

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 24, 2011

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, June 24, 2011.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the February 25, 2011 meeting, 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-2011-38: CASTINE PROPERTIES – LEXINGTON TWO, LLC** – appeals for a variance to reduce the already reduced setback from a residential zone for an overhead door from 60 feet to 56 feet in a Light Industrial (I-1) zone, on property located at 981 Contract Street (Council District 1).

The Staff Recommends: 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 area. The proposed building will be similar in appearance to other commercial buildings in the immediate area, and the door openings will not be oriented toward the

residential area that borders the north side of the property. A 7' tall berm and landscape buffer is to be provided along the rear property line that adjoins a residential zone.

- b. The relatively narrow width of the lot has placed some constraints on how a long and narrow building with individual storage units can be sited on the subject property.
- c. Strict adherence to the previously granted variance (which reduced the residential setback from 100' to 60') would result in a loss of at least one storage unit, or possibly would force the appellant to construct units with a less desirable width.
- d. The circumstances surrounding this variance request have arisen from the appellant's desire to use the property as efficiently as possible, and are not the result of any prior actions intended to circumvent the requirements of the Zoning Ordinance.

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

1. The storage building 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 final design of the parking layout and circulation shall be subject to review and approval by the Division of Traffic Engineering.
 4. The 7' tall berm/retaining wall at the rear of the property and tree plantings along the rear property line shall be arranged to provide a full perimeter landscape buffer that complies Article 18-3(a)(1)3 of the Zoning Ordinance.
 5. A minimum of six trees at approximate 25' intervals shall be planted along the rear property line.
2. **V-2011-39: LYNN PEDIGO** - appeals for a variance to reduce the required rear setback from 10 feet to 5 feet in order to construct a garage addition, in a Single Family Residential (R-1C) zone, on property located at 1182 Indian Mound Road (Council District 5).

The Staff Recommends: 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 garage addition will be nearly 30' away from the rear lot line, and there is no aspect of the connection to the residence that might be disturbing to that adjoining property.
- b. The location of the existing detached garage, which complies with the required 1.5' setback for accessory buildings, is a special circumstance that contributes to justifying a rear yard reduction solely for the purpose of allowing that structure to remain where currently located when it is expanded and connected to the residence.
- c. Strict application of the Zoning Ordinance would mandate that the existing garage be modified to be 5' further away from the rear lot line, which does not appear to be warranted given the location of the addition and connection to the residence.
- d. The circumstances surrounding this variance request are not the result of actions taken by the appellant or current property owner. The detached garage was built in 2006, and the current owner purchased the property in 2008. Given that sequence of events, it is clear that there has not been an effort to circumvent a requirement of the Zoning Ordinance.

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

1. The addition 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. **V-2011-40: RICH NORDLING / C.Y. OF LEXINGTON, INC.** - appeals for a variance to increase the allowable height of a wall in the required rear yard from 8 feet to 10 feet in a Highway Service Business (B-3) zone, on property located at 3100 Wall Street (Council District 10).

The Staff Recommends: Approval of a height variance to 9', 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 proposed retaining wall will be located along the exit-ramp from New Circle Road to Harrodsburg Road, will not block sight distance for vehicles, and it will only be visible to those vehicles utilizing the exit-ramp.
- b. The site's almost 20-foot grade change from Wall Street to the New Circle Road exit-ramp; and the fact that the adjoining local streets and exit-ramp are already in place, which prevents their grade

- from being altered, are special circumstances that contribute to justifying the requested variance.
- c. Strict application of the Zoning Ordinance would prevent the appellant from constructing a surface parking lot at the same finished floor elevation as the hotel, or would require significantly more cut and fill on the site, or possibly prevent compliance with the Americans with Disabilities Act.
 - d. The circumstances surrounding this requested variance has arisen as a result of the topography of the site, and are not the result of any actions taken by the appellant.
 - e. In order to construct the retaining wall as depicted on the submitted site plan and profile, a one-foot variance to the allowable height will suffice.

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

- 1. The retaining wall shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
 - 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 - 3. All required landscaping materials associated with vehicular use area screening and/or arterial screening shall be installed per Article 18 of the Zoning Ordinance.
4. **V-2011-41: RML CONSTRUCTION** - appeals for a variance to reduce the required front setback from 20 feet to 5 feet for additional off-street parking spaces in a Planned Neighborhood Residential (R-3) zone, on property located at 4161 Victoria Way (Council District 9).

