

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

October 12, 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: 931 8925 2414

Password: 52644

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://lfucg.granicus.com/MediaPlayer.php?publish_id=12

II. APPROVAL OF MINUTES – The Chair will announce that the minutes of the September 14, 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-20-00044: MANOJ R. SHAHI** – requests a variance to increase the allowable height of a fence in the front yard from 4' to 6' in a Planned Neighborhood Residential (R-3) zone, on property located at 3870 Boston Rd. (Council District 9)

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

- a. While it is disconcerting that the work was not completed in accordance with the permit, granting the variance should not adversely affect the public health, safety, or welfare. The fence is setback nearly 7' from the edge of the sidewalk and connects to an existing 6-foot tall fence.
- b. Granting the variance should not have much effect on the character of the general vicinity. The subject property is oddly shaped, particularly the portion where the fence is located. Additionally, there are several lots in the immediate vicinity which are through lots with houses backing up to Boston Road, which could have fences up to 8' in height by right along that street frontage.

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.
2. **PLN-BOA-20-00048: SHARON VROLIJK** – requests a variance to reduce the required front setback for additional paved parking from 6' to 0' and an administrative appeal to allow greater than 50% of the required front yard to be paved in order to allow an existing driveway expansion to remain in a Planned Neighborhood Residential (R-3) zone, on property located at 809 Statesman Way. (Council District 5)

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

- a. Granting the variance and administrative appeal should not adversely affect the public health, safety, or welfare. Instead, it should have a positive safety impact, as the expanded parking area will allow a safe alternative to a hazardous on-street parking situation.
- b. There are special circumstances that justify the need for this variance and administrative appeal. While staff typically encourages on-street parking, in this particular location, the configuration of the subject property relative to the intersection, creates an unsafe site for on-street parking.

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

1. The applicant shall submit drawings showing the work as completed in order to obtain an after-the-fact paving permit from the Division of Building Inspection within 30 days of Board action.
2. The applicant shall install additional railing along the front porch for a minimum of 4' beyond the existing railing in order to prevent vehicles from breaching the pedestrian area directly in front of the house.
3. **PLN-BOA-20-00049: TIMOTHY AND OPA JOHNSON** - request a variance to reduce the required front yard setback from 300' to 87' in order to construct a new house in an Agricultural Rural (A-R) zone, on property located at 6701 Jacks Creek Pike. (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 most of the houses in the immediate vicinity have similar setbacks.
- b. The topography of the property is a special circumstance that is unique to the subject property and justifies the need for the variance.
- c. Strict application of the Zoning Ordinance would create an unnecessary hardship for the applicants due to the high costs associated with constructing a house and designing a septic system on steep slopes.
- d. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicants have 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 proposed septic system shall be reviewed and approved by the Fayette County Board of Health prior to construction and occupancy.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.
4. **PLN-BOA-20-00050: PATRICK AND SHEILA WILKINSON** – request a variance to reduce the required side yard setbacks from 25' to 10' in order to construct an addition in an Agricultural Rural (A-R) zone, on property located at 1180 Centerville Lane (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 addition is relatively small and will be located at the rear of the house. Additionally, the side yard setbacks will be greater than those for the existing house and the addition will not be visible from the street.
- b. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. This request is supported by the recommendations of the 2018 Comprehensive Plan and the Rural Land Management Plan, as it will allow the applicants to construct a modest addition to provide additional living space for their family, while maintaining a small, legally non-conforming lot within a Rural Settlement. .

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 septic system shall be reviewed and approved, as necessary, by the Fayette County Board of Health prior to construction and occupancy.
 3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.
5. **PLN-BOA-20-00051: SARA AND MATTHEW CAMPBELL** – request a variance to decrease the minimum required side yard setback from 8' to 2' in order to allow a detached accessory structure to remain as constructed within the defined Infill & Redevelopment Area in Single Family Residential (R-1C)/Historic District Overlay (H-1) zones, on property located at 1623 Nicholasville Rd. (Council District 3)

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

- a. Granting the variance could have adverse effects on the public health, safety, or welfare, as the shed is located very close to the lot line, with an angled roof that directs water runoff onto the adjacent property's fence.
- b. There are not special circumstances that justify the requested variance. While another shed was previously located in this location, that shed was shorter and had a significantly smaller footprint, resulting in less potential for negative impacts on the adjacent property.
- c. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land, as there is sufficient space in the rear yard to relocate the shed.

