

**AGENDA FOR THE BOARD OF ADJUSTMENT**  
**MEETING**

May 8, 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 April 10, 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-23-00030: KEN PARR** – requests a variance to reduce the required side yard from eight feet (8') to three feet and eleven inches (3' 11") in order to construct an addition to an existing single family residence within a Neighborhood Character Design Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 161 Chenault 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, as the addition will be set back the same distance as the closest portion of the existing residence that has occupied this site since 1939.
      - b. The granting of the variance will not alter the essential character of the general vicinity as the addition will meet the Chevy Chase Neighborhood Character Design (ND-1) standards, will not be visible from the road, and will be screened from adjoining properties through existing fencing and landscaping.
      - 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.
    2. **PLN-BOA-23-00033: JOSEPH COSTA** – requests a variance to reduce the setback for an accessory structure where a corner lot adjoins in the rear a lot in any residential zone from sixteen feet (16') to thirteen feet (13') in order to construct an accessory structure within the defined Infill & Redevelopment Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 461 N. Limestone. (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 should have little visual impact on the surrounding properties, as it is sufficiently screened from the Fifth Street right-of-way,

and the principal structure on the immediately adjoining lot is located over 60 feet from the proposed garage. Other properties in the immediate vicinity feature similar setbacks along the Fifth Street corridor.

- b. The historic nature of the property, and existing setbacks of structures in the vicinity, are special circumstances that justify the need for the setback 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 accessory structure shall be constructed in accordance with the submitted application materials and site plan.
2. The accessory structure shall not be utilized by the legally non-conforming secondary residence (carriage house).
3. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to construction.

3. **PLN-BOA-23-00034: GLEN HECK & KATE MARTIN** – requests a variance to reduce the required front yard setback from thirty feet (30') to zero feet (0') in order to provide a circular driveway in the front yard in a Single Family Residential (R-1C) zone, on property located at 1221 Indian Mound Rd. (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.
- 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 is sufficient space in the existing garage and driveway to park up to seven (7) vehicles. Additionally, on-street parking is suitable to meet the applicant's needs.

#### **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)

Note: The Board of Adjustment continued the public hearing for the requested drive-through facility from the April 10, 2023 meeting. The applicant has submitted a revised justification and site plan for further consideration.

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

- a. Granting the variance should not adversely affect the public health, safety, or welfare, nor significantly alter the character of the general vicinity. The reduction in the number of access points and the simplification of the site circulation pattern makes the proposal safer for both vehicular and pedestrian traffic.
- b. The proposal should not negatively impact the adjoining residential use, as the drive-through facility will be screened with fencing and landscaping, no outdoor speakers are proposed, and any exterior lighting will be directed away from adjoining properties.
- c. With the inclusion of a direct pedestrian entrance from the building to N. Limestone, the structure will activate the primary streetscape and will make the development more pedestrian-friendly.
- 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. Construction shall be in accordance with the submitted application materials and revised site plan dated April 26, 2023.
2. 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.

3. A direct pedestrian entrance from the building to N. Limestone shall be provided on the corner or on the front wall plane of the structure.
4. Hours of operation shall be limited to 7:00 a.m. – 12:00 a.m., Monday–Thursday; 7:00 a.m. – 1:00 a.m., Friday –Saturday; 1:00 p.m. – 9:00 p.m. on Sunday.
5. No outdoor speakers or external amplification shall be permitted.
6. All outdoor lighting shall be directed away from the adjoining properties.
7. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, Waste Management and Traffic Engineering prior to occupancy.
8. Should Jacksons Wine and Spirits, LLC no longer operate the drive-through facility, the conditional use shall be considered null and void.

2. **PLN-BOA-23-00032: KEYHOLE TATTOO, LLC** – requests a conditional use permit to establish a tattoo parlor within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Downtown Center Business (B-2B) zone, on property located at 192 N. Broadway. (Council District 3)

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

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood. The immediate vicinity is characterized by a mix of uses, several of which have similar (or longer) hours to those being proposed.
- b. The proposed use should not have a negative impact on traffic, as only 10-12 customers are expected per day.
- 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 tattoo parlor use shall be established in accordance with the submitted application materials and site plan.
2. The tattoo parlor use shall operate in conformance with all state and local regulations related to tattooing, including registering and permitting with the Lexington-Fayette County Health Department.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection prior to occupancy.

3. **PLN-BOA-23-00035: JONABELL FARM** – requests a conditional use permit to establish a farm gift shop in an Agricultural Rural (A-R) zone, on property located at 3333 Bowman Mill Road. (Council District 12)

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 primary client base for the gift shop will be guests who are on the property for a tour of the equine facility, and the purpose of the gift shop is to enhance their experience of the farm.
- b. The scale of the use, both in size of the space and the operation of the gift shop, is minimal compared to the overall size and general operation of the farm. No additional facilities or services are needed for the gift shop's operation as it will be located in an existing building and any additional traffic other than what will be associated with the scheduled farm tours will be minimal.
- 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 farm gift shop shall be operated in accordance with the submitted application materials and site plan.
2. Only farm or industry memorabilia shall be provided for sale on the property.
3. There shall be no signage, other than directional or identification signs interior to the property, advertising the farm gift shop.
4. All necessary permits, including a Zoning Compliance Permit, shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the use.

4. **PLN-BOA-23-00036: OHP SOUTHLAND, LLC** – requests to amend an existing conditional use permit for drive-through facilities in order to modify conditions to allow for a menu board, amplified speaker, and microphone devices in a Neighborhood Business (B-1) zone, on property located at 115 Southland Drive. (Council District 10)

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

- a. Amending the requested conditional use should not adversely affect the subject or surrounding properties, as a drive-through facility has successfully functioned on the subject property for several years and there is adequate vehicular stacking available after the proposed ordering point. There are access points on both Southland Drive and Collins Lane which allow parked customers to exit separately from customers utilizing the drive-through facility.
- b. The addition of a separate ordering point with menu board, amplified speaker, and microphone devices should not negatively impact the subject or surrounding properties as the closest residential dwelling unit is over 300 feet away.
- 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 subject property shall be developed in accordance with the submitted application materials and site plan dated April 25, 2023, with changes as required by the Division of Traffic Engineering.
2. There shall be an interior ordering and service space for customers.
3. The final configuration of the parking lot shall be subject to approval of the Division of Traffic Engineering.
4. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

- 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 June 12, 2023 at 1:30 p.m. in Council Chambers, 2<sup>nd</sup> 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](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.