

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

September 11, 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 June 12, 2023 and the July 10, 2023 Board of Adjustment 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, 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-23-00048: GIBSON, TAYLOR, THOMPSON ARCHITECTURE & DESIGN** – requests a variance to reduce the required side yard for a deep building from eight feet and eleven inches (8' 11") to five feet (5') in order to build additions to an existing single-family residence within a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 226 Chenault Road. (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. The applicant's proposal is similar to existing setbacks in the surrounding area and the addition will be set back the same distance as the closest portion of the existing residence that has occupied this site since 1942.
- 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 and is located in the rear portion of the property where it will be adequately screened from view.
- c. The existing non-conforming side yard setback is a special circumstance that justifies the need for the variance.
- d. 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-23-00053: ESTEPP ENERGY** – requests a variance to increase the required front yard setback from twenty feet (20') to forty feet (40') in order to construct a canopy for gasoline pumps in a Neighborhood Business (B-1) zone, on property located at 1445 Newtown Center Way. (Council District 1)

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

- a. Granting the variance should not alter the character of the general vicinity. The applicant's proposal is in keeping with the larger commercial character of the general vicinity, and the second canopy has been previously approved on development plans.

- b. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity, as the safety concerns related to circulation and maneuverability of the site for fleet vehicles and large trucks and trailers 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 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, or as modified by the amended Final Development Plan.
 2. Action of the Board shall be reflected on the Final Development Plan for the property.
 3. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance.
 4. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.
3. **PLN-BOA-23-00055: JORDAN YEISER** – requests a variance to reduce the required side yard for a deep building from eleven feet and one inch (11' 1") to nine feet (9') in order to construct an addition (covered deck) in a Single Family Residential (R-1B) zone, on property located at 2108 Bridgeport Dr. (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. The property is of an appropriate size and configuration to allow an addition of the same square footage without a 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, since an addition only 2 feet and 1 inch narrower would still be adequate to meet the desires of the applicant.
 - c. Existing homes along Bridgeport Drive and within the Lakeview Estates subdivision generally meet the required 10' side yard setback without averaging and there have been no side yard variances granted on this street.
4. **PLN-BOA-23-00057: JOHN STOCKER** – requests a variance to reduce the required side street side yard setback from thirty feet (30') to zero feet (0') in order to provide a circular driveway and additional paving in the side street side yard in a Single-Family Residential (R-1C) zone, on property located at 2994 Montavesta 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. The applicant is able to expand the existing driveway to 24 feet wide and provide space to park approximately six (6) vehicles in the existing garage and expanded driveway. With approval from Traffic Engineering, the applicant is also able to pave a second driveway in order to provide an off-street parking area for their boat. Additionally, on-street parking is suitable to meet the applicant's needs.

D. Conditional Use Appeals

1. **PLN-BOA-23-00050: LEXINGTON HISPANIC ADVENTIST CHURCH** – requests to amend a conditional use permit in order to construct a building addition to an existing place of religious assembly in a Single Family Residential (R-1C) zone, on property located at 125 Garrett Ave. (Council District 11)

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The size of the subject property is large enough to support the proposed addition, and will be sufficiently landscaped and screened from neighboring residential uses.
- b. The requested conditional use should not have a negative impact on traffic in the general vicinity, as adequate parking will be provided to accommodate the expanded use.
- 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:

The use shall be operated in accordance with the submitted application materials and site plan.

1. The vehicular use area shall be paved, landscaped, and screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
2. The vehicular use area shall be designed in accordance with the locational and connection standards outlined in Article 16-6(a) of the Zoning Ordinance.
3. All necessary permits, including a paving permit, shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the use.

2. **PLN-BOA-23-00051: THE MISSION CHURCH OF LEXINGTON** – requests a conditional use permit to expand an existing place of religious assembly in a Single Family Residential (R-1D) zone, on property located at 3288 Beaver Creek Drive. (Council District 7)

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties. The size of the subject property is large enough to support the proposed sanctuary, and the use will be sufficiently landscaped and screened from neighboring residential uses, as well as Man O War Boulevard.
- b. The requested conditional use should not have a negative impact on traffic in the general vicinity, as adequate parking will be provided to accommodate the expanded use.
- 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 use shall be operated in accordance with the submitted application materials and site plan.
2. The vehicular use area shall be landscaped and screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
3. The vehicular use area shall be designed in accordance with the locational and connection standards outlined in Article 16-6(a) of the Zoning Ordinance.
4. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the use.

3. **PLN-BOA-23-00052: SHEPHERD'S HOUSE** – requests a conditional use permit to establish a rehabilitation home within 500 feet of a residential zone in a Professional Office (P-1) zone, on property located at 2141 Executive Drive. (Council District 6)

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

- a. The proposed rehabilitation home should not adversely affect the subject or nearby properties. The proposed rehabilitation home will utilize existing facilities and is screened from adjacent residential uses by significant vegetation located within the floodplain.
- b. The proposed use should not create adverse traffic impacts as there will be limitations on visitors to the facility. There is adequate parking available on the property and the proposed use should not generate more traffic than the previously approved assisted living facility.
- c. The proposed use will allow the applicant to utilize existing development in order to provide services that will promote the health and welfare of the community by providing a resource to address alcohol and drug addiction and dependency. The existing structure is uniquely suited to this type of use due to the previous use as an assisted living facility.
- 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 use shall be operated in accordance with the submitted application materials and site plan.
2. Board approval shall be denoted on the Final Development Plan for the property.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection, as well as state agencies, prior to occupancy.

