

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

November 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**

There are no minutes available for consideration 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-23-00045: RED DRAW DELAWARE, LLC** – requests variances to 1) reduce the required Vehicular Use Area perimeter buffer width from eight feet (8') to zero feet (0'), 2) reduce the required minimum interior landscape area from ten percent (10%) to four percent (4%), 3) reduce the required Vehicular Use Area tree canopy from thirty percent (30%) to zero percent (0%), and 4) reduce the required useable open space from ten percent (10%) to one percent (1%) in order to construct a warehouse/storage facility within the defined Infill and Redevelopment Area in a Light Industrial (I-1) zone, on property located at 1535 Delaware Ave. (Council District 5)

The Staff Recommends: **Approval of the variances to reduce the required Vehicular Use Area perimeter buffer width to zero feet (0') and reduce the required Vehicular Use Area tree canopy to zero percent (0%),** for the following reasons:

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, as the variances allow for the applicant to develop the site in a manner that does not threaten the structural integrity of the adjoining structure.
- b. Granting the variances should not alter the character of the general vicinity as the proposed vehicular use area should have little visual impact on the surrounding properties as the adjoining structure is immediately on the property line and sufficiently screens adjacent properties.
- c. Granting the variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because the applicant has applied for the necessary 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. The site shall be developed in accordance with the submitted application materials and site plan reflecting the conditions herein.
2. The applicant shall work with the Division of Environmental Services to determine species and locations of trees to be provided in alternative locations on-site.
3. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.

The Staff Recommends: **Disapproval of the variances to reduce the required minimum interior landscape area to four percent (4%) and reduce the required useable open space to one percent (1%),** 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. There is sufficient space on the property to accommodate the required interior landscaping and useable open space while maintaining a majority of the desired parking spaces.
- 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.

2. **PLN-BOA-23-00064: SHELBY MARLETTA** – requests a variance to increase the maximum number of parking spaces from two (2) to four (4) in order to pave additional parking within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Planned Neighborhood Residential (R-3) zone, on property located at 324 Aylesford Pl. (Council District 3)

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 paved parking area should have little visual impact on the surrounding properties as it is similar to other rear parking areas in the general vicinity.
- b. 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 revised site plan depicting a landscape buffer along the rear perimeter of the “grass back yard” to provide separation between the yard and parking area.
2. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection and the Board of Architectural Review prior to paving.

3. **PLN-BOA-23-00071: CHRIS FIELDER** – 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 1929 Alexandria Dr. (Council District 11)

The Staff Recommends: **Approval of a lesser variance of thirteen feet (13')**, for the following reasons:

- a. Granting the lesser variance should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity. The recommended widened driveway with turnaround area is similar to other parking areas in the general vicinity, and does not create a second access point on the property.
- b. The location of the subject property along a high-traffic road creates safety concerns for the applicant when backing out of, or backing into, their driveway. The alternative design allows for the applicant to utilize a turnaround area in order to pull out onto Alexandria Drive.
- 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 revised site plan depicting the alternative driveway design as provided by Staff.
2. All necessary permits and approvals shall be obtained from the Division of Building Inspection prior to paving.

4. **PLN-BOA-23-00075: RICKY POPE** – requests a variance to reduce the required front yard setback from ten feet (10') to zero feet (0') in order to construct an addition (enclosed patio) to an existing restaurant within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 159-161 Jefferson St. (Council District 11)

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

- a. Granting the variance should not alter the character of the general vicinity. The subject property is within the defined Infill and Redevelopment Area and the proposed addition features a front yard setback that is in keeping with other structures in the immediate vicinity.
- b. Granting the variance should not adversely affect the public health, safety, or welfare of the general vicinity as the enclosure of the patio should not negatively impact the walkability of the area. The subject property has featured a covered patio in the same location as the proposed addition since 2011, and the design of the proposed addition includes multiple windows which create a welcoming environment for pedestrians.
- 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.

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/or approvals shall be obtained from the Division of Building Inspection prior to construction.

5. **PLN-BOA-23-00083: JOE RAYYAN** – requests a variance to reduce the required setback of a gasoline pump to a residential zone from fifty feet (50') to twenty-five feet (25') in order to provide an additional gasoline pump in a Highway Service Business (B-3) zone, on property located at 705 E. Loudon Ave. (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.
- 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 the property already has 8 gasoline pumps.
- c. Approval of the requested variance could have a negative impact on the safety of pedestrians, as the property is located at a transition point between the residential and industrial uses in the immediate area.