The Staff Recommends: 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 reduced front yard will only apply to the location of 20 parking spaces at the northeast and northwest corners of the development, and a full landscape buffer will be maintained between the parking spaces and the Victoria Way sidewalk.
- b. The long and narrow shape of the property, and its location adjacent to a portion of an apartment complex on one side, and a single family residential subdivision, on the other, are special circumstances that contribute to justifying a front yard reduction just for off-street parking.
- c. Strict application of the Zoning Ordinance would increase the likelihood of on-street parking taking place routinely on a collector street, near the intersection of another collector street (Mooncoin Way), which would not be ideal.
- d. The appellant is making a reasonable effort to accommodate different development issues related to buffering and parking demands, which should not be construed as an attempt to circumvent a requirement of the Zoning Ordinance.
- e. The increased buffer yard that would result, adjacent to a new single family residential subdivision, would be of much greater benefit to this developing neighborhood than the strict application of the Zoning Ordinance for these 20 spaces.

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

- 1. The property shall be developed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
 - 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 - 3. A full landscape buffer shall be provided for all parking spaces along the frontage of Victoria Way, in accordance with the provisions of Article 18 of the Zoning Ordinance.
 - 4. A note reflecting the action of the Board shall be placed on the Final Development Plan for the subject property.
5. **V-2011-42: MIKE KERWIN HOMES** - appeals for a variance to reduce the required side setback from 8 feet to 3.5 feet for a home addition in a Single Family Residential (R-1C) zone, on property located at 256 Shady Lane (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. A side yard reduction to 3.5' should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Only one corner of the addition will come that close to the side property line, and portions of the proposed addition will exceed the required 8' side yard.
- b. The location and orientation of the existing residence, tightly constrained on this portion of the property by a 40' platted building line, is a special circumstance that contributes to justifying a side yard reduction at this location.

- c. Strict application of the Zoning Ordinance would force the appellant to reduce the width of the addition by several feet, or to find an alternate location for the addition. Neither option is sufficiently viable to totally eliminate the need for a variance, especially given the need to average the front yard for this property improvement.
- d. The appellant is pursuing a home improvement in an area of their property that appears to be the only suitable location for a modest addition, and there is no indication of any intent to circumvent a requirement of the Zoning Ordinance.

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

1. The addition 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. Landscaping as depicted on the submitted site plan shall be augmented by additional plantings, in the form of shrubs and at least one small tree, along the 32' section of the addition that will be closest to the side property line. Planting details shall be described in a landscaping plan subject to review and approval by the Division of Building Inspection.

D. Conditional Use Appeals

1. **CV-2011-34: SHILOH BAPTIST CHURCH** - appeals for a conditional use permit for an additional parking lot in a Planned Neighborhood Residential (R-3) zone; and a variance to reduce the required front setback from 20 feet to 3 feet, on property located at 227 & 233 East Fifth Street (Council District 1).

The Staff Recommends: Approval of the requested conditional use permit, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided that a front yard setback of at least 10' is maintained. The church is a well established use in this area, and the two lots to be improved for off-street parking are conveniently located immediately to the west of the existing church building. The parking lot will be landscaped in accordance with the provisions of Article 18 of the Zoning Ordinance, and existing traffic flows through the church property can be maintained.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of a front yard variance from 20' to 10', for the following reasons:

- a. A front yard reduction from 20' to 10', strictly for the purpose of providing additional parking spaces for the church, should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The church building immediately to the east of the subject lots sits about 10' back from the street sidewalk, and there are several other buildings in the immediate area that have similar or lesser front yard setbacks.
- b. The location of the two lots that comprise the subject property, generally surrounded by a mix of uses that do not comply with a 20' front yard requirement, is reasonably considered as a special circumstance that contributes to justifying a front yard reduction for the subject lots.
- c. Although strict compliance with a 20' front yard is possible at this location, it would result in the loss of needed parking spaces and would also render the new parking lot somewhat out of character with the immediately surrounding uses.
- d. With this application, the appellant is making a reasonable effort to maximize the availability of parking in close proximity to their church, with no intent 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 established in accordance with a revised site plan that (a) eliminates at least three parking spaces (and possibly up to six as determined to be necessary by the Division of Traffic Engineering) that were to be located closest to East Fifth Street; and (b) indicates a minimum setback of 10' to be provided for all spaces.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The parking lot shall be paved, with spaces delineated, and landscaped in accordance with the provisions of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the parking lot shall be subject to review and approval by the Division of Traffic Engineering.

