

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

December 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 November 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-21-00064: LFUC HOUSING AUTHORITY (AMD)** – amended requests to 1) variances to reduce the required front yards from 30' to 20' for lots 23-26 and 2) variances to reduce the required side street side yards from 30' to 20' for lots 5, 22 and 23 in order to construct 13 new duplexes in a Two-Family Residential (R-2) zone, on property located at 1604 Versailles Rd. (Council District 11)

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 vicinity is characterized by a variety of housing types and the requested variances will allow for a moderate increase in density in this location that allows for a transition between adjacent detached single-family residential and multi-family/institutional uses.
- The need for street connections to complete Hill Rise Drive and Hill View Place, and to connect Concord Drive are special circumstances that limit the buildable area of the property. Granting the variances will allow for a currently vacant lot within the Urban Service Boundary to be developed for needed housing.
- The variance requests do not attempt to circumvent the provisions of the Zoning Ordinance, as 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:

- The property shall be developed and operated in accordance with the submitted application materials and site plan dated December 1, 2021.
- All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
- Variances shall be noted on the Final Record Plat.

2. **PLN-BOA-21-00065: LAURA PAPERIO** – requests a variance to reduce the required setback from 30' to 22' in order to partially enclose an existing front porch at a single-family dwelling in a Two-Family Residential (R-2) zone, on property located at 328 McDowell Rd. (Council District 5)

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

- Granting the variance should not adversely affect the public health, safety, or welfare, as the proposed addition will be located within the same footprint as the existing screen porch at this location and will not extend any closer to McDowell Road.
- Granting the variance will not result in construction that will alter the character of the general vicinity as the conversion from screen windows to glass windows will result in a minimal change to the appearance of the structure.
- The variance request does not attempt to circumvent the provisions of the Zoning Ordinance as the applicant has 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. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction and occupancy.
3. **PLN-BOA-21-00066: HPI PRESERVE LLC** – requests a variance to increase the allowable height of a fence in a front yard from 4' to 6.75' in order to allow components of a front yard fence (vehicular gate and columns) to exceed the 4-foot height maximum in a High Density Apartment (R-4) zone, on property located at 845 Red Mile Rd. (Council District 11)

The Staff Recommends: Disapproval, for the following reasons:

- a. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. 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. Four-foot tall fences, including all components, such as columns and gates are typical across residential zones.
 - b. The applicant has not provided sufficient information to determine that strict enforcement of the Zoning Ordinance will result in an unnecessary hardship or deprive the applicant of the reasonable use of their land. Columns and gates with a maximum height of four feet could be installed in this location and would provide a similar aesthetic value and level of security.
4. **PLN-BOA-21-00068: UNIVERSITY PROPERTIES LLC** – requests a variance to reduce the required private open space from 10% to 4.5% in order to subdivide existing townhomes in a Planned Neighborhood Residential (R-3) zone, on property located at 1151 Unity Dr. (Council District 11)

The Staff Recommends: Disapproval, for the following reasons:

- a. The applicant has not provided a sufficient justification to meet the requirements of Article 7 of the Zoning Ordinance or KRS 100.243. 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. There appear to be possible solutions that would meet the requirements of the Zoning Ordinance. In addition, there do not appear to be plans for common open space that would provide a comparable amenity to private useable open space that the Zoning Ordinance requires.
 - b. The request appears to be an attempt to circumvent the Zoning Ordinance, as the property was originally developed as a Group Residential Project. In order to subdivide such a property, the Zoning Ordinance regulations for individual lots must be met. The development of the property under a different set of regulations than is currently desired does not constitute a special circumstance that justifies the need for a variance.
 - c. Denial of the variance will not deprive the applicant of the reasonable use of the land or create an unnecessary hardship because the individual units can continue to be utilized as rental units or could be sold as condominiums without subdividing the existing property.
5. **PLN-BOA-21-00069: EXETER NEWTOWN LAND LLC** – requests variances to increase the allowable area of two traffic directional signs from 3 square feet each, to 6 square feet each by transferring 3 square feet each from two other allowable traffic directional signs along the same frontage in a Light Industrial (I-1) zone, on property located at 1180 Newtown Pike. (Council District 1)

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance 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. Allowing one slightly larger sign at each of two access points instead of two small signs at each of two access points will allow the signs to be more legible and easily understood by the various types of users accessing the property.
- b. Granting the requested variance will not represent a circumvention of the Zoning Ordinance. The request is allowable because the requested transfer is between the same signage type and along the same street frontage. Further, it 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.

