

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

February 24, 2012

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, February 24, 2012.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the November 18, 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-2012-7: JUSTIN WEEKLEY** - appeals for a variance to reduce the required rear setback from 16.6 feet to 6 inches, in order to construct a carport in a Two-Family Residential (R-2) zone, on property located at 3974 Weber 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. This neighborhood has a nice mixture of homes with front facing garages, detached garages in the rear, and driveways without garages. There is not one dominant type of treatment throughout this neighborhood, and this proposed carport will not be out of character in this neighborhood.

- b. The requested yard reduction is reasonable based on the topography of the site and the proposed storm water controls, which will ensure that the carport does not negatively impact the adjoining property at 3960 Weber Way.
- c. Strict application of the Zoning Ordinance would force the appellant to either construct a new access point to Weber Way with a new driveway, or to do extensive grading work with retaining walls to place a carport in either of the side yards.
- d. The circumstances of this request are not the direct result of actions taken by the appellant, but relate to how the property was developed many years ago, long before the appellant purchased the property.

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

- 1. The development shall take place in accordance with the submitted application and site plan.
 - 2. All necessary permits shall be obtained from the Division Building Inspection prior to any construction activity.
 - 3. No part of the proposed carport, including roof overhangs, is to cross the property line.
 - 4. Guttering will be installed on the carport to direct storm water away from the neighboring property and into the appropriate storm sewer system.
2. **V-2012-8: THOROUGHbred HOMES, LLC** - appeals for a variance to reduce the required front yard setback from 30 feet to 22 feet in order to allow a second-story addition to extend over the existing front porch in a Two-Family Residential (R-2) zone, on property located at 1203 Fincastle Road (Council District 5).

The Staff Recommends: Disapproval, for the following reasons:

- a. Justification has not been provided that specifically addresses and supports that this request will not alter the character of the general vicinity. As proposed, approval of this variance will alter the immediate character of the neighborhood because the front yards, along with the fact that a majority of the homes have a one-story covered front porch, are some of the fundamental characteristics that give this neighborhood much of its form.
 - b. The applicant has not provided a justification indicating that there are any special circumstances that apply to this property that do not generally apply to others in the surrounding neighborhood. Although the shape of this lot is unusual compared to most lots in Fayette County, it is actually a typical lot in the Ashland Park neighborhood.
 - c. If additional living space is desired, a rear addition would not likely be as character altering with this architecturally established neighborhood. This deep lot could accommodate such an addition.
3. **V-2012-9: VILLAGE GREEN BUILDERS, LLC** - appeals for a variance to increase the maximum allowable width of a driveway for a two-car garage in the Infill & Redevelopment Area from 10 feet to 17 feet in a Two Family Residential (R-2) zone, on property located at 373 Preston Ave (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, nor alter the character of the general vicinity, provided the driveway width is mitigated with a decorative surface or landscaping to result in pavement of no more than two 8' driveways, rather than one continuous 17' wide driveway.
- b. Granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as 17' wide driveways are common in the community, and some exist in the defined Infill & Redevelopment Area.
- c. The special circumstance that is applicable to this property is the fire which destroyed the original residence. Replacement of that structure with an updated dwelling is somewhat unusual in this neighborhood, while much more common in others.
- d. Strict application of the Zoning Ordinance would limit the ability of the property owner(s) to access ½ of the constructed garage for parking vehicles.
- e. The circumstances of this variance request are not the result of the willful actions of the applicant. This home was issued a building permit, and the applicant built the structure in good faith. Only after it was constructed was the driveway mistake realized.

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

- 1. That the applicant obtain a Certificate of Zoning Compliance from the Division of Planning, prior to the issuance of a Certificate of Occupancy from the Division of Building Inspection.
- 2. At least one decorative area of at least one foot wide shall be installed in the center of the proposed

driveway. In the alternative, the applicant may also choose to construct two or more grass strips along the length of the driveway, leaving tire runs for each of the two garage parking spaces. In either case, these decorative areas can consist of grass, landscaping, decorative pavers, or decorative rocks that will not wash into the public right-of-way.

D. Conditional Use Appeals

1. **C-2012-2: JEHOVAH'S WITNESSES TRUSTEES** - appeal for a conditional use permit to expand an existing structure, increase parking and add sidewalks in a Single Family Residential (R-1B) zone, on property located at 400 Kingston Road (Council District 6).

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 minor changes proposed for the subject property will functionally improve the use of the property, and the additional parking will be fully landscaped from the adjacent roadways.
- 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 facility shall be built and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.

2. **C-2012-3: BRENDA TOLLETT** - appeals for a conditional use permit to establish an indoor recreational facility in a Light Industrial (I-1) zone, on property located at 741 Miles Point Way (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This site is well suited to handle the proposed indoor volleyball recreational facility.
- b. All necessary public facilities and services, including police, fire and EMS, are available and adequate for the proposed use.

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

1. The indoor volleyball facility shall be built and operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
3. Any food service provided shall remain accessory (i.e., incidental and subordinate) in nature, and shall be subject to review and approval by the Fayette County Board of Health.

3. **C-2012-4: STEVE SNOWDEN** - appeals for a conditional use permit to extend the regulations of the Neighborhood Business (B-1) zone up to 50 feet into the adjoining Single Family Residential (R-1C) zone in order to allow a bakery and retail sale of bakery goods, on property located at 1616 Liberty Road & 720 Henry Clay Boulevard (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- a. Granting this requested conditional use should not adversely affect the subject property or the surrounding neighborhood. In fact, this neighborhood shopping center has existed at this location for at least 60 years and is an asset to the surrounding neighborhoods. Extensive improvements have been made to the property in the recent past in order to ensure that it continues as such.
- b. All public utilities and services are existing and adequate to support the requested use.

