

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

August 23, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, August 23, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the June 28, 2013 and the July 26, 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-2013-50: CHARLES POPE** - requests two variances: 1) to reduce the required front yard from 50 feet to 26 feet; and 2) to reduce the required side yard on the northwest side of the property from 25 feet to 0 feet in order to construct a carport and a covered porch in the Agricultural Rural (A-R) zone, at 290 Carterbrook Lane (Council District 12).

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. It will not alter the character of the vicinity or cause a nuisance to the public, since most other properties are located at similar setbacks from the right-of-way. The side yard variance will be mitigated by the location of the fence about 10' from the property line, which will ensure that there will be room for the farm owner to maintain the fence.
- b. Granting these variances will not allow an unreasonable circumvention of the Zoning Ordinance since the building additions will be no closer to the road than the existing structure. The regulations from which the applicant seeks relief were intended for lots of 40 acres or more. The small ½-acre size of

this lot in an existing rural residential area constitutes a unique situation.

- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the applicant, as this structure would essentially be prohibited from a rather ordinary expansion. The applicant is prevented from making a significant addition to the rear of the structure because of the existing septic system on the property.
- d. The requested variances are 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.
- e. The variance is not a result of the applicant's actions, as the building has not been constructed, or even started. The need for the requested variances was recognized during the normal course of obtaining the necessary permits for the proposed additions.

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 building permit be obtained from the Division of Building Inspection prior to construction.

D. **Conditional Use Appeals**

- 1. **CV-2013-47: TRAIL BLAZER** - requests a conditional use permit to construct a tent for auto detailing, to be left on site for more than 60 days; and a variance to reduce the required front setback from 20 feet to 0 feet to allow the tent in a Highway Service Business (B-3) zone, at 2015 Family Circle (aka 1098 East New Circle Road) (Council District 5).

The Staff Recommends: **Approval of the requested conditional use permit**, 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 commercial uses, and it is not uncommon for them to have similar temporary structures for various reasons.
- b. The location of the temporary structure is appropriate, subject to the granting of a dimensional variance as recommended.
- c. No public facilities, such as utilities, are required for this use.

The Staff Recommends: **Approval of the requested variance**, 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 the tent will be not be in the required sight triangle. Furthermore, the existing tent, which was legally placed with a temporary Certificate of Occupancy, has not proven to be a nuisance or out of character with the surrounding area.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since it is typical for businesses to place temporary structures (tents) on their properties for grand openings or sidewalk sales. The placement of this particular tent is mitigated by the very tall hedge that is in place on the adjoining property as well as the wide grass utility strip between the property and the adjacent turning lane of New Circle Road to Family Circle.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, as alternate placements of the tent and detailing operation would create a hindrance to and a nuisance for the existing operation of this established business and their customers.
- d. The requested variance is not the result of a willful violation of the Zoning Ordinance, as the business obtained the appropriate permits for the placement of the temporary structure for the first 60 days, and is now requesting approval for up to 180 days. The location of the tent is dictated by the current configuration of the site which has been developed for decades.
- e. The variance is not a result of the applicant's actions, but rather a result of the pursuance of the appropriate permits for the temporary structure.

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.

- 2. **C-2013-48: YMCA OF CENTRAL KENTUCKY** - requests a conditional use permit to operate an after-school program for up to 48 students in an existing church in the Agricultural Rural (A-R) zone, at 4131 Todds 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, as the YMCA proposes to utilize the existing building and parking area to serve the after-school program (child care facility), which is located near the center of this 9.6-acre site.

- 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 use shall be conducted in accordance with the submitted application and a revised site plan that removes the "future parking" and "future structures" notations in the site statistics and an outdoor fenced and screened play area that is no smaller than 25 square feet per child
2. All necessary permits, including a final Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection within 60 days of approval by the Board of Adjustment. The revised site plan must be submitted to the Division of Planning prior to the issuance of a Zoning Compliance Permit.
3. Prior to issuance of the final Zoning Compliance Permit, the required outdoor play area shall be installed.
4. Any pole lighting for the parking lot shall be of a shoebox design, with light shielded and directed downward, to avoid disturbing any nearby properties.
5. The existing parking lot, screening, and storm water management plan shall continue to be implemented in accordance with the requirements of the Zoning Ordinance and Engineering Manuals.
6. Any new street access due to the connection of Polo Club Boulevard to Todds Road shall be designed to safely accommodate both the church and child care activities, subject to approval by the Division of Traffic Engineering.

