

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

July 26, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, July 26, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that there are no minutes 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-2013-44: MIKE KERWIN HOMES** - appeals for a variance to reduce the required side yard from 7 feet to 5 feet in order to complete construction of a residential addition in a Two Family Residential (R-2) zone, at 26 Mentelle Park (Council District 3).

The Staff Recommends: Approval, for the following reasons:

 - a. Reducing the required side yard from 7' to 5', allowing an addition and covered porch to be constructed as depicted on the site plan, should not adversely affect the public health, safety, or welfare, nor alter the character of the area, as the wall plane will average at about 6 feet from the property line and will have relief due to the existing 2-story bay window area on the side of the house.

- b. The unique circumstance that applies to this property is that the subdivision was built in the early 1900s, which pre-dates the Zoning Ordinance. The applicant cannot viably shift the proposed addition because of an existing driveway on the northwestern property line that serves a detached garage in the rear of the structure, which has been in this location since at least 1920.
- c. The requested variance will not be an unreasonable circumvention of the Zoning Ordinance, in so much as 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 5', both of which are allowable for most homes in residential zones.
- d. Strict application of the Zoning Ordinance would result in a hardship for the appellant, and would result in either a smaller addition, which will not be of sufficient size to fill the need for the improvement by the appellants; or a reduction in the driveway width, which would likely make maneuverability difficult.
- 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 only been applied for and construction of the improvements has not yet begun.

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

- 1. The addition will be built in accordance with the submitted site plan and application.
- 2. All necessary building permits shall be obtained prior to construction activities.
- 3. The use of the structure shall be limited to no more than 4 bedrooms.

D. Conditional Use Appeals

- 1. **C-2012-48: DAVID ROMERO** - appeals for a 6-month review of a conditional use permit approved by the Board for live entertainment accessory to a restaurant in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road (Council District 9).

In August of 2012, the Board approved a conditional use permit for live entertainment. One of the conditions for approval was a 6-month review of the use after issuance of a Certificate of Occupancy, in order to determine if surrounding property owners had experienced any adverse impacts from the live entertainment, as well as to determine compliance with the imposed conditions. The conditions to be reviewed are as follows:

- 1. The restaurant with live entertainment and dancing shall be established in accordance with the submitted application and site plan, or as amended by the Planning Commission.
- 2. All necessary permits, including a Zoning Compliance Permit and an Occupancy Permit, shall be obtained from the Divisions of Planning and Building Inspection prior to opening the restaurant.
- 3. Any music provided on the patio shall not be amplified.
- 4. A note reflecting action of the Board shall be placed on any amended Final Development Plan for the subject property.
- 5. Documentation that there is enough available parking during the hours of operation of this use to meet the minimum required parking, shall be provided prior to the issuance of a Zoning Compliance Permit by the Division of Planning.
- 6. These uses shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance or disturbance to the surrounding neighborhood.
- 7. The Board shall review this use six (6) months after issuance of a Certificate of Occupancy.
- 8. This conditional use shall become null and void should the appellant no longer operate at this location.

- 2. **C-2013-42: TONI E. SCHUCK** - appeals for a conditional use permit to expand an existing golf driving range (add accessory storage buildings) in the Agricultural Rural (A-R) zone, at 4440 Athens-Boonesboro Road (Council District 12).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A driving range has been in place at this location for more than two decades, with no indications of any significant disturbances to the surrounding rural properties. Minor expansions to this use several years ago by the previous owner(s) (involving putting greens and sand trap improvements) have not caused any problems or concerns that have generated any

complaints, and there is no indication that the placement of the requested accessory buildings will cause issues.

- b. The placement of three new accessory structures will provide a covered and secure area for the driving range to store valuable equipment that is necessary for the modern operation of this approved use. It will also allow the driving range to continue operation during rain or other inclement weather.
- c. Lighting and signage are currently controlled for this use, and will continue as such in the future.
- d. 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 driving range shall be operated in accordance with the existing application and a revised site plan that will be revised to identify all existing off-street parking areas, the proposed accessory structures and their uses, sand traps and putting greens on the subject property. The areas operated by the plant nursery on this property shall only be noted, as they are not a part of this conditional use permit request.
 - 2. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection within 60 days of action by the Board, following required revisions to the current site plan.
 - 3. The facility shall only operate during daylight hours, and shall not install lighting directed on the driving range, putting green(s) or sand trap areas.
 - 4. The use of this driving range should be limited to no more than 40 tee boxes, unless parking over and above 42 spaces can be documented to the Division of Traffic Engineering, as well as the Division of Planning, and the design of that parking approved by Traffic Engineering.
 - 5. Storm water management shall be provided in accordance with the requirements of the adopted Engineering Manuals, or as otherwise deemed acceptable by the Division of Engineering based on any prior permitting.
 - 6. Sewage treatment shall be provided in accordance with the requirements of the Board of Health.
 - 7. The existing 4' by 8' free-standing sign shall not be enlarged for use by this facility, and shall not be relocated closer than 25' to the right-of-way fence. All other signage on this property controlled by the golf driving range shall be subject to the requirements of Article 17 of the Zoning Ordinance.
 - 8. Only incidental retail sales and rentals are allowed at the pro shop, for items such as golf balls, golf clubs, golf gloves and tees.
3. **C-2013-43: TRINITY CHRISTIAN ACADEMY** - appeals for a conditional use permit to continue operation of a preschool accessory to a church in an Agricultural Urban (A-U) zone, at 3900 Rapid Run Drive (Council District 8).

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 the proposed preschool will only be for a small fraction of the number of children enrolled in the Trinity Christian Academy located in these same facilities.
- b. All necessary public facilities and services are adequate for the proposed use, and no new buildings or parking are required for this use.

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

- 1. The preschool shall be operated in accordance with the submitted application and site plan.
- 2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection within one month of the approval by the Board of Adjustment.
- 3. All parking areas and access shall be paved, with spaces delineated, and landscaped/ screened as would be required for churches in residential zones, in accordance with Articles 16 and 18 of the Zoning Ordinance.
- 4. All pole lighting for off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from adjoining residential properties.
- 5. The layout of the parking areas and access to Rapid Run Drive shall be subject to approval by the Division of Traffic Engineering.
- 6. A storm water management plan shall be implemented in accordance with the adopted Engineering manuals, subject to acceptance by the Division of Engineering.
- 7. All existing tree lines and fencing along the church property boundaries shall be preserved and maintained to the greatest extent possible.

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, due to the Labor Day Holiday, the next meeting date will be August 23, 2013, one week earlier than usual.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.