

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

May 31, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, May 31, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the April 26, 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-2013-31: MICHAEL D. CHILDERS** - appeals for a variance to reduce the required side yard from 8 feet to 4 feet in order to construct a detached garage in a Single Family Residential (R-1C) zone, at 435 Henry Clay Boulevard (Council District 5).

The Staff Recommends: **Approval**, for the following reasons:

 - a. Reducing the required side yard from 8' to 4', allowing a new detached garage to be constructed (where depicted on the site plan), should not adversely affect the public health, safety, or welfare, nor alter the character of the area. Several properties on this street currently have detached

- garages that are closer than 8' to the side lot line.
- b. The unique situations that exist for this property are that this subdivision was developed in the 1920s & 1930s before the current Zoning Ordinance requirements. The existing detached garage currently encroaches into the side yard by about 2.5 feet, and the new garage will be in the same location, but about 1.5 feet wider. Granting the requested waiver will actually increase compatibility with surrounding properties.
 - c. The detached garage is in an area with an average 14' wide side yard; and, in no circumstance, will the proposed side yard be less than 4'. Furthermore, because the averaged side yard is greater than the actual requirement, there will be no resulting circumvention of the Zoning Ordinance.
 - d. Strict application of the Zoning Ordinance would result in a garage which will be more out of character for the neighborhood and would disallow the space that is needed by the property owner(s) to access their vehicle.
 - e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as a building permit has been applied for and construction of the improvements has not yet begun.

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

1. A building permit shall be obtained from the Division of Building Inspection, as depicted in the submitted application and site plan, prior to construction.
2. **V-2013-32: BURLINGTON HEIGHTS CONDOMINIUMS, LLC** - appeals for two variances: 1) to reduce the width of the required zone-to-zone screening from 15 feet to 6 feet; and 2) to eliminate the 6-foot privacy fence requirement in favor of a mix of landscaping and 4 to 5-foot privacy panels along the rear of the patios in a High Density Apartment (R-4) zone, at 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, as the project is nearly surrounded by non-residential uses.
- b. The surrounding more intense non-residential land uses create a special circumstance that contributes to justifying the requested variances or the subject site.
- c. Strict application of the landscape requirements would force the appellant to construct a solid 6' tall fence or wall around this townhouse project, which may result in creating hidden pockets of space that would have a negative effect on the character and safety of the surrounding neighborhood.
- d. The applicant has provided alternative screening that will allow an effective buffer between the new townhouses and the surrounding properties, but with a desired level of openness.
- e. The project is currently under construction and the requested variances are more a result of negotiations with the surrounding landowners, and not a result of willful acts of the appellant.

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

1. The landscaping shall be installed 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 Division of Building Inspection prior to installation.
3. **V-2013-33: ELIZABETH and PRICE BELL** - appeal for a variance to reduce the required side yard from 8 feet to 6 feet in order to construct an addition to an existing residence in a Single Family Residential/Neighborhood Character Design Overlay (R-1C/ND-1) zone, at 319 Ridgeway Road (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. Reducing the required side yard from 8' to 6', allowing an addition and screened porch to be constructed nearer to 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, as most residences along Ridgeway Road have side yards that are as narrow (or more so) as that proposed for the subject property.
- b. Most properties on this street do not meet the current side yard requirements, as this subdivision was developed in the 1920s & 1930s before the current Zoning Ordinance requirements were in place. Even granting the requested variance, this house will still have one of the larger side yard setbacks in the neighborhood, which constitutes a unique circumstance.

- c. The addition is in an area with an average 6' wide side yard; and, in no circumstance, will the proposed side yard be less than 3'. Furthermore, the proposed addition is compliant with the Chevy Chase ND-1 zoning standards and is compatible with the neighborhood. Therefore, there will be no resulting circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would result in a smaller addition, which will not be of sufficient size to fill the need for the improvement by the appellants.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellants, as a building permit has been applied for and construction of the improvements has not yet begun.