D. Conditional Use Appeals

1. **PLN-BOA-23-00069: NICOLE SEALS** – requests a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1D) zone, on property located at 3104 Leestown Rd. (Council District 2)

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.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. There is no record of short term rental compliance issues with the applicant.
- 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 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 10 individuals.
3. The existing driveway accessed from Leestown Road shall be removed. The proposed driveway shall be paved.
4. 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.

5. The conditional use permit shall become null and void upon change in ownership, or 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.
2. **PLN-BOA-23-00070: JESSICA VOIGT** – requests a conditional use permit to operate an accessory dwelling unit (ADU) as a hosted short term rental within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone, in a Single Family Residential (R-1C) zone, on property located at 1859 Nicholasville 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 applicant occupies the principal dwelling unit on the subject property as their primary residence.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. There is no record of short-term rental compliance issues with the applicant.
- 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 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 2 persons, plus any children related to either of them or under their care through a duly authorized custodial relationship.
 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. The conditional use permit shall become null and void if the applicant no longer owns or operates the short term rental, or if the applicant no longer occupies the principal dwelling unit on the subject property as their primary residence.
3. **PLN-BOA-23-00072: STEWART AND JUDY PERRY** – request a conditional use permit for an un-hosted short term rental in a Mixed Low Density Residential (R-2) zone, on property located at 822 Raven Rd. (Council District 3)

*Note - The applicant has indicated that they are withdrawing their application.

4. **PLN-BOA-23-00073: TRADITIONAL BANK** – requests a conditional use permit for drive-through facilities for a proposed bank in a Neighborhood Business (B-1) zone, on property located at 457 Southland Dr. (Council District 10)

*Note - The applicant has requested postponement of their application to the December 11, 2023 meeting of the Board of Adjustment. The Staff will finalize their recommendation prior to the meeting.

5. **PLN-BOA-23-00074: DAVID DAUER** – requests a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 3374 Snaffle Rd. (Council District 10)

*Note - The applicant has indicated that they are withdrawing their application.

6. **PLN-BOA-23-00076: GLOCK NICHOLASVILLE, LLC** – requests a conditional use permit for an un-hosted short term rental and a variance to increase the maximum number of parking spaces from two (2) to four (4) in order to pave additional parking within the defined Infill and Redevelopment Area in a Single-Family Residential (R-1C) zone, on property located at 103 Westwood Dr. (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, as the structure will be large enough to accommodate the proposed number of users.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking will be available.

- c. There is no known record of short term rental compliance issues with the applicant.
- d. All necessary public services and facilities are available and adequate for the proposed use.
- e. 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 paved parking area should have little visual impact on the surrounding properties as it is similar to other rear parking areas in the general vicinity and is located in the rear of the property.
- f. 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 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 upon change in ownership, or 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. Paving shall be in accordance with the submitted application materials and revised site plan depicting the removal of the gravel area and a landscape buffer along the rear perimeter of the new parking area to provide separation between the yard and parking area and prevent the continued use of the informal gravel parking area.
 - 6. All necessary permits and approvals shall be obtained from the Divisions of Building Inspection prior to paving and prior to obtaining a Zoning Compliance permit for the short term rental use.
7. **PLN-BOA-23-00077: DAVID HAUGE** – requests a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area and a Historic District Overlay (H-1) zone in a Mixed Low Density Residential (R-2) zone, on property located at 361-363 S. Upper St. (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, as the structure is large enough to accommodate the proposed number of users. A short term rental operated successfully on the subject property for years under prior ownership.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. There is no record of short term rental compliance issues with the applicant.
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 4 individuals.
 - 3. The gravel parking area shall be paved in compliance with Article 16 of the Zoning Ordinance.
 - 4. 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.
 - 5. The conditional use permit shall become null and void upon change in ownership, or 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-23-00078: HARMONY HB, LLC** – requests to amend an existing conditional use permit for a place of religious assembly in order to construct a detached accessory structure (garage) in an Agricultural Urban (A-U) zone, on property located at 3330 Todds Rd. (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 structure is located to the rear of the subject property and the accessory garage will be sufficiently screened from nearby residential uses, as well as Todds Road.

- b. The requested conditional use should not have a negative impact on traffic in the general vicinity, as adequate parking will remain to accommodate the existing church's operation.
- 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. Action of the Board shall be denoted on an amended final development plan, depicting the proposed structure and changes to the site layout.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the structure.

9. **PLN-BOA-23-00079: 341 SHERMAN AVE, LLC**— requests a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 341 Sherman Ave. (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.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. There is no known record of short term rental compliance issues with the applicant.
- 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 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 upon change in ownership, or 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.

