

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

December 14, 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/95811238856?pwd=TnZGVnhNWGIJNnB1c2V2bGhXMC96QT09>

Webinar ID: 958 1123 8856
Password: 047608

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 November 9, 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-20-00052: KEITH NATIONAL CORPORATION** – requests a variance to reduce the required front yard setback from 20' to 10' in order to construct a new building within the defined Infill and Redevelopment Area in a Light Industrial (I-1) zone, on property located at 858 and 862 W. Main 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, nor alter the character of the general vicinity. Provided that the recommended urban design standards are met, a more urban front yard setback is appropriate in this location. The reduced setback will allow for parking to occur behind the building and will allow for an activated pedestrian environment along an important gateway into downtown Lexington.
- b. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicants have applied for the variances 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. The site shall be developed in accordance with the submitted application materials. A revised site plan and elevations may be accepted illustrating the urban design standards required in the conditions below and revisions recommended by the Division of Traffic Engineering.
2. The primary wall plane facing West Main Street shall adhere to the following urban design standards:
 - a. A covered primary entrance for pedestrian access shall be provided.
 - b. There shall be at least one articulation along the primary wall plane which shall be a change of at least 5 feet in depth and 8 feet in length, at a minimum.
 - c. A minimum of 20% of the ground floor building face shall be transparent glass, including windows and pedestrian doors.
3. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Certificate of Occupancy, prior to opening the facility.

2. **PLN-BOA-20-00059: CENTRAL EQUIPMENT** - requests a variance to reduce the number of trees required within the Interior Vehicular Use Area Landscape Area from two trees to zero trees, in a Highway Service Business (B-3) zone, on property located at 791 Red Mile Rd. (Council District 11)

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 two trees will still be provided on the property, adjacent to the new parking area. The project will result in an overall increase in tree canopy on the property.
- b. The location of the public stormwater system connection is a special circumstance that resulted in the underground retention basin being designed with shallower than normal soil depth above the underground storage vault. This special circumstance justifies the need for the requested variance as there is not sufficient soil depth to support healthy trees above the underground stormwater storage vault.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. The applicants have applied for the variance as soon as they were directed to by the Division of Environmental Services.

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 any future amendment to the Final Development Plan.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection and Environmental Services prior to installation of the landscaping and use of the parking lot.

3. **PLN-BOA-20-00061: KNOCKOUT DEVELOPMENT** – requests a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.70 in order to allow for the conversion of unfinished attic space into finished living space in a single-family dwelling unit within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 473 N. Martin Luther King Blvd. (Council District 1)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the variance will not represent an attempt to circumvent the Zoning Ordinance, but will meet the intent of the provisions of the Ordinance that allow for variances to FAR, as it will not create an opportunity for more units on the subject property than would be allowed by right.
- b. Granting the variance should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Finishing the existing attic space will not have any impact on the appearance of the house from the public rights-of-way.
- c. The variance is reasonable, as the structures in the general vicinity, along this portion of North Martin Luther King are similar in size and the lots are configured similarly. The Zoning Ordinance specifically states that BOA action may sometimes be required within the defined Infill and Redevelopment Area in order to facilitate appropriate development without creating an unusual hardship or development that is incompatible with the existing pattern of the neighborhood.

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.

4. **PLN-BOA-20-00063: EASTERN AVE SOBER LIVING** – requests a variance to increase the allowable lot coverage from 25% to 47% in order to construct a new 2-story accessory structure within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 208 Eastern Ave. (Council District 1)

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

- Granting the variance would constitute a circumvention of the Zoning Ordinance. Lot coverage cannot be varied in the R-3 zone when it could result in an increase in density on a property. Allowing additional lot coverage in this location would create an opportunity for more units on the subject property, which already contains a non-conforming structure.
- Construction of the garage would increase the non-conforming parking situation on the property. Currently, there is an informal parking area that appears to be large enough for about 4 vehicles to park. With the garage, there would only be 2 available parking spaces.
- Granting the requested variance alone would not be enough to allow for the construction of the requested structure. Other variances related to the size of the structure and required number of parking spaces would be required to satisfy the applicant's proposal. If the structure includes a dwelling unit, the property would have to meet the requirements for a Group Residential Project established by Article 9 of the Zoning Ordinance, which requires the Planning Commission's approval of a Development Plan. Given the size and configuration of the lot and existing structure, it is unlikely that the requirements for a Group Residential Project could be met on this site.