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

- 1. A building permit shall be obtained from the Division of Building Inspection, as depicted in the submitted application and site plan, prior to construction.
4. **V-2013-34: PHILLIP KENT** - appeals for a variance to reduce the required side yard from 3 feet to 0 feet in order to construct a 6-foot privacy fence in a Planned Neighborhood Residential (R-3) zone, at 2737 Mable Lane (Council District 2).

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 trapezoid-shaped configuration of the subject lot combined with the location of the home results in an average 19' side yard, 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 19' 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 portions of the fence being relocated outside of the "required" side yard and would create a potential "no man's land" between the existing and new fences, which could become a maintenance nuisance for both the property owner and for the immediate neighbor, and 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.
5. **V-2013-35: PENNINGTON ASSOCIATES, LP** - appeals for two variances: 1) to reduce the required setback for two identification signs from 20 feet to 7 feet; and 2) to increase the allowable fence/wall height in the front yard from 4 feet to 8 feet in a Planned Neighborhood Residential (R-3) zone, at 205, 215 and 245 Codell Drive (Council District 7).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variances will not adversely affect the subject or surrounding properties, nor will it affect the public health, safety, or welfare, as the proposed variances will not be in the sight triangle for this intersection. It will not alter the character of the vicinity or cause a nuisance to the public, as this site has long had signs in a similar location and an existing 6' tall decorative fence surrounding it.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since it is promoting the redevelopment of this property in a way that is compatible with the existing development pattern of the established neighborhood. The requested variances are minor in nature and not contrary to the intent of the Zoning Ordinance requirements.
- c. The subject property was developed prior to the adoption of the current Zoning Ordinance, particularly Articles 15-4(b) and 17-7(c)(2).
- d. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, because

placing the signage at the required location would decrease its visibility and would require the removal of existing trees. Adding the embellishments of the columns, entry walls, and signage is an important factor of the total redevelopment of the apartment complex.

- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. When the applicant purchased the property, the signs, landscaping, and fences were all in place. The repair and upgrading of these features as a part of a major redevelopment of this site is reasonable.

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

1. The property shall be developed in accordance with this application and site plan.
2. All fence and sign permits shall be obtained from the Division of Building Inspection prior to their construction.

D. **Conditional Use Appeals**

1. **CV-2013-30: BLUEGRASS MARLINS, INC.** - appeals for a conditional use permit for a community center; and a variance to reduce the required 25-foot setback from the floodplain to 0 feet in order to place a cover over an in-ground pool on a split-zoned property (Planned Neighborhood Residential/Planned Shopping Center [R-3/B-6P]), at 730 Millpond Road (Council District 9).

The Staff Recommends: Approval of the Conditional Use, for the following reasons:

- a. Approving the requested conditional use will have a positive impact, allowing greater use of the neighborhood pool, which will provide for the maintenance of this neighborhood asset. This property is surrounded by the Willow Creek neighborhood park, owned by the Lexington-Fayette Urban County Government, which provides a buffer to the surrounding residential properties.
- b. All necessary utilities and services are existing and adequate to support this minor change in use.

The Staff Recommends: Approval of the Variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties, as the pool was built on fill above the floodplain. The proposed structure will be built on the existing fill and will pose no threat to the public safety, health or welfare. Allowing the pool to be covered will not alter the essential character of the area.
- b. The proposed structures are not located in the regulatory floodplain; therefore, there will be no unreasonable circumvention of the Zoning Ordinance.
- c. The pool, and the fill on which it is built, were legally constructed prior to the adoption of the current regulation that requires all structures to be set back at least 25' from the floodplain. This is an unusual circumstance in this area of the community.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship for the applicant, since additional fill would need to be placed in the floodplain to meet the required 25' setback. Doing so would be detrimental to the floodplain and adjacent creek, which is owned by the LFUCG as the Willow Oak neighborhood park.
- e. The need for a variance is not the result of actions taken by the applicant, as the existing fill and floodplain were legally constructed before the adoption of the current floodplain regulations.

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

1. The property shall be developed in accordance with the approved application and site plan, or in accordance with the final development plan as approved by the Planning Commission.
2. That all necessary permits, including a Zoning Compliance Permit and Building Permit, be obtained from the Divisions of Planning and Building Inspection prior to commencement of the community center use or erection of any structure.

