

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

September 13, 2021

I. **CALL TO ORDER** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.

II. **APPROVAL OF MINUTES** – The Chair will announce that the minutes from the August 9, 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-21-00038: CORSER THOROUGHBREDS LLC** – requests a variance to reduce the required side yard setback from 300' to 60' in order to place a mobile home in an Agricultural Rural (A-R) zone, on property located at 4422 Bryan Station Rd. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. The proposed placement of the mobile home should not have an adverse influence on the subject property or the surrounding neighborhood. The proposed mobile home will be located more than 2,000 feet away from any existing residential use on other property.
- b. The variance is generally reasonable as it will allow for placement of a mobile home to be used as a farm employee dwelling unit in a location where the existing driveway can be utilized and operations of the farm will not be disrupted.
- c. The FEMA floodplain that exists on the subject property associated with the Avon Branch of the North Elkhorn Creek is a special circumstance that justifies the need for a variance in this location.
- d. The variance request does not represent an attempt to circumvent the provisions of the Zoning Ordinance. The applicant applied for the variance as soon as it was determined that one was needed during the permit process, and prior to placement of the mobile home.

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

1. The mobile home shall be placed in accordance with the submitted application materials and site plan.
2. The mobile home shall be used as a farm employee dwelling unit only, maintained exclusively for the occupancy of employees and their families or the owner's immediate family, in connection with an agricultural use on the property.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to occupancy.
4. The septic system shall be reviewed and approved, as necessary, by the Fayette County Board of Health.

2. **PLN-BOA-21-00044: LUFTMAN PROPERTIES LLC** – requests a variance to increase the allowable floor area ratio (FAR) from 0.35 to 0.7 in order to construct an addition to an existing duplex within the defined Infill and Redevelop area in a High Density Apartment (R-4) zone, on property located at 426 S. Broadway. (Council District 3).

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 replace an existing addition that has fallen into disrepair and should have little 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 structures fronting S. Broadway in this block has a Floor Area Ratio ranging from 0.46 to 0.72.
- 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.

- 3. **PLN-BOA-21-00045: JASON AND LAURA MARCUM** - request a variance to reduce the required side yard from 25' to 10' in order to construct a new attached garage on property in Single Family Residential (R-1A)/Neighborhood Design Character Overlay (ND-1) zones, on property located at 1244 Colonial Dr. (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 as a number of houses in the vicinity have side yard setbacks of less than 25 feet.
- b. The requested variance is generally reasonable because the desired variance is relatively minor. The proposed average side yard will be 20.16 feet because the existing house and sunroom addition will exceed the 25-foot required side yard setback.
- c. The requested variance does not represent a circumvention of the Zoning Ordinance as the proposed setback is compatible with the Zoning Ordinance requirement for properties in many R-1A zones and a number of houses in this R-1A zone do not have 25-foot side yard setbacks.

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. Construction shall be in accordance with the Colony ND-1 Design Standards.
- 3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

- 4. **PLN-BOA-21-00047: BARON GIBSON** – requests a variance to reduce the minimum required lot frontage from 40' to 25' in order to subdivide an existing lot within the defined Infill and Redevelopment area in a Single Family Residential (R-1E) zone, on property located at 550 Maryland Ave. (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. The requested variance will result in the creation of two lots that are of similar dimensions to a number of other lots in the immediate vicinity.
- 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. While the desired variance will result in a change to the existing development pattern by replacing one lot with two, the two new lots will be consistent with many of the other existing lots along Maryland Ave.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance because the two new lots will meet the minimum lot size requirement for lots in an R-1E zone and will have similar frontage to other existing lots along Maryland Ave.

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

- 1. The subject property shall be subdivided in accordance with the submitted application materials and site plan. The variance shall be denoted on the amended final record plat.
- 2. All other necessary approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
- 3. The two new lots shall be limited to one shared access point, which shall be reviewed and approved by the Division of Traffic Engineering.

