

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

September 12, 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 July 11, 2022 and August 8, 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-22-00032: AARON AND MEGHANN BIDARIAN** – request a variance to reduce the side yard setback from twenty-five (25) feet to ten (10) feet in order to construct a single-family residence in an Agricultural Rural (A-R) zone, on property located at 1440 Deer Haven Ln. (Council District 12)

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 reduced side yard setback will not visually impact the surrounding properties as the closest neighboring principal structures are located over one-hundred and fifty (150) feet from the proposed residence.
 - b. The non-conforming size of the lot in an Agricultural Rural (A-R) zone is a special circumstance that is unique to the subject property and justifies the need for the variance.
 - c. Strict application of the Zoning Ordinance would create an unnecessary hardship for the applicant due to the required setbacks being more restrictive on the subject property than other lots in the same zone. Additionally, if urban zoning standards were applied to the subject property, the lot would meet the standards for a Single-Family Residential (R-1A) zone, which only requires ten (10) foot side yards, as well as the recommended Expansion Area Residential 1 (EAR-1) zone, which only requires five (5) foot side yards.
 - d. 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.

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

 1. The front-facing garage shown on the submitted site plan shall be relocated to the side or rear of the structure in order to allow the two garages to share one driveway, and no additional paving for vehicular use area shall be permitted in front of the front wall-plane of the house.
 2. Construction shall be in accordance with the submitted application materials and a modified site plan reflecting condition #1.
 3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.
 2. **PLN-BOA-22-00038: GARY & LARRY HAMILTON** – request variances to 1) reduce the western side yard setback from eight (8) feet to one and a half (1½) feet; 2) reduce the eastern side yard setback from eight (8) feet to three (3) feet; and 3) increase the maximum front yard setback from thirty-five (35) feet to

one hundred and twenty-four (124) feet in order to convert an existing accessory structure into a principal structure in a Single-Family Residential (R-1C) zone, on property located at 684 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 of the general vicinity as the structure will be converted into a single-family residence and the property will be brought into more conformity with the zone and surrounding properties.
- 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 and neighborhood by creating a new residential structure along East Loudon Avenue.
- c. The existing configuration of the structure on the property is a special circumstance that justifies the need for the variances. Granting the variances will allow the applicant to convert an existing accessory structure into an independent dwelling unit, providing needed housing within the Urban Service Area.
- d. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The applicants wish to utilize an existing structure in order to minimize costs in providing a new residence in the neighborhood. Additionally, the applicants 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 applicants shall file for both a subdivision plan and a residential building permit prior to beginning construction.
 2. The new dwelling unit shall not be occupied until the subdivision plat is recorded and a Certificate of Occupancy has been issued.
 3. An access easement shall be established on the plat of record across both lots which permits associated utility companies' access to the cell tower on the rear of the property.
 4. The lot and structure shall be redeveloped in accordance with the submitted application materials and site plan.
 5. Any action of the Board of Adjustment shall be noted on the subdivision plan prior to it being recorded.
3. **PLN-BOA-22-00039: JEAN MACHADO** – requests a variance to reduce the side yard setback for an accessory structure that projects between the principal structure and side lot line from twenty-five (25) feet to twenty (20) feet in order to construct an equipment storage shed in an Agricultural Rural (A-R) zone, on property located at 7959 Old Richmond Rd. (Council District 12)

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.
 - 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. There appears to be sufficient space for the applicant to relocate the structure or reduce its size, which would eliminate the need for a variance.
 - c. Approval of the variance would allow for an unreasonable circumvention of the requirements of the Zoning Ordinance, as the need for a variance is the result of the applicant's actions taken after the adoption of the current Zoning Ordinance. The applicant did not secure a building permit prior to construction of the accessory structure.
4. **PLN-BOA-22-00041: CHARLIE WILLIAMS DESIGN, INC.** – requests a variance to reduce the side yard setback for an accessory structure that projects between the principal structure and the side lot line from eight (8) feet to one-and-three-quarters (1¾) feet within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) in a High Density Apartment (R-4) zone, on property located at 606 W. Short St. (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 of the general vicinity, nor alter the character of the general vicinity. The proposed construction will improve the character of the property and will be in keeping with other residential properties in the general vicinity.
- b. The restrictive developable area of the lot, and limitations of making improvements to a historic

property, are special circumstances that justify the need for the variance.

