

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

October 28, 2011

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, October 28, 2011.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the September 30, 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-2011-58: JAMES HICKEY** - appeals for a variance to reduce the required side yard from 3' to 9" for retention of a home addition; and a variance to reduce the required rear yard from 10' to 0' for retention of a deck in a Planned Neighborhood Residential (R-3) zone, on property located at 3606 Windgate Way (Council District 4).

The Staff Recommends: Postponement, for the following reasons:

- a. Because the deck encroaches into the adjoining property to the rear, an additional variance for that property is required to reduce the rear yard to zero feet. The appellant has described such a

variance in his request; however, there is no indication in the application materials (such as a letter of permission from that property owner) that he has the right to ask for that variance.

- b. Notification to property owners within a 200-foot radius around that property must be provided if a variance is requested for that property (356 Big Bear Lane), as well as legal notice in the newspaper. A one-month postponement will allow time to provide the necessary letter of permission from the adjoining property owner, as well as notification letters to surrounding property owners, for the variance request.

2. **V-2011-72: JAMES M. LUDKA** - appeals for a variance to reduce the required side yard from 3' to 0', and alley setback from 6' to 1', in order to retain an existing fence in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 432 North Broadway (Council District 1).

The Staff Recommends: Withdrawal of the alley setback variance, for the following reasons:

- a. The provisions of Article 15-6(a)(2) specifically relate to accessory buildings, not to fences.
- b. Article 15-4(b) permits a fence up to 8' in height within a front yard created by abutment to an alley. The subject property is a "through lot" with a front yard that abuts Caldwell Alley.
- c. Driver visibility concerns are more appropriately addressed by Article 3-3 of the Zoning Ordinance pertaining to the maintenance of sight distance triangles.

The Staff Recommends: Approval of the requested side yard variance, for the following reasons:

- a. Reducing the required side yard from 3' to 0', only for the purpose of allowing the preexisting portion of the fence to remain where currently located, should not adversely affect the public health, safety, or welfare, nor alter the character of the area. Similar fences are common in the general vicinity.
- b. The location of the preexisting fence on the side property line is a special circumstance that contributes to justifying a side yard reduction.
- c. Strict application of the Zoning Ordinance would result in all portions of the fence not to the rear of the dwelling having to be placed 3' back from the side property line. This would create an awkward jog in the fence, and would result in a design that is clearly out of character with how other fences have been erected in this historic neighborhood.
- d. The appellant is attempting to maintain a historic property in a manner that is consistent with how other properties in the neighborhood have been developed, 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 fencing may remain where currently located, as depicted in the submitted application and site plan, subject to any modifications that may be required to comply with Article 3-3 of the Zoning Ordinance relating to the maintenance of sight distance triangles.
2. If deemed necessary by the Division of Historic Preservation, a Certificate of Appropriateness, or other type of applicable permit, shall be obtained for the final location and design of the fence within the Northside Historic District.
3. A fence permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board and/or the Board of Architectural Review, whichever is later.

3. **V-2011-73: MID-AMERICA APARTMENTS** - appeals for a variance to reduce the required 20' setback for a free standing identification sign to 0' in a High Density Apartment (R-4) zone, on property located at 151 S. Locust Hill Drive (Council District 7).

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, provided that the required sight triangle for driver visibility is maintained once the final location of the sign is determined.
- b. Granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as the sign will be much smaller than an existing sign to be replaced that is partially at a 0' setback.
- c. The location of the existing sign is a special circumstance that contributes to justifying this request to eliminate the required 20' setback.
- d. Strict application of the Zoning Ordinance would force the appellants to place the new sign 20' farther back from the street than the existing sign, in areas that would likely require some existing

mature landscaping to be removed or significantly altered.

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

1. The sign shall have a maximum size of 32 square feet and shall be erected in accordance with the submitted application and site plan, with allowances to alter the location (per condition #4).
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to erection of the sign.
 3. Any needed encroachment permits shall be obtained from the Department of Public Works prior to erection of the sign.
 4. The Division of Traffic Engineering shall verify that the proposed sign will not obstruct the sight triangle, as required by Article 3-3 of the Zoning Ordinance. If the sign does obstruct the sight triangle, the location shall be modified accordingly.
4. **V-2011-74: THOMPSON THRIFT DEVELOPMENT CO.** - appeals for a variance to reduce the required front yard for a Group Residential Project from 70' to 20' in a High Density Apartment (R-4) zone, on property located at 2391 Sir Barton Way (Council District 6).