5. **PLN-BOA-21-00049: TONY AND SUSAN HOLMES** – request a variance to reduce the minimum required front yard setback from 300' to 100' in order to construct a Farm Employee Dwelling Unit in an Agricultural Rural (A-R) zone, on property located at 6721 Russell Cave Rd. (Council District 12)

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

- a. There are not special circumstances that justify the need for the variance and strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. The applicant could construct the desired structure at the 300-foot setback from Carrick Pike, or elsewhere on the property and meet the required front yard setback.
- b. The variance request could represent a circumvention of the provisions of the Zoning Ordinance because farm employee dwelling units are meant to be accessory to the principal agricultural and residential uses on the property, and to meet the required setbacks for a principal residence. The proposed location of the FEDU and its access point do not appear to facilitate a functional relationship between the proposed structure and the operation of the farm. Instead, it would result in a farm manager having to exit the property onto Carrick Pike and re-enter from Russell Cave Road in order to access the barn and other accessory structures in a vehicle.

6. **PLN-BOA-21-00050: LEIGHANNE AND KEITH DANIEL** – request a variance to reduce the required side yard setback from 8' to 5' in order to construct an addition to an existing house in Single Family Residential (R-1C) /Neighborhood Design Character Overlay (ND-1) zones, on property located at 225 Chenault Rd. (Council District 5)

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 is relatively modest in size and will not be visible from the public right-of-way.
- b. Granting the variance will not result in construction that will alter the character of the general vicinity, as there are a number of houses in the immediate vicinity that were constructed with side yards of less than 8 feet, which appear to have been expanded over the years in a similar fashion.
- c. The variance request does not attempt to circumvent the provisions of the Zoning Ordinance as the applicants have applied for the variance as soon as it was determined that it 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. Construction shall be in accordance with the Chevy Chase ND-1 Design Standards.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.

7. **PLN-BOA-21-00053: CANDICE AND JON SETZER** – request a variance to reduce the required side street side yard from 30' to 6' in order to construct an in-ground swimming pool in a Single Family Residential (R-1D) zone, on property located at 857 Sunny Slope Trace. (Council District 9)

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

- a. There do not appear to be special circumstances that are unique to the subject property that do not generally apply to land in the general vicinity, or in the same zone that justify the need for the variance. The lot is a typical corner lot, similar to others in the vicinity.
- b. Granting the variance could adversely affect the public health, safety, or welfare, as the proposed location of the swimming pool does not comply with the Kentucky Residential Building Code.
- c. Disapproval of the variance will not deprive the applicant of the reasonable use of their land or create an unnecessary hardship. The size and shape of swimming pools are generally customizable and it is possible that the applicant could construct a smaller swimming pool that would not require a variance.

D. Conditional Use Appeals

1. **PLN-BOA-21-00039: THE ARCADIA COMPANY LLC** – requests conditional uses to establish a school for academic instruction and an accessory nursery school in an Agricultural Rural (A-R) zone, on property located at 5768 Bates Creek Rd. (Council District 12)

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

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood. Traffic impacts should be relatively minor and the school will operate during normal business hours throughout the week.

- b. All necessary public services and facilities are or will be available and adequate for the proposed use.

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

1. The school and accessory nursery school shall be established and operated in accordance with the submitted application materials and a revised site plan, demonstrating that the parking lot will be provided behind the proposed school, unless such a configuration will conflict with the septic system.
2. All parking areas shall be designed in accordance with the recommendations of the Division of Traffic Engineering.
3. The septic system shall be reviewed and approved, as necessary, by the Fayette County Board of Health.
4. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to occupancy.

