

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

April 26, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, April 26, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the March 29, 2013 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-2013-23: BALL HOMES, LLC** - appeals for a variance to reduce the required 25-foot setback from the floodplain in order to construct a duplex in an Expansion Area Residential (EAR-1) zone, at 501 Lorenzo Place (Council District

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 40' 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; and the possibility of this variance is noted on the current Development Plan approved for this location.
- c. Upon completion of all of the storm water improvements within the 500+ acre Gess development, and approval by FEMA of the final Letter of Map Revision (LOMR), this variance will 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 (unknown) time in the future.
- e. It is only the timing of the proposed construction that necessitates the variance. Once the CLOMR becomes a LOMR (sometime 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.
2. **V-2013-24: LEXINGTON HABITAT FOR HUMANITY** - appeals for a variance to reduce the required setback along Willard Street from 30 feet to 10 feet in order to construct a single family residence in a Single Family Residential (R-1D) zone, at 969 Valley Avenue (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare, as the proposed variance will not negatively affect the sight triangle for this intersection will not be adversely impacted. It will not alter the character of the vicinity or cause a nuisance to the public, since many other properties in neighborhood are located at similar setbacks from the street.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since it is clear that the intent of the current Infill & Redevelopment regulations is to create compatibility with the existing development patterns of older, established neighborhoods such as this.
- c. The subject property was developed prior to the adoption of the current Zoning Ordinance, particularly Articles 8-8(h) and 15-2(b)(4), which now require the side street side yard to be 30 feet in many areas.
- d. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, as this lot is only 39.8 feet wide, which would only leave 4.8' on which to build a residence.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The appellant has halted the site preparation and construction until such time as the Board approves the requested variance to allow the residence to be built and to provide the required parking space to be in the driveway.

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

1. That a building permit be obtained from the Division of Building Inspection prior to resuming construction.
 2. That an Administrative Action and/or Easement Minor Amended Plat be certified prior to the issuance of a building permit in order to record the action of the Board and to create the necessary "public passageway easement" for the sidewalk improvements.
3. **V-2013-25: CHRISTINA K. RAZAVI** - appeals for a variance to reduce the required side yard from 3 feet to 0 feet in order to install a privacy fence along the property line in a Planned Neighborhood Residential (R-3) zone, at 316 Loblolly Court (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. Reducing the required side yard from 3' to 0', only for the purpose of allowing a portion of the fence to be constructed on the property line (where depicted on the site plan), should not adversely affect the public health, safety, or welfare, nor alter the character of the area.
- b. The pie-shaped configuration of the subject lot and the location of the home thereon, result in side yards well in excess of the minimum 3' requirement, which constitutes a unique circumstance.

- c. The location of the fencing is in an area with at least a 10' wide side yard; and, in no circumstance, will the proposed fence create a situation with an obstructed side yard of less than 6' on the subject or neighboring properties. Therefore, there will be no resulting circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would result in all portions of the fence being relocated to the rear of the structure, which would result in a much smaller fenced yard for the appellant.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as a fencing permit has been applied for and construction of the fence has not yet begun.

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

- 1. A fencing permit shall be obtained from the Division of Building Inspection, as depicted in the submitted application and site plan, prior to construction.

D. **Conditional Use Appeals**

- 1. **C-2013-13: CHAD DICKEN** - appeals for a conditional use permit to establish a garden center and future plant nursery in an Agricultural Urban (A-U) zone, at 3280 Clays Mill Road (Council District 9).

The Staff Recommended: Disapproval, for the following reason:

