

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

April 12, 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/92324693470?pwd=dkMxbloRUGJNUXhaVGtuUHN6eUhQQT09>

Webinar ID: 923 2469 3470

Password: 950624

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 March 8, 2021 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-21-00004: THOMAS R. LAMBUTH** – requests variances to 1) reduce the required rear yard setback from 10' to 1'8", and 2) to reduce the required side yard setback for a deep building from 8' to 3'7" in order to construct an addition to an existing house in a Planned Neighborhood Residential (R-3) zone, on property located at 1522 Player Dr. (Council District 2)

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

- a. Granting the variances could adversely affect the public health, safety, or welfare because the proposed addition encroaches into an existing sanitary sewer easement and does not currently meet the requirements of the Kentucky Residential Building Code.
- b. There are not special circumstances that justify the need for the variances and 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 at the rear of the property that would comply the Zoning Ordinance and still provide some additional living space.

2. **PLN-BOA-21-00010: GWENDOLYN ALCORN** – requests a variance to increase the allowable height of an accessory structure from 14' to 20' at property located within the defined Infill and Redevelopment area in a Two Family Residential (R-2) zone, on property located at 930 Charles Ave. (Council District 2)

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 and duplexes with shorter accessory structures, which generally appear to meet the requirements of the Zoning Ordinance. The applicant has not provided compelling reasons for requiring a taller accessory than would be allowed by right on the subject property.
- b. Granting the requested variance could have a negative impact on the surrounding neighbors. The requested variance would allow for a structure that is taller than many of the principal structures in the immediate vicinity to be located much closer to the side and rear property lines than a principal structure could be.
- c. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. The applicant could lower the roof of the accessory structure in order to bring it into compliance and still provide some extra storage on the property.
- d. 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. Had the applicant applied for a permit prior to construction, the need for a variance could have been avoided.

3. **PLN-BOA-21-00014: JULIUS PROPERTY LLC AND WILLIAMS ENTERPRISES LLC** – request 1) a variance to reduce the required rear yard from 14' to 10' and 2) variances to reduce the required side yard setbacks from 5' to 3' in order to construct a new house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 351 Ross 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 vicinity is characterized by similar small lots and the requested setbacks will be similar to other setbacks in the area.
- b. The size of the lot is a special circumstance that justifies the need for the variances. Without any variances, the maximum building footprint would be only 987 square feet. Granting the variances will allow the applicant to utilize a currently vacant lot within the Infill & Redevelopment Area for needed housing.
- c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment Area 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. Additionally, the applicant has applied for the variances as soon as it was determined that they were 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.

4. **PLN-BOA-21-00015: CHAD NEEDHAM** – requests 1) a variance to reduce the required front yard from 20' to 12', 2) a variance to reduce the required rear yard setback from 20' to 7', and 3) a variance to increase the allowable width of the driveway from 10' to 18' in order to construct a new house within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 108 E. Loudon 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 front yard variance will allow for construction that is consistent with the existing setbacks along this portion of East Loudon Avenue. The rear yard and driveway variances will not be out of character in the general vicinity as the area is characterized by small industrial lots and does not have a consistent residential character.
- b. The requested variances are generally reasonable as they will allow for construction of housing on a vacant lot within the defined Infill and Redevelopment Area. The variances will allow for construction of a house that is of a style desirable in today's market with a usable yard and garage.
- c. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. The intent of the Infill and Redevelopment Area 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. Additionally, the applicant has applied for the variances as soon as it was determined that they were needed, 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 Traffic Engineering prior to construction and occupancy.

