

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

March 29, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, March 29, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the January 25, 2013 and February 22, 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-2013-16: JAMES J. & SARA S. MAGGARD** - appeals for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to expand an existing garage in a Single Family Residential/High Density Apartment/Historic District Overlay (R-1C/R-4/H-1) zone, at 114 Barberry Lane (Council District 3).

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 a detached garage has existed in this location for the past 75 years.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since the requested variance will allow the property owner to retain the historical layout of this residential property.
- c. The subject property was platted and developed prior to the adoption of the current Zoning Ordinance, particularly Article 15-6(a)(3), which now requires the increased side yard setback for accessory structures when located between the property line and the principal structure.
- d. Strict adherence to the Zoning Ordinance would necessitate the re-location of the garage further to the rear yard, negating the long-standing role this lot has uniquely held as a transitional lot between the

shallower and deeper lots on Barberry Lane. In addition, it would greatly reduce the buffering between this lot and the adjoining townhouse development on Nicholasville Road.

- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The applicant has received approval of the design and location of the new accessory structure from the Board of Architectural Review, and now seeks the requested variance in order to obtain the necessary building permits prior to demolition and construction.

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

1. That all applicable permits, including a Certificate of Appropriateness from Historic Preservation office, and a Building Permit for the construction of the garage be obtained from the Division of Building Inspection prior to the construction.
2. **V-2013-17: XINCAI DONG** - appeals for variances to: 1) reduce the required number of parking spaces for a restaurant within the defined Infill & Redevelopment Area by 50%; and 2) increase the allowable 300-foot distance from the parking area to 1100 feet in a Neighborhood Business (B-1) zone, at 289 South Limestone (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. The applicant has demonstrated that based on the high volume of foot traffic, this proposed restaurant will need significantly less parking than other restaurants in more suburban settings. Additionally, the urban setting of downtown Lexington is a pedestrian-friendly environment with many existing on-street public (metered) parking options for customer demand.
- b. Granting the requested variance will not negatively alter the pedestrian-oriented character of the immediate area. It promotes the smart use of existing buildings and parking in the area because the applicant is proposing to utilize parking within an existing garage and not attempting to provide new surface parking.
- c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, as this site was 100% developed prior to the requirement for parking, and there is no opportunity to provide on-site parking for this project.
- d. The variance is not a result of the willful actions of the appellant, as their needs do not warrant a full complement of 15 parking spaces at this location. In addition, an ordinance has been initiated by the Urban County Council to allow designation of pedestrian-oriented business districts that may have parking requirements significantly reduced or eliminated. The subject property is just on the edge of the first area under consideration for this designation (S. Limestone Street).
- e. Requiring the full amount of parking for this restaurant, where the requirement far exceeds the demand, will require an additional financial burden and hardship to the appellant in order to procure off-site parking agreements in perpetuity.

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

1. The applicant will provide documentation of a renewable parking agreement for at least 8 parking spaces for the proposed restaurant prior to issuance of a Zoning Compliance Permit.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to the operation of the restaurant use on the subject property.
3. **V-2013-18: AMINA SHALASH** - appeals for a variance to reduce the required 30-foot setback along Alumni Drive to 20 feet in order to construct an in-ground pool in a Single Family Residential (R-1C) zone, at 1929 Long Pond Walk (Council District 5).

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, as the pool will be screened from the road and adjoining properties by an existing 8' tall brick wall.
- b. Granting the variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. The request is reasonable based on the small size of the rear yard and limited design options available on the subject lot.
- c. The circumstance that justifies the requested variance is that the property has two front yards, based on the requirements of the Zoning Ordinance, one of which functions as a rear yard.

- d. Strict application of the Zoning Ordinance would require that the pool and spa be moved very close to the existing house, despite the screening provided by the existing wall, which would likely detract from the overall appeal and usefulness of the rear yard activity area for this family.
- e. This variance is not the result of an action by the appellant, as no construction has begun for this property improvement.

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

- 1. The in-ground swimming pool shall be constructed in accordance with the submitted application and site plan.
- 2. All necessary permits shall be obtained from the Division Building Inspection and the Fayette County Health Department prior to construction
- 3. An administrative action plat reflecting action of the Board shall be filed with the Division of Planning in accordance with the requirements of the Subdivision Regulations.

D. Conditional Use Appeals

- 1. **C-2012-47: NADIA ALI BENALI** - requests a 6-month review of a conditional use permit approved in August 2012 for a home occupation (tutoring) in a High Density Apartment (R-4) zone, at 368 Shoreside Drive (Council District 7).

In August of 2012, the Board approved a conditional use permit for a home occupation, subject to five conditions, one of which was a 6-month review after issuance of a Certificate of Occupancy to determine if there had been any adverse impact to surrounding property owners and to determine compliance with the following conditions:

- 1. Tutoring shall be provided in accordance with the submitted application.
- 2. All necessary permits, including issuance of an occupancy certificate, shall be obtained from the Divisions of Planning and Building Inspection within 30 days of the Board's approval.
- 3. Students shall be limited to one at a time unless they arrive in the same vehicle.
- 4. This conditional use shall become null and void should the appellant no longer reside at this location.
- 5. The Board shall review this application in six months, with notice to the neighborhood association.