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

1. The traffic directional signs shall be installed in accordance with the submitted application materials and site plan dated November 10, 2021.
2. All necessary permits shall be obtained from the Division of Building Inspection, prior to installation of the signs.
3. Board of Adjustment action shall be noted on the corollary Final Development Plan for the site.

D. Conditional Use Appeals

1. **PLN-BOA-21-00063: CHENAULT INTERESTS LTD (AMD)** – an amended request for a conditional use for drive-through facilities in order to construct a new restaurant in a Neighborhood Business (B-1) zone, on property located at 2191 Nicholasville Rd. (Council District 11)

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

- a. The amended design of the restaurant and drive-through facilities generally meet the intent of the B-1 zone and should not have an adverse influence on existing or future development of the subject property or its surrounding properties. The amended design takes into account pedestrian access, moves the building closer to the street frontage, and reduces the potential for vehicle stacking issues on the service road.
- b. All necessary public facilities and services that will be needed are, or will be, adequate to serve the proposed use.

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

1. Construction and operation of the restaurant and drive-through facilities shall be in accordance with the submitted application materials and **amended** site plan, dated December 2, 2021, subject to alterations to the site plan to meet the requirements of the conditions below.
 2. All necessary permits and/or approvals shall be obtained prior to construction and occupancy.
 3. The final configuration of the parking areas shall be subject to approval by the Division of Traffic Engineering and the parking areas shall be paved, with spaces delineated and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
 4. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light directed downward to avoid disturbing any adjoining residential properties.
2. **PLN-BOA-21-00067: 251 E MAXWELL LLC** – requests a conditional use to establish a fraternity house and a variance to reduce the required parking from 7 spaces to 6 spaces within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 251 E. Maxwell St. (Council District 3)

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

- a. The requested conditional use is appropriate in this location as the property has historically been used for communal living, including as a fraternity house prior to 1984, and as a rehabilitation home for more than 35 years. The use should not have an adverse influence on the existing or future development of the property, as it will allow for the renovation and reuse of an existing structure to provide needed student housing options within walking distance of the University of Kentucky campus and downtown.
- b. All necessary public facilities and services are existing and will be adequate to serve the proposed use.
- c. Granting the variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity. The property is located within the defined Infill and Redevelopment Area where parking variances of up to 50% may be granted. The applicant is requesting a modest reduction of only one parking space. The general vicinity has adequate pedestrian facilities, including walk signals and crosswalks, and public transit is available.
- d. The special circumstances that justify the variance are the location of the development and the type of user expected. The development is in a very pedestrian and bike-friendly area, near the University of Kentucky campus. By definition, the residents are students at the University, and they will likely walk to school or work to take advantage of the amenities that are within walking distance.
- e. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary process for this project and has requested the variance prior to commencing construction.

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

1. The proposed use shall be developed and operated in accordance with the submitted application materials and site plan, subject to alterations to the site plan to meet the requirements of the conditions below.
2. All necessary permits and/or approvals shall be obtained prior to construction and occupancy.

3. The fraternity house shall be limited to a total of 10 beds.
4. The final configuration of the parking areas shall be subject to approval by the Division of Traffic Engineering and the parking areas shall be paved, with spaces delineated and landscaped/screened in accordance with the requirements of Article 16 and 18 of the Zoning Ordinance.
5. The existing paved area adjacent to the structure and extending from the existing landscaped area along Stone Avenue to the existing concrete patio of the property shall be removed and replaced with landscaping. This area shall be screened from the paved parking area by a three-foot average height hedge or fence.
6. The conditional use shall be transferable to another fraternity or sorority that operates in compliance with the approved conditions. Any fraternity or sorority that occupies the premises shall be a University of Kentucky recognized fraternity or sorority that subscribes to the Student Code of Conduct.

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 10, 2022 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.