

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 19, 2010

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, November 19, 2010.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the April 30 and September 24, 2010 meetings, will be considered at this time.
- III. **PUBLIC HEARING ON ZONING APPEALS**
 - A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.
 1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
 2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
 - B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
 - C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2010-104: BRUCE BARNETT** - appeals for a variance to reduce the required yard along Bassett Avenue from 30 feet to 20 feet in order to construct a 2-story detached garage in a Single Family Residential (R-1C) zone, on property located at 1421 Richmond Road (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The detached garage to be constructed will be set back 8' further from Bassett Avenue than the existing residence, and there are several residences in the

- immediate area on Bassett Avenue that have front yard setbacks of less than 20'.
- b. The narrow width of the lot and the location of the existing residence 12' back from Bassett Avenue are special circumstances that contribute to justifying the requested variance.
 - c. Strict application of the Zoning Ordinance would permit a detached garage of just 18.5' in depth, which would be marginally functional for the appellant, and would force the garage to be constructed very close to the side property line where there is an existing residence on the adjoining lot.
 - d. The appellant is a potential purchaser of the property, and is seeking assurance that a reasonably sized and well located garage can be built on the subject property. Such an effort should not be interpreted as an attempt to circumvent a requirement of the Zoning Ordinance.

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

1. The detached garage shall be constructed in accordance with the submitted application and site plan.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. The existing driveway shall be removed and replaced with grass/landscaping, with the curb cut to be restored in accordance with the requirements of the Division of Traffic Engineering. Removal and restoration shall be done either prior to or concurrent with construction of the new detached garage.
 4. The detached garage shall not have a kitchen and shall not otherwise be used as an additional dwelling unit for the property.
2. **V-2010-105: KEN and LINDSAY DONWORTH** - appeal for a variance to reduce the required yard along Montclair Drive from 35 feet to 20 feet in order to construct a 1½-story detached garage in a Single Family Residential (R-1C) zone, on property located at 1251 Eldemere Road (Council District 3).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance would negatively alter the character of the general vicinity, by allowing a sizable accessory building nearly 15' closer to Montclair Drive than the existing residence. Such an arrangement is not typical of this neighborhood, which is characterized by spacious front yards and clearly defined building setbacks.
 - b. Special circumstances unique to this particular property have not been identified that might tend to justify a reduction in the required side street side yard setback.
 - c. Strict application of the Zoning Ordinance would not unreasonably restrict use of the property or create an unnecessary hardship. The lot is relatively large, with ample space for constructing an accessory building that complies with applicable setback requirements.
3. **V-2010-106: MANCHESTER DEVELOPMENT** - appeals for a variance to eliminate the required landscape buffer for a portion of a vehicular use area in a Wholesale and Warehouse Business (B-4) zone, on properties located at 962-964 Pine Street and 904-910 Manchester Street (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Even with the variance, the overall appearance of this parking lot will significantly improve, with extensive landscaping to be provided internally and along Manchester Street and portions of Pine Street.
- b. The historical use of the subject property as a parking lot, and design complications resulting from the location of an underground gas line, are special circumstances that justify some reduction in the landscape buffers now required to refurbish the parking lot.
- c. Strict application of the Zoning Ordinance would likely require that a full landscape buffer be provided along Pine Street, resulting in the loss of approximately five parking spaces.
- d. Given the extensive increase in the amount of landscaping to be provided as this existing parking lot is improved, the fairly limited variance that has been requested should not be interpreted as an attempt to circumvent a requirement of the Zoning Ordinance.

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

1. The parking lot shall be landscaped in accordance with the submitted application and site plan, or as amended to comply with requirements of the Division of Building Inspection.

2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The five triangular-shaped areas created by the parking space tire stops and the edge of the sidewalk along Pine Street shall have individual plantings at grade or in planter boxes. Species selected shall complement that provided at other locations on the property, and a landscaping plan for those areas shall be prepared subject to review and approval by the Division of Building Inspection.

D. Conditional Use Appeals

1. **CV-2010-98: B & S RESTAURANT MANAGEMENT** - appeals for a conditional use permit to provide live entertainment (DJ & bands) and dancing at a restaurant/bar; and a variance to reduce the required 100' setback from a residential zone to 0 feet in a Neighborhood Business (B-1) zone, on property located at 120 (aka 122) W. Maxwell Street (Council District 3).

The Staff Recommended: Postponement, for the following reasons:

- a. Written assurance has not yet been provided by the owner of the subject property indicating that the appellant is authorized to pursue a conditional use and variance for a bar & grill with live entertainment.
 - b. Additional details are needed regarding: (1) the intended use of the outdoor deck/patio and courtyard adjacent to the building; (2) required off-street parking for the proposed use, which will require submittal of an indoor and outdoor seating arrangement, along with a calculation of the square footage of the building that will be used for the proposed activities; and (3) an assessment of required parking for other occupants of the building, and a description of how the available parking behind the building will be shared with those occupants and any other users in the area (e.g., Two Keys Tavern) that may have at some point been authorized to use that accessory parking lot.
 - c. There are a number of residential properties in close proximity to the subject property. Alternative music venues and operational considerations should be explored by the appellant that might serve to reduce the potential for a bar/grill with live entertainment to adversely affect those properties.
2. **CV-2010-100: TOTAL GRACE BAPTIST CHURCH** - appeals for a conditional use permit to expand the parking area; and variances to reduce the required front yard from 30 feet to 0 feet in a Single Family Residential (R-1C) zone and 20 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, on properties located at 1313 & 1317 N. Limestone Street (Council District 1).