The Staff will report at the public hearing.

- 2. **CV-2013-15: UNIVERSAL HOMES OF KY** - appeals for a conditional use permit to establish an assisted living facility; and a variance to reduce the required 25-foot setback from a floodplain to 5 feet in a Professional Office (P-1) zone, at 2141 Executive Drive (Council District 6).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as an assisted living facility is an appropriate transition between existing commercial development to the south and east, and the residential uses to the north and west.
- b. All necessary public facilities, including any modifications to the stormwater system as deemed necessary by the Divisions of Engineering and Water Quality, will be available and adequate for this use.

The Staff Recommends: Approval of the Floodplain Setback Variance to ten (10) feet, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties, as the location of the proposed building is about 30' from the floodplain as approved by FEMA on Conditional Letter of Map Revision (CLOMR) case #05-04-2989R; and all of the necessary floodplain improvements for the subject property are completed and functioning properly, as per the approved CLOMR.
- b. The proposed structure is not located in the regulatory floodplain.
- c. Upon completion of all floodplain modifications in the overall development of Bluegrass Executive Park, and approval by FEMA on the final Letter of Map Revision (LOMR), this requested floodplain setback 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 this lot, and the issuance of the LOMR appears to be some time in the near future.
- e. The variance is not the result of the appellant's actions, as the development of this lot and its current

grading preceded the requirement for a 25' floodplain building setback.

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

1. Construction of the assisted living facility shall be done in accordance with the submitted application and site plan, or as amended by the Planning Commission.
 2. No building permits shall be issued until the Planning Commission approves a final development plan for the subject property, and that plan is certified.
 3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of the building.
 4. The parking lot shall be paved, with spaces delineated, and landscaped/screened according to the provisions of Articles 16 and 18 of the Zoning Ordinance. In addition, zone-to-zone screening shall be provided as required by the Zoning Ordinance prior to the issuance of any permits for occupancy.
 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 and the Division of Water Quality.
 6. Action of the Board shall be reflected on the Final Development Plan for the property.
3. **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).
4. **C-2013-14: BRIAN K. CROWDER** - appeals for a conditional use permit to operate a pawn shop in a Highway Service Business (B-3) zone, at 1206 East New Circle Road (Council District 5).

The Staff Recommends: 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 is conveniently available, and the existing building can accommodate the proposed use without the need for any expansion. The subject property is surrounded on all sides by other commercial uses.
- 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 pawnshop shall be established in accordance with the submitted application and site plan, and shall be limited to the 2,500 (+/-) square-foot suite currently proposed.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation; and prior to opening the pawnshop, A zoning compliance permit from the Division of Planning, as well as a Certificate of Occupancy from the Division of Building Inspection shall be obtained.
3. Pawning of vehicles shall not take place at the subject property, and vehicles pawned at other locations shall not be stored on site.
4. The applicant will maintain all existing vehicular use area screening on the property in accordance with the submitted site plan.
5. All signage shall comply with Article 17 of the Zoning Ordinance.
6. This approval shall become null and void should the appellant cease to occupy the subject property as a pawnshop.

E. **Administrative Review**

1. **AC-2013-12: SUSAN RICHIE** - appeals for an administrative review to determine that breeding and raising hedgehogs should be considered a home occupation; if determined as such, a conditional use

permit for a home occupation in a Single Family Residential (R-1E) zone, at 1589 Springfield Drive (Council District 8).

The Staff Recommends: Approval of the Administrative Appeal, for the following reasons:

- a. The commercial breeding and raising of hedgehogs, when contained within a 100 square-foot area such as a bedroom, is not substantially similar to a commercial kennel (prohibited in residential zones), primarily due to small size and quiet nature that allows the hedgehogs to be bred and raised completely indoors.
- b. Furthermore, the applicant has demonstrated that this proposed use does meet the criteria for consideration as a "gainful occupation," incidental to the residential use of a single family residential property, as defined in Article 1-11 of the Zoning Ordinance.

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

- a. This proposed use meets the criteria for approval as a home occupation, incidental to the residential use of the property, as defined in Article 1-11 of the Zoning Ordinance.
- b. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the activities and operations will be confined to a single bedroom within the house. The breeding and raising of hedgehogs will not have any effect on the exterior of the property, and the "point of sale" for these animals will be conducted off site. The applicant's operation will ensure that additional traffic, noise, and odors will not be generated by this use.
- c. All necessary public facilities and services are available and adequate for the proposed use, including police and fire protection and sanitary sewer service. With deliveries of the animals to other locations, local roadways are adequate for this home occupation to minimize disruptions to neighbors.

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

1. The applicant shall conduct this home-based business in accordance with the submitted application and site plan.
2. No other type of animal may be bred and raised on the premises.
3. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to issuance of a local business license.
4. This use shall comply with the requirements of the federal Animal Welfare Act. In addition, this use shall be subject to certification and/or licensure by the United States Department of Agriculture (USDA), as necessary.
5. A program for veterinary care shall be set in place for this use to ensure safe and responsible animal husbandry practices.
6. Should the applicant cease operation of this home occupation, this permit shall become null & void.

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