

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

December 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 November 11, 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-19-00082: MARIYANA K. & DIYAN R. HRISTOV** – request a variance to increase the allowable height of a fence located in the front yard from 4' to 6' in an Expansion Area Residential 2 (EAR-2) zone, on property located at 3376 Scottish Trace, (Council District 12).

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

- a. Granting the variance would result in construction that is out of character with the general vicinity. Front yard fences of any height are not present in the general vicinity and a 6-foot tall fence would be very unusual.
 - b. The recommendation of the Homeowners' Association does not qualify as a special circumstance that justifies the need for the variance. The size and/or orientation of the basketball court could be altered to allow for the fence to be constructed within the side yard. Such a fence (not extending past the front wall plane of the house) could be constructed at 6' tall.
 - c. A 4' tall fence in the front yard, although not as desirable for the applicant, would provide a reasonable level of security for a basketball court. Pursuing this alternative, if the court cannot be reduced in size and/or reoriented, is not considered as a significant hardship.
2. **PLN-BOA-19-00084: ALTORAC FARM, LLC** – requests a variance to reduce the required front yard setback from 300' to 250' in an Agricultural Rural (A-R) zone on property located at 5695 Sulphur Well Road, (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, as the proposed tenant home will be located further from the front lot line than the existing tenant home, which is to be removed.
- b. The requested variance is generally reasonable because it will allow for the tenant home to utilize the existing driveway and septic system. The location of these features, along with the close proximity of the creek are special circumstances that justify the need for the variance.
- 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. Construction shall be in accordance with the submitted application materials and site plan.
2. The existing tenant home and detached garage (labeled "1" and "2" on the site plan) shall be removed upon construction of the new tenant home.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection and the Rural Land Management Board prior to construction and occupancy.

D. **Conditional Use Appeals**

1. **PLN-BOA-19-00071: JAMES B. MCGEE** – requests a conditional use to operate a junk yard in a Heavy Industrial (I-2) Zone on property located at 130 Lisle Industrial Ave., (Council District 2).

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

- a. The applicant has not provided details regarding means of mitigating the potential negative impacts (outlined

in the previous staff report sent to them prior to the October 2019 Board of Adjustment Meeting), nor has any information been provided regarding overall management of the site.

- b. The proposed conditional use could have a negative impact on the public health, safety, or welfare. Without improved management and mitigation efforts, staff has serious concerns regarding the potential impacts this type of use may have on water quality, air quality, and public health.

2. **PLN-BOA-19-00083: DUNKIN' DONUTS** – requests a conditional use to establish drive through facilities for a new restaurant in a Neighborhood Business (B-1) zone, on property located at 2213 Versailles Road, (Council District 11).

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

- a. The proposed use should not adversely affect the subject or surrounding properties. The subject property is located in a commercial area on a busy corridor and other drive through facilities exist in the immediate vicinity.
- b. The proposed drive-through should not have adverse effects on traffic at this location. There is adequate space available for the required vehicular stacking area and the subject property is near a signalized intersection (at Versailles Road and Village Drive).
- 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 drive-through facility shall be established in accordance with the submitted application materials and site plan, with revisions allowed as required by the Division of Traffic Engineering.
2. The final design of the drive-through/parking lot shall be subject to review and approval by the Division of Traffic Engineering.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

3. **PLN-BOA-19-00086: THE MISSION CHURCH OF LEXINGTON** – requests a conditional use for a place of religious assembly in order to expand the parking lot at an existing church in a Single Family Residential (R-1D) zone, on property located at 3288 Beaver Creek Dr., (Council District 7).

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

- a. The proposed use should not adversely affect the subject or surrounding properties and will provide needed parking spaces for the growing church. The parking lot will be landscaped in order to create a buffer between the vehicular use and the residential neighborhood.
- b. A parking lot expansion should not have any major traffic impact on the general vicinity. The church is located adjacent to Man o' War Boulevard and will typically generate activity on only two days per week.
- 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, 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. The final configuration of the parking lot, including any changes to the church's existing parking layout, 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.
5. 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.
6. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.

4. **PLNBOA-19-00087: COMMUNITY VENTURES PROPERTIES, LLC** – request a conditional use to operate a private club (artists' studio work space) at a property within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 244 and 248 Race St., (Council District 1).

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

- a. The applicant has requested a one month postponement to consider making changes to their application based on new information regarding the condition of the subject property. Staff is agreeable to this request.

E. **Administrative Appeals**

1. **PLN- BOA-19-00080: LEXLIVE ENTERTAINMENT COMPLEX** – continuation of the public hearing to request 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: 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:

- c. 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.

2. **PLN-BOA-19-00085: MATT BURTON** – requests an administrative appeal to re-establish a legal non-conforming use (parking lot) on property within the defined Infill and Redevelopment Area in Two Family Residential (R-2)/Historic Overlay (H-1) zones, on property located at 421 and 425 S. Mill St., (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. While the use of the for parking has been limited in scale, there does not appear to have been any intent to abandon the commercial nature of the subject property. The use of the lots for parking will be a less intense use than that of the commercial businesses which have historically operated on the property.
- b. The changes being proposed should not adversely affect the subject or surrounding properties. The adjacent properties have commercial uses and parking areas are common along this portion of Plunkett Street. It is unlikely that these two parcels would be utilized for residential construction until the time that the non-conforming business uses on either side cease.
- c. The use of this property as a parking lot will provide relief for businesses in an area with limited parking availability.
- d. All necessary public services and facilities are or will be available and adequate for the uses.

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

1. The uses shall be conducted 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.
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 Articles 16 and 18 of the Zoning Ordinance.
5. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.

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 January 13, 2020, at 1:30 p.m.

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