

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

July 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 June 10, 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-19-00035: HIGHGATES** – requests for variances to: 1) reduce the landscape buffer area between a residential zone and the Urban Service Boundary from 5 feet to 0 feet in order to relocate the landscape buffer to the existing property line; 2) to reduce the setback for buildings and structures from the Rural Service Area Boundary from 100 feet to 50 feet to allow the creation of buildable lots adjacent to the RSA where it intersects the existing property; and 3) to reduce the required front yard setback from 300 feet to 100 feet on the proposed A-R zoned lot at a split-zoned Expansion Residential 1/Agricultural Rural Area zone, at 4128 Todds Road (Council District 12).

The Staff Recommends: **Approval of the requested variances** for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety, or welfare. Granting the variances will allow for a development to be constructed that is in accordance with the Expansion Area Master Plan and provides housing options in the Expansion Area.
- b. The location of the Urban Service Boundary and the agreement between the two property owners regarding relocation of the landscape buffer area, as permitted by the Zoning Ordinance, are special circumstances that justify the need for the requested variances.
- c. Strict application of the Zoning Ordinance could create an unnecessary hardship as the location of the Urban Service Boundary creates a configuration that would reduce the overall buildable area.
- d. Granting the variance for the front yard setback on the proposed A-R zoned property will not result in construction that is out of character with the vicinity as other nearby houses have front yards of less than 300'.

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

1. Development of the subject property shall be in accordance with the submitted application materials and site plan.
2. Action of the Board shall be noted on a Final Development Plan.

2. **PLN-BOA-19-00038: ABRAHAM MARTH** – requests for variances to: 1) increase the allowable front yard setback from 20 feet to 60 feet; and 2) to decrease the required setback for a vehicular access door from a residential zone from 20 feet to 0 feet in order to construct an automobile service station on the B-1 portion of a split-zoned Neighborhood Business (B-1)/ Single Family Residential (R-1C) zone property, at 825 Lane Allen Road (Council District 11).

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

- a. There do not appear to be special circumstances that justify such a large variance in this location. There are other businesses (Jiffy Lube and Valero) which cater to vehicular uses in the immediate vicinity and have setbacks much closer to 20' from the service road.
- b. Disapproval of the variance would not result in an unreasonable hardship for the applicant. It appears that the business could operate in much the same manner as proposed if the building had a 20-foot setback from the service road by having the vehicles enter in the back and pull out on the front side (similar to the Jiffy Lube at 801 Lane Allen Road). By moving the building forward, there would be no need for the variance for the garage door location as it would be more than 20' from the residential zone.

3. **PLN-BOA-19-00041: COPPER COWS, LLC.** – requests for variances to reduce the required rear yard setbacks from 20 feet to 6 feet in order to construct accessory buildings on two through lot properties within the defined Infill

& Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 643 & 645 North Limestone (Council District 1).

The Staff Recommends: **Approval of a lesser variance (from 20' to 10')**, for the following reasons:

- a. Granting a lesser variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The lesser variance will allow a vehicle backing out to the garage to have a better view of any vehicles traveling on Harry Street.
- b. Approval of a lesser variance would not constitute a circumvention the provisions of the Zoning Ordinance. While Harry Street is a public street, it functions more like an alley, so a variance to allow application of the provisions for an accessory structure along an alley is generally reasonable.
- c. Approval of a lesser variance will not create an unnecessary hardship because the two properties are relatively deep and the additional 4' should not have an effect on the usability of the yard space between the houses and the accessory structures.

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, except that the minimum setback for accessory structures along Harry Street shall be 10'.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

4. **PLN-BOA-19-00043: KYLE PLOMIN** – requests for variances to: 1) reduce the required side yard setback from 6 feet to 2 feet in order to construct a new detached garage; and 2) to reduce the required rear yard from 30 feet to 15 feet in order to construct an addition within the Defined Infill and Redevelopment area in a Two Family Residential (R-2) zone property, at 543 West Third St. (Council District 2).

The Staff Recommends: **Approval of a lesser variance to reduce the required side yard setback from 6 feet to 3 feet**, for the following reasons:

- a. Granting a lesser variance for a side yard setback of 3' should not adversely affect the public health, safety, or welfare as setbacks of at least 3' are generally preferred due to fire safety and building code requirements.
- b. The variance will not constitute a circumvention of the Zoning Ordinance and the variance is generally reasonable. If the garage were attached to the house, side yard averaging could be utilized per Article 15-2(b)(6) and a 3' setback would be allowed in this location.

The Staff Recommends: **Approval to reduce the required rear yard from 30 feet to 15 feet**, 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 addition will not be visible from Third Street, and while visible from Blackburn Avenue, should not have a major impact on the streetscape. Additionally, while this portion of W. Third Street is not part of an Historic Overlay (H-1) zone, the house was constructed around 1830, and preservation of its front façade will help to maintain the historic character of the neighborhood.
- b. Special circumstances that justify the need for the variance include the house's existing front yard and that of the adjacent property to the east, which are considerably deeper than most of the houses on the street. The adjacent property's setback contributes to a condition that would render a variance necessary to construct an addition of this size to either the front or back of the existing house.

