athens-Walnut Pike and Athens-Boonesboro Road within tract #3 of the subject property, except for the required sight triangle area. This buffer shall contain at least one tree for every 40' of linear boundary, consisting of a mix of deciduous and non-deciduous species, as determined to be appropriate by the Landscape Examiner with the Division of Environmental Services.
 6. Retail sales shall conclude by 6:30 p.m. on any day, and shall take place on no more than 12 days in any month.
 7. The restaurant's hours of operation shall not exceed 6 a.m. to 2 p.m. daily, except when operated in conjunction with the antique sales, when it may operate until 6:30 p.m.
 8. The restaurant shall be limited in size to that of the existing cafeteria.
 9. There shall be no alterations or additions to the exterior of the building.
 10. The hosting of special events related to a commercial purpose shall be strictly prohibited.
2. **PLN-BOA-19-00024: DENTISTRY PLUS** – requests an administrative appeal to allow a second wall sign (transferred from another wall) to be located on the front wall of the building in a Professional Office (P-1) zone, at 2800 Palumbo Dr. (Council District 7).

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

- a. Granting the request will not circumvent the Zoning Ordinance as the proposed signage will comply with the limitations outlined in Article 17-8(a).
- b. The combined total size of the two wall signs proposed for the front wall plan will not exceed that allowed by Article 17 of the Zoning Ordinance (5% of the wall area).

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

1. The sign shall be installed in accordance with the submitted application materials and site plan.
2. A sign permit shall be obtained from the Division of Building Inspection prior to relocation of the sign.
3. The rear wall of the building shall not have any wall signage.

- 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 June 10, 2019, at 1:30 p.m.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.