

**AGENDA FOR THE BOARD OF ADJUSTMENT
MEETING**

January 8, 2024

- 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 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) 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 six percent (6%), 3) reduce the required Vehicular Use Area tree canopy from thirty percent (30%) to twenty-three percent (23%), 4) reduce the required useable open space from ten percent (10%) to five percent (5%), and 5) reduce the required minimum dimension for useable open space from ten feet (10') to five feet (5') 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 applicant has indicated to Staff that they wish to postpone their application to the February 12, 2024 meeting.

2. **PLN-BOA-23-00083: JOE RAYYAN (AMD)** – an amended application to request variances 1) to reduce the required setback of a gasoline pump to a residential zone from fifty feet (50') to twenty-five feet (25'), 2) reduce the minimum required property perimeter landscaping buffer for a business zone adjoining a residential zone from fifteen feet (15') to zero feet (0'), and 3) reduce the minimum required vehicular use area perimeter buffer from eight feet (8') to zero feet (0') 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 of the required setback of a gasoline pump (#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.
- 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.

The Staff Recommends: **Disapproval of the landscape and screening variances (#2 and #3)**, 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 variances.
- 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.
- c. Approval of the requested variances 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. The requested variances could also lead to nuisances for the adjoining residential properties as any nuisance mitigation implementation methods would be eliminated.

3. **PLN-BOA-23-00105: TURNER PROPERTIES 4, LLC** – requests variances to reduce the required property perimeter landscaping adjoining a railroad from fifteen feet (15') to zero feet (0') and reduce the required vehicular use area perimeter buffer from eight feet (8') to zero feet (0') in order to construct a mixed-use development in an Industrial Redevelopment Planned Unit Development (PUD-3) zone, on property located at 125 Turner Commons Way. (Council District 11)

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

- a. Granting the variances should not adversely affect the public health, safety, or welfare of the general vicinity, nor alter the character of the general vicinity as the elimination of the property perimeter and VUA buffers will allow the existing slab and retaining wall to remain in place.
- b. The subject property's potential structural issues facing the retaining wall constitute a special circumstance that does not apply to land in the general vicinity or in the same zone. Additionally, denial of the variances could create an unreasonable hardship on the applicant if the retaining wall and concrete slab were to fail.
- c. The granting of these 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 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 an amended Final Development Plan, including buffering for residential uses as specified in Condition #4 below.
2. Action of the Board shall be reflected on the Final Development Plan for the property, including any requirements or conditions related to buffering and landscaping.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Building Inspection, and Engineering prior to construction.
4. A minimum five-foot (5') buffer area containing a double row of six-foot high hedge located on either side of an adjoining parking area shall be installed between any residential structures and the railroad; or a substantially similar buffer specified by the Division of Environmental Services shall be located between any residential structures and the railroad.

D. Conditional Use Appeals

1. **PLN-BOA-23-00087: CENTRAL KY INVESTMENTS** – requests a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Historic District Overlay (H-1) zone in a Mixed Low Density Residential (R-2) zone, on property located at 724 W. High St. (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 and there is a mixture of uses in the immediate vicinity that may result in a higher demand for short term rentals.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as more than adequate parking is available, both on-site and to the rear of the dwelling unit in a shared parking court.

- 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 2 individuals.
- 3. Parking in front of the garage doors along W. High Street is prohibited.
- 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-23-00097: NOODLES & COMPANY** – requests a conditional use permit to establish drive-through facilities accessory to a restaurant in a Neighborhood Business (B-1) zone, on property located at 2468 Nicholasville Rd. (Council District 3)

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 sufficiently meets the required five car stacking for drive-through facilities.
- 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 drive-through shall be operated in accordance with the submitted application materials and site plan, with changes as required by the Division of Traffic Engineering.
- 2. The drive through facilities shall not include a menu board, amplified speaker or microphone devices.
- 3. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and initiation of the drive-through facility.

3. **PLN-BOA-23-00098: DISCOUNT TOBACCO ZONE NUMBER 1, LLC** – requests a conditional use to establish drive-through facilities accessory to a retail use within the defined Infill and Redevelopment Area in a Neighborhood Business (B-1) zone, on property located at 717 N. Broadway. (Council District 1)

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

- a. Granting the requested conditional use should not adversely affect the subject or surrounding properties, as drive-through facilities have existed on the site for many years, and should not increase levels of traffic, noise, or odors.
- b. Through the redesign of the property, the applicant will provide the required five car stacking required for drive-through facilities and eliminate an existing non-conformity.
- 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 drive-through shall be operated in accordance with the submitted application materials and site plan.
- 2. The Morrison Avenue curb cut closest to North Broadway shall be removed and replaced with curb, sidewalk, and planting strip.
- 3. The drive through facilities shall not include a menu board, amplified speaker or microphone devices.
- 4. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and initiation of the drive-through facility.

4. **PLN-BOA-23-00099: BOWMAN'S TRAVELLER** – requests a conditional use permit for an un-hosted short term rental in a Single Family Residential (R-1B) zone, on property located at 1650 Traveller 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.

- b. The proposed use should not have an adverse impact on traffic in the general vicinity as more than adequate parking is available on-site.
- 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.
5. **PLN-BOA-23-00100: 300 SHERMAN AVE., LLC** – requests a conditional use permit for an un-hosted short term rental with an occupancy greater than 12 within the defined Infill and Redevelopment Area in a Mixed Low Density Residential (R-2) zone, on property located at 300 Sherman Ave. (Council District 5)

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

- a. The proposed short term rental occupancy increase will have an adverse influence on the subject property and the surrounding neighborhood. Staff has concerns that a concentration of short term rentals may be beginning to occur in the vicinity, and increasing the occupancy of an existing short term rental will create a nuisance and increase the potential for negative externalities.
 - b. The applicant has not provided sufficient evidence that a greater occupancy will not create a nuisance, especially considering recent noise complaints for occupants at the subject property which indicate that current monitoring is not effective to prevent nuisance activity.
6. **PLN-BOA-23-00102: KHOUDOUD AND SOUAD ABUL** – request a conditional use permit for an un-hosted short term rental in a Neighborhood Design Character Overlay (ND-1) zone in a Single Family Residential (R-1C) zone, on property located at 1242 Scoville Road. (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.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as more than adequate parking is available on-site.
- 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 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.
7. **PLN-BOA-23-00106: SOUTH CENTRAL BANK, INC.** – requests a conditional use to establish drive-through facilities accessory to a bank within the defined Infill and Redevelopment Area in a Downtown Frame Business (B-2A) zone, on property located at 473 E. Main St. (Council District 3)

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

- a. Approving the requested conditional use could adversely affect the character, as well as the public health, safety, and welfare of the subject or surrounding properties as drive-through facilities are not typical in the vicinity along this portion of the Main Street corridor and have recently been restricted by

conditional zoning on nearby property with frontage on Main Street. Additionally, the 2023 Comprehensive Plan specifically states that drive-through facilities should not be within the urban core.

- b. The proposed drive-through facilities will negatively impact the vehicular traffic and pedestrian safety along Main Street, given the proximity to a high number of intersections, no center turn lane, and limited pedestrian crosswalks.

- 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 February 12, 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.