

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

May 9, 2022

- 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 March 14, 2022 and April 11, 2022 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-22-00011: DILLON OAKS** – requests variances to reduce the front yard setback from thirty feet (30') to fifteen feet (15') and to reduce the required setback for additional paved parking from six feet (6') to zero feet (0') in order to enclose the existing carport and utilize the existing driveway for the one required parking space for a single family dwelling unit in a Single Family Residential (R-1C) zone, on property located at 2367 Millbrook Dr. (Council District 10)

The Staff Recommends: **Approval of a variance to reduce the front yard setback**, for the following reasons:

- While the need for a variance could have been avoided had the applicant sought a permit prior to enclosing the existing carport, the requested variance to reduce the required front yard setback is generally reasonable as the size and orientation of the existing residence on the property prevents the applicant from using areas to the side or rear of the home to accommodate the required parking.
- Granting the variance should not negatively impact the character of the area because several homes in the immediate vicinity feature similar enclosures and have required parking located within the front building setback.

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

- Construction and paving shall be in accordance with the submitted application materials and site plan, except for necessary changes to the pavement.
- All necessary permits and/or approvals shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.

The Staff Recommends: **Disapproval of the variance request to reduce the setback for additional paved parking**, for the following reasons:

- The need for a variance has come about because the applicant did not procure the proper permits prior to expansion of the additional paved parking area.
- 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. The setback for additional paved parking areas applies across all single-family residential zones.
- 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, as the site has historically operated with an additional paved parking area that met ordinance requirements.

2. **PLN-BOA-22-00013: AMY MCSHARRY** – requests a variance to reduce the side yard setback for a deep building from 10'10" to 2'8" in order to complete construction of an addition on property located within a Single-Family Residential (R-1C) zone, on property located at 1029 McClain Dr. (Council District 1)

The Staff Recommends: **Approval of a lesser variance for a side yard setback to three-feet (3')** for the following reasons:

- Granting the lesser variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. There are other houses in the immediate vicinity with side yards less than the eight feet typically required for the R-1C zone.

- b. Approval of the lesser variance should not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as three-foot side yards are generally the narrowest allowed for single-family dwelling units, a requirement which is related to Building Code regulations for fire safety.

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

1. Construction shall be in accordance with the submitted application materials and a modified site plan depicting a three-foot setback and an appropriate connection between the existing structure and the new construction.
2. The addition shall be connected to the existing house, and the connection shall be enclosed and conditioned, per Building Inspection regulations.
3. No wall, air-conditioning unit, structure, or other obstruction shall be located within the three-foot side yard.
4. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to the completion of construction.

3. **PLN-BOA-22-00017: SARA MORKEN** - requests variances to reduce the front yard setback from twenty feet (20') to five and one-half feet (5.5') and to reduce the side yard setback from five feet (5') to one and one-half foot (1.5') in order to construct additions to an existing non-conforming structure so that a non-conforming commercial structure may be converted into a single-family residence on property located within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 634 Ballard St. Council District 11)

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

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity as the non-conforming commercial use will be discontinued, and the structure will be converted into a single-family residence.
- b. Granting the requested variances should not have an adverse effect on the surrounding area. They will result in construction that will improve the character of the property by giving the structure a more residential-style appearance, in keeping with other residential structures in the general vicinity and along Ballard Street.
- c. The size of the lot and the existing configuration of the structure on the property are special circumstances that justify the need for the variances. Granting the variances will allow the applicant to discontinue a legally non-conforming use in favor of needed housing within the defined Infill and Redevelopment Area.
- d. The granting of these variances will not allow an unreasonable circumvention of the requirements 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. The site plan be modified to incorporate planting areas along the frontage of the lot in order to break up the existing pervious surface, prohibiting parallel parking within the front yard.
2. The additions shall be constructed in accordance with the submitted application materials and modified site plan.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

4. **PLN-BOA-22-00018: LYNN WINTER** – requests a variance to reduce the front yard setback from thirty-two feet (32') to twenty-four feet (24') in order to construct an addition of a balcony to the front wall plane of a single family residence on property located within the defined Infill and Redevelopment Area in a Single-Family Residential (R-1D) zone, on property located at 176 N. Ashland Ave. (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 of the general vicinity, nor alter the character of the general vicinity. The balcony will be constructed within the footprint of the existing covered front porch and should not have a negative impact on the streetscape.
- b. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary variance as soon as it was determined that it was needed, and prior to beginning construction of the balcony.

