

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

November 14, 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 September 12, 2022 and October 10, 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-22-00029: HEIDI FRAZIER** – requests an Early Rehearing of a variance request to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet in a Single-Family Residential (R-1C) zone, on property located at 143 E. Lowry Lane. (Council District 3)

The Staff Recommends: **Disapproval of an Early Rehearing**, for the following reasons:

- a. The new information provided by the applicant does not substantially alter the character of the original appeal. The home was constructed to face E. Lowry Lane as its front face and front yard, and the 4-foot fence limitation in the front yard is consistent across all residential zones.
- b. Neither the original subdivision plat, letters of support, references to another BOA case at a different property, nor the police report for another property provide any new information that would impact the Board's original decision.

2. **PLN-BOA-22-00052: VICTOR AND FAIDA NATOUR** - request a variance to reduce the required setback from a floodplain from 25' to 18' in order to construct an addition in a Planned Neighborhood Residential (R-3) zone, on property located at 1045 Chasewood Way. (Council District 10)

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 existing retaining wall and 7-foot grade change between the proposed addition and the floodplain base elevation should limit the potential for flooding to affect the residence.
- b. The restrictive size of the lot and floodplain are special circumstances that justify the need for the variance, as the developable area of the lot is limited and any improvements to the structure would require a 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 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 approvals shall be obtained from the Division of Building Inspection prior to construction.

3. **PLN-BOA-22-00055: STACY AND ERIC HENRY** - request a variance to reduce the required rear yard setback from 10' to 0' in order to construct an addition to an existing deck in a Single Family Residential (R-1C) zone, on property located at 446 Monticello Blvd. (Council District 9)

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 modifications to the existing non-conforming deck should have little visual impact to the surrounding properties, as the non-conforming deck has existed for many years.
- b. The restrictive configuration of the lot and existing slope are special circumstances that justify the need for the variance, as the available buildable area for a deck is limited.
- c. While the existing deck was constructed without a permit, the applicant has attempted to secure the proper permit to improve the deck; therefore, the granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The applicant has applied for the variance as soon as it was determined that it was needed during the permit process, and prior to completion of construction.

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

1. The modifications to the existing deck shall be constructed in accordance with the submitted application materials and site plan.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to completion of construction.

D. Conditional Use Appeals

1. **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)

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

- a. The applicant has not provided sufficient evidence that the proposed use will not have an adverse influence on the subject property or the surrounding neighborhood. Drive-through facilities are not appropriate for the subject property due to adversely affecting vehicular traffic and pedestrian safety along the Main Street and Water Street frontages and the recently constructed Town Branch Commons.
- b. Drive-through facilities are no longer appropriate in this location due to the change in development context of the general vicinity and a significant increase in pedestrian and multi-modal users immediately adjacent to the subject property.
- c. The subject property is unique in shape, access, and location, and drive-through facilities cannot be properly integrated into the downtown community at this location.

2. **PLN-BOA-22-00047: KIM BRAGG** – requests a conditional use to establish drive-through facilities accessory to a gas station in a Neighborhood Business (B-1) zone, on property located at 2312 Versailles Rd. (Council District 11)

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

- a. Drive-through facilities for a convenience store should not adversely affect the subject or surrounding properties. The physically delineated drive-through line will prevent potential conflicts with drive-through stacking.
- b. The applicant has clarified that physically delineating the drive-through lane will not create a conflict for the fuel trucks accessing the refueling connections.
- c. The proposed plan meets screening and landscaping requirements as listed in Article 18 of the Zoning Ordinance.

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

1. The property shall operate in accordance with the submitted application materials and site plan.
2. All vehicular use areas shall be designed in accordance with the recommendations of the Division of Traffic Engineering.
3. All property landscaping and screening shall be reviewed and approved by the Division of Environmental Services.

