

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 11, 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 October 14, 2019 meeting will be considered at this time.
- III. **PUBLIC HEARING ON ZONING APPEALS**
 - A. **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.
 - B. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda with regard to any postponements, withdrawals, and items requiring no discussion.
 - C. **Variance Appeals**
 1. **PLN-BOA-19-00075: WILLIAM AND BEN STRAMER** – request a variance to increase the allowable height of a detached accessory structure from 13'9" to 18' in order to construct a detached garage that exceeds the elevation of the structure in a Single Family Residential (R-1B) zone, on property located 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-19-00076: LAKESHORE APARTMENTS ASSOCIATION LLC** – requests a variance to decrease the minimum setback from the floodplain from 25' to 16', to build 8 townhouses in a High Density Apartment (R-4) zone, on property located at 519 Laketower Drive (Council District 5).

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 the location of the proposed townhouses was approved on the Development Plan prior to the change in the floodplain boundary line. The townhouses will be located 16' from the designated floodplain.
 - b. There are special circumstances that justify the need for the variance, as the property is impacted not only by the floodplain, but also by sanitary sewer and waterline easements that limit the available buildable area. Due to those easements, shifting the townhouses further from the floodplain would not be possible.
 - c. Approval of the variance would not constitute a circumvention of the Zoning Ordinance as the change in the floodplain map occurred subsequent to the Planning Commission's approval of the townhouses at this location.

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

 1. The townhouses shall be constructed in accordance with the approved Final Development Plan, or as that plan is amended to address design requirements of the Divisions of Engineering, Traffic Engineering, or Building Inspection.
 2. All necessary permits shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction

3. Action of the Board shall be noted on both the Final Development Plan and the Final Record Plat for the subject property.
3. **PLN-BOA-19-00078: H2 CONSTRUCTION, LLC** – requests variances to reduce the required side yards from 10' to 3' in order to construct a new house in a Single Family Residential (R-1B) zone, on property located at 1755 Old Paris Road, (Council District 6).

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. The width of the lot is a special circumstance that justifies the need for a variance. Strict application of the
- b. Zoning Ordinance would significantly limit the allowable width of a house on the property. Granting the variance will allow the applicant to utilize an existing vacant lot for needed housing.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicant has applied for the variance as soon as it was determined that it was needed, and prior to beginning construction.

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

1. The structure shall be constructed in accordance with the submitted application and site plan.
 2. All necessary permits shall be obtained from the Division of Building Inspection, prior to beginning construction.
4. **PLN-BOA-19-00079: ETS REALTY II, LLC** – requests a variance to increase the allowable height of a fence in the front yard from 4' to 6' in a Neighborhood Business (B-1) zone, on property located at 900 N. Broadway (Council District 1).

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

- d. This type of fence is not typical of the vicinity. Other commercial uses in the immediate area do not have fences, and there are only a few residential buildings with 4' tall fences on the opposite side of N. Broadway.
 - b. The fact that the property is currently unoccupied is not a special circumstance that justifies the need for a variance. A 4-foot tall fence is allowed by the Zoning Ordinance and would likely offer a similar level of security and privacy.
 - c. The applicant has not provided any information or documentation to support an argument that a 6' tall fence results in greater security than a 4' fence. In lieu of taller fencing, other security measure are available that could be used which would not impact the overall physical appearance of the property.
5. **PLN-BOA-19-00080: LEXLIVE ENTERTAINMENT COMPLEX** – requests 1) variances to increase the allowable lettering height of the “sign bands” below 50' from 30” to 72” along S. Broadway and High Street; 2) an administrative appeal to transfer 61.33 square feet from one wall sign to another for the sign reading “CORNER”; 3) an administrative appeal to transfer 56.41 square feet from one wall sign above 50' to a location below 50' for the sign reading “LEXLIVE” along High Street; 4) an administrative appeal to determine that the use of the property qualifies as a “civic center” and therefore is allowed to have a wall-mounted electronic message board; 5) if #4 is approved, an administrative appeal to transfer 200 square feet from allowed electronic message board to the other in order to have a 400 square-foot electronic message board within the defined Infill and Redevelopment area in the Lexington Center Business (B-2B) zone, on property located at 301 and 307 S. Broadway (Council District 3).

The Staff Recommends: **Approval of Request #1 but only for the “LEXLIVE” sign on S. Broadway and for colored panels (no images) in the sign band on E. High Street**, for the following reasons:

- a. There do not appear to be special circumstances that justify a variance for all of the signs within the sign bands. The intent of the Zoning Ordinance is to allow signs within the sign band which will be visible to nearby motorists, and 2 ½' in height was determined to be appropriate for that purpose. Staff cannot support the applicant's claim that the large size of the building and its location are special circumstances, as these are typical and expected circumstances for new development within the downtown business zones.
- e. Granting the requested variance for a portion of the requested signage will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. Since “LEXLIVE” is the name of the complex itself, it is generally reasonable to allow that sign to be a bit larger than other signage within the sign band.
- f. Based on Reason “a” above, staff does not support a variance for the images proposed behind the lettering along E. High Street. However, staff is agreeable to allowing taller colored panels to be placed behind the lettering instead to create contrast and allow for greater visibility. Based on the definition of “sign” such panels would still require a variance.