10. **PLN-BOA-23-00080: CALVIN ANDRIES** – requests a conditional use permit for an un-hosted short term rental in a Townhouse Residential (R-1T) zone, on property located at 640 Declaration Ct. (Council District 6)

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.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity, since the applicant is proposing to restrict parking to the garage and driveway.
- c. There is no record of short term rental compliance issues with the applicant.
- 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 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 5 individuals.
3. Parking for the short term rental shall be restricted to the attached garage and driveway; no on-street parking will be permitted.
4. 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.
5. The conditional use permit shall become null and void upon change in ownership, or 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.

- 11. PLN-BOA-23-00081: KEENELAND ASSOCIATION** – requests to amend an existing conditional use permit for a horse race track with accessory facilities, and a variance to increase the allowable height of a building from thirty-five feet (35') to fifty-five feet (55'), in order to provide additional square footage for administrative space, dining facilities, and visitors' center in the Agricultural Rural (A-R) zone, on property located at 3801-4081 and 4251 Versailles Rd. (Council District 12)

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

- a. Granting the requested conditional use permit and variance should not adversely affect the subject or surrounding properties. There are no uses on adjoining or nearby properties that might be adversely impacted by the proposed improvements, and these changes will enable Keeneland to provide better service to its patrons and clientele.
- b. Granting the requested variance should not alter the character of the general vicinity as existing structures feature greater heights than what are being proposed.
- c. The proposed buildings will be screened from view from the public right of way by existing trees and landscaping.
- d. All necessary public and private services are available and adequate for the proposed use.

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

1. The project shall be completed in accordance with the submitted application materials and site plan.
2. New parking areas shall be designed in accordance with Articles 16 and 18 of the Zoning Ordinance.
3. All necessary permits and approvals shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.

- 12. PLN-BOA-23-00084: LSC FACILITIES HOLDING COMPANY, LLC** – to amend a conditional use permit for outdoor recreational facilities (soccer fields) with outdoor lighting and variances to 1) increase the allowable height of free-standing lighting in a parking lot from twelve feet (12') to twenty-eight feet (28') and 2) increase the maximum spacing between interior landscape areas from ninety feet (90') to one hundred and seventeen feet (117') in an Agricultural Rural (A-R) zone, on property located at 250 Doe Run Trail. (Council District 12)

The Staff Recommends: **Approval of the conditional use and the variance to increase the allowable height of free-standing lighting in a parking lot to twenty-eight feet (28')**, for the following reasons:

- a. Granting the requested conditional use permit and variance should not adversely affect the subject or surrounding properties, provided the activities are in accordance with the recommended conditions herein. The preservation of existing vegetative screening, prohibitions against restaurants or food service, loudspeakers and substantially similar uses, and limitations of on-site operations and durations should minimize the impact of the use on properties within the general vicinity.
- b. The proposed buildings will be screened from view from adjoining properties by existing trees and landscaping.
- c. All necessary public and private 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 conducted in accordance with the submitted application materials and site plan reflecting the conditions herein.
2. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.
3. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. A sewage treatment system shall be installed in accordance with the requirements of the Department of Health.
5. The applicant shall submit a landscape plan for review and approval by the Division of Environmental Services reflecting the landscaping required in condition #8.
6. 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.
7. The parking lot shall be screened in accordance with the requirements of Article 18 of the Zoning Ordinance.
8. Existing vegetative areas in the south and southwestern portions of the site shall be preserved to maintain screening for the adjacent properties.
9. Loudspeakers and restaurants or food service are prohibited.

10. The proposed outdoor recreational facilities shall be limited to use for athletic-related activities only and shall not be used for non-athletic commercial events or gatherings, including concerts, festivals, fireworks, off-site parking and substantially similar uses.
11. Hours of operation shall be limited to 7 A.M. to 10 P.M., daily.
12. The use shall be developed and operate in accordance with the requirements of the United States Fish and Wildlife Service (USFWS).
13. Coordination with the Division of Environmental Services and/or the US Corps of Engineers shall occur prior to construction within fifty (50) feet of an identified sinkhole or wetland on the property.

The Staff Recommends: **Postponement of the variance to increase the allowable distance between interior landscape islands to one hundred and seventeen feet (117')**, for the following reasons:

- a. The requested variance is related to Article 18 standards and the applicant should have an opportunity to have their request be reviewed by the Landscape Review Committee.

- 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 December 11, 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.

**ADDENDUM TO THE NOVEMBER 13, 2023
BOARD OF ADJUSTMENT AGENDA**

IV. BOARD ITEMS (cont'd)

- A. Consider Board of Adjustment 2024 Meeting and Filing Schedule for adoption.**