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.

D. Conditional Use Appeals

1. **PLN-BOA-22-00012: DOMINIQUE AND BLAKE STEVENSON** – request a conditional use permit in order to operate a home-based esthetician business on property in a Single-Family Residential (R-1C) zone, on property located at 617 Freeman Dr. (Council District 6)

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as it should not create disturbing levels of traffic, noise, or odors. Adequate off-street parking is available to serve the limited number of customers to the home.
- b. 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. The home-based esthetician business shall be operated in accordance with the submitted application materials and site plan, with appointments only on an individual basis.
2. The use shall operate in accordance with the requirements of the Kentucky Board of Cosmetology.
3. All necessary permits including a Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.
4. The conditional use shall become null and void should the applicant no longer reside at this location.

2. **PLN-BOA-22-00014: NORTHEAST CHRISTIAN CHURCH** – requests a conditional use to establish a child care center for up to 100 children in a Planned Neighborhood Residential (R-3) zone, on property located at 990 Star Shoot Parkway. (Council District 6)

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. The use will be located in the existing building and a fenced outdoor play area will be provided. Church properties are typically not used throughout the week, so are generally well-suited for this type of use. This use will provide a valuable service for the surrounding neighbors and broader community.
- b. More than adequate parking exists and is available on the subject property during the week.
- c. 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. The childcare use shall be conducted in accordance with the submitted application materials and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
3. The days and hours of operation shall not exceed Monday through Friday, from 7:00 a.m. to 6:00 p.m. without further approval by the Board of Adjustment.
4. The childcare facility shall be limited to 100 children.
5. A fenced and screened play area, containing a minimum of 25 square feet per child, shall be provided.
6. The facility shall be fully licensed and comply with requirements of the Kentucky Cabinet for Health and Family Services, Division of Regulated Child Care.

3. **PLN-BOA-22-00015: LITTLE CAESARS**– requests a conditional use to establish drive-through facilities in a Neighborhood Business (B-1) zone, on property located at 269 Southland Dr. (aka 271 Southland Dr.) (Council District 10)

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

- a. A drive-through facility for a proposed restaurant at this location should not adversely affect the surrounding properties. The subject property has recently operated with a drive-through window, and the drive-through facility will be visually screened from adjacent residential properties by vegetation and fencing to the rear of the site.
- b. The proposed drive-through facility should not have adverse effects on traffic at this location. Adequate vehicular stacking along the rear portions of the structure will be provided to accommodate the Little Caesar's commercial traffic. Furthermore, as the subject property derives access from a service road, the proposed drive-through facility traffic should have a minimal impact on traffic on Southland Drive.
- c. 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. The property shall be operated in accordance with the submitted application materials and site plan, subject to revisions to the site plan as deemed necessary during the permitting process.
2. All vehicular use areas shall be designed in accordance with the recommendations of the Division of Traffic Engineering.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering, as well as necessary state agencies, prior to occupancy.
4. All exterior lighting shall be directed away from any adjoining residential property.
5. The applicant shall maintain a 6-foot tall, solid fence at the rear property line.

4. **PLN-BOA-22-00016: CENTER POINT CHURCH** – requests to amend an existing conditional use permit for a place of religious assembly in order to expand the existing church facility into adjoining commercial space within the existing building on property located within a Highway Service Business (B-3) zone, on property located at 163 Old Todds Rd. (Council District 7)

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

- a. The proposed use should not adversely affect the subject or adjoining/nearby properties. Adjoining or nearby land uses are of a commercial nature and are not likely to be disturbed by typical church activities.
- b. The church's expansion will provide designated space for their existing student and children's services and will not increase the impact of the use or required parking. More than adequate parking is available on the subject property during the week for the planned Wednesday night events and should not affect nearby commercial entities' parking needs during the week.
- c. 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. The expansion of the church shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the expansion of this use.

E. Administrative Appeals

There are no Administrative Appeals for consideration at this time.

- 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 June 13, 2022 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.