

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

April 10, 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 March 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 plans 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-23-00023: TINA THOMAS** – requests a variance to increase the allowable size of an accessory structure from fifty percent (50%) to sixty-nine percent (69%) in order to construct a detached accessory structure in a Planned Neighborhood Residential (R-3) zone, on property located at 1449 Anniston Drive. (Council District 6)

The Staff Recommends: **Approval of a reduced variance from 50% to 59%** for the following reasons:

- a. Granting the lesser variance should not adversely affect character of the general vicinity. With a reduction in the proposed size, the single-family residence will remain the focal point and clearly the principal use of the site.
- b. The request will not negatively impact the public health, safety, or welfare of the general vicinity as the structure will be partially screened from view by the single family home, a drop in topography, and existing trees and vegetation along adjoining property lines.

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

1. Construction shall be in accordance with the submitted application materials and an updated site plan depicting accessory structures totaling no more than 1,053 square feet by reducing the size of the proposed garage and/or removing the existing shed.
 2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.
2. **PLN-BOA-23-00027: JAY INGLE** – requests variances to reduce the required rear yard setback from forty-three feet and nine inches (43' 9") to four feet (4') and to increase the allowable floor area ratio (FAR) from 0.35 to 0.38 in order to construct an addition to an existing single family detached dwelling within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 633 Bellaire Avenue. (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 proposed garage addition should have little visual impact on the surrounding properties as it is located to the rear of the property, other residences in the vicinity feature garages to the rear of the property, and a garage has existed in this location for forty years.

- b. The unique configuration and historic nature of the lot 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 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. The addition 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 construction.

3. **PLN-BOA-23-00029: GIBSON TAYLOR THOMPSON ARCHITECTURE & DESIGN**– requests a variance to reduce the side yard setbacks for a deep building from five feet (5') to three feet (3') in order to construct a new single family dwelling unit within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 366 Jefferson 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, as well as the setback for the previous structure on the subject property.
- 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 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 site plan.
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-23-00026: JUAN MELENDEZ** – requests a conditional use permit in order to operate a home-based auto detailing business in a Planned Neighborhood Residential (R-3) zone, on property located at 509 Lucille Drive. (Council District 2)

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 operation of the business will be confined to the garage, where it will be enclosed, screened from view, and noise-proofed.
- 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 automobile detailing use shall be operated in accordance with the submitted application materials, modified site plan, and supplemental justification statement, with appointments only on an individual basis.
2. The operation of the detailing business be confined to the attached garage, and shall be enclosed at all times.
3. All wastewater from the use shall be disposed of within the home's sanitary sewer system.
4. No more than one vehicle shall be detailed at one time, and appointments shall not overlap.
5. No more than eight (8) appointments per week shall be permitted.
6. Hours of operation shall be limited to 4:00 P.M.–8:00 P.M. on Tuesdays and Thursdays, and 8:00 A.M. to 4:00 P.M. on Saturdays and Sundays.
7. 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.
8. The conditional use shall become null and void should the applicant no longer reside at this address.

3. **PLN-BOA-23-00028: ZION CHURCH BUILDERS** – requests to amend an existing conditional use permit and a variance to reduce the required side street side yard setback from thirty feet (30') to ten feet (10') in order to construct an addition to an existing place of religious assembly in a Single-Family Residential (R-1C) zone, on property located at 3416 Clays Mill Road. (Council District 9)

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

- a. Granting the requested conditional use permit and variance will not adversely affect the public health, safety, or welfare of the subject property or general vicinity, nor alter the character of the surrounding area. The addition will be located within an existing parking area which should minimally impact stormwater runoff, as well as minimally impact neighboring residential uses. The addition of landscaping along the property's Clays Mill Road and Merrimac Drive frontages should sufficiently buffer the use from neighboring residential uses.
- b. The utilization of the proposed building addition to replace the existing retaining wall is a unique circumstance which justifies the requested variance. Strict application of the Zoning Ordinance would create an unnecessary hardship for the applicant due to the high costs associated with adding in fill to the site. The addition will be constructed in what is likely the most practical and economically feasible manner, given the layout of the existing building, impermeable area, and retaining wall.
- 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 beginning construction.
- d. 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 addition shall be constructed in accordance with the submitted application materials and revised site plan showing existing and proposed landscaping along Clays Mill Road and Merrimac Drive.
2. The applicant shall submit a landscape plan that fulfills and exceeds the requirements of Article 18 of the Zoning Ordinance for review and approval by the Division of Environmental Services to include the following:
3. Reinstallation of deciduous trees along the length of the retention basin in accordance with C-1998-91: Cravens & Associates Architecture, PSC.
4. Installation of the medium to large trees and shrubs, both evergreen and deciduous, in accordance with CV-2001-30: T & O Designers, Inc. & Bethel Harvest Church and along the full building frontage adjacent to the Merrimac Drive frontage.

5. An updated stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to the acceptance by the Division of Engineering.
6. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.

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.

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

A. **Amendment to findings of fact in PLN-BOA-23-00013.**

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 May 8, 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://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.