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

1. The property shall be developed in accordance with the submitted site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of the portion of the building zoned R-1C.

4. **C-2012-5: NEW HOPE IPC, INC.** - appeals for a conditional use permit to establish a church with accessory parking in a Single Family Residential (R-1C) zone, on property located at 3021 Tates Creek Road (Council District 4).

The Staff Recommends: Postponement, for the following reasons:

- a. While some necessary public services and facilities are available to the subject property, such as police and fire protection and sewer infrastructure, not all necessary public facilities are available and adequate for the proposed use:
 1. Specifically, there is no provision for the collection of solid waste via dumpsters on the subject site, as recommended by the Division of Solid Waste. It is anticipated that some driveways and parking spaces shown on the submitted site plan will need significant revision in order for this required facility to be provided on the site in a manner where a service truck can safely maneuver internally on the site.
 2. The internal circulation recommended by the Division of Traffic Engineering and the geometrics of the property egress (exit) along Bates Creek Road require revision of the site plan. Ideally, this should be accomplished prior to any approval of this request, following review by the applicable agencies.
5. **C-2012-6: KENTUCKY MANSIONS PRESERVATION FOUNDATION, INC.** - appeals for a conditional use permit to establish an historic house museum in the Agricultural Rural (A-R) zone, also in a Historic District (H-1) Overlay zone, on property located at 2650 Bowman Mill Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Given its documented history, Helm Place is well suited for future use as a "historic house museum" for the benefit of the entire community.
- b. The proposed conditional use does not adversely affect the subject or surrounding properties and will not cause a hazard or nuisance to the public. The nearest residential uses on adjoining or nearby properties are a considerable distance from the main residence on the property, and the proposed site improvements will enable safe traffic movements from Bowman Mill Road to the museum for its patrons and clientele. Trash pickup/disposal is available to the site and the sewer treatment (septic system) is privately provided. In addition, public services, such as police and fire protection, are available and adequate for the proposed use.
- c. Provided the existing barn is not utilized, this conditional use will comply with the 10,000 square-foot limitation of Article 8-1(d) of the Zoning Ordinance for many non-agricultural conditional uses in this agricultural zone.

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

1. The proposed conditional use shall be conducted in accordance with the submitted application and site plan, allowing for any amendments necessary (including the need for pavement or other materials instead of gravel) in order to comply with the requirements of the Board of Architectural Review, and/or the preservation easement already in place under the Purchase of Development Rights program.
2. All necessary permits shall be obtained from the Divisions of Building Inspection prior to any construction or remodeling or occupancy of the residence as a museum. Any exterior modifications to principal or accessory buildings shall first meet the requirements of the Board of Architectural Review and/or its staff.
3. The parking lot shall be paved, if required by the Board of Architectural Review, and landscaped or screened in accordance with their requirements, as applicable.
4. The final design of the parking layout shall also be subject to review and approval by the Division of Traffic Engineering.
5. The existing septic field in place for the farm shall be subject to the review and approval by the Fayette County Board of Health for this new use.
6. All social "activities and events" conducted at this historic house museum must comply with any applicable easements and/or restrictions that are in place for Helm Place under the Purchase of Development Rights Program.

E. **Administrative Review**

1. **A-2011-76: DAVID BENNETT / LEXINGTON GREEN** - appeals for an administrative review to allow a shopping center identification sign on a stone planter box that will project into the street right-of-way, in a Planned Shopping Center (B-6P) zone, on property located at 161 Lexington Green Circle (Council District 9).

The Staff Recommends: Postponement, for the following reasons:

- a. A determination needs to be made regarding the correct property that this appeal should be filed under. At the minimum, documentation is needed that the appellant has sufficient legal interest in the subject property to pursue the requested sign appeal. Alternatively, it may be necessary to amend the application and re-notice area property owners to include the property known as 3211 Nicholasville Road, which is not owned by the appellant.
 - b. There is some uncertainty as to whether or not the prohibition on signage projecting into a right-of-way can be waived by the Board. Further evaluation of this issue in consultation with the Department of Law is necessary.
 - c. Additional investigation is needed to determine the most appropriate manner that existing signage on the mall's property can be classified, and how that might relate to the potential for erecting an additional shopping center identification sign.
 - d. Depending on how these interrelated issues are resolved, it may be necessary to file a variance request to reduce the required sign setback to 0', which would give the appellant the opportunity to place the sign up to but not beyond the right-of-way boundary.
2. **A-2011-80: CRESTWOOD CHRISTIAN CHURCH** - appeals for an administrative review to allow four directional signs to be placed on the church property, in a Single Family Residential (R-1C) zone, on property located at 1882 Bellefonte Drive (Council District 4).

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

- a. Under Article 17 of the Zoning Ordinance, directional signs are not a permitted type of sign in the R-1C zone, for any type of use.
- b. The Board is not authorized to increase the number of permitted signs on a particular property, nor permit a design type that is not specifically permitted by Article 17 of the Zoning Ordinance for the zone where the sign is to be located.
- c. The inability to erect directional signage is not considered to be a significant hardship for the church, and many other options are available that might assist them in their efforts to clarify access to and navigation around the church property. Further, they could apply for an amendment to the sign 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. **House Bill 55 Training Opportunity** - There will be an APA audio-conference in the Division of Planning Conference Room on Wednesday, March 14, 2012, beginning at 4:00 p.m. and lasting until 5:30. The title of this conference is "Urban Agriculture and Food Systems Planning" and will count toward 1.5 hours of House Bill 55 training credit 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 March 30, 2012.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.