

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 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, November 30, 2012.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the September 28, 2012 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-2012-79: INDEPENDENT HEALTHCARE PROPERTIES, LLC** - appeals for a variance to reduce the required setback from the right-of-way for an identification sign from 10 feet to 0 feet in a Professional Office (P-1) zone, at 225 Ruccio Way (Council District 9).

The Staff Recommends: Approval of a variance from 10' to 1', for the following reasons:

- a. Granting the variance from 10' to 1' for the sign will not negatively affect the public health, safety or welfare; will not alter the character of the general vicinity; nor will it cause a hazard or nuisance to the public, assuming that the sign is outside the sight triangle as approved by the Division of Traffic

Engineering.

- b. It is likely that most traffic will enter this site from the southern entrance and will exit through the northern access point because of the drop-off area in the front of the building. It is because of this anticipated traffic flow that the applicant desires to place the sign at the southern entrance, in order to enhance the visual clue to drivers that this is the entrance to the property.
- c. The existing 12' wide sanitary sewer easement located at the front of the lot severely limits the options for this business to locate a viable free standing identification sign, and is a unique situation that does not generally apply to most P-1 zoned properties.
- d. Strict application of the setback requirement will require that the sign be placed either perpendicular to the road or further back from the road, either of which will diminish the readability of the sign to drivers on Ruccio Way.
- e. The existing sanitary sewer easement was placed in its location on the subject site prior to the development of this property. Thus the circumstances of the requested variance are not a result of the applicant's own actions.

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

1. The sign shall be constructed in accordance with the submitted application and site plan.
 2. All necessary permits, including a Zoning Compliance Permit and a Sign Permit shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to construction.
 3. Prior to issuance of a sign permit, the Division of Traffic Engineering shall review the details of the sign and its placement. If necessary, the applicant shall make any modifications recommended by Traffic Engineering to improve safety.
2. **V-2012-80: RALPH SENNINGER** - appeals for variances to: 1) reduce the required front yard from 50 feet to 15 feet; and 2) reduce the required rear yard from 25 feet to 5 feet in order to construct a single family residence in the Agricultural Rural (A-R) zone, at 8839 Beach Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the proposed variances will not adversely affect the public health safety or welfare, nor will it cause a hazard or nuisance to the public, as the replacement structure will be in the same location as the previous structure. Furthermore, the house will not impede the sight distance for vehicular traffic on either Beach Road or Old Richmond Road, and will not be out of scale with surrounding properties.
- b. Granting this request will not alter the general character of the vicinity, as the neighboring property at 8837 Beach Road is approximately at the same 15-foot setback requested by the applicant. More importantly, the proposed home will be sited in the same location as the previous structure and oriented in the same manner, which preserves the tree stands on the site.
- c. Granting the requested variances is not an unreasonable circumvention of the Zoning Ordinance, as this non-conforming lot was originally platted in 1933. The size and shape of the lot have remained unchanged since its creation. Allowing a modest increase in the size of this home is only possible with the approval of these variances.
- d. The subject site is a legal non-conforming lot of record, recognized by the Comprehensive Plan as being a part of the Clays Ferry Rural Settlement. This is both historically and symbolically important to the Rural Service Area, creating a unique condition that is not commonly found in many other properties in the A-R zone.
- e. The requested variance is more a result of a fire that destroyed the former residence on this property than any other single factor. Allowing a modest increase in the size of the home on this lot is only possible with the approval of these variances.

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

1. The property shall be developed according to the submitted application and site plan.
2. The applicant shall obtain all applicable permits, including a Building Permit and a Certificate of Occupancy from the Division of Building Inspection.

D. **Conditional Use Appeals**

1. **C-2012-74: FOUR SEASONS MARTIAL ARTS / COLLEEN O'DONNELL** - appeal for a conditional use permit to establish an athletic club facility in a Light Industrial (I-1) zone, at 951 Floyd Drive (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. No new construction will be required, and there are no adjacent or nearby uses that are likely to be adversely impacted. Very little traffic will be generated, and sufficient off-street parking is conveniently located at the front of the suite that is proposed to be occupied by this use.
- 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 proposed athletic club facility (martial arts center) will be operated in accordance with the submitted application and site plan.
 2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to continuing the use of the athletic club facility.
2. **C-2012-76: IDEAL EXCHANGE, INC.** - appeals for a conditional use permit to operate a pawn shop in a Highway Service Business (B-3) zone, at 510 E. New Circle Road, Ste. 180 (Council District 1).

