

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

March 9, 2020

- 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 February 10, 2020 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-19-00066: JACK V. DRAKE** – requests a variance to reduce the front setback for additional paved parking from 6' to 0' in order to widen an existing driveway within the defined Infill & Redevelopment area in a Planned Neighborhood Residential/Historic Overlay (R-3/H-1) zone, on property located at 100 Goodrich Ave., (Council District 3).

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare, as the areas to be paved are relatively small and will result in a more functional design.
- b. Granting this variance should not have much effect on the character of the general vicinity. While driveways of this width are not common in the neighborhood, two-car attached garages are also quite uncommon. In this case, approving the variance will allow the driveway to be the same width as the garage and will reduce debris, rutting and damage to the yard caused by vehicles driving through the "landscaped" gravel areas.

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

1. The driveway shall be paved in compliance with the application materials and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Building Inspection, and Historic Preservation prior to paving.

2. **PLN-BOA-20-00003: LIU, HUIFANG & DENG** – request a variance to increase the allowable height of a fence that is within 3' of the public right-of-way in a side street, side yard, from 4' to 6' in a Single Family Residential (R-1C) zone, on property located at 802 Cheryl Lane, (Council District 11).

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

- a. While it is disconcerting that the work was completed without a permit, granting the variance should not adversely affect the public health, safety, or welfare, as there is still at least 28" between the public right-of-way and the fence at all locations. At some points, including each end section, the fence is just one to two inches short of the required 3' setback.
- b. Granting the variance should not have much effect on the character of the general vicinity. The requested variance is relatively minor (only 8"), and there are other similar 6-foot tall fences in the neighborhood that are less than 3' from the public right-of-way.

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

1. The applicant shall submit corrected drawings showing the work as completed in order to obtain an after-the-fact fence permit from the Division of Building Inspection within 30 days of Board action.

3. **PLN-BOA-20-00004: ROYCE PULLIAM**– requests a variance to increase the allowable maximum front yard setback from 20' to 70' for a new building in a Neighborhood Business (B-1) zone, on property located at 1009 and 1017 Wellington Way, (Council District 10).

The Staff Recommends: **Approval** of the variance for Building A only, for the following reasons:

- a. Granting the variance should not adversely affect the public health, safety, or welfare. Approval of the variance for Building A will allow the applicant to construct the necessary underground detention and to maximize their use of the property.
- b. Granting this variance for Building A should not have much effect on the character of the general vicinity, as

most buildings in the general vicinity have parking in the front.

- c. Granting the variance for Building A will not constitute a circumvention of the Zoning Ordinance, as the topography of the property and the need for underground detention are special circumstances that justify the need for the variance.

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

1. Construction shall be in accordance with an amended Final Development Plan which reflects that the front yard setback for Building B shall not exceed 20'.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection prior to construction and occupancy.
3. 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.
4. Action of the Board shall be noted on the Final Development Plan for the subject property.

4. **PLN-BOA-20-00005: ANN MARIE AND RYAN SPOONAMORE** – request a variance to decrease the required rear yard from 25' to 19' in order to construct an addition to a house in an Agricultural Rural (A-R) zone, on property located at 128 S. Baxter Blvd., (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 have much effect on the character of the general vicinity. The addition should not be visible from a public right of way, nor have an effect on neighboring houses.
- b. The need for the variance did not come about because of the applicants' actions and there has not been an intentional circumvention of the Zoning Ordinance. They went through the appropriate process to secure a building permit. The applicants were not aware of the required setback, as it was not noted on the approved drawings, nor on the building permit. The variance is generally reasonable as the area requiring the variance is only about 75 square feet.

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

1. Construction shall be completed in accordance with the submitted application materials and site plan.

5. **PLN-BOA-20-00011: BANK OF AMERICA** – requests variances to increase the allowable maximum front yard from 20' to 55', and the allowable maximum side street yard from 20' to 30' in order to construct a new building in a Neighborhood Business (B-1) zone, on property located at 2197 Versailles Rd., (Council District 2).

The Staff Recommends: Approval of lesser variances, from 20' to 32' for the front yard setback and from 20' to 25' for the side street side yard setback, for the following reasons:

- a. Granting lesser variances should not adversely affect the public health, safety, or welfare. By moving the building forward to the former Long John Silver's front building line, the applicant can maintain the existing access easement, but still meet the intent of the B-1 setback requirements, which is to create a more pedestrian friendly environment.
- b. Granting lesser variances should not have much effect on the character of the general vicinity, as there are varying setbacks in the area and the new building will be located with the same front yard setback as the building it is replacing.
- c. The existing access easements constitute a special circumstance that is unique to the subject property and justifies the need for the front and side street side yard to be varied.
- d. Granting the lesser variances will not deprive the applicant of the reasonable use of the land or create an unnecessary hardship. The 7 parking spaces shown in front of the proposed building are not required and there is room to reconfigure the site plan.

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

1. Construction shall be completed in accordance with an amended Final Development Plan which reflects the lesser variances for a front yard setback of 32' and a side street side yard setback of 25'.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Traffic Engineering, and Building Inspection prior to construction and occupancy.
3. Action of the Board shall be noted on the Final Development Plan for the subject property.