D. Conditional Use Appeals

1. **PLN-BOA-20-00042: DOUG VESCIO** – continuation of the public hearing to request a conditional use for a plant nursery in order to construct a new building at an existing plant nursery in an Agricultural Urban (A-U) zone, on property located at 901 Old Todds Rd. (Council District 7)

The Staff Recommends: **Approval** of the Conditional Use, for the following reasons:

- a. Expanding the existing use to allow for construction of a 6,360 square-foot structure should not adversely affect the subject or surrounding properties. Construction of the proposed building will help to clean up the property by allowing the applicant to store the majority of equipment and materials indoors and to perform vehicle maintenance tasks indoors.
- b. The proposed building will not increase the intensity of the existing use on the property. The number of employees, days and hours of operations, and types of activities occurring will not change.
- 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 use shall be conducted in accordance with the submitted application materials and site plan. Buildings on the property shall be limited to the existing office building, the existing shed, and the proposed 6,360 square-foot storage building. The applicant shall return to the Board of Adjustment if any additional structures are desired in the future.
 2. All necessary permits and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to occupying the proposed building.
 3. A 5' average buffer shall area shall be provided along the side lot lines where adjacent to the proposed storage building, extending to and including the rear lot line. This buffer area shall include 1 tree every 40' of linear boundary, or fraction thereof, from Group A or B as listed in the Planting Manual, plus a 6' high fence.
2. **PLN-BOA-20-00046: LITTLE CHAMPS ACADEMY** – requests a conditional use to establish a childcare facility in a Light Industrial (I-1) zone, on property located at 297 Ruccio Way. (Council District 9)

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The property has been used for activities primarily for children and families in this location since the early 2000s. This use will provide a useful service for the surrounding neighbors and broader community.
- b. More than adequate parking exists and is available on the subject property.
- 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 child care 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 prior to the commencement of this use.
3. The facility shall be fully licensed and comply with requirements of the Kentucky Cabinet for Health and Family Services, Division of Regulated Child Care.

E. Administrative Appeals

1. **PLN-BOA-20-00045: NEWTOWN SPRINGS, LLC** - requests an administrative appeal to transfer 22 square feet of signage from one allowable free-standing sign to another in order to construct a 72 square-foot free-standing sign on split-zoned property in Neighborhood Business (B-1)/Agricultural Urban (A-U) zones, on property located at 1445 Newtown Center Way. (Council District 1)

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

- a. Granting the request will not circumvent the Zoning Ordinance as the proposed signage will comply with the limitations outlined in Article 17-8(a). The combined total size of all business signs on the subject property will not exceed that allowed by Article 17. The number of signs allowed on the property will not be increased.
- b. Approval of the request will not adversely affect the public health, safety, or welfare, nor alter the character of the vicinity. The proposed signage increase in this location is relatively modest and the applicant will forgo an additional sign in order to have a slightly larger sign in an area they feel will be most beneficial to their business.

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

1. The proposed signage shall be established in accordance with the submitted application materials and the revised site plan dated 9/24/2020 with regard to size and location. The sign should be lit in accordance with Article 17 of the Zoning Ordinance, and no digital signage shall be allowed.
2. All necessary permits for signage shall be obtained from the Division of Building Inspection.

2. **PLN-BOA-20-00047: LEXINGTON HOUSING FOR THE HANDICAPPED, DBA THE BOB BROWN HOUSE** – requests an administrative appeal to change one legal non-conforming use (nursing home) to another (assisted living facility) in an Agricultural Rural (A-R) zone, on property located at 3057 N. Cleveland Rd. (Council District 12)

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

- a. Granting the requested change in non-conforming use from a nursing home to an assisted living facility should not adversely affect either the subject or surrounding properties. This change in use should be a positive change, resulting in less traffic.
- b. The proposed assisted living facility land use is first allowable in the same zoning category as the existing use and no structural changes will be made to the exterior of the building. Therefore the non-conforming use will be equally non-conforming and qualifies for approval per Article 4-3(e).

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

1. The change in use to an assisted living facility shall be done in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals including a Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to occupancy.

- IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

A. Adoption of the 2021 Board of Adjustment schedule

- 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 November 9, 2020, at 1:30 p.m.

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