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

1. Construction shall be in accordance with the submitted application materials and an amended site plan showing a 3' setback for the detached garage.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

5. **PLN-BOA-19-00044: KEVIN EBBITT** – request for a variance to reduce the required side yard setback from 3 feet to 1 foot in order to construct an addition at an existing house within the defined Infill & Redevelopment area in a Single Family Residential (R-1E) zone, at 523 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.
- 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.

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.

D. Conditional Use Appeals

1. **PLN-BOA-19-00039: WINDY CORNER, LLC.** – requests a conditional use permit to continue use of an existing gravel parking lot in the B-1 portion of a split-zoned Neighborhood Business (B-1) and Agricultural Rural (A-R) zone property, at 943 Muir Station Rd. (Council District 12).

The Staff Recommends: **Approval (with an amended site plan to include paving)**, for the following reasons:

- a. The proposed use of the subject property as a parking lot has occurred since at least 2013 and should not adversely affect the subject or surrounding properties. By paving the parking lot, it can be assured that the area will not unintentionally expand or “spread” beyond its current area. The parking lot will continue to provide overflow parking for Windy Corner Market.
- b. The proposed use should not have any major traffic impact. The parking lot is already in use. Aligning the entrance to the parking lot with the entrance to Windy Corner Market could reduce future traffic complications and make for safer vehicular movements and pedestrian crossing.
- 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 paved in accordance with an amended site plan, subject to the review and approval by the Division of Traffic Engineering.
 2. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection, Planning, and Engineering prior to construction.
 3. The parking lot shall be paved, with spaces delineated, in accordance with Article 16 of the Zoning Ordinance.
2. **PLN-BOA-19-00040: KRISTOFER AND HELEN NONN** – request a conditional use permit for a child care facility within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 561 N. Limestone. (Council District 1).

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

- a. The parking situation will need to be addressed. If the applicants are to use 568 Harry Street for both parking and drop-off/pick-up, that area will need to be paved and striped in accordance with the Zoning Ordinance and an agreement between the applicants and the owner of 568 Harry Street will need to be provided. It will also need to be verified that the parking spaces are not required spaces for another business or meet the requirements of Article 16-7 for joint use of parking areas.
 - b. The property at 568 Harry Street is two lots removed from the proposed childcare facility, and may not represent the best option for parking and drop-off/pick-up of children. Other alternatives should be explored by the applicants.
3. **PLN-BOA-19-00042: ROOD AND RIDDLE PARTNERS** – requests a conditional use permit to expand parking for an equine hospital at a split-zoned Agricultural Urban (A-U), Highway Service Business (B-3), and Planned Neighborhood Residential (R-3) zone property, at 2150 Georgetown Rd. (Council District 2).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This is a well-established equine hospital with numerous facilities. The additional parking should serve existing users of the property.
- b. The adjacent property has B-3 zoning so allowing the applicant to place parking near the property boundary is unlikely to create any adverse effects on development of the adjacent property.
- c. All necessary public and private services 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.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and

Engineering prior to construction.

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.

4. **PLN-BOA-19-00045: HORSESHOE BEND VINEYARD, LLC. (DBA JESTER'S PADDOCK)** – requests a conditional use permit to host special events accessory to a small farm winery in the Agricultural Rural (A-R) zone, at 4688 Paris Pike (Council District 12).

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

- a. The requested uses (limited special events and a bistro) are clearly incidental and subordinate to the operation of the small farm winery and should not adversely affect the subject or surrounding properties. No new structures are needed to accommodate these uses and adequate parking will be provided.
- b. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. Construction shall be in accordance with the submitted application materials and an amended site plan addressing condition #3 below.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to operation.
3. 30 parking spaces shall be provided, each with independent access (no tandem parking). 15 shall be paved, striped, and landscaped in accordance with the requirements of the Zoning Ordinance. The remaining 15 spaces shall utilize permeable grass pavers or turf reinforcement mesh and shall be clearly identified. The driveway, circulation, and parking design as well as the specific type of grass paver used shall be subject to approval by the Division of Traffic Engineering.
4. Special events shall be limited to the Winery Production and Tasting Building and the 1.42-acre "Proposed Outdoor Event Space." The existing house and barn shall not be utilized for special events.
5. Events shall be limited to no more than 150 participants, and no more than two times per month.
6. Any lighting for events shall be shielded and directed downward to avoid disturbing the surrounding properties.
7. Temporary structures, such as tents, shall be permitted for this use for up to 180 days, provided approval is obtained from the Division of Building Inspection.
8. For events, approval for the septic system and/or any portable toilets as well as for any food services offered, shall be obtained from the Fayette County Health Department.

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 August 12, 2019, at 1:30 p.m.

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