- c. The granting of this variance will not allow an unreasonable circumvention of the requirements 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. The accessory structure's second story living space is prohibited from featuring a kitchen and shall not be rented.
2. The accessory structure shall be constructed in accordance with the submitted application materials and site plan.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

5. **PLN-BOA-22-00042: PADAVET, LLC** – requests a variance to reduce the required setback from a residential zone from one-hundred (100) feet to eighty (80) feet in order to operate an animal clinic in a Highway Service Business (B-3) zone, on property located at 2870 Richmond 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 of the general vicinity, nor alter the character of the general vicinity, as the use will be operated indoors, and the nearest residential structure is over 150 feet from the proposed use.
- b. The small remnant portion of R-3 zoning present on the site is a unique circumstance that limits the applicant's ability to operate at this location.
- c. 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 occupying the space.

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

- I. The use shall operate in accordance with the submitted application materials and site plan.
- II. No outdoor kennels, pens, or exercise areas shall be permitted.
- III. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

6. **PLN-BOA-22-00043: CALLIE & KIRK RZASA** – request a variance to reduce the required setback for a 6-foot tall fence within a side street side yard from three (3) feet to one (1) foot within a Neighborhood Design Character Overlay (ND-1) in a Single Family Residential (R-1C) zone, in property located at 150 Old Cassidy Ave. (Council District 5)

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. Three-foot side street setbacks for fencing taller than 4 feet are consistent across residential zones.
- b. There is sufficient space on the subject property to accommodate the desired fencing at the required setback
- c. Approval of the variance would allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the need for the variance arises from the applicant's actions taken after the adoption of the current Zoning Ordinance and who undertook work without a permit to construct the fence.
- d. Strict application of the Zoning Ordinance would not deprive the applicant of the reasonable use of their land. The applicant could add privacy to their rear yard without requiring a variance by either constructing a 6-foot tall fence at a 3-foot setback, or reducing the height of the fence and utilizing landscaping elements to provide additional screening.
- e. Approval of the requested variance could have a negative impact on the walkability of the immediate vicinity, as the property is located immediately adjacent to an elementary school. Best practices regarding sidewalk design often discourage tall fences adjacent to pedestrian facilities, as pedestrians do not feel comfortable walking directly adjacent to a building wall or a fence.

D. Conditional Use Appeals

1. **PLN-BOA-22-00033: KENTUCKY EPSILON PHI DELTA THETA HOUSE CORPORATION** – requests a conditional use permit for an eighteen (18) bed fraternity house within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 236 Lexington Ave. (Council District 3)

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

- a. The proposed use would likely have adverse effects on the subject and adjoining/nearby properties. The proposed use would increase the intensity of use and density of the property, and likely create a nuisance for the neighborhood. There are several other fraternity houses in the general vicinity, and the concentration of this type of use has resulted in enforcement issues. The events associated with a fraternity house are not suitable for the proposed location as there is an existing concentration of dense multi-family housing immediately adjacent to the subject property.

2. **PLN-BOA-22-00037: CHELCEA RAMBURGER** – requests a conditional use permit in order to operate a home-based dog grooming business in a Single Family Residential (R-1D) zone, on property located at 605 Lin Wal Rd. (Council District 1)

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 on a daily and weekly basis.
- 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 dog and cat grooming business shall be operated in accordance with the submitted application materials and modified site plan, with appointments only on an individual basis.
2. The operation of the grooming business be confined to within the home and limited to 300 square feet of the residence.
3. No overnight boarding or kenneling shall be permitted.
4. 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.
5. The conditional use shall become null and void should the applicant no longer reside at this address.

