

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 8, 2020

I. CALL TO ORDER - The Chair will call the meeting to order at 1:30 p.m. **via video teleconference.**

Due to the COVID-19 pandemic, state of emergency and Governor Beshear's Executive Orders regarding social distancing, this meeting is being held via teleconference pursuant to Senate Bill 150 (as signed by the Governor on March 30, 2020) and Attorney General Opinion 20-05, and in accordance with KRS 61.826, because it is not feasible to offer a primary physical location for the meeting.

Please utilize the following information to participate in this public hearing:

<https://zoom.us/join>

Webinar ID: 940 4508 9468

Password: 092716

Call in Number

+1 (929) 436-2866

If participants have items to submit for consideration by the Board of Adjustment (photos, videos, documents, etc.), please email them to **planningmailbox@lexingtonky.gov** before 10:00 a.m. on the day of the meeting. Information may also be mailed to the Division of Planning, 101 E. Vine Street, Suite 700, Lexington, KY 40507. Members of the public will have the opportunity to speak during the meeting, but will not have the opportunity to share their screens during the video teleconference.

If you do not feel comfortable participating in a video teleconference meeting, written comments may be sent to the Division of Planning at the above listed email address, and will be distributed to the Board of Adjustment members.

The media and public may view the public hearing on LexTV Spectrum channel 185, MetroNet channel 3, Windstream channels 3 and 20, or via live stream at the following link: http://fucg.granicus.com/MediaPlayer.php?publish_id=12

II. APPROVAL OF MINUTES – The Chair will announce that the minutes of the March 9, 2020, April 13, 2020 and May 11, 2020 meetings 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-20-00017: 3609 PROPERTIES LLC** – requests a variance to reduce the required 25' setback for a front-facing garage to 20', in order to allow a new garage door to be installed in an Expansion Area Residential (EAR-2) zone on property located at 4517 Arum Park. (Council District 7)

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. In fact, without a recessed garage door, the house will be more in character with other houses in the neighborhood. There is ample room in the driveway to park a vehicle without obstructing the sidewalk, and the space in the garage will be more functional with the new garage door.
- b. Granting the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance, since the home and garage were inspected and the Division of Building Inspection issued a Certificate of Occupancy several months before the applicant identified a setback problem.
- c. Strict application of the requirements of the Zoning Ordinance has created a hardship for the applicant as the recessed garage door has limited the usable interior space within the garage and resulted in an awkward exterior appearance, factors which have inhibited the applicant's ability to find a buyer for the house.
- d. The variance is not the result of a willful violation of the Zoning Ordinance, but came about due to a surveying error that was discovered after a Certificate of Occupancy had already been issued for the home. The original variance application was submitted voluntarily by the applicant after a mortgage survey identified a potential problem with regard to the location of the garage.

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

1. The garage door shall be installed in accordance with the submitted application materials and site plan.
 2. All necessary permits shall be secured from the Division of Building Inspection prior to installation of the garage door.
2. **PLN-BOA-20-00018: KR LEX OZ LLC** – requests a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.61 in order to construct an addition to a single-family house with an existing FAR of 0.57 within the defined Infill & Redevelopment Area in High Density Apartment (R-4)/Historic Overlay (H-1) zones on property located at 244 N. Broadway. (Council District 1)

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. A relatively small addition to the rear of the house will not have a significant impact on the appearance of the house from the public rights-of-way. Additionally, each of the other five single family houses along N. Broadway between W. Third Street and New Street has a non-conforming Floor Area Ratio, with a range from 0.42 to 0.62.
- b. The request is generally reasonable because even though the property is in an R-4 zone, it is intended to remain as a single family residence and the addition of the sunroom will not result in construction that would encourage the creation of additional units on property.
- 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.
3. **PLN-BOA-20-00019: STEADFAST COLLIN LPC LLC** – requests a variance to reduce the required setback for a free-standing sign from 20' to 10' in an Expansion Area Residential (EAR-3) zone on property located at 1825 Little Herb Way. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. The change in elevation along much of the property's frontage is a special circumstance that is unique to the subject property and justifies the need for the variance.
- b. Strict application of the Zoning Ordinance could result in an unnecessary hardship for the applicant because visibility of the sign would be significantly limited due to the change in elevation at the 20' setback.
- c. The need for the variance has not arisen due to actions of the applicant, nor does the request 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 necessary, prior to installation of the sign.
- d. Granting the variance should not adversely affect the public health, safety, or welfare, as the sign will be located outside of the required sight-distance triangle and should not have an effect on traffic visibility. It should not alter the character of the general vicinity, as the requested signage is not out of scale or overwhelming in this location.

