

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

March 13, 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 February 13, 2023 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, or anyone in the audience who planned to speak to any appeal before the Board, please stand in order to 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-23-00020: MULBERRY BUILDERS** – requests variances to reduce the front yard setback from thirty feet (30') to sixteen feet (16'), and reduce the side yard setback for a deep building from seven feet and two inches (7' 2") to three feet (3') 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 421 E. Second 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, nor alter the character of the general vicinity. The applicant's proposal is similar to existing properties in the general vicinity, and the proposed setbacks are consistent with the historical development of the surrounding area.
- b. The restrictive size of the lot is a special circumstance that justifies the need for the variances.
- c. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variances as soon as it was determined that they were 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 amended site plan dated February 14, 2023.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

2. **PLN-BOA-23-00021: MULBERRY BUILDERS** – requests variances to 1) reduce the front yard setback from twenty feet (20') to sixteen feet (16'), 2) reduce the side yard setback for a deep building from four feet and eleven inches (4' 11") to three feet (3'), and 3) reduce the rear yard setback from twenty feet (20') to eleven feet and eight inches (11' 8") in order to construct a single family residence within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 423 E. Second 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, nor alter the character of the general vicinity. The applicant's proposal is similar to existing

properties in the general vicinity, and the proposed setbacks are consistent with the historical development of the surrounding area.

- b. The restrictive size of the lot is a special circumstance that justifies the need for the variances.
- c. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variances as soon as it was determined that they were 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 amended site plan dated February 14, 2023.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

3. **PLN-BOA-23-00024: J. PERRY HOMES, INC.** – requests variances to reduce the required side street side yard for a deep building from twenty feet and ten inches (20' 10") to three feet (3') and reduce the required side yard from three feet and ten inches (3' 10") to three feet (3') in order to construct a single family residence within the defined Infill and Redevelopment Area in a Single Family Residential (R-1E) zone, on property located at 198 Prall Street. (Council District 3)

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, nor alter the character of the general vicinity. The applicant's proposal is similar to existing properties in the surrounding area, and the proposed setbacks are greater than the non-conforming structure that previously existed on the site.
- b. The restrictive configuration of the lot is a special circumstance that justifies the need for the variances, as the lot is a narrow corner lot within the defined Infill and Redevelopment Area. The Zoning Ordinance specifically calls for increased flexibility in review of variances to accommodate compatible development on existing small lots within the defined Infill and Redevelopment Area.
- c. The granting of these variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance as the applicant has applied for the variances as soon as it was determined that they were 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.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

4. **PLN-BOA-23-00025: AMY MCSHARRY** – requests variances to reduce the required front yard from twenty feet (20') to ten feet (10') and reduce the required side street side yard for a deep building from twenty feet and ten inches (20' 10") to five feet (5') in order to construct a single family residence within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 228 Race 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 similar to existing setbacks in the surrounding area, and is set back further than the previous structure that previously occupied this site.
- b. The restrictive configuration of the lot is a special circumstance that justifies the need for the variance, as the lot is a narrow corner lot within the defined Infill and Redevelopment Area. The Zoning Ordinance specifically calls for increased flexibility in review of variances to accommodate compatible development on existing small lots within the defined Infill and Redevelopment Area.
- 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 dated February, 22, 2023.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

D. Conditional Use Appeals

1. **PLN-BOA-23-00005: JACKSON'S WINE & SPIRITS, LLC** – requests a conditional use for accessory drive-through facilities in order to construct a retail use within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 1406 & 1408 N. Limestone. (Council District 1)

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

- a. The proposed drive-through facility will adversely affect the surrounding properties, as the request places the proposed drive-through in closer proximity to the adjoining residential use at 102 Bermuda Ave. The proposed hours of operation would allow for vehicle stacking, with associated noise, lights, and emissions to impact existing single-family residential units within the immediate vicinity.
- b. The proposed drive-through will negatively affect pedestrian safety in the area, and will conflict with planned pedestrian infrastructure improvements along the N. Limestone corridor.
- c. The request is out of character with the N. Limestone corridor, between downtown and New Circle Road, where commercial development is more neighborhood oriented, and drive-through uses are not commonly found.
- d. The Central Sector Small Area Plan was adopted by the Planning Commission in 2009 and focuses on retaining the unique character of N. Limestone. The proposed drive-through is inconsistent with the recommendations of the Central Sector Small Area Plan, particularly those for Subarea D related to the desire for traditional neighborhood retail focused on serving residents of the Central Sector.