2. **C-2013-27: HIGHLANDS BAPTIST CHURCH** - appeals for a conditional use permit to construct a 3-bay detached garage for storage of church vehicles in an Agricultural Urban (A-U) zone, at 2032 Parallel Road (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The site is well buffered to the north and east by an existing equine hospital, and an open space buffer along the adjoining residential area to the south will be maintained. Access to Georgetown Road will be facilitated by the existing signalized intersection at

- Parallel Road located near the church entrance.
- 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 garage shall be completed in accordance with the submitted application and site plan.
 2. All necessary permits, including a Zoning Compliance Permit and a Building Permit shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
 3. The parking lot will continue to be paved, with spaces delineated and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
 4. The final design of the parking lot and circulation shall be subject to review and approval by the Division of Traffic Engineering.
 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.
 6. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing surrounding properties.
3. **C-2013-29: BRYSON DANIEL DROZ** - appeals for a conditional use permit to establish an athletic club (personal training) facility in a Light Industrial (I-1) zone, at 441 Hayman Avenue, Suite C (Council District 3).

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. That the proposed athletic club facility (private gym) be operated in accordance with the submitted application and site plan.
2. That the applicant obtain a Zoning Compliance Permit and Certificate of Occupancy from the Divisions of Planning and Building Inspection, respectively, prior to operating an athletic club facility at this location.

E. **Administrative Review**

1. **A-2013-26: BOONE CREEK ADVENTURES** - an appeal of a Notice of Violation (NOV) issued by the Division of Planning on March 8, 2013 for a property in the Agricultural Rural (A-R) zone, at 8291 Old Richmond Road (Council District 12).

The Staff will report at the public hearing.

2. **A-2013-28: LURADANE, LLC and ANDERSON HOMES FOR RENT** - an appeal of the Division of Planning's determination that two lots were consolidated into one by virtue of the previous existence of a residence in two separate locations, each in a Single Family Residential (R-1D) zone, at 1316 & 1318 Stanley Avenue and 1322 & 1324 Camden Place (Council District 3).

The Staff Recommends: **Disapproval**, for the following reasons:

- a. The lots in question are not non-conforming lots (as defined in Article 4-1(c)), but do meet the minimum requirements of Article 8-8(o)(1)(c) of the Zoning Ordinance. As of December 5, 2002, lots that are the subject of this appeal were occupied by 1) single family detached dwellings, 2) located in the defined Infill & Redevelopment area, and 3) involved single properties, as identified by their individual deeds.
- b. Well into the 1970s, building officials commonly allowed buildings to be built over lot lines despite laws requiring building setbacks from property lines, and building codes that had strict application of structural building requirements associated with such property lines. These officials permitted this type of construction by ruling that the combined effect of allowing the construction and the subsequent transfer of such lots created a de facto "consolidation" of the properties. In the opinion of the times, these actions resolved all strict violations of zoning ordinances and building code requirements that would have otherwise been created by building

structures across otherwise platted lot lines.

- c. After homes were originally constructed on the subject lots decades ago, these properties were transferred numerous times, each as an individual property. They were taxed as a single unified property by the Property Valuation Administrator for decades.
- d. Approval of this appeal has the potential to allow the wholesale razing of homes and allow multiple homes to be constructed, by-right, in numerous neighborhoods where individual homes have existed for decades. Such a result would create chaos and neighborhood instability at unimaginable levels. This would also contradict the intent of the "Infill and Redevelopment" text amendments (to the Zoning Ordinance) that have been adopted over the past decade to promote compatible and appropriate infill development.

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 Opportunities** - There will be an APA audio conference held in the Division of Planning conference room on Wednesday, June 5, from 4:00 until 5:30 p.m. The title of this audio conference is "Pedestrian and Bicycle Planning." A second audio conference, "Planning Law Review," will be held on Wednesday, June 26, from 4:00 until 5:30 p.m., also in the Division of Planning conference room. Each audio conference will provide 1.5 hours of required training for Planning Commission and Board of Adjustment members, as well as staff.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be June 28, 2013.

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