

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 28, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 28, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that there are no minutes of previous meetings 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-2013-31: MICHAEL D. CHILDERS** - appeals for a variance to reduce the required side yard from 8 feet to 2.1 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 2', 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 3.5 feet wider. Granting the requested waiver will actually increase compatibility with surrounding properties.
 - c. The detached garage is in an area with an average 12.25' wide side yard; and, in no circumstance, will the proposed side yard be less than 2'. 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 added garage 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-2013-37: ANNA DEER THAKUR** - appeals for variances to: 1) reduce the required front yard from 20 feet to 8.4 feet; 2) reduce the required side yards on each side of the property from 4.1 feet to 3 feet in order to replace a single family residence with a larger residence in a Single Family Residential (R-1E) zone within the defined Infill & Redevelopment Area, at 146 Colfax Street (Council District 3).

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

- a. Granting the requested variances will not adversely affect the public health, safety or welfare, nor will they alter the character of the general vicinity. The lot currently has a similar, yet slightly smaller, non-conforming residential structure on it. Other small residential properties with similar homes exist in the Pralltown neighborhood.
- b. Granting the variances will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The request is reasonable based on the small size and limited design options available for the extremely narrow subject lot.
- c. The circumstance that justifies the requested variance is that the property is unusually small, with an existing non-conforming structure at the requested setbacks.
- d. Strict application of the Zoning Ordinance would require that a smaller house be built on this property, set back in a way that is out of the ordinary for this neighborhood.
- e. This variance is not the result of an action by the appellant, as no construction has begun for this property improvement, as has no demolition of the existing structure.

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

1. The single family dwelling shall be constructed in accordance with the submitted application and site plan.
 2. All necessary permits, including a demolition permit and building permit, shall be obtained from the Division Building Inspection prior to construction
3. **V-2013-38: LEXINGTON HABITAT FOR HUMANITY** - appeals for a variance to reduce the required front yard from 20 feet to 0 feet in order to allow parking in the front yard in a Planned Neighborhood Residential (R-3) zone, at 631 Breckenridge Street (Council District 1).

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. It will not alter the character of the vicinity or cause a nuisance to the public, since there is no single established pattern for providing required parking spaces in this neighborhood.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance; and it will allow for a reasonable accommodation for a handicapped individual and his/her family, improving their safety by moving the parking space off the street and into the driveway.

- c. The special circumstance that applies to this case is that Breckenridge Street has an unusually wide right-of-way for a local residential street; and, as a result, homes that are set back 20' from the right-of-way are actually about 40' from the curb of the street.
- d. Strict adherence to the Zoning Ordinance would necessitate the removal of the temporary construction driveway, which, in this case, would result in a hardship on the handicapped individual and family members planning to reside in this new residence.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The applicant was unaware of which family would be the owner of this home prior to construction. This home was permitted to utilize the on-street parking provision of Article 16 of the Zoning Ordinance; and because the structure is being built with only 7' and 6.5' side yards, there is no longer room to provide a parking space behind the required front building line.

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

- 1. That all applicable permits be obtained from the Division of Building Inspection prior to the conversion of the temporary construction driveway to a permanent driveway.
 - 2. That the permanent driveway be constructed out of a durable and dustless material, as required by Article 16 of the Zoning Ordinance.
 - 3. That at no time shall a vehicle be parked in the driveway in such a way that the public sidewalk is obstructed.
 - 4. That this variance only applies to the provision of the required off-street parking space and does not allow the construction of any structures otherwise not allowable by the Zoning Ordinance.
 - 5. That an administrative action minor subdivision plat be submitted to, and approved by, the Division of Planning prior to the issuance of a paving permit.
4. **V-2013-39: CHURCHILL McGEE** - appeals for a variance to reduce the required front yard from 20 feet to 10 feet in order to construct two buildings in a Neighborhood Business (B-1) zone, at 1317 & 1325 West Main Street (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. It will not alter the character of the vicinity or cause a nuisance to the public, since most other properties in this strip center are located at similar setbacks from the right-of-way.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since the commercial buildings are all located at an average of 10 feet from the property line, but generally lie about 90-100 feet from the travel lanes of West Main Street/Leestown Road. The fact that the parking lots are located in the State right-of-way is a situation unique to this strip center.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, as this would be the building that is required to be constructed 10 feet further back than other buildings in this center.
- d. The requested variance is not the result of a willful violation of the Zoning Ordinance, as the subject property was developed prior to the adoption of the current Zoning Ordinance, particularly Article 8-16(h), which now requires the front yard to be 20 feet in the B-1 zone.
- e. The variance is not a result of the applicant's actions, as the building has not been constructed, or started.

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

- 1. That the property be developed in accordance with the submitted site plan and application.
 - 2. That a zoning compliance permit and a building permit be obtained from the Divisions of Planning and Building Inspection prior to construction.
5. **V-2013-40: ANDERSON COMMUNITIES** - appeals for a variance to allow a wall sign to be located at 18 feet, rather than at the required minimum 50-foot height, in a Lexington Center Business (B-2B) zone, at 120 East Main Street (Council District 3).

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity. The sign is otherwise an allowable sign, and granting the height variance will allow the applicant to install a sign that will be architecturally complimentary to the building, as it would orient to the Phoenix Park area of downtown.

- b. Granting the variance would not allow an unreasonable circumvention of the Zoning Ordinance since the proposed signage falls within the allowable size for this north facing wall façade, and the signage is merely being lowered due to the height and architectural character of the building.
- c. The special circumstance that justifies this variance is the multi-level parking garage that separates the first floor commercial from the residential uses at the top of the building, and its location adjacent to Phoenix Park.
- d. Strict application of the Zoning Ordinance would result in signage that which would cause potential light pollution to the residents of the dwelling units, and would not necessarily result in a more appropriate design for the signage.
- e. The circumstances surrounding this variance are not the result of a willful violation of the Zoning Ordinance, but rather a desire to install more effective and architecturally relevant signage for a circumstance that was not envisioned by the Zoning Ordinance.

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

- 1. The sign shall be installed in accordance with the submitted application, site plan, and building elevation.
- 2. A sign permit shall be obtained from the Division of Building Inspection prior to the installation of the sign.
- 3. Any further changes to the structure of the sign, if desired, shall be subject to the approval of the Courthouse Area Design Review Board.

D. Conditional Use Appeals

- 1. **C-2013-36: BAKER IRON and METAL** - appeals for a conditional use permit to operate an automobile wrecking facility as part of the existing scrap metal dealership in a Heavy Industrial (I-2) zone, at 1550 - 1558 Old Frankfort Pike (Council District 2).

The Staff Recommends: **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, and the automobile dismantling and wrecking will be done indoors, in a building that is 850 feet away from the nearest residential property.
- b. All necessary public facilities and services are available and adequate.

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

- 1. The automobile wrecking 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 operation of the automobile wrecking.
- 3. This automobile wrecking use shall include the dismantling and crushing of cars, but shall not include a car shredder or similar device without approval of an amended application by the Board of Adjustment.

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 July 26, 2013.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.