

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

March 30, 2012

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, March 30, 2012.
- II. **APPROVAL OF MINUTES** - The Chair will announce that there will be no minutes of the previous meeting to 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-2012-8: 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.
2. **V-2012-13: GARI & STEPHANIE MAYBRIER** - appeal for a variance to reduce the side setback along Nakomi Drive from 40 feet to 19 feet in order to construct a carport in a Single Family Residential (R-1B) zone, on property located at 644 Nakomi Drive (Council District 10).

The Staff Recommends: Disapproval, for the following reasons:

- a. The applicant has not provided sufficient justification related to special circumstances that might apply to this property and that do not generally apply to other properties in the neighborhood.
 - b. There are no other properties in this subdivision that have an accessory structure in front of the building line.
 - c. There is adequate room on this lot for the applicant to move the carport that would be behind the garage, and still be accessed off the secondary driveway.
3. **V-2012-15: JAMES P. ARNOLD** - appeals for a variance to reduce the required setback along both Athens-Boonesboro and McCalls Mill Roads from 50 feet to 35 feet in the Agricultural Rural (A-R) zone, on property located at 7210 Athens-Boonesboro Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of this rural area. Several nearby residences are located closer to Athens-Boonesboro Road and McCalls Mill Road than the proposed residence.
- b. The irregular shape of the lot, the existing portion of the home to remain, and the fact that this lot is subject to front yard limits from both Athens-Boonesboro Road and McCalls Mill Road, are special circumstances that contribute significantly to justifying the requested front yard reductions.
- c. Strict application of the Zoning Ordinance would force the appellant to construct a new residence very close to the southerly side property line, in an area that is heavily wooded and abandon the portion of the existing residence that he wishes to retain.
- d. The appellant is making a reasonable effort to site a reconstructed residence at a location that reduces the existing non-conformities of this residential structure. This effort should not be interpreted in any way as an attempt to circumvent a requirement of the Zoning Ordinance.

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

- 1. The residence shall be constructed in accordance with the submitted application and site plan.
- 2. All necessary permits shall be obtained from the Division Building Inspection prior to construction.

4. **V-2012-16: MARY MARGARET BELL** - appeals for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to construct a detached garage in a Single Family Residential/Neighborhood Character Overlay (R-1C/ND-1) zone, on property located at 377 Colony Boulevard (Council District 5).

The Staff Recommends: Approval of a variance to 3 feet for the accessory structure, 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 will be situated at the end of an existing driveway, near the rear of the main structure. Detached garages at the rear of a property are common in the Chevy Chase neighborhood.
- b. The square shape of this corner lot, resulting in an unusually shallow lot for Colony Boulevard, is a special circumstance that contributes to justifying the need for the requested variance.
- c. Strict application of the 8' side yard setback requirement would force the appellant to place the detached garage at an undesirable or a less accessible location on the lot or to forego a garage for this property altogether.
- d. The lot lines and the location of the house and driveway were already in place when the applicant purchased the property. This variance request is not a result of her actions since the adoption of the Zoning Ordinance, and there is no intent 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, except that the garage shall be a minimum of 3' from the property line, and the resulting shift of driveway pavement shall be shown prior to issuance of a building permit.

2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. A gutter system will be installed to direct stormwater runoff away from all adjoining properties, to the approval of the Division of Engineering.
5. **V-2012-17: ANDERSON CAMPUS RENTAL PROPERTIES** - appeals for a variance to reduce the side setback along Edward Avenue from 18 feet to 3 feet in order to construct a residence in a Single Family Residential (R-1D) zone, on property located at 341 American Avenue (Council District 3).

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. Not granting the requested variance will result in the lot not being buildable.
- b. The extremely narrow width of this corner lot, and the fact that other residential corner lots in this neighborhood have similar side street side yards constitute special circumstances that contribute to justifying the requested variances.
- c. Strict application of the setback requirement would result in only 4' of buildable area, essentially making this lot unbuildable.
- d. The requested variance is an attempt to develop a residence that is still compatible with the existing single-family residences in the neighborhood. Approving the requested variance will also help to maintain the compatibility standard of Article 15-7 of the Zoning Ordinance.

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

1. The home shall be constructed in accordance with the submitted application and site plan, except as required below (Condition #3).
 2. All necessary permits shall be obtained from the Division Building Inspection prior to construction.
 3. A 10' wide driveway and at least one, but not more than two parking spaces will be installed at the rear of the property off of Edward Avenue, with the design to be reviewed and approved by the Division of Traffic Engineering prior to issuance of a building permit.
6. **V-2012-18: SETZER INVESTMENTS NO. 5, LLC** - appeals for a variance to eliminate the required screening around an outdoor storage area in a Light Industrial (I-1) zone, on property located at 1133 Industry Road (Council District 6).

The Staff Recommends: Approval of the requested landscape/screening variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety, welfare, or the character of the area. The property where the outdoor storage area is located is generally bounded by existing fencing or thick vegetative screening, with the only exception of the area along 1105 Eastland Parkway that is under the same ownership and the area near the entrance to Industry Road.
- b. The prior use of this outdoor storage area, the ownership of the adjacent property, the lack of visibility from the right-of-way, and the heavy screening along the railroad to the north of the subject property are special circumstances that contribute to justifying the elimination of the fencing requirement around the outdoor storage area.
- c. Strict application of the Zoning Ordinance would force the appellant to place a fence along the southwest side property line, where such a structure would interfere with the operation of the business at 1105 Eastland Parkway.
- d. The circumstances surrounding this variance request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance in 1983, as the existing conditions have largely been unchanged since that time.