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. A frontage yard of 70' will be provided for much of the new development, with the reduced frontage yard of 20' limited to the smaller residential building adjacent to the clubhouse.
- b. Strict application of a 70' frontage yard requirement would necessitate that the two residential buildings align rather than be offset, which is not desired by the appellant for architectural and site design reasons. Full compliance would also make it difficult to comply with a required 25' floodplain buffer, unless the size of the smaller residential building was further reduced.
- c. The FEMA designated 100-year floodplain along the side and rear of the property is a special circumstance that contributes to justifying a reduction of the frontage yard width at this location.
- d. Since the appellant has chosen not to subdivide the subject property into two lots (which is technically feasible), and thereby avoid a Group Residential Project designation and the associated frontage yard requirement, it is clear that there is no intent to circumvent a requirement of the Zoning Ordinance. A focused effort is being made to substantially comply with the Zoning Ordinance requirements while reducing possible impacts to the floodplain and enhancing design features of the development.

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 and the Division of Engineering (for special use permits that may be required for parking and other activities in or near the floodplain) prior to construction.
3. A note regarding action of the Board shall be placed on the final development plan for the subject property.

D. **Conditional Use Appeals**

1. **C-2011-69: RHONDA HENZMAN** - appeals for a conditional use permit to establish a home occupation (embroidery services) in a Single Family Residential (R-1C) zone, on property located at 3033 Bates Creek Road (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. Materials and equipment typically used for embroidery are relatively safe and should not generate significant levels of noise or other potential disturbances. No significant increase in traffic or parking demand is anticipated.
- b. All necessary public services are available and adequate for the proposed use.

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

1. The home occupation shall be established in accordance with the submitted application and site plan, and shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance.

2. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.
 3. This conditional use permit shall become null and void should the appellant cease to either own or occupy the residence on the subject property.
2. **C-2011-70: BOONE CREEK ADVENTURES, LLC** - appeals for a conditional use permit to construct and operate an agricultural market and outdoor recreational facility with accessory camping facilities in the Agricultural Rural (A-R) zone, on property located at 8291 & 8385 Old Richmond Road and 8385 Durbin Lane (Council District 12).

The Staff Recommends: Postponement, for the following reasons:

- a. The number and general location of improvements to be undertaken as part of the outdoor recreational facility, such as catwalks, suspension bridges, and zip lines, need to be identified on an amended site plan and otherwise described by the appellant. This should include the location of any bridges intended to cross Boone Creek over to Clark County.
- b. The number and general location of tree houses need to be identified on an amended site plan and otherwise described by the appellant, along with a description of the tree houses size and layout, as well as the type of sewage treatment to be provided.
- c. A complete site plan for the proposed agricultural market, addressing items outlined in Article 8-1(d)7(o) of the Zoning Ordinance, is needed. This may be incorporated into an amended site plan for the overall project, rather than presented as a separate document, if desired by the appellant.
- d. Specific information is needed to clarify what portion of 8385 Durbin Lane is to be purchased by the appellant or otherwise included as part of the conditional use request, since no formal subdivision plat has been filed for this purpose, as of yet.
- e. Variance requests may be needed for any new or expanded/relocated buildings that will not comply with the 300' front yard setback requirement of the Zoning Ordinance.

E. **Administrative Review**

1. **A-2011-68: JAMES D. ATKINSON** - appeals for an administrative review to allow a second detached garage, resulting in accessory structures exceeding the allowable lot coverage and being larger than 50% of the size of the principal residence in a Single Family Residential (R-1B) zone, on property located at 450 Kingston Road (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. A moderate increase in the allowable square footage for accessory buildings is justified in this particular case, due to the large size of the lot and plentiful open space that is available. These conditions prevent this modest increase from being considered a circumvention of the Zoning Ordinance.
- b. An additional accessory building of the size proposed should not adversely affect any of the adjoining properties, which includes the vacant lot to the north that is owned by the appellant.
- c. Multiple accessory buildings on single properties are common in the general vicinity, so the overall character of the neighborhood should not be diminished by the proposed construction. Clearly, a second accessory structure of some sort is permitted on the subject property by the Zoning Ordinance.

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

1. The additional detached garage shall be constructed and used 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.
2. **A-2011-71: BALL and WRIGHT CAPITAL HOLDINGS** - appeals for an administrative review to allow a third wall sign on a bank building in a Professional Office (P-1) zone, on property located at 998 Governors Lane (Council District 10).

The Staff Recommends: Disapproval, for the following reasons:

- a. Article 17-7(e)1 of the Zoning Ordinance states that one wall sign per street frontage is permitted in the Professional Office (P-1) zone, with a maximum of two wall signs per building.
- b. There are no provisions in Article 17-7(e) for canopy signs in the P-1 zone.

- c. Permitting a third wall sign for this building would be contrary to a condition previously imposed by the Board (case # A-2010-27).
- d. The Board is not authorized to increase the number of permitted signs, pursuant to Article 17-8(a) of the Zoning Ordinance.

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. **2012 Meeting and Filing Schedule** - As part of its Bylaw-related duties, each year the Board of Adjustment adopts the Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2012 is in draft form and will be presented to the Board for review and/or discussion prior to its official adoption.

VI. **NEXT MEETING DATE** - The Chair will announce that, due to the Thanksgiving holiday, the next meeting date will be November 18, 2011, one week earlier than usual.

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