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

1. The sign shall be installed in accordance with the submitted application and site plan.
 2. All necessary permits for signage shall be obtained from the Division of Building Inspection, prior to erecting the sign.
4. **PLN-BOA-20-00020: SEAN AND KRISTEN FOLEY** – request variances to decrease the required minimum frontage from 750' to 353' for Lot 1 and from 750' to 166' for Lot 2, in order to subdivide an existing parcel into two parcels in the Agricultural Rural (A-R) zone on property located at 5021 Jacks Creek Pike. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance should not have much effect on the character of the general vicinity. There are a number of existing legally non-conforming lots in the vicinity that are smaller than the 40 acres now required in the A-R zone that also have less than the 750' of frontage now required. The northern frontage, in particular, is similar to that of several smaller lots in the vicinity.

- b. Granting the variance should not adversely affect the public health, safety, or welfare. There should not be any adverse impacts on traffic, as two existing entrances, permitted by the Kentucky Transportation Cabinet, already exist and no access between the two proposed lots exists without accessing Jacks Creek Pike.
- c. There are special circumstances that justify the need for the variances including the ravine and steep slopes that separate the two proposed lots. The unique configuration of the existing property, with two existing frontages separated by three 10-acre lots is also a special circumstance.
- d. The requested variances are not an attempt to circumvent the requirements of the Zoning Ordinance. The applicant has gone through the necessary processes and has received an approval for the Final Record Plat, pending approval of the variances.

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

- 1. The property shall be subdivided in accordance with the submitted application materials and site plan.
- 2. Action of the Board shall be noted on the Final Record Plat.
- 3. Any additional landscaping or fencing along the frontage of lot 2 shall be set back a minimum of 15' from the front property line to reduce potential traffic visibility issues at the 90 degree bend in Jacks Creek Pike.

- 5. **PLN-BOA-20-00021: POSITIVE GROWTH LLC**— requests variances to 1) reduce the required front yard setback from 14' to 6', and 2) to reduce the required rear yard setback from 20' to 6' in order to construct a new house within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone on property located at 667 N. Martin Luther King Blvd. (Council District 1)

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

- a. There are special circumstances that justify the need for the requested variances. The lot is both narrow and shallow, and the normally required front and rear yard setbacks would render the lot unbuildable.
- b. The requested variances are generally reasonable and their approval will allow the applicant to utilize a currently vacant lot within the Infill & Redevelopment area for needed housing.
- c. Granting the variances will not result in construction that is out of character with the general vicinity. The adjacent property to the left is approximately the same size and shape as the subject property, and contains a house with similar setbacks to what is being proposed.
- d. 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 variances as soon as it was determined that they were needed, prior to starting 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-20-00022: KBJ CONSTRUCTION MGMT**- requests variances to 1) reduce the required front yard setback from 20' to 0'; 2) reduce the required rear yard setback from 20' to 11'; and 3) reduce the required side yard setback from 3' to 2' in order to construct a new house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 524 Michigan St. (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.
- 2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to

construction and occupancy.

