

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

September 9, 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 August 12, 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-19-00056: JASON ORTH** – requests a variance to reduce the required front yard setback from 65 feet to 25 feet in order to construct a new detached garage in the front yard in an Agricultural Rural (A-R) zone, at 5600 Kiddville Lane (Council District 12).

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Kiddville Lane is a short and narrow dead-end rural road with several existing structures located fairly close to the road. The tree buffer along the street will limit the visual impact of the structure.
- b. The topography of the lot, which slopes away from the street, and the need to maintain visual clearance between the house and animal pasture are special circumstances that justifies the need for the variance.
- c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance as 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.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

2. **PLN-BOA-19-00057: MARTIN'S PETERBILT** – requests a variance to decrease the required vehicular use area landscape buffer between a vehicle sales facility and a public street right-of-way from 5 feet to 0 feet and to increase the allowable height of a fence from 4 feet to 6 feet in the front and side street side yard in order to construct a 6-foot tall fence at a truck/equipment dealership in a Highway Service Business (B-3) zone, at 425 Rogers Road & 2353 Paris Pike (Council District 6).

The Staff Recommends: **Approval of the variance to increase the allowable height of the fence from 4' to 6 feet in the front yard**, for the following reasons:

- a. Granting the variance should not have a negative effect on the character of the general vicinity. While the previously approved variance was for a fence that was twice as far from Paris Pike, the proposed fence will still be about 50' from the edge of paving on Paris Pike. The change from black chain-link to a more decorative fence type should help to mitigate any effects on the streetscape of Paris Pike caused by moving the fence closer to the road.
- b. Granting the variance will not adversely affect the public health, safety, or welfare, and may help prevent nuisances or hazards by limiting engagement with the large equipment on site by passersby.

The Staff Recommends: **Approval of the variance to decrease the required vehicular use area buffer between a vehicle sales facility and a public right-of-way from 5 feet to 0 feet**, for the following reasons:

- a. Granting the landscape variance will not alter the essential character in the general vicinity as the required number of trees will still be provided in a group rather spaced every 50'. The applicant will maintain a 5' buffer area that includes an 18" tall hedge made up of boxwoods (or similar) at 3' on center.

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

1. The fence and landscape buffer shall be installed in accordance with the submitted application materials and

- site plan.
2. The types and final location of the trees and hedge shall be reviewed and determined to be appropriate by the Landscape Examiner with the Division of Environmental Services.
 3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to installation of the fence.
 4. Action of the Board shall be noted on an amended Final Development Plan.
3. **PLN-BOA-19-00058: MARRIOTT/RESIDENCE INN** – request variances to increase the allowable lettering height from 2.5 feet to 3'7 feet for 2 wall mounted signs located below 50 feet on the building within the defined Infill & Redevelopment area in the Lexington Center Business (B-2B) zone, at 121 West Vine 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, as the proposed signs are to be located more than 30' high on the building faces. They should not have an effect on the character of the general vicinity, as there are many different sizes and types of signs in the area.

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.

4. **PLN-BOA-19-00060: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** – requests variances to reduce the required side yard setbacks from 6 feet to 5 feet in order to construct two duplexes within the defined Infill & Redevelopment area in a Two Family Residential (R-2) zone, at 754 & 756 Florence Ave. (Council District 2).

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity as a one-foot variance is quite minimal and unlikely to be easily noticed.
- b. The narrow width of the lots constitute a special circumstance that justifies the need for the variance. Also, because the lots are located within the defined Infill & Redevelopment area, parking is prohibited in the front yard. Without the variances allowing for the creation of a shared driveway, the applicant would be unable to provide the required parking for duplexes. Granting the variance will allow the applicant to utilize two small, currently vacant lots within the Infill & Redevelopment area for needed housing.
- 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. While the Infill provisions of the Zoning Ordinance are intended to make development of single-family houses on existing small lots easier, they tend to offer very little relief for two-family dwellings. 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.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

5. **PLN-BOA-19-00061: FAYETTE COUNTY LOCAL DEVELOPMENT CORPORATION** – requests a variance to decrease the required number of parking spaces from four spaces to two spaces within the defined Infill & Redevelopment area in a Planned Neighborhood Residential (R-3) zone, at 364 Corral Street (Council District 1).

