

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

December 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 September 2023 Board of Adjustment minutes will be considered at this time.

The October 2023 Board of Adjustment minutes 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-23-00045: 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)

Note: The Board voted to continue this item at the November 13, 2023 meeting.

The Staff Recommends: **Approval of a lesser variance to reduce the required useable open space to six percent (6%),** 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, as the variance allows the applicant to develop the site in a manner that provides adequate parking for the proposed use.
- b. 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 revised site plan reflecting the provision of 6% useable open space.
 2. All necessary permits shall be obtained from the Divisions of Building Inspection and Engineering prior to construction.
2. **PLN-BOA-23-00068: MATTHEW DELUCA** – requests a variance to reduce the required rear yard setback of a through lot from twenty feet (20') to twelve feet (12') in order to construct an addition in a Planned Neighborhood Residential (R-3) zone, on property located at 2116 Maura Trace. (Council District 9)

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 consistent with other structures in the vicinity and the applicant plans for the addition to be designed in compliance with the subject property's deed restrictions.
- b. The irregular shape of the lot, including the curvature of Lyon Drive along the rear of the property, is a special circumstance that justifies 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.
2. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

3. **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.

4. **PLN-BOA-23-00085: GIBSON, TAYLOR, THOMPSON ARCHITECTURE AND DESIGN** – requests a variance to reduce the required side yard for a deep building from eight feet and five inches (8'5") to five feet and six inches (5'6") in order to construct an addition within a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 477 Hart 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 property since 1939.
- b. The granting of the variance will not alter the 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 legally 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.

5. **PLN-BOA-23-00090: ANNE RAMIREZ** – requests a variance to reduce the required setback from the side and rear lot lines from two feet (2') to zero feet (0') in order to pave a driveway within the defined Infill and Redevelopment Area in a Medium Density Residential (R-4) zone, on property located at 141 E. Fourth 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 as a non-conforming gravel driveway has existed in this same location for over 20 years.
- b. The narrow width of the portion of the property accessed from Johnson Avenue, and lack of sufficient side yard width to accommodate a driveway extending from the property's Fourth Street frontage, are special circumstances that justify the need for the variance.
- c. Zoning Ordinance as it will allow an existing non-conforming driveway to be brought into compliance.

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 Divisions of Building Inspection and Traffic Engineering prior to construction.

6. **PLN-BOA-23-00092: RAMON HERNANDEZ** – requests a variance to reduce the required side yard setback for an accessory structure that projects between the principal structure and the side lot line from six feet (6') to one-and-one-half feet (1½') in order to construct a detached accessory structure (carport) in a Mixed Low Density Residential (R-2) zone, on property located at 321 Peachtree Road. (Council District 7)

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 carport will improve the character of the property and will feature a setback typical of that of other detached accessory structures.
- b. The restrictive developable area of the lot is a special circumstance that justifies the need for the variance to the side yard requirement.
- 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. The carport shall not be enclosed.
3. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection prior to construction.

7. **PLN-BOA-23-00094: JOSEPH COSTA** – requests a variance to increase the allowable size of accessory structures from 50% to 53% in order to construct an accessory structure 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 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.
- b. The historic nature of the property, and existing historic accessory structures, are special circumstances that justify the need for the requested 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.

D. Conditional Use Appeals

1. **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)

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

- a. Approving the requested conditional use should not adversely affect the subject or surrounding properties, as the proposed bank and drive-through facilities significantly improve access and circulation into and throughout the site.
- b. The proposed drive-through facilities should not negatively impact the subject or surrounding properties as the expected volume of traffic is low, and the orientation of the drive-through lanes directs headlights away from residential uses, and towards commercial uses across Southport Drive.
- 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.
2. All necessary permits and approvals shall be obtained from the Divisions Building Inspection and Traffic Engineering prior to construction.

2. **PLN-BOA-23-00086: PHILLIP PETRIE** – requests a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, on property located at 316 Nelson Avenue. (Council District 1)

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

- a. The proposed use will have an adverse influence on the subject property and the surrounding neighborhood, by removing an existing housing unit from the market that could otherwise be utilized as a primary residence for an owner occupant or long-term tenant within one of the top 10 Census Block Groups identified as a Priority Area, as mapped within the Task Force on Neighborhoods in Transition Report. These priority areas are vulnerable to involuntary displacement, and the proposed use would heighten existing issues with gentrification and displacement.

3. **PLN-BOA-23-00088: MARYLAND AVENUE GETAWAY, LLC** – requests a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Single Family Residential (R-1E) zone, on property located at 554 Maryland Avenue. (Council District 11)

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 parking is available on Maryland Avenue.
- 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 8 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.

4. **PLN-BOA-23-00091: NICOLLE GIRVES** – requests a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1C) zone, on property located at 1109 McClain Dr. (Council District 1)

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 parking is available along McClain Drive.
- 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 6 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. **PLN-BOA-23-00093: JESSICA JUSTICE** – requests a conditional use permit in order to operate a home-based beauty salon business in an Agricultural Rural (A-R) zone, on property located at 3750 Combs Ferry 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 property is of a sufficient size to serve the limited number of clients to the home on a daily and weekly basis.
- 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 beauty salon business shall be operated in accordance with the submitted application materials and site plan, with appointments only on an individual basis.
2. The use shall operate in accordance with the requirements of the Kentucky Board of Cosmetology.
3. 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.
4. All necessary approvals for the septic system shall be obtained from the Health Department prior to initiation of the use.
5. The conditional use shall become null and void should the applicant no longer reside at this address.

- 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 January 8, 2024 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://fucg.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.