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

1. The "LEXLIVE" sign on the S. Broadway façade shall be installed in accordance with the submitted application materials and site plan. The other signs within that sign band shall be limited to 2 ½' in height.
2. Along the E. High Street façade, the portion of the signs behind the lettering shall be allowed to be up to 72" in height, but shall be limited to solid color panels to allow for contrast, and shall not depict images of activities occurring within the complex.
3. All necessary permits shall be obtained from the Division of Building Inspection, prior to installation of the signs.

The Staff Recommends: **Approval of a lesser transfer for Request #2**, for the following reasons:

- a. The Zoning Ordinance allows tenant spaces with independent entrances to have an additional wall sign on each facade. Without a transfer, Corner Bar would be allowed two 80 sf signs (one on each façade). Currently, "CORNER" is proposed to be 141.33 sf and "BAR" is proposed to be 67.25 sf, for a total of 208.58 sf. Staff recommends that the full "CORNER BAR" sign be scaled down to a total of 160 square feet to allow the signage transfer for "CORNER" to come from unused square footage available for "BAR".
- b. Granting this lesser appeal will allow the applicant to have a modest size increase for the sign, while maintaining the total allowable signage for this tenant allowed by the Ordinance. There do not appear to be special circumstances that justify the need for a larger sign for this particular tenant in comparison to other nearby businesses with independent entrances in similar downtown buildings.

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

1. The "CORNER BAR" signs shall be no larger than 160 sf total.
2. All necessary permits shall be obtained from the Division of Building Inspection, prior to installation of the signs.

The Staff Recommends: **Approval of Request #3**, for the following reasons:

- a. The applicant will forego allowable signage above 50' in order to allow a wall sign to be placed at a lower elevation. This should not have an effect on the public health, safety, or welfare, nor the character of the general vicinity. This sign will be identical to the "LEXLIVE" sign within the sign band on the S. Broadway façade and should serve a similar purpose of identifying the complex.

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

1. The "LEXLIVE" sign on the E. High Street façade shall be installed 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 installation of the signs.

The Staff Recommends: **Disapproval of Request #4**, for the following reasons:

- a. The use of this entertainment complex is not substantially similar to that of a civic center. While the Zoning Ordinance does not specifically define this use it does state that there must be an exhibition hall and an arena in order to allow electronic message boards. Additionally, the term "civic center" typically implies that there is a public or municipal component. This complex is a completely private venture. While the activities mentioned in the applicant's justification (i.e. commercial and educational exhibitions and seminars, cultural events, etc.) may occur occasionally, based on the applicant's website the primary uses of this venue will be its movies, sports bar, bowling, bourbon bar, and arcade. These uses are clearly that of an entertainment venue, but should not be construed as an "exhibition hall" or "arena".
- b. Rather than attempting to represent the proposed uses as a civic center, a more appropriate process to possibly allow an electronic message board system at this location would be to pursue a Zoning Ordinance Text Amendment to broaden the scope of uses where such signage could be allowed.

The Staff Recommends: **Disapproval of Request #5**, for the following reason:

- a. Based upon the findings for Request #4 above, the use of this entertainment complex is not substantially similar to that of a civic center, therefore no electronic message board signage is permitted.

6. **PLN-BOA-19-00081: JEFFREY AND KATHERINE WISEMAN** – request a variance to reduce the required setback for a swimming pool from 10' (per a previously approved variance), to 7'8" within the defined Infill & Redevelopment Area in a Single Family Residential (R-1C) zone, on property located at 223 Glendover Road (Council District 4).

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

- a. While the measurement error that took place is concerning, it does not appear that there was any intent to circumvent the 10' setback requirement that was previously established by the Board. It is common for property lines to run along the inside edge of a sidewalk, but in this case there is an offset of 2'4", which is the essential factor that led to the error.

- b. Even with this additional variance, the pool will still be surrounded by a 4' wide walkway, so safety concerns previously identified by staff with the prior variance request have been addressed. Further, the Division of Building Inspection has advised that approval of the additional variance will not conflict with provisions of Residential Building Code related to private swimming pools.

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

1. Updated drawings showing the as-built pool shall be submitted to the Division of Building Inspection in order to update the existing permit for the pool.
2. The 6-foot tall fence shall be installed to allow a 4-foot walkway between the fence and pool's edge.

D. Administrative Appeal

1. **PLN-BOA-19-00077: LARRY HAMILTON** – requests an administrative appeal to increase the allowable total size of accessory structures from 1,033 square feet to 1,560 square feet in order to construct a 384 square foot addition to an existing garage within a Single Family Residential (R-1C) zone, on property located at 690 E. Loudon Avenue (Council District 5).

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

- a. Granting the requested appeal will not adversely affect the public health, safety or welfare. The addition to the existing accessory structure will provide a safe, usable storage space for the applicant's belongings/vehicles.
- b. The addition should not have much, if any, effect on the character of the general vicinity, as large accessory buildings are not uncommon in the general vicinity. The proposed addition will be less noticeable than the previously approved second structure would have been, as it is smaller, will be located behind the existing garage, and will not be visible from the road.

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

1. The structure shall be constructed in accordance with the submitted application and site plan.
2. This approval shall supersede the previous application's approval (**A-2009-41**). No additional accessory structures shall be constructed on the property without further review by the Board.
3. All necessary permits shall be obtained from the Division of Building Inspection, prior to beginning construction.

E. Conditional Use Appeals

F. Administrative Reviews

- 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.
 - A. Consideration of the Meeting & Filing Schedule for 2020.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be December 9, 2019, at 1:30 p.m.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.