The Staff Recommended: Postponement, for the following reasons:

- a. Additional time is needed for the appellant to consider a modified proposal that reduces the extent of paving proposed in the front yards of each lot, with the goal of maintaining a comparable amount of open space as that provided on the adjoining residential properties.
 - b. There are significant questions related to the overall design of the parking areas that are proposed, which should be discussed with the Division of Traffic Engineering prior to the Board's consideration of the conditional use request.
 - c. The provision of landscape buffers for the proposed parking lot, whether required by the Zoning Ordinance or otherwise deemed desirable, should be addressed by the appellant. Given the narrow width of the northerly lot, and the limited space between the church building and North Limestone, such buffers may ultimately determine the feasibility and design options for expanding the off-street parking areas for this church facility.
3. **C-2009-9: BROADWAY CHRISTIAN CHURCH** - under consideration for revocation of a previously approved conditional use permit for expansion of a parking lot, for failure to comply with conditions specified by the Board, in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street (Council District 2).

The Board of Adjustment approved a conditional use permit for the subject property on April 24, 2009, subject to several conditions. According to the Division of Building Inspection, not all conditions have been fulfilled as required, and Building Inspection has requested a hearing to determine if the conditional use permits merits revocation.

4. **C-2010-102: EVERGREEN MISSIONARY BAPTIST CHURCH** - appeals for a conditional use

permit to construct and occupy a new Sunday school and literacy center (with two 2nd-floor apartments and accessory parking) in a Planned Neighborhood Residential (R-3) zone, on properties located at 739, 741 and 743 Florida Street (Council District 1).

The Staff Recommended: Approval of a conditional use for a Sunday school and community center/literacy center, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The activities proposed will be an extension of the church use that is already an established part of the neighborhood. Services to be provided at the literacy center should be beneficial for the community. Minimum requirements pertaining to off-street parking will be satisfied (primarily on site), and full landscaping for the parking lot will be provided.
- 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 Sunday school and literacy center shall be constructed and operated in accordance with the submitted application and site plan, with the understanding that some revisions (including a reduction in on-site parking) may be required to satisfy the requirements of the Divisions of Building Inspection and Traffic Engineering.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and occupancy of the building.
3. The final design of the parking lot shall be subject to review and approval by the Division of Traffic Engineering.
4. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
6. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby residential properties.
7. The church shall ensure that a minimum of two parking spaces at the closest portion of the main church parking lot (accessed via 752 Dakota Street) are made available for use by the community center/literacy center. If less than 9 off-street parking spaces are ultimately provided on site, then this number shall be adjusted upward accordingly.
8. A consolidation plat shall be filed with the Division of Planning for the three lots (739, 741 and 743 Florida Street), and recorded prior to the issuance of a building permit.

E. Administrative Review

1. **A-2010-90: NCJPM PROPERTIES** - appeals for an administrative review to allow a sign that projects above the roof line and overhangs the building in a Neighborhood Business (B-1) zone, on property located at 1315 W. Main Street (Council District 1).

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. The existing signage has elements that render it appropriately considered as a roof sign and/or as a freestanding sign that overhangs the building, both of which are prohibited by Article 17-5 of the Zoning Ordinance.
- b. Granting the appeal would set a damaging precedent that would significantly change the manner in which signage on or over a roof is regulated in Fayette County, resulting in a clear circumvention of the intent of the Zoning Ordinance.
- c. Numerous options are available for creative and unique signage, of the artistic character desired by the appellant, which would comply with the design, size and height allowances for signage within the Neighborhood Business (B-1) zone.

The Division of Building Inspection will report at the meeting.

2. **A-2010-103: RANDALL PETERSON** - appeals for an administrative review to allow a second kitchen in a single family residence in a Single Family Residential (R-1B) zone, on property located at 1535/1545 Lakewood Drive (Council District 5).

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be

upheld, for the following reasons:

- a. The property is located in a Single Family Residential (R-1B) zone, which permits just one dwelling unit per property, and one kitchen facility to serve that single unit.
- b. Special circumstances, such as a living situation involving a handicapped person or elderly family member, have not been identified by the appellant to justify the need for a second kitchen.
- c. Permitting second kitchens as a routine matter, without any special needs or living conditions involved, could lead to a proliferation of multiple living units on properties that are zoned for just one dwelling unit. This would be a direct circumvention of the intent of the Zoning Ordinance, and could ultimately result in adverse impacts to many neighborhoods.

The Division of Building Inspection will report at the meeting.

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.

A. **Landscape Review Committee** - The term of Richard Weber, Landscape Architect member of the Landscape Review Committee, will expire on November 30 of this year. Mr. Weber has agreed to be re-appointed for another four-year term. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jim Griggs	Board of Adjustment
11/30/2013	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2014	Mr. Richard Weber	Landscape Architect
11/30/2011	Ms. Melissa Stephan	Tree Board
11/30/2012	Mr. Mike Cravens	Lexington Homebuilders

B. **HB 55 Training Opportunity** - There will be an APA audio conference on Wednesday, December 8, beginning at 4:00 p.m. in the Division of Planning (Phoenix Building, 7th floor) conference room. The title of this audio conference is "Staying Out of Court by Avoiding Pitfalls," and will count toward 1.5 hours of training credit for Board of Adjustment/Planning Commission members and staff.

C. The staff would like to wish the Board members and their families a safe and happy Thanksgiving holiday.

VI. **NEXT MEETING DATE** - The Chair will announce that, due to the Christmas holiday, the next meeting date will be December 10, 2010, which is two weeks earlier than usual.

VII. **ADJOURNMENT** - If there is no further business, the Chairman will declare the meeting adjourned.