7. **PLN-BOA-20-00023: KBJ CONSTRUCTION MGMT** – requests variances to 1) reduce the required front yard setback from 20' to 0'; 2) reduce the required rear yard setback from 20' to 11'; and 3) reduce the required side yard setback from 3' to 2' in order to construct a new house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 526 Michigan St. (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.
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-20-00015: ALICIA D. CARSON** – requests a conditional use for a family childcare facility for up to 10 children in a single-family residential (R-1D) zone on property located at 2365 Shandon Dr. (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. Adequate off-street and on-street parking is available. A fenced outdoor play 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 12 children shall be provided in accordance with the submitted application materials and site plan.
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 beyond 6 children.
3. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
4. The conditional use shall become null and void should the applicant no longer reside at this location.

2. **PLN-BOA-20-00016: LEXINGTON HISTORY MUSEUM** – requests a conditional use to establish a historic house museum within the defined Infill & Redevelopment Area in Two-Family Residential (R-2)/Historic Overlay (H-1) zones on property located at 317 and 321 S. Mill St. (Council District 3).

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

- a. The proposed use should not adversely affect the subject or surrounding properties, nor should the use create traffic issues. The proposed museum will be open to the public only two days per week and by appointment. Required off-street parking will be provided on nearby property.
- 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 condition:

1. The use shall be conducted in accordance with the submitted site plan and application.
2. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.

3. **PLN-BOA-20-00024: COMMON GROUNDS** – requests a conditional use to establish a drive-through facility within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 399 Waller Ave. (Council District 3)

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

- a. While staff is sympathetic to the applicant's concerns regarding the operation of their business during the current health crisis, the proposed use is not appropriate at this particular location. The proposed drive-through would result in adverse traffic impacts. There is not sufficient space on the site to accommodate two drive through facilities. The proposed drive-through facilities would impede the use of the existing drive-through, create parking difficulties within the site, and would likely create traffic issues on Waller Avenue.

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: **Approval of the variance to reduce the property perimeter landscape buffer where any zone abuts a railroad, from 15' to 0'** for the following reasons:

- a. Granting the landscape variance along the railroad will not alter the essential character in the general vicinity as the applicant plans to plant a significant number of trees along the rear lot line abutting the railroad.
- b. The elevation change between the subject property and the railroad is a special circumstance that is unique to this property and justifies the need for a variance. The required landscape buffer would not create an effective buffer because the railroad is located at a significantly higher elevation.

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

1. Trees a minimum of two (2) feet height shall be planted along the rear lot line, where the property abuts the railroad in accordance with the submitted application materials and site plan.
2. The types and final location of the trees shall be reviewed and determined to be appropriate by the Landscape Examiner with the Division of Environmental Services.
3. Action of the Board shall be noted on the Final Development Plan.

The Staff Recommends: **Disapproval of the administrative appeal to allow construction of a temporary gravel parking lot (to be paved at a later date)** 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. 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 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.
- d. The Royal Springs Wellhead Protection Committee (RSWC) has recommended that gravel not be utilized on this site in order to prevent contaminant discharge into the Royal Springs aquifer recharge area.

The Staff Recommends: **Disapproval of the variance to reduce the required vehicular use area perimeter landscape buffer from 5' to 0'** for the following reasons:

- a. There are not special circumstances unique to the subject property that justify the need to eliminate the required vehicular use area perimeter landscape buffer. The circumstances that the applicant has indicated make planting and fence installation difficult on the site are the result of the applicant's actions, as they are due to improper fill being installed on the site.
- b. Granting the variances would adversely impact the character of the general vicinity. While this property is not located within the Paris Pike Corridor overlay zone, it is a part of that corridor and a major entry point into Lexington. Easing the transition from the rural landscape to an urban streetscape is especially important in this location.

2. **PLN-BOA-20-00025: AARON AND AMY JUTTE** – request an administrative appeal to contest the Division of Building Inspection's issuance of a construction permit based on the Division of Planning's sign-off regarding the front and side yard setbacks of proposed construction within the Montclair

Neighborhood Design (ND-1) overlay in a Single Family Residential (R-1C) zone, on property located at 1203 Summit Dr. (Council District 3)

The Staff will present a “fact sheet” for the Board’s review prior to the appellant’s presentation.

- 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 July 13, 2020, at 1:30 p.m.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.