- a. The proposed conditional use will not meet the following minimum requirements of the Zoning Ordinance:
 - 1. This use is not proposed to be "operated in conjunction with a commercial greenhouse or plant nursery on the same premises" as required by Article 8-4(d)(3).
 - 2. The subject lot does not meet the minimum size requirements (of 10 acres) set forth by Article 8-4(f) for garden center uses. Further, the proposed retention of the existing single family dwelling on the property will further limit the available portions of this two-acre property for the proposed use.
 - 3. The proposed off-street parking area of this garden center, by proposing the use of only gravel for twelve parking spaces and the associated drive aisles, will not meet the requirements of Article 16-2(e).
- 2. **C-2013-19: STEVE MILLERD** - appeals for a conditional use permit to establish a home occupation (leatherworking) in a Single Family Residential (R-1D) zone, at 4264 Forsythe Drive (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. A home occupation is permitted as a conditional use in the Single Family Residential (R-1D) zone with Board of Adjustment approval.
- b. Granting this conditional use permit will not adversely affect the subject property or any surrounding properties since there will be no traffic associated with the use other than three or four deliveries per month and occasional trips to the post office on the part of the appellant. The work area is limited to a small portion of his attached garage, and there will be no sign or any other indication on the property that this use is taking place. Any noise generated will be minimal and will be no more than is typical of everyday living (hammer, electric drill and small vacuum); and only small hand tools will be used for the leather working/craft itself. The use is clearly incidental to use of the property as a single family residence, as the appellant does his leather working for only 5 to 7 hours per week. This type of home occupation is therefore well within the limitations of Article 1-11 regarding home occupations.
- c. All public facilities are available and adequate for the proposed use.

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

- 1. That the home occupation be limited to the area within the appellant's residence, as indicated on the site plan included with this application; and that it be limited to leather working, as requested.
- 2. That a Zoning Compliance Permit be obtained from the Division of Planning and an Occupancy Permit be obtained from the Division of Building Inspection prior to establishing the use as a home occupation.
- 3. That no sign be posted on the property, and that the appellant comply with all other stipulations of Article 1-11 regarding home occupations.
- 4. That the only traffic associated with the use be the infrequent (3 to 4 times per month) deliveries, as noted in the application.
- 5. That should the appellant cease to own or occupy the subject property, the conditional use permit shall become null and void.

3. **C-2013-21: STH ENTERPRISES, LLC** - appeals for a conditional use permit to establish a new indoor recreational facility (go-carts, miniature golf, games, concessions, etc) in a Wholesale and Warehouse Business (B-4) zone, at 3025 Blake James Drive (Council District 7).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking will be provided, and the facility will have convenient access to Todds Road and Man o' War Boulevard. The surrounding land uses (commercial, industrial and professional office), are unlikely to be adversely affected by activities at an indoor recreational facility.
- 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 facility shall be operated and conducted 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 prior to any construction or remodeling of the building. In addition, prior to a certificate of occupancy being obtained from the Division of Building Inspection, a zoning compliance permit shall be obtained from the Division of Planning.
 3. The final design of the parking lot shall be subject to review and approval by the Division of Traffic Engineering.
 4. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance and the approved Final Development Plan.
 5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. **C-2013-22: HOLSTON GASES, INC.** - appeals for a conditional use permit for the storage and sale of propane gas in a Light Industrial (I-1) zone, at 600 Blue Sky Parkway (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. All of the immediately adjoining properties are zoned for light industrial uses. There are no physical impediments on the property to prevent the safe installation of the propane storage tank(s), which must comply with national, state, and local regulatory requirements, including National Fire Protection Association (NFPA) guidelines.
- b. All necessary public facilities and services are available and adequate, which includes fire stations less than three miles away at two separate locations.

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

1. No more than two storage tanks shall be installed on the site and this use shall be operated in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Planning and the Division of Building Inspection prior to placing the tanks on the property.
3. The facility shall at all times comply with the provisions of Article 8-22(d)7 of the Zoning Ordinance, which includes standards of the Fire Marshall.

E. Administrative Review

1. **A-2013-20: NEW REPUBLIC, LLC** - appeals for an administrative review to change one legal non-conforming use (major automobile and truck repair) to another (micro-brewery) in a Neighborhood Business (B-1) zone, at 266 Jefferson Street (Council District 1).

The Staff Recommends: Disapproval, for the following reasons:

- a. The request for a micro-brewery at this location would result in is a more intense use, first allowed as a principal use in the I-1 zone, than the existing non-conforming major automobile repair shop, which is first permitted in the B-4 zone.
- b. The requested micro-brewery will be expanded in its scope of operation from the current non-conforming use by placing the silos/grain storage bins (an integral part of the beer manufacturing

process) outside of the building, which is in direct conflict with Article 4-3(g) 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. **House Bill 55 Training Opportunity** - There will be an APA audio conference offered in the Division of Planning conference room, to be held on Wednesday, May 15, 2013 at 4:00 p.m., lasting until 5:30 p.m. The title of this audio conference is "Rethinking the Role of the Urban Freeway" and will be good for 1.5 hours of training.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be May 31, 2013.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.