

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

January 9, 2023

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 December 12, 2022 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-22-00054: JOHN DEHART** – an amended request for a variance to increase the maximum front yard setback from twenty (20) feet to seventy-six (76) feet in order to construct a retail and office use in a Neighborhood Business (B-1) zone, on property located at 490 Southland Dr. (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, nor alter the character of the general vicinity. Increasing the maximum 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 Neighborhood Business (B-1) zone 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 site plan dated December 15, 2022.
2. The applicant shall document a cross-access easement for the proposed dumpster location. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, Waste Management and Traffic Engineering prior to occupancy.

2. **PLN-BOA-22-00063: TERRENCE HICKS** – requests variances to 1) reduce the front yard setback from thirty feet (30') to seven feet (7'); 2) reduce the side street side yard from thirty feet (30') to six feet (6'); 3) reduce the side yard setback from six feet (6') to three feet (3') and 4) to reduce the rear yard setback from twenty feet (20') to ten feet (10') in order to construct a duplex within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 701 N. Upper Street. (Council District 1)

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 applicant's proposal is consistent with the location of the previous home on the subject property, and is similar to existing setbacks in the surrounding area.
- b. The restrictive configuration of the lot is a special circumstance that justifies the need for the variance, as the lot is a narrow lot that is bound on multiple sides by existing roadways.
- 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 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 updated site plan.
2. The parking area shall be a maximum of 24-feet wide, and shall conform to the location and landscaping requirements of Article 16 and Article 18.
3. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

3. **PLN-BOA-22-00065: ERFAN M. ALAMI** – requests variances to reduce the front yard setback from twenty (20) feet to zero (0) feet and to reduce the side street side yard setback from twenty (20) feet to zero (0) feet in order to construct additions to an existing non-conforming structure so that a dwelling unit may be provided on the proposed second floor within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 500-502 E. Seventh Street. (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 non-conforming commercial use will not be expanded, and the proposed additions will allow for one dwelling unit to be constructed, which is a principal permitted use in the Planned Neighborhood Residential (R-3) zone.
- 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, and the proposed second story is in keeping with other two-story residential structures in the general vicinity.
- 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 utilize the existing structure to make improvements and gain additional income from the proposed dwelling unit.
- 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 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 additions shall be constructed in accordance with the submitted application materials and modified site plan.
2. A landscape planting area shall be incorporated into the site plan along the Shropshire Avenue frontage in order to break up the existing pervious surface, prohibiting illegal parking along the side of the structure. Landscape materials shall be approved by the Landscape Examiner in the Division of Environmental Services.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

4. **PLN-BOA-22-00068: HEIDI FRAZIER** – requests a variance 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**, 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 in the front yard 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. Fencing at the applicant's proposed height could be installed within the rear yard and side yard, up to the front wall plane of the home without the need for a variance. Alternatively, the applicant could reduce the height of the fence to four feet where located in front of the primary wall plane in order to enclose the desired area without a variance.
- c. Approval of the requested variance could have a negative impact on the walkability of the immediate vicinity, as the property is located at a transitional point between the residential neighborhood and the neighborhood-serving commercial businesses to the west. 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.

5. **PLN-BOA-22-00070: BILL ROCK** – requests a variance to increase the allowable height of a fence in the front yard from four (4) feet to six (6) feet in a Commercial Center (B-6P) zone, on property located at 400-406 Park Place. (Council District 1)

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 in the front yard are typical across business 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. Fencing at the applicant's proposed height could be installed within the rear yard and side yard, up to the front wall plane of the structure without the need for a variance. Alternatively, the applicant could reduce the height of the fence to four feet where located in front of the primary wall plane in order to create a physical barrier along the edge of the parking lot without a variance.
- c. Approval of the requested variance could have a negative impact on the walkability of the immediate vicinity, as the property is located at a transition point between the industrial, personal service and neighborhood business uses in the immediate area.

D. Conditional Use Appeals

1. **PLN-BOA-22-00069: SHAWNA STIGALL** – requests a conditional use permit in order to operate a home-based beauty salon in a Single Family Residential (R-1C) zone, on property located at 809 Carneal Road. (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. The property is of a sufficient size to serve the limited number of clients 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 beauty salon 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 secondary access door required by the Board of Cosmetology shall be installed on the side of the home, and shall be connected to the driveway by a sidewalk.
5. The conditional use shall become null and void should the applicant no longer reside at this address.

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

A. Election of Officers - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting.

The current officers are: Chair – Raquel Carter; Vice Chair – Chad Needham; Secretary – Harry Clarke.

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 February 13, 2023 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.