2. **PLN-BOA-23-00013: THE PADDOCK** – requests a conditional use permit for a cocktail lounge with indoor and outdoor live entertainment, and a variance to reduce the required setback from a residential zone from one-hundred (100) feet to thirty-five (35) feet within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 319 S. Limestone. (Council District 3)

The Staff Recommends: **Approval of the conditional use for a cocktail lounge**, for the following reasons:

- a. The proposed cocktail lounge should not adversely affect the subject or surrounding properties, as the subject property has functioned in a commercial capacity throughout much of its history. The general vicinity features a mix of commercial, residential, and professional healthcare uses, typical of a downtown area. In addition, there will be restrictions on outdoor live entertainment and outdoor speakers allowed as a part of this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: **Approval of the variance for a cocktail lounge**, for the following reasons:

- a. Granting the variance should not adversely affect the subject or surrounding properties, nor alter the character of the general vicinity, as the area features a mix of commercial, residential, and university-related uses.
- b. Live entertainment will be limited to the interior of the cocktail lounge and located at least 90 feet from the nearest residential zone. Use of the courtyard for outdoor seating and gathering without live entertainment should not create a nuisance.
- c. The granting of this variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the portion of the residentially-zoned property within 100 feet of the subject property functions as a parking lot and the closest residentially-zoned dwelling unit is over 100 feet away.

These recommendations of approval are made subject to the following conditions:

1. The cocktail lounge shall be operated in accordance with the submitted application materials and site plan.
2. Hours of operation shall be limited to 12:00 P.M. – 2:00 A.M., Monday-Saturday.
3. The rear doors shall remain closed any time that indoor live entertainment is provided, and outdoor live entertainment and outdoor speakers are prohibited. Interior areas in which live entertainment is provided shall be sound-proofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
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 the expansion of the use.

The Staff Recommends: **Disapproval of the conditional use for outdoor live entertainment**, for the following reasons:

- a. The applicant has not provided sufficient evidence that the proposed outdoor live entertainment use will not adversely affect the subject or surrounding properties. The proposed outdoor live entertainment is not appropriate for the subject property due to the density of residential uses in the general vicinity.
- b. The proposed outdoor live entertainment will likely adversely affect the surrounding area as the subject property has existing issues with noise-related nuisances.

3. **PLN-BOA-23-00022: LEXINGTON COMMUNITY LAND TRUST, INC.** – requests a conditional use permit to establish a community center within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 615 De Roode Street. (Council District 11)

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

- a. Establishing the conditional use for a community center should not adversely affect the subject or surrounding properties, as the proposed use was recommended within the 2002 Newtown Pike Extension Corridor Plan and the 2003 Southend Park Urban Village Plan and will allow the applicant to expand the functionality of the adjoining Davis Park and provide an amenity to the surrounding neighborhood.
- b. The proposed use should not adversely affect traffic in the immediate area and sufficient parking for the use will be provided via shared parking agreement with Davis Park or along the public local streets in the immediate area. 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 community center use shall operate in accordance with the submitted site plan and application materials.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.

E. Administrative Appeals

1. **PLN-BOA-23-00006: WHITETAIL HEAVEN OUTFITTERS** – requests an administrative appeal to contest the issuance of Notices of Zoning Violations by the Division of Building Inspection for recreational outfitters (commercial guided hunting) in an Agricultural Rural (A-R) zone, on property located at 5701 Jacks Creek Pike. (Council District 12)

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

- a. There is sufficient evidence provided by the Lexington Police Department and Kentucky Department of Fish and Wildlife Resources to confirm the use of the subject property and other related properties for recreational outfitters (commercial guided hunting) by Whitetail Heaven Outfitters.
- b. The applicant has not provided sufficient justification to determine that the use of the subject property for recreational outfitters (commercial guided hunting) existed prior to the 2016 Zoning Ordinance Text Amendment which explicitly prohibited the use within the Agricultural Rural (A-R) zone.
- c. The issuance of the Notices of Zoning Violation by the Division of Building Inspection was done in compliance of Article 5 of the Zoning Ordinance.

2. **PLN-BOA-23-00014: WHITETAIL HEAVEN OUTFITTERS** – requests an administrative appeal to contest the issuance of Notices of Zoning Violations by the Division of Building Inspection for recreational outfitters (commercial guided hunting) in an Agricultural Rural (A-R) zone, on property located at 5725 Jacks Creek Pike. (Council District 12)

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

- a. There is sufficient evidence provided by the Lexington Police Department and Kentucky Department of Fish and Wildlife Resources to confirm the use of the subject property and other related properties for recreational outfitters (commercial guided hunting) by Whitetail Heaven Outfitters.
- b. The applicant has not provided sufficient justification to determine that the use of the subject property for recreational outfitters (commercial guided hunting) existed prior to the 2016 Zoning Ordinance Text Amendment which explicitly prohibited the use within the Agricultural Rural (A-R) zone.
- c. The issuance of the Notices of Zoning Violation by the Division of Building Inspection was done in compliance of Article 5 of the Zoning Ordinance.