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

- a. Granting the variance 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, a number of which do not have off-street parking at all.
- b. The size of the lot is a special circumstance that justifies the need for the variance. Without the variance, the applicant would be unable to provide the required parking for a duplex, which is four times that required for a single family house. Granting the variance will allow the applicant to utilize a small, currently vacant lot within the Infill & Redevelopment area for needed housing.
- 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 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.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

6. **PLN-BOA-19-00062: WANDA AND MITCHELL COOPER** – request a variance to increase the allowable width of a driveway from 10 feet to 17 feet within the defined Infill & Redevelopment area in a Single Family Residential (R-1C) zone, at 177 Rosemont Garden (Council District 3).

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

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to installation of the driveway.
- b. The site does not have any special circumstances that justify the requested variance. There appears to be sufficient space to serve the applicant's needs in the paved area that would remain if the noncompliant portion were removed.
- c. This neighborhood is characterized primarily by properties with 10' driveways, several of which widen behind the front building line to accommodate additional parking.

7. **PLN-BOA-19-00065: GATEWOOD ARNOLD CONSTRUCTION, INC.** – requests variances 1) to reduce the required front yard setback from 50 feet to 25 feet; 2) to reduce the rear yard setback from 25 feet to 24 feet; 3) to reduce the side yard setback from 30 feet to 6 feet on the northern side; and 4) to reduce the side yard setback from 30 feet to 5 feet on the southern side in order to construct a single family residence in an Agricultural Rural (A-R) zone, at 7380 Athens Boonesboro Pike (Council District 12).

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 as the applicant plans to build a modestly sized single family house which should not have a significant impact on the rural landscape.
- b. Strict application of the Zoning Ordinance could create an unnecessary hardship for the property owner as they would be unable to construct a dwelling on the property. Without any variances, the maximum buildable area would be extremely limited.
- c. The size and odd configuration of the lot are special circumstances that justify the need for the variances as they are not typical of properties in the A-R zone. These factors limit the buildable area, especially when coupled with the site and distance requirements for a septic system.
- d. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The applicant has applied for the variances as soon as it was determined that they were needed, 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.
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-19-00059: SANDRA CLEMENTS** – requests a conditional use permit for a home-based business (Pilates Instruction) in a Single Family Residential (R-1B) zone, at 307 Idle Hour Drive (Council District 5).

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 (individual Pilates instruction) shall be operated in accordance with the submitted application materials and site plan, with instruction only on an individual basis.
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.

2. **PLN-BOA-19-00063: LUFTRADE** – requests a conditional use permit for an extended stay hotel in the Historic Overlay (H-1)/ Neighborhood Business (B-1) zones, at 402 South Broadway (Council District 3).

The Staff Recommends Postponement, for the following reasons:

- a. A new notification package with corrected owner addresses must be completed. The applicant plans to provide a corrected notification package by September 11, the filing deadline for the October meeting.

3. **PLN-BOA-19-00064: DELTA TAU DELTA CORP PMB 140** – requests a conditional use permit to expand an existing fraternity house; and a variance to increase the maximum allowable number of parking spaces from 15 to 42 within the defined Infill & Redevelopment area in the Single Family (R-1C)/ Planned Neighborhood Residential (R-3) zones, at 1410, 1419, & 1420 Audubon Ave. (Council District 3).

The Staff Recommends: Approval of a conditional use permit, for the following reasons:

- a. Granting the conditional use permit should not adversely affect the subject or surrounding properties. The fraternity has operated for many years at this location and the types of activities conducted on site will remain the same. No new beds will be added and the expansion is considerably smaller than the expansion that was approved by the Board in 2003.
- b. Negative traffic impacts are unlikely and sufficient parking will be available on the subject property.
- c. All necessary public facilities and services are available and adequate for the proposed use.

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

- a. Increasing the number of allowed off-street parking spaces should benefit the public health, safety and welfare without altering the character of the general vicinity by providing adequate parking for the use on the property.
- b. Granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance. Given the nature of the use at this location, and the need to reduce street parking in the adjoining residential areas, the request is reasonable.

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

1. The addition and parking lot shall be constructed in accordance with the submitted application materials and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The layout of the parking areas and access points shall be subject to approval by the Division of Traffic Engineering.
4. The parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
5. Any pole lighting for the parking lots shall be of a shoebox design with light directed downward to avoid disturbing adjoining residential areas.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. The southern edge of the proposed detention area, for a distance of approximately 125' from Nicholasville Road, shall be landscaped in a manner comparable to that required for a vehicular use area. Landscaping for this area shall be incorporated into the landscaping plan required for the overall expansion, subject to approval by the Landscape Examiner with the Division of Environmental Services.

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 October 14, 2019, at 1:30 p.m.

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