5. **PLN-BOA-20-00064: ROMANY MARKET, LLC** – requests variances to 1) reduce the side yard setback adjoining a more restrictive zone from 10' to 0' and 2) to reduce the required landscape buffer from 15' to 0' in order to construct a new building in a Neighborhood Business (B-1) zone, on property located at 344 Romany Rd. (Council District 5)

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

- Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The relationship between the proposed structure and the neighboring property will be substantially similar to the conditions that have existed on the property for many years.
- The variance requests are generally reasonable as they will allow for the redevelopment of a property which has been vacant for several years. The proposed construction will meet the intent of the Zoning Ordinance for the B-1 zone by allowing for the re-establishment of neighborhood shopping facilities meant to serve the needs of the surrounding residential area.
- The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The applicants have applied for the variances 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:

- Construction shall be in accordance with the submitted application materials and site plan, or as amended by the Planning Commission on an amended final development plan.
- Action of the Board shall be noted on the Final Development Plan.
- 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-20-00062: BAPTIST SEMINARY OF KENTUCKY** – requests a conditional use to utilize the former parish residence as office space associated with a place of religious assembly within the defined Infill and Redevelopment Area in Two Family Residential (R-2)/Historic District Overlay (H-1) zones, on property located at 536 Sayre Ave. aka 533 E. Main St. (Council District 3)

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

- While the proposed use is related to a religious purpose, the primary use being requested is professional office space for an entity that is separate from the existing place of religious assembly which occupies the remainder of the site. While offices that are accessory to the place of religious assembly's particular use might be appropriate in this location, general office space is not an allowable use in the R-2 zone. Since the proposed use of the site is not permitted either as a principal use or a conditional use, the Zoning Ordinance does not allow establishing an accessory use on the site.
- The existing parking facilities are legally non-conforming for the use of the property as a place of religious assembly and are not adequate to support an additional use on the subject property. The operation of the proposed offices would coincide with that of the day school, resulting in an increased demand for parking.

E. Administrative Appeals

1. **PLN-BOA-20-00060: SOUTHERN HEIGHTS NEIGHBORHOOD ASSOCIATION** – requests a third party appeal to contest the issuance of a Paving Permit by the Division of Building Inspection in a Professional Office (P-1) zone, on property located at 1950 and 2020 Nicholasville Rd. (Council District 4)

The Staff Recommends: Disapproval of the third party appeal and to uphold the Division of Building Inspection's issuance of a Paving Permit, for the following reason:

- a. The Division of Building Inspection has issued a paving permit in accordance with the requirements of Article 5-4(b).
 - b. A Development Plan has not been certified for the subject property, nor is one required for the installation of paving that connects two adjacent lots.
 - c. Although, the new paving does provide an additional means for customers using the drive-through facilities to exit, it does not expand the use of the drive-through, which has operated in this location for over 50 years and certainly before the current Zoning Ordinance was adopted in December 1983. The new paved connection between 1950 and 2020 Nicholasville Road does not constitute an expansion of the drive-through facilities, so a conditional use application is not required.
2. **PLN-BOA-20-00065: LISA GANNOE** – requests a third party appeal to contest the issuance of a Temporary Certificate of Occupancy by the Division of Building Inspection in an Agricultural Rural (A-R) zone, on property located at 7524 Old Richmond Rd. (Council District 12)

The Staff Recommends: Disapproval of the third party appeal and to uphold the Division of Building Inspection's issuance of a Temporary Certificate of Occupancy, for the following reason:

- a. The Division of Building Inspection has issued a Temporary Certificate of Occupancy in accordance with Article 5-5(a) of the Zoning Ordinance to allow the property owner to ready the greenhouse and property for use as a plant nursery. The property owner is actively making efforts to establish his business in accordance with the Board's approval of a conditional use permit for a plant nursery, subject to 9 conditions, and is in the process of applying for the necessary permits.

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 January 11, 2021, at 1:30 p.m.

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