

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 10, 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 May 13, 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-19-00032: SUSAN COX** – requests a variance to reduce the perimeter landscape buffer from 15 feet to 10 feet in a Highway Service Business (B-3) zone, at 4731 & 4771 Georgetown Rd. (Council District 12).

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

- a. An additional variance is required for the proposed building's side yard setback. Consideration of this variance will require new notice to surrounding property owners. Additionally, the applicant is encouraged to consider reorienting the building in order to better engage Georgetown Road. Staff understands that the requested variance and/or additional variances may still be needed to accommodate such a reconfiguration based on the size and shape of the subject property.

2. **PLN-BOA-19-00033: ERIC WHITAKER** – requests a variance to reduce the required setback for a 6-foot tall fence in a side street side yard from 3 feet to 2 feet in order to allow a recently constructed fence to remain as constructed in a Single Family Residential (R-1C) zone, at 3340 Hunter Road (Council District 4).

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

- a. While it is disconcerting that the fence was not constructed in accordance with the approved fencing permit, the variance does not appear to be an attempt to circumvent the Zoning Ordinance, as the relatively slight curvature of the property line could be difficult to mirror with fencing.
- b. Allowing the fence to remain as constructed should not have an adverse effect on the public health, safety, or welfare, nor should it have an adverse effect on the character of the neighborhood. The majority of the length of fencing along Heather Way is 3' from the sidewalk, with less than 35' in length being up to 1' closer to 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.
3. **PLN-BOA-19-00035: HIGHGATES** – requests for variances to: 1) reduce the landscape buffer area between a residential zone and the Urban Service Boundary from 5 foot to 0 feet; 2) to reduce the setback for buildings and structures from the Rural Service Area Boundary from 100 feet to 20 feet; 3) to reduce the Rural Service Agricultural use buffer yard to 20 feet; and 4) to relocate fencing required between a development and land being used for agricultural purposes in order to allow a 20 foot landscape buffer and Rural Service Area setback on a split-zoned Expansion Residential 1 Area/ (EAR-1) Agricultural Rural (A-R) zone, at 4128 Todds Road (Council District 12).

The Staff Recommends: **Disapproval of Variances #2, #3, and #4**, for the following reasons:

- a. Granting a variance reducing the required setback from the Urban Service Boundary from 100' to 20' (Variance #2) could constitute a circumvention of the intent of the Zoning Ordinance. It is made clear throughout the Expansion Area Master Plan that the boundaries of the Expansion Area should be treated with care and should include physical and spatial buffers between urban intensity development and the rural service area. Design Principle 7, as listed in the EAMP, states that "Development adjacent to the rural service area should be limited and designed to ensure that the agricultural viability of such lands is not compromised."
- b. Variances #3 and #4 can be resolved without a variance through a legally recorded covenant between the

applicant and the adjacent property owner. Approving these variances could constitute a circumvention of the Zoning Ordinance, as the provision allowing a legally recorded covenant between property owners provides a reasonable path for the applicant to reduce the buffer.

- c. The need for these variances is, to a large extent, resulting directly from the manner in which this particular land is proposed to be subdivided. The 9.43 acre "subject property" is not an existing lot of record, and alternative ways of subdividing the property should be considered, if any subdivision at all is ultimately determined to be desired and feasible.

The Staff Recommends: **Postponement of Variance #1**, for the following reasons:

- a. Without approval of Variance #2, significant changes will need to be made to the proposed development. Until such changes have been made, approval of Variance #1 would be premature.

4. **PLN-BOA-19-00036: LEXINGTON HOME OWNERSHIP COMMISSION II, INC.** – requests a variance to reduce the required side yard setback from 25 feet to 15 feet in order to construct a duplex within the defined Infill and Redevelopment Area in a Two Family Residential (R-2) zone, at 369 Glen Arvin Ave. (Council District 2).

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

- a. The requested variance should not have a negative impact on the character of the general vicinity. Several other houses in the vicinity that border the cemetery are closer than 25' to the shared property line. The applicant is proposing a 15' side yard which should be a sufficient to buffer between the cemetery and the proposed duplex.
- b. The requested variance will not adversely affect the public health, safety, or welfare. Approval of the variance will allow the applicant to utilize a currently vacant lot within the defined Infill & Redevelopment area for the creation of four affordable residential units.
- 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.

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

1. The project shall be completed in accordance with the submitted application materials and site plan, subject to any alterations required throughout the permitting process.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

D. **Conditional Use Appeals**

1. **PLN-BOA-19-00034: LEXINGTON UNIVERSAL ACADEMY, INC.** – requests a conditional use permit to expand an existing school for academic instruction in the Agricultural Urban (A-U) zone, at 4590 Nicholasville Rd. (Council District 9).

The Staff Recommends: **Approval (excluding the "Alternate Site Plan")**, for the following reasons:

- a. The proposed addition should not adversely affect the subject or surrounding properties. The new addition will be located in the same portion of the property where previously approved additions were proposed.
- b. The proposed addition should not have any traffic impact. The applicant does expect an increase in enrollment
- 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 project shall be completed in accordance with the submitted application materials and site plan (excluding the "Alternate Site Plan"), subject to any alterations required throughout the permitting process.
 2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.
 3. Any future expansion of the parking lot shall require a new application to the Board of Adjustment.
2. **PLN-BOA-19-00037: CENTRAL DEALERS, LLC.** – requests an administrative review of Building Inspection's decision to delay the permitted demolition of a building at a property within the defined Infill and Redevelopment area in a Historic District Overlay (H-1) and a Downtown Business Center (B-2B) zones, at 120 W. High Street (Council District 3).

The Staff Recommends: **Disapproval of the appeal and to uphold the decision of Building Inspection to stay the issuance of a demolition permit**, for the following reasons:

- a. The Division of Building Inspection has acted based on the advice of the Department of Law. The issuance of a Certificate of Appropriateness is not sufficient to warrant issuance a demolition permit, as all other

- requirements of law must be met. It is the opinion of the Department of Law (based on their interpretation of the Zoning Ordinance) that the requirements of law are not being met while the property is involved in the Court of Appeals process.
- b. The time limitations that the applicant references for issuance of a Building Permit are specified in the Code of Ordinances, a document outside of this Board's purview.

- 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 July 8, 2019, at 1:30 p.m.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.