4. All necessary permits and/or approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering, prior to occupancy.

3. **PLN-BOA-22-00050: REDWOOD COOPERATIVE SCHOOL, INC.** – requests to amend an existing conditional use for a school for academic instruction in order to construct and occupy an additional educational building in a Single Family Residential (R-1C) zone, on property located at 166 Crestwood Drive. (Council District 3)

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

- a. The proposed site plan does not meet current parking requirements. The applicant will need to address alternative solutions for providing their required parking.
- b. Existing and proposed landscaping elements are not clearly defined on the submitted site plan. Due to the proposed increase in intensity of the school's use along the northern property line, staff recommends that additional buffering be provided between the proposed building and the adjacent R-1C zoned lots.

4. **PLN-BOA-22-00053: DREAM CARE LEARNING CENTER, LLC** – requests to amend an existing conditional use in order to expand an existing childcare center in a Light Industrial (I-1) zone, on property located at 2414 Palumbo Drive. (Council District 7)

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

- a. Expanding the conditional use for a childcare center should not adversely affect the subject or surrounding properties, and will allow the applicant to provide additional services that are compatible with the existing activities on site.
- b. The expansion of the use should not adversely affect traffic in the immediate area and sufficient parking is available on the subject property.
- c. 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 childcare center shall operate in accordance with the submitted site plan and application materials.
2. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.

5. **PLN-BOA-22-00054: JOHN DEHART** – requests a conditional use permit for accessory drive-through facilities and a variance to increase the maximum front yard setback from twenty (20) feet to seventy-six (76) feet in order to construct a retail use in a Neighborhood Business (B-1) zone, on property located at 490 Southland Dr. (Council District 10)

The Staff Recommends: **Approval of the variance to increase the front yard setback**, 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. Increasing the front yard setback will ensure that the proposed building is in keeping with existing non-conforming setbacks of adjoining retail uses, and will preserve existing site access and circulation for vehicular and pedestrian users of the subject property and surrounding properties.
- b. The existing non-conforming setbacks of the adjoining retail uses, as well as the existing parking area and vehicular access, are special circumstances that limit the applicant's ability to develop the subject property in accordance with the Zoning Ordinance without adversely affecting the subject property and surrounding properties.
- 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 construction.

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

1. Construction shall be in accordance with the submitted application materials and a revised site plan without drive-through facilities.
2. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Traffic Engineering prior to occupancy.

The Staff Recommends: **Disapproval of the conditional use permit for accessory drive-through facilities**, for the following reasons:

- a. The applicant has not provided sufficient information regarding the future tenant of the proposed retail use, the expected hours of operation, or number of customers and Staff is unable to adequately assess the impact of the proposed drive-through facilities.
- b. The proposed drive-through facilities will likely adversely affect the subject property and surrounding properties. The subject property is located in a congested area of both vehicular and pedestrian users and the proposed facilities would create numerous conflict points for vehicles and pedestrians.

6. **PLN-BOA-22-00057: SHUNAR CONCRETE AND CONSTRUCTION, LLC** – requests an administrative appeal to change one non-conforming use (adult day care facility) to another non-forming use (childcare center) in a Single Family Residential (R-1D) zone, on property located at 3600 Appian Way. (Council District 8)

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

- a. The requested change in non-conforming use from an adult day care center to a childcare center should not adversely affect the subject or surrounding properties, as this change is very minor in scope and the two uses have similar impacts on the subject and surrounding properties.
- b. No expansion of the building's footprint is proposed, and the change in non-conforming uses should not negatively impact the neighborhood or alter the character of the subject or surrounding properties.
- c. With a limit of 99-children, the proposed use is in line with the scope of the original childcare center use that successfully operated at this location from 1978-2014.
- d. 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 childcare center shall operate in accordance with the submitted application materials site plan and application materials.
2. The use shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
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 childcare center.
4. The childcare center shall be limited to a maximum of 99 children.
5. The applicant shall provide 25 square feet of fenced, screened, and functional outdoor play area per child.

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

A. Consider Board of Adjustment 2023 Meeting and Filing Schedule for adoption.

- V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

A. Parking ZOTA announcement

- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be December 12, 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.

The media and public may view the hearing on LexTV Spectrum channel 185, MetroNet channel 3, or via live stream at the following link: http://fucg.granicus.com/MediaPlayer.php?publish_id=12

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.