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 this type of use is not concentrated along this portion of New Circle Road; and the applicant will not be displaying or selling merchandise outside.
- 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 pawnshop shall be established 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 any construction and/or renovation, and prior to opening the pawn shop.
 3. The applicant will provide documentation to the Division of Planning that the existing landscape buffer areas either meet Article 18 requirements for a hedge and trees, or provide for additional landscaping per the Zoning Ordinance, prior to the issuance of a Zoning Compliance Permit.
 4. No outdoor display or sales of merchandise will be allowed on the property, including on the right-of-way of New Circle Road.
 5. Firearms will not be sold or purchased at this location without approval of an amended application by the Board of Adjustment.
 6. This approval shall become null and void should the appellant no longer own the property or operate this business on the subject property.
3. **C-2012-77: BLUEGRASS REGIONAL MENTAL HEALTH** - appeals for a conditional use permit to establish an assisted living facility/rehabilitation home in a Planned Shopping Center (B-6P) zone, at 3479 Buckhorn Drive (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 because 24-hour supervision will be provided, and the site can adequately accommodate this facility. Nearby residential uses will be buffered from this use because this particular location only shares property boundaries with a park and other commercial properties.
- 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 assisted living and rehabilitation facility shall be established in accordance with the submitted application and site plan.
 2. A Zoning Compliance Permit and an Occupancy Permit shall be obtained from the Divisions of Planning and Building Inspection prior to opening the facility.
4. **C-2012-78: TOTAL GRACE BAPTIST CHURCH** - appeals for a conditional use permit to establish a child care facility in a Planned Neighborhood Residential (R-3) zone, at 1313 N. Limestone Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding

properties. Child care facilities, both in conjunction with a church and as a stand-alone day care have previously been approved at this location.

- 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 child care facility shall be established in accordance with the submitted application and site plan, with the exception of the outdoor play area, which will be relocated to the area adjacent to 102 Withers Avenue or redesigned to be a permanent play area at the rear of the property as submitted. Prior to the issuance of Zoning Compliance Permit, the applicant shall submit a revised site plan to the Division of Planning with the details of the revisions.
2. A Zoning Compliance Permit and an Occupancy Permit shall be obtained from the Divisions of Planning and Building Inspection prior to opening the child care facility.
3. The dropping off and picking up of students shall be reviewed by the Division of Traffic Engineering and shall be managed to ensure that vehicles do not stack on Withers Avenue or North Limestone Street.
4. The proposed child care facility, including a day care and an after-school program, will be limited to a total of 50 children.

E. Administrative Review

1. **A-2012-45: CHEROKEE PARK NEIGHBORHOOD ASSOCIATION** - requests an administrative review of a Zoning Compliance Permit issued for a mobile MRI facility in a Professional Office (P-1) zone, on property located at 1713 Nicholasville Road (Council District 3).

As this is a 3rd party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

2. **A-2012-62: CLYDE SIMMONS, JAMIE SHIER, AMY CLARK, SHERRI HUMAN and KAREN BASSETTI** - appeal for an administrative review of the Division of Building Inspection's issuance of a permit for paving in the required front yard, in a Single Family Residential (R-1E) zone, within the defined Infill & Redevelopment Area, at 626 Kastle Road (Council District 3).

As this is a 3rd party appeal, there is no recommendation for either approval or disapproval. A report will be made at the public hearing.

- 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 Mike Cravens, Lexington Homebuilder member of the Landscape Review Committee, will expire on November 30 of this year. Mr. Cravens 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. Karen Angelucci	Tree Board
11/30/2012	Mr. Mike Cravens	Lexington Homebuilders

- B. 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 14, 2012, which is two weeks earlier than usual.
- VII. **ADJOURNMENT** - If there is no further business, the Chairman will declare the meeting adjourned.

**ADDENDUM
URBAN COUNTY BOARD OF ADJUSTMENT**

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V. STAFF ITEMS (cont.)

- C. **Request for Revocation Hearing** - A memo was sent to the Board advising them of a conditional use permit approved on April 27, 1990 for which the conditions have not been adhered to. The Division of Planning's Zoning Enforcement Section has requested that a revocation hearing for C-90-45: Con Robinson Contracting Company, Inc. be scheduled for the Board's January 25, 2013 hearing.

The Staff will report at the public hearing.