

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

August 12, 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 July 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-19-00046: KBJ CONSTRUCTION** – requests variances to: 1) reduce the required side yard setbacks from 3 feet to 2 feet; 2) to reduce the required front yard setback from 20 feet to 0 feet in order to construct a house with a 12 foot setback and allow a parking space to be located in front of the house; and 3) to reduce the required rear yard setback from 20 feet to 10 feet in order to construct a new single family residence within the defined Infill & Redevelopment area in in a High Density (R-4) zone, at 516 Michigan Street (Council District 2).

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

- a. Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The vicinity is characterized by similar small lots and the requested setbacks will be similar to other setbacks in the area.
- b. The size of the lot is a special circumstance that justifies the need for the variances. Without any variances, the maximum building footprint would be only 350 square feet. Granting the variances will allow the applicant to utilize a currently vacant lot within the Infill & Redevelopment for needed housing.
- c. The variance requests do 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 beginning construction.

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 driveway shall be a minimum of 16' in length, as measured from the inside edge of the sidewalk.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

2. **PLN-BOA-19-00048: IVCP ATHENS, LLC** – requests a variance to reduce the required perimeter landscape buffer between an Industrial zone and an A-R zone from 15 feet to 6 feet in order to allow construction near the LFUCG owned pump station located interior to the subject property in a Light Industrial (I-1) zone, at 5301 Athens Boonesboro Rd. (Council District 7).

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 A-R zoned parcel containing the pump station has existed in the location for some time. A narrower landscape buffer will still provide appropriate screening in this location.
- b. There are special circumstances with regard to grading and access that affect the location of the proposed access drive and justify the need for the variance.
- c. The location of the pump station property entirely within the subject property is a special circumstance that does not generally apply to land in the vicinity or in the same zone. Because moving the pump station is not feasible, the variance is generally reasonable.

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

1. The property shall be developed in accordance with the submitted application and site plan, as amended to

meet the conditions below.

2. There shall be a 6' solid wood privacy fence or a 6' high hedge between the drive aisle and the zoning boundary.
3. There shall be one tree per every 15' of linear boundary, to be located in a group away from the drive aisle. The type of trees and final location shall be reviewed and determined to be appropriate by the Landscape Examiner with the Division of Environmental Services.

3. **PLN-BOA-19-00049: BELLAIRE DEVELOPMENT, LLC** – requests a variance to reduce the required landscape buffer from 15 feet to 0 feet within the defined Infill and Redevelopment area in a Light Industrial (I-1) zone, at 744 Bellaire Ave. (Council District 1).

The Staff Recommends: **Approval of a lesser variance (from 15' to 6')**, 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. There is currently very little landscaping on this property and the proposed development should be an overall improvement to this portion of Bellaire Avenue.
- b. Approval of a lesser variance would not constitute a circumvention the provisions of the Zoning Ordinance. The applicant has taken care to go through the necessary process of applying for the variance prior to construction.
- c. The Landscape Review Committee met on July 23, 2019 and recommended approval of this variance.

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

1. The property shall be developed in accordance with the submitted application and site plan, as amended to meet the conditions below.
2. There shall be a 6' solid wood privacy fence along the side lot line adjacent to 742 Bellaire Avenue.
3. Trees from Group A or B of the Planting Manual shall be installed one every 40 feet, or fraction thereof. These trees do not have to be equally spaced and may be grouped.

4. **PLN-BOA-19-00052: GALEN P. STONE AND LEANNE ASH** – request a variance to increase the allowable height of a detached garage from 20 feet to 22 feet in a Two Family Residential (R-2) zone, at 327 McDowell Rd. (Council District 5).

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

- a. Although the applicant has stated they did not intentionally violate the Zoning Ordinance requirements, there has been a willful decision by the applicant or their contractor to not follow the approved plans. This could constitute a circumvention of the Zoning Ordinance.
- b. There is no clear delineation of special circumstances that do not generally apply to other properties, nor would the strict application of the Zoning Ordinance deprive the applicant of reasonable use of their land.

D. **Conditional Use Appeals**

***Note** – The following two cases are postponements from the July 8th meeting.

1. **PLN-BOA-19-00040: KRISTOFER AND HELEN NONN** – requests 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: **Approval**, for the following reasons:

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. A family child care for up to 6 children would be allowable by right in this location as an accessory use if the applicant lived in the house. The limited enrollment of only 4 children should result in virtually no impact on traffic. A fenced area will be provided that is much larger than the minimum size required.
- 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. Childcare for up to 4 children shall be provided in accordance with the submitted application materials and an amended site plan indicating compliance with Condition #3.
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 childcare use.
3. A loading zone shall be designated by the Division of Traffic Engineering and/or at least one off-street parking space shall be established prior to initiation of the childcare use.
4. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.

