

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 9, 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/j/96769807663?pwd=cFJ2RFIQUW45YmVWGFHT29XS3prZz09>

Webinar ID: 967 6980 7663
Password: 182194

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 October 12, 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-20-00056: JN HARRODSBURG, LLC** - requests variances to reduce the required front yard setback from 30' to 20' in order to construct a new house on each of 33 lots in a Single Family Residential (R-1D) zone, on property located at 4229-4299 Captains Ct. (formerly 4235 Harrodsburg Rd.) (Council District 10)

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. Approval of the variances will result in construction that is characteristic of the existing adjoining neighborhood. The majority of houses on the three streets that run parallel to Captains Court are set back 20' from the back of the sidewalk, due to the waiver that was approved for that subdivision in the 1990s.
- b. The 10' Tree Protection Area (TPA) along the boundary between the subject property and the Palomar View Subdivision is a special circumstance that justifies the need for the variances on the western side of Captains Court, as the TPA limits is quite densely planted and includes a berm, limiting the amount of functional rear

yard space for those lots. Allowing houses on those lots to move forward 10' will allow for larger, more usable rear yards.

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 minimum rear yard shall be 20' for each lot. The revised front and rear lot lines shall be denoted on an Administrative Action Minor Subdivision Plat within 60-days of Board Action.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

2. **PLN-BOA-20-00057: ANDERSON COMMUNITIES, INC** – requests a variance to reduce the required setback for a yard adjacent to a more restrictive zone where the proposed development abuts the existing Agricultural Urban (A-U) zone from 25' to 15' on a split-zone property in High Density Apartment (R-4)/Agricultural Urban (A-U) zones, on property located at 3330 Todds Rd. (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. The transition between the two zones is relatively insular, and should only have an impact on the church and the new development. The character of the church property, which exists along its Todds Road frontage, will be maintained. The requested variance will not impact the relationship between the subject property and adjacent single family residences.
- b. There are special circumstances that are unique to this particular property that justify the need for the variance. The property is triangular, so it is necessary for much of the development to occur at the widest portion of the site, which is adjacent to the zoning boundary. Additionally, the requirement for a public street and access to the needed parking areas have resulted in the need to move the proposed buildings closer to the zoning boundary.

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. Action of the Board shall be noted on the Final Development Plan.
3. All necessary permits and/or approvals shall be obtained prior to construction and occupancy.

D. Conditional Use Appeals

1. **PLN-BOA-20-00053: SANDRA CLEMENTS** – requests a conditional use for a home-based business (personal Pilates instruction) in a Single Family Residential (R-1C) zone, on property located at 3420 Crimson King Ct. (Council District 8)

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 off-street 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 (individual Pilates instruction) shall be operated in accordance with the submitted application materials and site plan, with instruction only on an individual basis.
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.

2. **PLN-BOA-20-00054: NATHAN T. COOK** – requests 1) a conditional use to extend the R-2 regulations into the B-1 zoned portion of the property in order to construct living quarters accessory to the single family dwelling unit, and 2) an administrative appeal to allow kitchen facilities in the proposed accessory living quarters within the defined Infill and Redevelopment Area in a Two Family Residential (R-2) zone, on property located at 140 Victory Ave. (Council District 5)

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

- a. Extending the R-2 zoning regulations approximately 20' to the side lot line is generally reasonable in this location and should not have adverse impacts on the subject or surrounding properties. The majority of the general vicinity is characterized by residential uses where accessory living quarters are allowable by right.

- b. Extending the R-2 zoning regulations will allow the entire lot to function more cohesively and will support the existing principal use located within the R-2 zoned portion of the lot.

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

- 1. The accessory living quarters shall not be rented, but shall be for use by the property owner and/or his guests only.
- 2. Kitchen facilities as defined in Article 1 shall not be provided.
- 3. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.

The Staff Recommends: **Disapproval of the Administrative Appeal**, for the following reasons:

- a. Approval of kitchen facilities in an accessory living quarters in this location would effectively create an Accessory Dwelling Unit (ADU). ADUs are currently only allowed in the Expansion Area. While there are pending regulatory changes that would likely allow an ADU in this location, those changes have not been approved. Since those regulatory changes are currently under review and consideration by a committee of the Urban County Council, it is not within the Board's purview to approve such a use at this location.

- 3. **PLN-BOA-20-00055: TATES CREEK CHRISTIAN CHURCH** – requests a conditional use to establish a childcare center accessory to a place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 3150 Tates Creek Rd. (Council District 5)

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 located in the existing building and a fenced outdoor play area will be provided. Church properties are typically not used throughout the week, so are generally well-suited for this type of use. 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 during the 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 childcare 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 days and hours of operation shall not exceed Monday through Friday, from 7:00 a.m. to 6:00 p.m. without further approval of by the Board of Adjustment.
- 4. The childcare facility shall be limited to 40 children.
- 5. A fenced and screened play area, containing a minimum of 25 square feet per child, shall be provided.
- 6. 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-20-00058: JOSEPH FENWICK** – requests an administrative appeal to increase the allowable size of an accessory building from 690 square feet to 960 square feet in order to allow an addition to an existing detached garage to remain as constructed in a Single Family Residential (R-1C) zone, on property located at 2064 Rebel Rd. (Council District 9)

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

- a. There are not special circumstances that justify the request. The general vicinity is characterized by single family homes with smaller accessory structures, which generally appear to meet the requirements of the Zoning Ordinance. The applicant has not provided compelling reasons for requiring additional space in an accessory structure above and beyond what would be allowed by right on the subject property.
- b. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. The applicant could construct a smaller addition to provide some extra storage while meeting the requirements of the Zoning Ordinance for accessory structures.
- c. The circumstances at hand are the result of actions taken by the applicant. Construction began without a permit, which could constitute a willful violation of the Zoning Ordinance. Approval of the request could result in the creation of a precedent for forgiveness of noncompliance coupled with a lack of justification. Such a precedent could have lasting effects on the immediate vicinity and similar neighborhoods.

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