5. **PLN-BOA-21-00017: DAH INVESTMENTS LLC** – requests a variance to reduce the required side yard setback from 8' to 3' in order to construct a new house in a Single Family Residential (R-1C) zone, on property located at 1808 Clays Mill Rd. (aka 1810 Clays Mill 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 vicinity is characterized by lots of a similar size that contain one to two-story houses with detached garages and the requested setback will be similar to other setbacks in the area.
- b. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance. 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-21-00013: ANDY'S FROZEN CUSTARD** – requests a conditional use for drive-through facilities within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 1200 S. Broadway. (Council District 3)

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

- a. The proposed design of the restaurant and drive-through facilities do not meet the intent of the B-1 zone, nor the stacking requirements of Article 16-9, and are inappropriate in this location. However, redesigned facilities, which take into account pedestrian access and neighborhood integration could be appropriate in this location.

2. **PLN-BOA-21-00016: BALL HOMES, LLC** – requests a conditional use for a childcare center in a Planned Neighborhood Residential (R-3) zone, on property located at 3157 Keithshire 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 can accommodate a child care facility along with its associated parking and outdoor play areas. This use will provide a convenient and beneficial service for the surrounding neighbors and broader community.
- b. 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. Construction and operation of the childcare facility shall be in accordance with the submitted application materials and site plan. Architectural changes made to the proposed structure and/or reconfiguration of the proposed parking area are permissible during the Final Development Plan process as long as all Zoning Ordinance requirements and conditions below are met.
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.
4. The days and hours of operation of the childcare facility may be expanded to operate 7 days per week from 7:00 a.m. to 7:00 p.m. without a new application to the Board of Adjustment.
5. Maximum enrollment shall be based on the capacity allowed by the Cabinet for Health and Family Services Division of Regulated Childcare, so long as local parking and outdoor play area requirements are met.

3. **PLN-BOA-21-00018: LEXINGTON RESCUE MISSION, INC.** – requests a conditional use for a community center within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 203 E. Fourth St. (Council District 1)

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. Activities on the site are similar to the activities which have occurred under the previous conditional use. Additionally, such activities will occur during normal business hours throughout the week and daytime hours on the weekends.
- b. The proposed use should not create adverse traffic impacts. There is adequate parking available on the property and it is located in an area with sufficient pedestrian and bike infrastructure.
- c. The proposed use will allow for the continued use of a large, historic structure to provide needed community services.
- d. 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. Establishing the community center shall be done in accordance with the submitted application materials and site plan.
2. All necessary permits, including a Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to occupancy.
3. The existing parking lot and vehicular use area buffer shall be maintained in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. The 7-foot fence along the northern property line shall be maintained.
5. The subject property shall not be utilized for any residential purposes or overnight shelter.
6. Hours of operation shall be limited to 9 a.m. to 6 p.m. Monday through Friday, and from 9 a.m. to 2 p.m. on Saturday and Sunday.
7. Any pole lighting for outdoor areas shall be of a shoebox design with light directed downward and away from adjoining properties to prevent any disturbance to area residents.
8. Should the applicant cease to either own or occupy the subject property, this conditional use shall become null and void.

E. Administrative Appeals

1. **PLN-BOA-21-00011: EUGENE DULANEY AMMUNITION** – requests an administrative appeal to determine whether firearms ammunition manufacturing is an allowable use in a Light Industrial (I-1) zone at a split-zoned property located in Light Industrial (I-1)/Warehouse Business (B-4) zones, on property located at 251 Price Rd. (Council District 2)

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

- a. The manufacture of small arms ammunition is allowable in the I-1 zone because Kentucky Revised Statutes (KRS 100.325 and KRS 65.870) prohibit LFUCG and the Division of Planning from regulating the manufacture of ammunition, and from utilizing the zoning process to prohibit a federally licensed firearms manufacturer from locating at any place within the jurisdiction at which any other business may locate.

2. **PLN-BOA-21-00012: THE OLD RICHMOND ROAD NEIGHBORHOOD ASSOCIATION** – requests a third party appeal regarding the enforcement of conditions of approval associated with a conditional use in an Agricultural Rural (A-R) zone, on property located at 7524 Old Richmond Rd. (Council District 12)

The Staff will present the details of the appeal at the public hearing without recommendation.

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 May 10, 2021, at 1:30 p.m. via teleconference.

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