

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

October 11, 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 and the September 13, 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-21-00053: CANDICE AND JON SETZER (AMD)** – an amended request for a variance to reduce the required side street side yard from 30' to 10' 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: Approval, for the following reasons:

- a. Granting the variance will not have an adverse effect on the public health, safety, or welfare. The pool will be located 10 feet from the street property line in accordance with the Kentucky Residential Building Code.
- b. Granting the variance will not have a negative impact on the character of the general vicinity. While a pool is considered to be a "structure," the visual impact of a pool is significantly less than that of a building. Therefore, a setback variance from, 30' to 10' is generally reasonable.
- c. The location of other structures and the location of the existing easements are special circumstances that limit the available land area for such a structure, which justify the need for a variance.
- d. Granting a variance will not result in an unreasonable circumvention of the Zoning Ordinance. The applicant is going through the appropriate processes to seek approval prior to commencing construction.

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

1. The pool shall be installed at a minimum setback of 10' from the property line along Hollyberry Lane, in accordance with the revised site plan.
2. All necessary encroachment agreements shall be secured prior to beginning construction.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to beginning construction.

2. **PLN-BOA-21-00054: SOUTHERN & JONES PROPERTIES LLC** – requests a variance to reduce the required side yard setback from 6' to 3' in order to construct a duplex within the defined Infill & Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 530 Merino Street (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. The special circumstance that justifies the need for the variance is the 15' sewer easement on the eastern side of the property, which renders 30% of the property unbuildable.
- b. Granting the variance should not have an adverse effect on the character of the general vicinity, as there is not a well-defined streetscape, due to a number of the surrounding properties being vacant/undeveloped. Where there are houses nearby, on the same side of Merino Street, they have rather narrow side yards.
- c. Granting the variance will not allow an unreasonable circumvention of the Zoning Ordinance. The applicant is going through the appropriate process and has applied for the variance prior to commencing construction.

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

1. The duplex shall be constructed in accordance with the submitted application materials and site plan.

2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering prior to construction and occupancy.
3. **PLN-BOA-21-00057: HILLS PROPERTIES** – requests a variance to increase the maximum number of parking spaces allowed from 230 spaces to 236 spaces for a multi-family residential development in a Commercial Center (B-6P) zone, on property located at 3151 Mapleleaf Drive. (Council District 7).

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

- a. The requested variance does not arise from special circumstances that do not generally apply to land in the general vicinity, or in the same zone. The applicant has not provided specific reasons that justify the need for the additional six requested parking spaces.
- b. The strict application of the Zoning Ordinance will not deprive the applicant of the reasonable use of the land or create an unnecessary hardship. The applicant is taking advantage of the provisions allowing for unlimited structured parking by providing 188 garage parking spaces in addition to the maximum allowable surface parking. Without the requested variance, 418 parking spaces will be provided, which is 1.8 parking spaces per unit dwelling. Additionally, public transit is available in the immediate vicinity with the nearest Lextran bus stop being located approximately one-tenth of a mile from the subject property.

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-21-00058: LFUC HOUSING AUTHORITY** - requests 1) a conditional use to establish a childcare center; 2) a variance to reduce the required front yard from 20' to 10' along Shropshire Avenue; 3) a variance to reduce the through lot front yard from 20' to 5' along a new proposed Street "A"; 4) a variance to reduce the required side street side yard from 20' to 10' along E. Fifth Street; and 5) a variance to reduce the required side street side yard from 20' to 10' along E. Sixth Street in order to develop 11 proposed lots within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 551 Shropshire Ave. (Council District 1).

The Staff Recommends: **Approval of the conditional use and variances**, for the following reasons:

- a. Approval of the proposed conditional 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 or will be available and adequate for the proposed use.
- c. Granting the variances should not adversely affect the public health, safety, or welfare, nor alter the character of the general vicinity. Much of the vicinity is characterized by similar small lots and the requested setbacks will be similar to other setbacks in the area.
- d. The unique design of the right-of-way along Shropshire Avenue is a special circumstance that justifies the need for the variances. Granting the variances will allow the applicant to utilize a currently vacant lot within the Infill & Redevelopment Area for needed housing and a childcare center.
- e. The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance. 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 within the defined Infill and Redevelopment Area. 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. The property shall be developed and operated in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
3. 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.
4. Maximum enrollment for the childcare facility 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.
5. The final design of "Street A" and the childcare center parking lot shall be subject to approval by the Division of Traffic Engineering and shall be designed for one-way traffic moving north from East Fifth Street toward East Sixth Street.
6. Variance shall be noted on the face of the Final Record Plat.

E. Administrative Appeals

1. **PLN-BOA-21-00055: DBSP, LLC** – requests an administrative appeal to allow the applicant to forego the allowable wall sign on the rear wall of a building in order to allow two wall signs on the side wall of that building in an Commercial Center (B-6P) zone, on property located at 240 Canary Rd. (Council District 4)

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

- a. Granting the requested appeal will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The subject property has significant street frontage, but is only accessible by an access easement. Additionally, this shopping center sits at a lower elevation than the streets from which it is visible. These circumstances justify the need for a second sign on the façade facing New Circle Road.
- b. The requested appeal will not result in an increase in the number of permitted signs, allow a design feature or type of sign not specifically permitted in the subject zone, nor will it increase the maximum total permitted sign area on a single lot or building. The applicant will forgo a sign on the rear façade of the building and the total allowable area of signage for the wall sign on the New Circle Road façade will be less than 15% of the total wall area, which is the established maximum for each façade or wall face.

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

1. All wall signs shall be installed in accordance with the submitted application materials and site plan.
2. No wall sign shall be permitted on the rear façade.
3. All necessary permits shall be obtained from the Division of Building Inspection, prior to installation of the signs.
4. Board of Adjustment action shall be noted on the corollary Final Development Plan for the site.

IV. BOARD ITEMS - The Chair will announce that any items a Board member wishes to present will be heard at this time.

- A. Presentation of Resolution to former Board of Adjustment member, Janice Meyer.
- B. Division of Planning staff will present an overview of the 2018 Comprehensive Plan, "Imagine Lexington".
- C. Consideration of the 2022 Board of Adjustment Meeting and Filing Schedule.

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 November 8, 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.