6. **PLN-BOA-20-00012: EDSON GARCIA** – requests variances to 1) reduce the required front setback for additional paved parking from 6' to 0' and 2) to reduce the required side yard setback for additional paved parking from 2' to 1' in a Single Family (R-1C) zone, on property located at 441 Severn Way, (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance should not have much effect on the character of the general vicinity. The property is not located within the defined Infill & Redevelopment area and there are varying driveway widths in the neighborhood.
- b. Granting the variance should not adversely affect the public health, safety, or welfare. The additional paving allows the applicant to access the required parking space behind the front building line safely and easily.
- c. While the requirements of the Ordinance could have been met in this location had the applicant gone through the process of applying for a paving permit prior to completing the work, there seems to have been confusion between the Division of Building Inspection and the applicant. Notes on the approved plans for the interior renovation indicated that the additional parking space behind the building line must remain. It is likely that the Plan Reviewer did not realize the paving did not already exist because it was not labeled as "new" or "proposed" on the drawings. It is also understandable based on that annotation that the applicant did not realize the paving did not meet the requirements of the Zoning Ordinance.

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

1. The applicant shall submit corrected drawings showing the work as completed in order to obtain an after-the-fact fence permit from the Division of Building Inspection within 30 days of Board action.

7. **PLN-BOA-20-00013: NEW CIRCLE INVESTMENTS, LLC** – requests a variance to increase the allowable height of a new building in an Adaptive Reuse Project from 48' to 78' in order to construct a new hotel within the defined Infill & Redevelopment Area in a Light Industrial (I-1) zone, on property located at 941 Manchester St., (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. The adjacent properties, as well as those immediately across the street are mostly commercial; and the property is bounded by the railroad along the rear property line. Adequate parking will be provided on the property and across Manchester Street.
- b. Granting this variance should not have a negative effect on the character of the general vicinity. A mixture of uses including the commercial uses in the adaptive reuse project, industrial uses, vehicle storage, the railroad, and residential uses exist in the area. This mixture of uses is characterized by many different building materials, setbacks, and degrees of lot coverage.
- c. Granting the variance will not result in an unreasonable circumvention of the Zoning Ordinance. Hotels are allowed to be at least 75' tall in other zones where they are permitted, and other buildings in the I-1 zone that are not within an Adaptive Reuse area are permitted to be 75' tall.

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

1. Construction shall be in accordance with the Final Development Plan as approved by the Planning Commission.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, Traffic Engineering, and Building Inspection prior to construction and occupancy.
3. Action of the Board shall be noted on the Final Development Plan for the subject property.

D. Conditional Use Appeals

1. **PLN-BOA-20-00007: CAPKY BLUEGRASS** – requests a conditional use to establish an extended stay hotel within the defined Infill & Redevelopment Area in a High Rise Apartment (R-5) zone, on property located at 353 Waller Ave., (Council District 3).

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 use should be compatible with the surrounding uses. The property is located near institutions that will likely find this type of use to be a welcome amenity.
- b. Negative traffic impacts are unlikely and sufficient parking exists 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 extended-stay hotel shall be operated in accordance with the submitted site plan and application materials.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.
3. Action of the Board shall be reflected on the Final Development Plan for the property.

2. **PLN-BOA-20-00008: TIM COURTNEY** – requests a conditional use for a home-based business (mail order firearm customization/assembly) in a Single Family (R-1C) zone, on property located at 713 Troy Trail, (Council District 4).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use will be conducted inside the house, and there will be no customers on site. The applicant will have a Federal Firearms License to conduct these activities as regulated by the Bureau of Alcohol, Tobacco, and Firearms.
- 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 use shall be conducted in accordance with the submitted site plan and application.
2. There shall be no on-site discharge or sale of firearms.
3. The applicant shall acquire and utilize a gun safe within the house.
4. The home-based business shall be limited to the area in the garage, as indicated in the application.
5. Signage for the business shall not be placed on the property or at any other location.
6. Should the applicant cease to occupy the subject property, the conditional use permit shall become null and void.
7. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
8. All of the proper governmental approvals from the Bureau of Alcohol, Tobacco, and Firearms shall be on file with the Division of Building Inspection prior to the issuance of a Certificate of Occupancy.

3. **PLN-BOA-20-00009: NATHANIEL MISSIONARY SOCIETY, INC.** - requests a conditional use to expand the existing place of religious assembly in order to include an accessory community center (Recovery Café), within the defined Infill & Redevelopment Area in a Warehouse Business (B-4) zone, on property located at 1109 Versailles Rd., (Council District 2).

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. Adjoining or nearby land uses, largely of a commercial nature, are not likely to be disturbed by the proposed activities which will generally occur at times when there is little or no existing activity on the property. The nearest residential area is several hundred feet away and adequately buffered from the proposed site.
- 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 use shall be conducted in accordance with the submitted site plan and application.
2. The hours of operation for the community center shall be limited to Fridays and Saturdays, from 10:00 a.m. to 5:00 p.m.
3. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.

E. Administrative Appeals

1. **PLN-BOA-20-00010: REALTY UNLIMITED BLUEGRASS, LLC** – requests 1) an administrative appeal to allow construction of a temporary gravel parking lot (to be paved at a later date); 2) a variance to reduce the required vehicular use area perimeter landscape buffer from 5' to 0'; and 3) a variance to reduce the property perimeter landscape buffer where any zone abuts a railroad, from 15' to 0' at property located in a Highway Service Business zone (B-3), at 1760 N. Broadway, (Council District 1).

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

- a. Granting the administrative appeal would result in a circumvention of the Zoning Ordinance, as gravel is not an allowable paving material. Allowing a new gravel parking lot to be established in a commercial zone, for an extended and uncertain time period of 3-5 years, would set a dangerous precedent and would likely create enforcement issues.
- b. There are not special circumstances unique to the subject property that justify the need to utilize gravel, or to eliminate the required landscape buffers. These circumstances are the result of the applicant's actions, as they are due to improper fill being installed on the site.
- c. Granting the appeal and variances could adversely affect the public health, safety, or welfare. The Division of Engineering has expressed major concerns with the lack of water quality and quantity features that were shown on the construction plans, but not installed.

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

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