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

1. The property shall be developed in accordance with the approved site plan, or as amended by the Planning Commission on a final development plan.
 2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior the issuance of a certificate of occupancy for the proposed use.
 3. The fence and gate near the entrance of the property from Industry Road will have mesh panels installed to meet the opacity requirements of the Zoning Ordinance, as approved by the Division of Building Inspection.
7. **V-2012-19: STEVE PERRY** - appeals for variances to: 1) reduce the required project exterior yard from 20 feet to 6 feet; 2) reduce the minimum required open space from 20% to 18%; and 3) to increase the

maximum allowable parking from 50 to 60 spaces in a High Density Apartment (R-4) zone, within the defined Infill & Redevelopment Area, on properties located at 301 and 313 Burley Avenue (Council District 3).

The Staff Recommends: Approval, 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 project is surrounded by non-residential uses, and the requested variances will promote new development that is compatible with the existing neighborhood.
- b. The surrounding non-residential land uses, the property's close proximity to a new public park, and the need to accommodate student parking in this neighborhood are special circumstances that contribute to justifying the requested variances.
- c. Strict application of the setback, open space, and maximum parking requirements would force the appellant to redesign this townhouse project, which may or may not result in a better design, and would likely result in a design that would have a negative effect on the character of the surrounding neighborhood.
- d. The conflicts with the Zoning Ordinance are an attempt to develop townhouses that are more compatible with the existing single-family residences in the neighborhood. Approving the requested variances will be in keeping with the compatibility standard of Article 15-7 of the Zoning Ordinance.

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

1. The townhouse project shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission on the approved final development plan.
 2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
8. **V-2012-20: MIKE SCHMELING** - appeals for a variance to reduce the required setback along an alley from 7.5 feet to 2.5 feet to accommodate an addition to a garage in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 616 West Short Street (Council District 2).

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 detached garage will be situated along Klair Alley, similar to other garages and accessory structures. Detached garages at the rear of properties are common in the Historic Western Suburb Neighborhood.
- b. The existing development pattern of similar garages along Klair Alley is a special circumstance that contributes to justifying the need for the requested variance.
- c. Strict application of the 7.5-foot setback requirement would force the appellant to forego the addition to the garage for this property. Without the requested variance, the garage addition would not be feasible, as it would not allow an extension of the garage to make it usable for vehicular parking.
- d. The 16-foot-deep garage was existing when the appellant purchased the property. He has recently been able to acquire a small parcel from the neighboring property at 620 W. Short Street, which now allows for the possibility of expanding the structure. This requested variance should not be construed in any way as a circumvention of the requirements 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 Building Inspection prior to construction, based on a Certificate of Appropriateness from the Division of Historic Preservation.

D. Conditional Use Appeals

1. **CV-2012-11: TOWNES ENTERTAINMENT, LLC** - appeals for a conditional use permit for a restaurant with live entertainment; and variances to 1) reduce the required 100-foot setback from a residential zone to 0 feet, and 2) reduce the required parking by 50% in a Neighborhood Business (B-1) zone, within the defined Infill & Redevelopment Area, on property located at 122 W. Maxwell Street (Council District 3).

The Staff Recommended: Postponement, for the following reasons:

- a. Additional details are needed regarding: (1) required off-street parking for the proposed use, which will necessitate submittal of an indoor and outdoor seating counts, along with a calculation of the square footage of the building that will be used for the proposed activities; and (2) an assessment of required

parking for other occupants of the building. Also a description is needed 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.

- b. 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. **C-2012-10: LORLEETA MUNDY** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, on property located at 2832 Winter Garden (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. Adequate off-street and on-street parking is available for this use. A large fenced outdoor play area will be provided. Noise and other disturbances are not anticipated, as care for the twelve children will only be provided during daytime hours; and after 6:00 PM, no more than six children will be present.
- 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. Child care shall be provided in accordance with the submitted application, and an amended site plan indicating full enclosure of the outdoor play area with suitable fencing.
 2. Care for up to 12 children shall be limited to the hours of 6:00 AM to 6:00 PM; Care for up to 6 children shall be allowed from 6:00 PM to Midnight, throughout the week.
 3. All necessary permits, including issuance of an occupancy certificate, shall be obtained from the Divisions of Planning and Building Inspection prior to beginning child care for more than six (6) children activities at this location.
 4. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
 5. This conditional use shall become null and void should the appellant no longer reside at this location.
3. **C-2012-12: THE BAPTIST CHURCH AT ANDOVER** - appeals for a conditional use permit to expand the church (education center) in an Agricultural Urban (A-U) zone, on property located at 3330 Todds 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, as the location of the proposed addition is not readily visible, and there is adequate off-street parking for the use of the new education building.
- 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 site 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 construction and occupancy of the building.
3. Any gaps in the existing tree line along the perimeter of the property will be replanted with appropriate tree species and/or shrubs, as approved by the Landscape Examiner. Otherwise, the vehicular use screening of the parking lot, required by Article 18 of the Zoning Ordinance, is to be installed prior to the issuance of an Occupancy Permit.

E. **Administrative Review**

None

- 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 April 27, 2012.

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