4. **PLN-BOA-23-00059: JANCY BONEWITS AND CASEY WESLEY** – request a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 2497 Eastway Dr. (Council District 10)

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, as the structure is large enough to accommodate the proposed number of users (guests), and has a screened back yard.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street and on-street parking is available.
- c. The subject property is not located in, or within 1,000 feet of, a Federally Designated Area of Persistent Poverty and Historically Disadvantaged Communities.
- d. The proposed use is not located in an area of concentrated short-term rentals, and no short-term rentals in the area have been cited as a nuisance.
- e. There is no record of short-term rental compliance issues with the applicant.
- f. 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 short term rental use shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
3. Occupancy of the short-term rental shall be limited to 12 individuals.
4. The conditional use permit shall become null and void if the applicant's short-term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

5. **PLN-BOA-23-00060: ANCHOR BAPTIST CHURCH** - requests to amend an existing conditional use permit for a school for academic instruction in order to construct new buildings in a Planned Neighborhood Residential (R-3) zone, on property located at 3601 Winthrop Dr. (Council District 9)

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

- a. Granting the conditional use should not adversely affect the subject or surrounding properties. The modular building is located in the same area which was previously approved by the Board for construction of a main sanctuary building and the modular structure will be temporary in nature, to be removed by September 30, 2024.
- b. The requested conditional use should not have a negative impact on traffic in the general vicinity, as the school's enrollment will not be increased, and the day-to-day operations will not change.
- 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 use shall be operated in accordance with the submitted application materials and site plan.
2. The modular structure shall be removed by September 30, 2024.
3. Upon removal of the modular structure, the site shall be re-seeded and restored to its previous condition.
4. Enrollment shall not exceed 200 students.
5. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of the modular building.

6. **PLN-BOA-23-00061: BETHESDA PENTECOSTAL TABERNACLE, INC.** – requests conditional use permits for a place of religious assembly and a childcare center for eight (8) children in a Single Family Residential (R-1D) zone, on property located at 125 E. Tiverton Way. (Council District 4)

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

- a. Granting the requested conditional uses should not adversely affect the subject or surrounding properties. The proposed uses will utilize existing structures and will be screened from adjacent uses by 6-foot privacy fencing.
- b. The requested conditional uses should not have a negative impact on traffic in the general vicinity, as adequate parking will be provided to accommodate the uses.

- c. The proposed uses will allow the applicant to utilize existing structures in order to provide services that will address a need for available beds within the foster care system. The existing structure is a single family dwelling unit and is well suited to this type of use.
- d. All necessary public facilities and services are available and adequate for the proposed uses.

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

1. The uses shall be operated in accordance with the submitted application materials and site plan.
2. The parking area to the rear of the structure shall be repaved.
3. Religious assembly services shall not occur when the childcare center is operating.
4. All necessary permits, including a paving permit shall be obtained from the Divisions of Planning and Building Inspection prior to commencement of the use.
5. The applicant shall comply with all requirements of the State of Kentucky's Cabinet for Health and Family Services.

7. **PLN-BOA-23-00062: AARON REEDY** – requests a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 621 Lane Allen Rd. (Council District 10)

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, as the structure is large enough to accommodate the proposed number of users, and has a screened back yard.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street and on-street parking is available.
- c. No short-term rentals in the area have been cited as a nuisance.
- d. There is no record of short-term rental compliance issues with the applicant.
- e. 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 short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 12 individuals.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
4. The conditional use permit shall become null and void if the applicant's short-term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

8. **PLN-BOA-23-00063: MATTHEW AND TAMARA ROBINSON** – request a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1B) zone, on property located at 775 Chinoe Rd. (Council District 5)

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, as the structure is large enough to accommodate the proposed number of users, and has a screened back yard.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street and on-street parking is available.
- c. The subject property is not located in, or within 1,000 feet of, a Federally Designated Area of Persistent Poverty and Historically Disadvantaged Communities.
- d. The proposed use is not located in an area of concentrated short-term rentals, and no short-term rentals in the area have been cited as a nuisance.
- e. There is no record of short-term rental compliance issues with the applicant.
- f. 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 short term rental use shall be established in accordance with the submitted application materials and site plan.
2. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and

Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.

3. Occupancy of the short term rental shall be limited to 10 individuals.
4. The conditional use permit shall become null and void if the applicant's short-term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.

E. Administrative Appeals

1. **PLN-BOA-23-00049: SHADELAND INVESTMENTS, LLC** – requests an administrative appeal to change one non-conforming use (retail) to another non-conforming use (office) within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 185 Eastern Avenue. (Council District 1).

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

- a. The requested change in non-conforming use from retail to office should not adversely affect the subject or surrounding properties, as the proposed office use should have a lesser impact on the subject and surrounding properties due to a decrease in visitors throughout the day.
- b. There should not be adverse impacts on traffic as sufficient parking is available on site.
- c. 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. Additionally, removal of the installed outdoor refrigeration unit will return the site to its previous condition.
- 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 office use shall operate in accordance with the submitted site plan and application materials.
2. The illegally installed structure (outdoor refrigeration unit) to the rear of the building shall be removed.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.

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

A. Recognize new and newly appointed members of the Board.

- 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 October 9, 2023 at 1:30 p.m., Council Chambers, 200 East Main Street, 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.