

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

February 8, 2021

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/94034021269?pwd=Y09WVjF0d0M5Zlp3bi94RGc3MHkzQT09>

Webinar ID: 940 3402 1269

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

II. APPROVAL OF MINUTES – The Chair will announce that the minutes of the December 14, 2020 and January 11, 2021 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-20-00071: MEGAN RILEY & HARRY TOLSON RICHART, IV** – request a variance to increase the allowable height of a fence within 3 feet of the public right-of-way in a side street side yard from 4' to 4.5' in a Single Family Residential (R-1C) zone, on property located at 118 Vista St. (Council District 11)

The Staff Recommends: Disapproval, for the following reasons:

- a. Approval of the variance would allow an unreasonable circumvention of the requirement of the Zoning Ordinance, as the need for a variance has come about as the result of the applicant's actions. The fence was completed without a permit.
- b. Granting the variance could have adverse effects on the public health, safety, or welfare, as the subject property is located at an intersection where cross traffic does not stop and visibility is particularly important.
- c. 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, as relocating or shortening the fence would not greatly reduce the usable space in the rear yard.

2. **PLN-BOA-21-00001: FRIENDLY PROPERTIES, LLC** - request a variance to reduce the required side yard setback from 18" to 14" for a detached accessory structure within the defined Infill and Redevelopment Area in Historic District Overlay (H-1)/Two Family Residential (R-2) zones, on property located at 143 Shawnee Place. (Council District 3)

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

- a. While it is unfortunate that the applicant began work without a permit, the requested variance is generally reasonable and its approval would not result in an unreasonable circumvention of the requirement of the Zoning Ordinance. The average yard between the proposed structure and the side lot line exceeds the yard that would exist if the entire garage were set back 18 inches.
- b. Granting the variance should not have adverse effects on the public health, safety, or welfare. The requested variance is reflective of a previously existing condition. While the new garage will be somewhat larger than the previous structure, only a portion of the structure will be closer to the property line than 18 inches. This should have little impact on the adjacent neighbor.

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 Divisions of Building Inspection and Historic Preservation prior to construction and use.

3. **PLN-BOA-21-00002: CROW ISLAND, INC** – requests a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.71 in order to construct an addition to a single-family dwelling within the defined Infill and Redevelopment Area in Historic District Overlay (H-1)/Two Family Residential (R-2) zones, on property located at 243 N. Mill St. (Council District 1)

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 proposed addition to the rear of the house will enclose an existing two-story porch and should have little to no impact on the appearance of the house from the public rights-of-way.
- b. The variance request is generally reasonable, as 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. The proposed construction is compatible with the existing neighborhood, as each of the other eight single-family houses fronting Gratz Park has a non-conforming Floor Area Ratio, with a range from 0.41 to 0.67.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance because the requested Floor Area Ratio will not result in an increase in density in this location and 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 Divisions of Building Inspection and Historic Preservation prior to construction and occupancy.

4. **PLN-BOA-21-00003: HUGH AND KIM BLOOMFIELD** – request a third party appeal to contest the Division of Planning's certification of a retracement plat (PLN-MNSUB-19-00049) within the defined Infill and Redevelopment Area in Two-Family residential (R-2)/Historic District Overlay (H-1) zones on property located at 444-446W. Third St. (Council District 1)

The Staff Recommends: **Disapproval of the third party appeal and to uphold the Division of Planning's certification of PLN-MNSUB-19-00049**, for the following reasons:

- a. The Director of the Division of Planning, acting as the Planning Commission Secretary, has certified a Retracement Minor Subdivision plat in accordance with Article 2-3(f) of the Subdivision Regulations.
- b. The Land Subdivision Regulations, and the activities defined within, are the authority of the Planning Commission. An appeal of Planning Commission action should be made to Fayette County Circuit Court, not the Board of Adjustment.
- c. While the appellants may feel that they have been aggrieved by this action of the Division of Planning, they have not provided evidence that the Retracement Minor Subdivision plat was certified and recorded in error. It is not within the Board's authority to overturn the certification of the Retracement Minor Subdivision plat based on a private property dispute.

- 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 March 8, 2021, at 1:30 p.m. via teleconference.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.