2. **PLN-BOA-21-00046: HART FAMILY ENTERPRISES LLC** – requests a conditional use to modify the use of an existing private club in an Agricultural Rural (A-R) zone, on property located at 2179 Bahama Rd. (Council District 12)

The Staff Recommends: Postponement, for the following reasons:

- a. Because the applicant is limited to a total of 10,000 additional square feet constructed after January 26, 1995, the proposed addition is too large. The applicant received a conditional use in 1996, which allowed for a 1,704 square foot addition to the clubhouse (CV-1996-5: Hart Properties/Greenbriar). They are also proposing to remove approximately 5,280 square feet by demolishing the children's pavilion. Therefore, any new structure would be limited to a total of 13,576 square feet. The applicant should either provide staff with information that additional existing square footage will be removed, or reduce the size of the proposed construction.

3. **PLN-BOA-21-00048: OPEN DOOR CHURCH INC** – requests 1) a conditional use to expand an existing place of religious assembly; 2) a variance to reduce the required side street side yard from 30' to 18' and 3) a variance to reduce the required rear yard from 10' to 1' in order to construct an addition to an existing place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 749 Addison Ave. (Council District 11)

The Staff Recommends: Approval, for the following reasons:

- a. Approval of a conditional use for the expansion of an existing place of religious assembly should not have an adverse influence on the subject property or the surrounding neighborhood, as the church has operated in this location for many years.
- b. Adequate parking exists and is available on the subject property, and the proposed addition will not increase the need for parking spaces.
- c. All necessary public services and facilities are available and adequate for the proposed use.
- d. Granting the requested rear and side street side yard setback variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. The proposed side street side yard is generally consistent with the yards along Garrison Avenue. The requested rear yard variance maintains the existing rear yard setback of the recreation building.
- e. The requested variances are generally reasonable, as they will allow for modest additions to be constructed to enhance the existing recreation building without requiring the existing parking area or vehicular access point along Garrison Avenue to be altered or removed.

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

1. Construction and occupancy of the property shall be in accordance with the submitted application materials, to allow construction of both Phase "A" and "B", allowing two additions totaling up to 850 square feet, utilizing the existing one-foot rear yard setback and a minimum setback of 18' from the lot line along Garrison Avenue.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.
3. At least 15% of the wall plane facing Garrison Avenue shall be openings, including a minimum of one window in addition to the person door proposed in the façade facing Garrison Avenue.

4. **PLN-BOA-21-00052: JUDY RAY LLC** – requests a conditional use for live outdoor entertainment in a Neighborhood Business (B-1) zone, on property located at 5902 Old Richmond Rd. (Council District 12)

The Staff Recommends: Approval, for the following reasons:

- a. The proposed hours of operation for the live outdoor entertainment use will occur during the restaurant's normal business hours, are generally reasonable, and should not violate local noise ordinances.

- b. The proposed location of the stage is more than 400 feet from the nearest residential structure and should not result in a negative impact on the health, safety or welfare of nearby residents.
- c. The proposed use should not result in a significant increase in traffic in this location, as the live outdoor entertainment will be accessory to the restaurant use.
- d. All necessary public facilities and services that will be needed are adequate to serve the proposed use.

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

- 1. The proposed live outdoor entertainment use shall be established and operated in accordance with the submitted application materials and site plan.
- 2. The applicant shall pave, stripe, and screen the existing gravel parking areas in accordance with Articles 16 and 18 of the Zoning Ordinance, and subject to review and approval by the Division of Traffic Engineering.
- 3. The live outdoor entertainment use shall be conducted accessory to the operation of the restaurant. The applicant shall not host ticketed concerts for a commercial purpose separate from the operation of the restaurant. The conditional use for live entertainment shall become null and void should the restaurant use cease to operate.
- 4. The outdoor live entertainment use shall be limited to the restaurant's hours of operation and shall comply with the LFUCG Noise Ordinance, meaning that live entertainment shall not be offered between the hours of 11:00 p.m. and 7:00 a.m.
- 5. Live outdoor entertainment shall be limited to minimal amplification. Amplification devices, such as speakers, shall not be located outside of the proposed stage area, and shall only be directed toward the center of the subject property.

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 October 11, 2021 at 1:30 p.m. in the Council Chambers at 200 E. Main St.

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