3. **PLN-BOA-23-00015: WHITETAIL HEAVEN OUTFITTERS** – requests an administrative appeal to contest the issuance of Notices of Zoning Violations by the Division of Building Inspection for recreational outfitters (commercial guided hunting) in an Agricultural Rural (A-R) zone, on property located at 5751 Jacks Creek Pike. (Council District 12)

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

- a. There is sufficient evidence provided by the Lexington Police Department and Kentucky Department of Fish and Wildlife Resources to confirm the use of the subject property and other related properties for recreational outfitters (commercial guided hunting) by Whitetail Heaven Outfitters.
- b. The applicant has not provided sufficient justification to determine that the use of the subject property for recreational outfitters (commercial guided hunting) existed prior to the 2016 Zoning Ordinance Text Amendment which explicitly prohibited the use within the Agricultural Rural (A-R) zone.
- c. The issuance of the Notices of Zoning Violation by the Division of Building Inspection was done in compliance of Article 5 of the Zoning Ordinance.

4. **PLN-BOA-23-00016: WHITETAIL HEAVEN OUTFITTERS** – requests an administrative appeal to contest the issuance of Notices of Zoning Violations by the Division of Building Inspection for recreational outfitters (commercial guided hunting) in an Agricultural Rural (A-R) zone, on property located at 5837 Jacks Creek Pike. (Council District 12)

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

- a. There is sufficient evidence provided by the Lexington Police Department and Kentucky Department of Fish and Wildlife Resources to confirm the use of the subject property and other related properties for recreational outfitters (commercial guided hunting) by Whitetail Heaven Outfitters.
- b. The applicant has not provided sufficient justification to determine that the use of the subject property for recreational outfitters (commercial guided hunting) existed prior to the 2016 Zoning Ordinance Text Amendment which explicitly prohibited the use within the Agricultural Rural (A-R) zone.
- c. The issuance of the Notices of Zoning Violation by the Division of Building Inspection was done in compliance of Article 5 of the Zoning Ordinance.

5. **PLN-BOA-23-00017: WHITETAIL HEAVEN OUTFITTERS** – requests an administrative appeal to contest the issuance of Notices of Zoning Violations by the Division of Building Inspection for recreational outfitters (commercial guided hunting) in an Agricultural Rural (A-R) zone, on property located at 3508 Crawley Lane. (Council District 12)

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

- a. There is sufficient evidence provided by the Lexington Police Department and Kentucky Department of Fish and Wildlife Resources to confirm the use of the subject property and other related properties for recreational outfitters (commercial guided hunting) by Whitetail Heaven Outfitters.
- b. The applicant has not provided sufficient justification to determine that the use of the subject property for recreational outfitters (commercial guided hunting) existed prior to the 2016 Zoning Ordinance Text Amendment which explicitly prohibited the use within the Agricultural Rural (A-R) zone.
- c. The issuance of the Notices of Zoning Violation by the Division of Building Inspection was done in compliance of Article 5 of the Zoning Ordinance.

6. **PLN-BOA-23-00018: WHITETAIL HEAVEN OUTFITTERS** – requests an administrative appeal to contest the issuance of Notices of Zoning Violations by the Division of Building Inspection for recreational outfitters (commercial guided hunting) in an Agricultural Rural (A-R) zone, on property located at 7418 Old Dry Branch Road. (Council District 12)

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

- a. There is sufficient evidence provided by the Lexington Police Department and Kentucky Department of Fish and Wildlife Resources to confirm the use of the subject property and other related properties for recreational outfitters (commercial guided hunting) by Whitetail Heaven Outfitters.
- b. The applicant has not provided sufficient justification to determine that the use of the subject property for recreational outfitters (commercial guided hunting) existed prior to the 2016 Zoning Ordinance Text Amendment which explicitly prohibited the use within the Agricultural Rural (A-R) zone.
- c. The issuance of the Notices of Zoning Violation by the Division of Building Inspection was done in compliance of Article 5 of the Zoning Ordinance.

- II. **BOARD ITEMS** – The Chair will announce that any items a Board member wishes to present will be heard at this time.
- III. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.
- IV. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be April 10, 2023 at 1:30 p.m. in Council Chambers, 2nd Floor, 200 E. Main St., Lexington, KY 40507.
- V. **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://lfucg.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.