2. **PLN-BOA-19-00045: HORSESHOE BEND VINEYARD, LLC (DBA JESTER'S PADDOCK)** – requests a conditional use permit for a bistro and 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.

3. **PLN-BOA-19-00047: MIKE SCOTT BASKETBALL, LLC** – requests a conditional use permit for a childcare facility in a Light Industrial (I-1) zone, at 2414 Palumbo Drive (Council District 7).

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

- a. The conditional use for a childcare facility should not adversely affect the subject or surrounding properties, and will allow the applicant to provide additional services that are compatible with the existing activities on site.
- b. Negative traffic impacts are unlikely and sufficient parking is available on the subject property.
- 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 conditions:

1. The after-school program shall be operated in accordance with the submitted site plan and application materials.
2. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.

4. **PLN-BOA-19-00053: STEADFAST COLLIN LPC, LLC** – requests a conditional use permit for a temporary real estate sales office in an Expansion Area Residential (EAR-3) zone, at 2575 Polo Club Boulevard (Council District 12).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The leasing trailer will be located on the property adjoining construction, and should not disturb construction activities. The leasing trailer will be a temporary structure, which will only be utilized until construction of the assisted living is completed.
- b. Adequate parking will be available and conveniently located on site, adjacent to the leasing trailer.
- 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 leasing trailer shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Placement Permit/Certificate of Occupancy from the Division of Building Inspection, shall be obtained prior to the installation of the trailer and

- commencement of this use.
3. The leasing trailer shall be in place for no more than 12 months and shall be removed within 14 days of the issuance of a Certificate of Occupancy for the assisted living facility.
 4. Restroom facilities for the public shall be provided in accordance with the requirements of the Fayette County Health Department.
5. **PLN-BOA-19-00055: APOSTLES ANGLICAN CHURCH, INC.** – requests an amendment to an existing conditional use for a place of religious assembly to include seasonal activities (a weekly farmer's market) in a Single Family Residential (R-1C)/Neighborhood Design Character Overlay (ND-1) zones, at 200 & 296 Colony Blvd. (Council District 5).

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

- a. Granting the conditional use request should not have any adverse effects on the public health, safety, or welfare, nor should it alter the character of the existing vicinity. The market will take place in the existing parking lot of the church and does not require any additional structures or parking spaces.
- b. The market use is a component of the church's mission as it acts as a community engagement program for the church and serves neighboring residents. The market also makes donations to local community groups as part of the church's mission.
- c. All necessary public facilities and services are available and adequate.

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

1. The market use shall be conducted in accordance with the submitted application materials and site plan.
2. The market shall occur on Wednesdays only, from 7:00 a.m. to 12:30 p.m. during up to two 90-day periods per year.

E. **Administrative Reviews**

1. **PLN-BOA-19-00051: COMPASS CAPITAL, LLC** – requests an administrative appeal to change one legally non-conforming use (retail sales) to another (office and retail sales) within the defined Infill & Redevelopment area in a Historic Overlay (H-1)/ Planned Neighborhood Residential (R-3) zones, at 131 Kentucky Avenue (Council District 3).

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

- a. Granting the requested change in non-conforming use from a needlepoint shop to an office with a smaller portion of retail space should not adversely affect either the subject or surrounding properties. This change in use should be a positive change, resulting in less traffic.
- b. The proposed office use is first allowable in a more restrictive zone than the existing use and the existing use will be reduced. Therefore the non-conforming use will be less non-conforming and qualifies for approval per Article 4-3(e).

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

1. The change in use to an office-type business with a limited retail component shall be done in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals including a Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to occupancy.

2. **PLN-BOA-19-00054: STONEWALL INVESTMENTS, LLC** – requests an administrative appeal to transfer 150 square feet of unused signage in order to construct a 200 square-foot free-standing sign in a Neighborhood Business (B-1) zone, at 3101 Clays Mille Road (Council District 9).

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. Approval of the request will not adversely affect the public health, safety, or welfare, nor alter the character of the vicinity. The proposed sign will replace a long-existing sign that is non-conforming with a new sign that will have a similar visual impact. Approximately 60 square feet of the sign structure is decorative and will not contain any copy. The area containing copy is only about 10 square feet larger than the existing non-conforming sign and the sign will now comply with the height restriction of the Zoning Ordinance.
- c. The combined total size of all business signs on the subject property will not exceed that allowed by Article 17 of the Zoning Ordinance.

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

1. The proposed signage shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits for signage shall be obtained from the Division of Building Inspection.
3. Total signage on the property shall not exceed 1,474.5 square feet.

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 September 9, 2019, at 1:30 p.m.

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