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 prevent disturbances to any of the surrounding properties.
2. **CV-2011-35: SRG PROPERTIES** - appeals for a conditional use permit for a drive-through facility in a Professional Office (P-1) zone; and variances to eliminate the required zone-to-zone landscape screening along the western property line, perimeter landscape screening adjacent to the New Circle Road on-ramp, and Vehicular Use Area (VUA) screening along the eastern side of the property, on a portion of 858 Malabu Drive (Council District 4).

The Staff Recommends: Approval of the requested conditional use permit, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The property to the north is currently being used for office purposes, and the site is bordered to the east by a 70' wide permanent drainage easement and in the other directions by Bates Creek Road, and an on-ramp to New Circle Road. Although residences and residential zoning are present to the west of the site, the residences will be over 160 linear feet distant from the proposed drive-through facility. Adequate stacking space for vehicles has been proposed, and the final design will be subject to review and approval by the Division of Traffic Engineering, prior to construction.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of the requested variances for landscaping, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed retaining wall, the existing vegetation, and the topographic differences between the bulk of the site and the adjoining roadway will provide a sufficient buffer for the subject property. If the existing vegetation is removed in the floodplain area of this property, a suitable landscaping plan has been offered to mitigate that possibility. This work in the floodplain will not adversely affect public health, safety or welfare.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The purpose of the ordinance related to landscaping is to provide appropriate screening, which will be provided on the property for this new development, although in a different form than required by the Ordinance.
- c. The special circumstances that apply to the subject property that serve to justify the landscape variances proposed are its steep slope, the fact that it is bounded by two arterial roads, the constraints of the existing floodplain and the existing vegetation located on the subject property.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely lead to loss of parking and the functionality of the circulation around the new office building proposed for the subject site.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance in 1969.

These recommendations for approval are made subject to the following conditions:

1. The drive-through facility shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the drive-through facility shall be subject to review and approval by the Division of Traffic Engineering.
4. Storm water management is to be provided in compliance with the Division of Engineering Storm Water Manual.
5. All existing trees over 4" in caliper at DBH shall be maintained within the permanent drainage easement surrounding Bates Creek, which is along the eastern property line, unless diseased or dead as determined by the Urban Forester. An additional five (5) trees shall be planted between the proposed retaining wall and Bates Creek Road in order to mitigate the appearance of the wall. American sycamores are to be the species utilized, since they would be located within the bounds of the special flood hazard area (floodplain).
6. The landscaping plan shown as part of the submitted site elevations (from Bates Creek Road) shall be implemented to the greatest extent feasible, if honeysuckle is removed along the

frontage of the road.

7. A note shall be placed on the Development Plan for the property indicating the variances that have been approved for this property.
 8. Prior to any construction, the applicant shall obtain a building permit and all applicable Federal, State, and Local approvals associated with the identified floodplain.
 9. Any trees within the New Circle Road right-of-way are not to be removed by the applicant, except as required by the Kentucky Department of Highways or other appropriate governmental entity.
3. **C-2011-29: STEPHEN HOWARD** - appeals for a conditional use permit to establish a special event facility, accessory to a small farm winery, in the Agricultural Rural (A-R) zone, on property located at 3497 North Cleveland Road (Council District 12).

The Staff Recommends: Postponement, for the following reasons:

- a. The appellant has indicated a desire to meet with the staff to get a better understanding of what project revisions could be pursued that would result in a finding that the event facility proposed can be considered as clearly incidental and subordinate to the winery operation that is to be established.
 - b. Should the conditional use application be revised, additional time will be required to review whether the proposed event facility (as revised) will adversely impact any surrounding properties.
4. **C-2011-33: FELLOWSHIP CHURCH OF LEXINGTON** - appeals for a conditional use permit to establish a church in one suite of an existing building, in a Highway Service Business (B-3) zone, on property located at 2551 Richmond Road (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The suite to be occupied for this church congregation is surrounded by a mix of retail and office uses, many of which are generally not open during the times that church activities will be taking place. A number of off-street parking spaces are conveniently located near the subject suite, sufficient to accommodate a small church with fewer than 100 members.
- 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 church shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning church activities.