3. **PLN-BOA-22-00040: NEW PIKE, LLC** – requests a conditional use permit to establish an extended stay hotel in a Professional Office (P-1) zone, on property located at 1432 Newtown Pass. (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. With the incorporation of pedestrian scale lighting and vehicular use area and perimeter landscaping, the use should have a minimal impact on adjacent residential uses.
- b. Sufficient parking is available through the reciprocal parking agreement with the adjoining property to the north.
- 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 extended stay hotel shall be conducted in accordance with the submitted application materials and site plan, or as modified by the amended Final Development Plan.
2. Action of the Board shall be reflected on the Final Development Plan for the property.
3. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning, Engineering, and Building Inspection prior to construction and occupancy.
4. Lighting utilized for the use shall be pedestrian in scale, shall be directed away from the adjacent residential uses, and not exceed 12-feet in height.
5. Reciprocal parking shall be provided with the adjacent property at 1448 Newtown Pass.
6. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Article 16 and 18 of the Zoning Ordinance.

4. **PLN-BOA-22-00044: IVCP ATHENS SOUTH, LLC** – requests a conditional use permit for outdoor recreational facilities (soccer fields) with outdoor lighting in an Agricultural Rural (A-R) zone, on property located at 5354 Athens Boonesboro Rd. (Council District 12)

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

- a. The proposed outdoor athletic facility (soccer fields) should not adversely affect the remainder of the subject or surrounding properties, provided the activities are in accordance with the recommended conditions herein. The preservation of existing vegetative screening, inclusion of additional landscape buffers, prohibitions against restaurants or food service, loudspeakers and substantially similar uses, and limitations of on-site operations and durations should minimize the impact of the use on properties within the general vicinity.
- b. The proposed facility is supported by the 2018 Comprehensive Plan which calls for the creation of a regional sports complex. The facility will provide a centralized location for local youth and future professional soccer teams to practice, as well as for youth tournaments. The site has convenient access to Athens Boonesboro Road and Interstate I-75, which will benefit local and regional soccer teams traveling to and from Lexington.
- c. The lighting study submitted with the request indicates that there will be no spillover lighting on adjacent properties as a result of the proposed lighting.
- d. The proposed use should not have an adverse impact on traffic in the immediate vicinity as the facility will be easily accessible from the interstate and Athens Boonesboro Road.
- e. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The use shall be conducted in accordance with the submitted application materials and site plan reflecting the conditions herein.
 2. The applicant amend the site's current development plan with the Division of Planning to reflect the proposed development.
 3. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.
 4. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
 5. A sewage treatment system shall be installed in accordance with the requirements of the Department of Health.
 6. The applicant shall submit a landscape plan for review and approval by the Division of Environmental Services reflecting the landscaping required in condition #9.
 7. The proposed temporary access drive shall be paved with asphalt or concrete and shall include pedestrian facilities.
 8. The design of the off-street parking, internal circulation, and access to the site shall be subject to review and approval by the Division of Traffic Engineering.
 9. The parking lot shall be screened in accordance with the requirements of Article 18 of the Zoning Ordinance.
 10. There shall be a review of the conditional use one year after approval in order to assess traffic impacts.
 11. Existing vegetative areas in the south and southwestern portions of the site shall be preserved to maintain screening for the adjacent properties.
 12. Loudspeakers and restaurants or food service are prohibited.
 13. The proposed outdoor recreational facilities shall be limited to use for athletic-related activities only and shall not be used for non-athletic commercial events or gatherings, including concerts, festivals, fireworks, off-site parking and substantially similar uses.
 14. Hours of operation shall be limited to 7 A.M. to 10 P.M., daily.
 15. The use shall be developed and operate in accordance with the requirements of the United States Fish and Wildlife Service (USFWS).
 16. Coordination with the Division of Environmental Services and/or the US Corps of Engineers shall occur prior to construction within fifty (50) feet of an identified sinkhole or wetland on the property.
5. **PLN-BOA-22-00045: INDEPENDENCE BANK** – requests a conditional use to establish drive-through facilities for a proposed bank within the defined Infill and Redevelopment Area in a Downtown Business (B-2) zone, on property located at 366, 370, and 376 E. Main St. (Council District 3)

*Note - The applicant has requested postponement of their application to the October 10, 2022 meeting of the Board of Adjustment. The Staff will finalize their recommendation prior to the meeting.

- 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 10, 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.

For further information on these matters, or for persons with a disability who may need assistance in order to participate in the above meeting, please contact the Division of Planning, 101 E. Vine St., Lexington, KY, at 859-258-3160.