

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

February 22, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, February 22, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the July 20, 2012; October 26, 2012 and the January 25, 2013 meetings 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-2013-11: BALL HOMES, LLC** - appeals for a variance to reduce the required 25-foot distance from the floodplain to 13 feet in order to construct a duplex in an Expansion Area Residential (EAR-1) zone, on property located at 3865 & 3869 Castlebridge Lane (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties, as the location of the proposed duplex is about 50' from the floodplain as approved by FEMA on Conditional Letter of Map Revision (CLOMR) case #09-04-8336R; and all of the necessary floodplain improvements between Hays Boulevard downstream to the regional detention basin are complete and functioning properly, as per the approved CLOMR.

- b. The proposed structures are not located in the regulatory floodplain.
- c. Upon completion of all of the stormwater improvements within the 500+ acre Gess development, and approval by FEMA of the final Letter of Map Revision (LOMR), this variance would no longer be necessary. Thus, there would be no circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship for the appellant, since a client has chosen these lots and the issuance of the LOMR appears to be some time in the future.
- e. The possibility of this variance is noted on the current Development Plan approved for this location. It is only the timing of the proposed construction that necessitates the variance. Once the CLOMR becomes a LOMR in the future, the need for the variance will no longer be applicable.

This recommendation is made subject to the following conditions:

- 1. This development of the subject property shall take place 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 any other applicable Division of the Urban County Government prior to any construction activity on the subject site.

D. **Conditional Use Appeals**

- 1. **C-2013-6: EL POTRILLO MEXICAN BAR & GRILL** - appeals for a conditional use permit to offer live entertainment and dancing accessory to a restaurant/bar & grill in a Neighborhood Business (B-1) zone, at 1765 Alexandria Drive (Council District 11).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested conditional use has significant potential to adversely impact a well established residential area located as close as 30' from the building to be used for live entertainment and dancing.
- b. The proposed late hours of operation, combined with the changing character of this use from a restaurant to a night club on the weekends has a significant potential to be a disruption to the neighborhood, and therefore, is inappropriate at this location.

A letter was submitted by the appellant, requesting withdrawal of this conditional use; therefore, no action is needed from the Board other than acceptance of the request for withdrawal.

- 2. **C-2013-9: R.F.I. PROPERTIES, LLC** - appeals for a conditional use permit to establish an indoor fitness facility in a Light Industrial (I-1) zone, at 2426 Palumbo 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, as this site is well suited for a small fitness center, where the peak hours of operation will be in the early mornings and evenings after normal business hours, which will reduce the potential for lack of parking availability.
- 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 (private gym) will be operated in accordance with the submitted application and site plan.
- 2. The applicant shall obtain a Zoning Compliance Permit and Certificate of Occupancy from the Divisions of Planning and Building Inspection prior to operating an athletic club facility at this location.

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.

- A. **House Bill 55 Training Opportunity** - There will be an APA lecture held in the Division of Planning conference room on Wednesday, March 13, entitled "Environmental Systems, Assessment and Carrying Capacity" that will provide 1.5 hours of training credits. The time of the lecture is from 4:00 p.m. until 5:30 p.m.

- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be March 29, 2013.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.