E. **Administrative Review**

1. **ACV-2011-37: EAST HICKMAN BAPTIST CHURCH** - appeals for an administrative review to determine that the proposed 2,400 square-foot multi-purpose building does not violate the 10,000 square-foot limit for church facilities; a conditional use permit to construct the addition; and variances to reduce the required rear and side setbacks from 25 feet to 16 feet, in the Agricultural Rural (A-R) zone, on property located at 6418 Bates Creek Road (Council District 12).

The Staff Recommends: Approval of the requested administrative appeal, for the following reasons:

- a. All of the existing church facilities on the subject property, which do total more than 10,000 square feet in floor area, were established prior to January 26, 1995. The new use requiring a conditional use will have a total of 2,400 square feet, far below the 10,000 square feet limitation set by the Zoning Ordinance for most conditional uses in the A-R zone established after January 26, 1995.
- b. It has consistently been the interpretation of the Board that Article 8-21(d)19 of the Zoning Ordinance allows an additional 10,000 square feet of floor area for structures beyond that which was established prior to January 26, 1995.

The Staff Recommends: Approval of a conditional use permit for a 2,400 square-foot multi-purpose building, for the following reasons:

- a. A church has been established at this location for over 180 years, and there is no aspect of the construction or use of the new building that is anticipated to be disturbing to the surrounding agricultural properties. The immediately surrounding properties do not have any agricultural improvements of any kind that might be impacted, and an existing tree stand exists on the adjoining

- farm to buffer this new site improvement.
- b. All necessary public facilities and services are available and adequate for the proposed use, and private sewage treatment will be provided as required by the Fayette County Health Department.

The Staff Recommends: Approval of variances reducing the required side and rear yards from 25' to 16', for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The specific area where the side and rear yard setbacks are to be reduced to 16' is over 300' back from Tates Creek Road, and there are no improvements on the immediately adjoining agricultural properties in that area that might be impacted by these modest setback reductions.
- b. The manner in which the existing church facilities have been developed over the years on this non-conforming lot, to a large extent prior to the adoption of the current zoning requirements, is a special circumstance that contributes to justifying the requested setback reductions.
- c. Strict application of the Zoning Ordinance would likely result in the church having to place the multi-purpose building at an undesirable location that would interfere with established parking areas and traffic aisles, and would possibly involve extensive, and probably expensive, building code changes for the church's sanctuary.
- d. The circumstances surrounding the requested variances relate to the church's desire to place their new building at the least disruptive location on the property, and there is no indication of any intent to circumvent a requirement of the Zoning Ordinance.

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

- 1. The addition 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. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
- 4. Sewage disposal shall be provided in compliance with the requirements of the Fayette County Health Department, subject to Health Department approval.

- 2. **AC-2011-36: JACQUELINE ALLEN** - appeals for an administrative review to determine that counseling provided by a Licensed Clinical Social Worker qualifies for consideration as a home occupation; if determined as such, a conditional use permit to provide counseling in a Planned Neighborhood Residential (R-3) zone, on property located at 2304 Stone Garden Lane (Council District 10).

The Staff Recommended: Approval of the Administrative Review portion of this appeal, for the following reasons:

- a. The definition of the "practice of social work," as defined in KRS 335.020, specifically notes non-medical counseling and psychotherapy as a branch of social work. The appellant, as a Licensed Clinical Social Worker in the state of Kentucky, intends to provide non-medical counseling to her clients.
- b. In a similar 1992 case (same proposed use provided by a Licensed Clinical Social Worker as a home occupation), the Division of Building Inspection had determined that mental health counseling qualified as a professional service, meeting the definition of Home Occupation in Article 1-11, which the Board of Adjustment heard and acted on during a public hearing.

The Staff Recommended: Disapproval of the Conditional Use portion of this appeal, for the following reason:

- a. Based on the fact that the space proposed to be used for professional counseling services does not exist as yet and will only be constructed if this request is granted, a violation of requirement #5 for approval of a home occupation as a conditional use (i.e., that no external alteration of the dwelling is made to accommodate the home occupation) would occur. The staff therefore cannot support this request.

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.

AGENDA 6/24/11

- A. House Bill 55 Training Opportunity - There will be an APA audio-conference on Wednesday, June 29, 2011 at 4:00 p.m. in the Division of Planning conference room. The title of this conference is "Planning Law Review" and will count toward 1.5 hours of House Bill training credits for Board of Adjustment and Planning Commission members, as well as staff.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be July 29, 2011.

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