

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

August 10, 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: 944 1962 2664

Password: **937603**

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 July 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-20-00031: BEBY JAYARAM** – requests a variance to increase the allowable height of a fence in the side street side yard from 6' to 8' in a High Density Apartment (R-4) zone, on property located at 2201 Storey Ct. (Council District 8)

The Staff Recommends: Disapproval, for the following reasons:

- a. Approval of the variance would allow an unreasonable circumvention of the requirements of the Zoning Ordinance, as the need for a variance has come about as the result of the applicant's actions. The applicant did not secure a fence permit prior to beginning construction.
- b. While staff is sympathetic to the applicant's concerns regarding noise and the visibility of their home, there are not special circumstances that justify the requested variance. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. A 6-foot tall fence is allowed by the Zoning Ordinance and would likely offer a similar level of security and privacy.
- c. Granting the variance would result in construction that is out of character for the general vicinity. There are very few fences located along this portion of Trent Boulevard, much less any of the requested height.

Additionally, an 8-foot tall, solid wood fence is not appropriate along the public right-of-way in a high-density residential zone where the pedestrian experience is particularly important. An 8-foot tall fence is not permitted along the public right-of-way in any residential zone, nor in most commercial zones.

2. **PLN-BOA-20-00035: JAMES T. MASTIN** – requests a variance to reduce the required side yard setback of 5.5' to 3.2' in order to construct an addition within the defined Infill and Redevelopment area in a Planned Neighborhood Residential (R-3) zone, on property located at 467 Johnson Ave. (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. The requested setback will be similar to other setbacks in the area, and the addition will not be visible from any public rights-of-way.
- b. The size and configuration of the lot is a special circumstance that justifies the need for the variance, as it is dissimilar from many of the lots in the immediate vicinity.
- c. The requested variance is generally reasonable, as it will continue an existing setback for a modestly sized addition, replacing portions of a structure that has fallen into disrepair. It will allow for better access to the attic and make the living space more functional. Granting the variance will allow the applicant to update and better utilize a small lot within the Infill & Redevelopment area by adding features that are more desirable in the current housing market.
- d. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The proposed addition will be compatible with the existing development pattern in the neighborhood. 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-20-00030: IDEAL EXCHANGE PAWN** – requests a conditional use to establish a pawnshop in a Highway Service Business (B-3) zone on property located at 1123 Winchester Rd. (Council District 5)

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this type of use is not heavily concentrated along this portion of Winchester Road.
- b. The requested use should not create traffic issues, and sufficient parking is available 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 pawnshop shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to any construction and/or renovation, and prior to opening the pawnshop.
3. Outdoor display or sales of merchandise shall be limited to the area of 4 parking spaces (approximately 650 square feet), in order to maintain the minimum parking requirement for the pawnshop. Outdoor display shall not be permitted between the front wall plane of the building and Winchester Road.
4. This approval shall become null and void should the appellant no longer operate this business on the subject property.

2. **PLN-BOA-20-00033: KIDS UNLIMITED LEARNING CENTER** - requests a conditional use for a rehabilitation home located closer than 500 feet from a residential zone in a Professional Office (P-1) zone, on property located at 1365 Devonport Dr. (Council District 11)

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. A mixture of uses exists in the general vicinity and adjacent to the subject property. The use should not have a negative impact on the nearby residential uses, as the property is just over half an acre in size and the building is located approximately 75' from the nearest residential structure. Additionally, the applicant plans to construct a privacy fence, which will allow the residents to enjoy outdoor areas of the property, while maintaining privacy for both neighbors and the residents.
- b. This use will allow the applicant to utilize an existing building in order to provide services that are needed in

the community. The existing structure is uniquely suited to this type of use due to its architectural style. The building has two wings with a shared breezeway, making it well-suited to housing gendered populations.

- 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 use shall be conducted in accordance with the submitted site plan and application.
2. Services including employability training, counseling, anger management, etc. shall be made available only to residents of the facility.
3. The layout of the parking areas and access points shall be subject to approval by the Division of Traffic Engineering.
4. The maximum number of residents shall not exceed 42, and all required parking for the facility (for both residents and employees) shall be provided on the subject property.
5. 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.
6. Any pole lighting for the parking lots shall be of a shoebox design with light directed downward to avoid disturbing adjoining residential areas.
7. The applicant shall install a 6' to 8' tall privacy fence in the side and rear yards (behind the front wall plane of the building).
8. All necessary permits and approvals, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, as well as from the Commonwealth of Kentucky Department of Corrections.

3. **PLN-BOA-20-00034: THERESA NOWAK** - requests a conditional use for a home-based business (counseling), in a Single Family Residential (R-1C) zone, on property located at 233 Larch Lane. (Council District 2)

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 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 (counseling) shall be operated 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 use.
3. The conditional use shall become null and void should the applicant no longer reside at this location.

4. **PLN-BOA-20-00036: BFB HOLDINGS, LLC** – requests 1) a conditional use to establish a cocktail lounge with both indoor and outdoor live entertainment and/or dancing, and 2) a variance to reduce the required distance for outdoor live entertainment from 100 feet from any residential zone, to 30 feet within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 385 S. Limestone St. (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, provided the applicant complies with appropriate measures, as recommended. These include restrictions on the days, hours, and amplification of the entertainment.
- b. All necessary public facilities and services are available and adequate for the proposed live entertainment conditional use.
- c. Granting the requested variance will not adversely affect the public health, safety or welfare. It will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public provided there are limits on the hours of operation and amplification is limited. No expansion of the existing building is required or proposed by the applicant to accommodate this use.
- d. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because, although the residential zone is closer to the proposed use than 100', the nearest residential structure is approximately 100' away from the property line, and even further from the covered patio where live entertainment will occur.

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

1. The use shall be conducted 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 establishing the use.

3. Outdoor amplified music/entertainment shall be limited to Thursday through Saturday nights, ending no later than 1:00 a.m.
4. All music/entertainment shall be provided in a manner that does not create a nuisance to the surrounding neighborhood.
5. **PLN-BOA-20-00037: L. ROBERTS PROPERTIES** – requests a conditional use for a vehicle storage yard within the defined Infill and Redevelopment area in a Light Industrial (I-1)/Heavy Industrial with conditional zoning (I-2) zone, on property located at 745, 747, 751, 757, 765 and 775 E. Seventh St. (Council District 5)

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

- a. The proposed use is a conditional use in the I-1 zone and is appropriate in this location, where historically, legal and possibly illegal non-conforming uses have been conducted for a number of years. The proposed use will likely be less intense than many of the previous uses, and should have fewer environmental impacts.
- b. The proposed use should not adversely affect the subject or adjoining/nearby properties which mostly have I-1 zoning, and are being used for industrial purposes. It is unlikely that this use will disturb residential uses nearby, as the only residential uses are to the north, separated from the subject property by the railroad tracks.
- 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 use shall be conducted in accordance with the submitted application materials and site plan.
2. The layout of the parking areas and access points shall be subject to approval by the Division of Traffic Engineering.
3. 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.
4. Fencing along East Seventh Street shall be set back a minimum of 5' from the public right-of-way.
5. Any pole lighting for the parking lots shall be of a shoebox design with light directed downward to avoid disturbing adjoining residential areas along the norther boundary of the subject property.
6. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.

- 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 September 14, 2020, at 1:30 p.m.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.