3. **C-2013-49: YMCA OF CENTRAL KENTUCKY** - requests a conditional use permit to operate an after-school program for up to 48 students in an existing church in a Single Family Residential (R-1D) zone, at 2185 Garden Springs Drive (Council District 11).

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 YMCA proposes to utilize the existing building and parking area to serve the requested after school program (child care facility) which is located near the center of this 4.9 acre site additionally buffered by a public school and public park on two sides.
- 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 use shall be conducted in accordance with the submitted application and a revised site plan that removes the park property owned by the LFUCG; and identifies the existing site conditions for the church, including the off-street parking, building dimensions, and square footage of the existing outdoor play area.
2. All necessary permits, including a final Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection within 30 days of approval by the Board of Adjustment. The Zoning Compliance Permit is not to be issued until a revised site plan is received in the Division of Planning office.
3. The existing parking lot, screening, and storm water management plan shall continue to be implemented in accordance with the requirements of the Zoning Ordinance and Engineering Manuals.

E. **Administrative Reviews**

1. **AV-2013-45: STEVEN FOUNT HOUSE** - requests an administrative review to allow an increase in the allowable size of an accessory garage/barn from 949 square feet to 2304 square feet (2,368 total square feet of accessory buildings); and a variance to increase the allowable height of a front yard fence from 4 feet to 5 feet in a Single Family Residential (R-1B) zone, at 229 Eastin Road (Council District 6).

The Staff Recommends: **Approval of the requested administrative review**, for the following reasons:

- a. Granting the requested administrative review should not adversely affect the subject or surrounding properties. The proposed barn will not alter the character of the vicinity or cause a nuisance to the public, since this property is a very large lot consisting of 2.56 acres, and the sum total of accessory structures will be less than the total calculated floor area of the principal residential structure. Additionally, this barn will not overpower this lot and will be similar to the one approved by the Board on the adjacent property in 1998.
- b. Strict adherence to the Zoning Ordinance would necessitate that the applicant build a much smaller accessory structure than proposed, and will not allow the necessary room he needs to store his personal property which includes several vehicles and larger equipment needed to maintain his 2.5 acre property, much of which is wooded.

- c. The accessory structures will not be used for any commercial use.

The Staff Recommends: **Approval of the requested fence height variance**, 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; and because the fence height variance will allow the extension of an existing agricultural style fence which will not be out of character for this property or the surrounding neighborhood.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since the requested variance will allow the property owner to extend the existing fence and complete the fencing of the property in an orderly manner.
- c. The subject property was platted and developed prior to the adoption of the current Zoning Ordinance, particularly Article 15-4(b), which now limits the height of fences in the front yard of residential zones.
- d. Strict adherence to the Zoning Ordinance would necessitate that the applicant build a shorter fence, which will not be the same height as the existing fence. Furthermore, the applicant contends a shorter fence will not discourage thefts and that the proposed fencing is necessary as it will allow him to better secure his property.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The applicant was in the process of pursuing the necessary permits to construct the proposed barn and fencing, when the need for Board of Adjustment action was determined.

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

- 1. That this property shall be developed in accordance with the submitted site plan and application, noting specifically that the sum total of the three accessory buildings cannot exceed the total calculated square footage of the principal residence.
 - 2. That all applicable permits including a Building Permit for the barn and fencing permit be obtained from the Division of Building Inspection prior to construction.
 - 3. No additional accessory structures shall be erected on this property.
 - 4. There shall be no commercial use of the subject property.
2. **AC-2013-46: MARY BETH THOMPSON** - requests an administrative review to determine if individualized Pilates training should be allowed as a home occupation; if determined it should be allowed, a conditional use permit to offer one-on-one Pilates training in a Single Family Residential (R-1D) zone, at 902 Charwood Drive (Council District 12).

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

- a. Granting the requested administrative appeal, and the requested conditional use, permit should not adversely affect the subject or surrounding properties. This proposed home occupation for individualized personal training is similar in scale and nature to allowable uses such as educational tutoring or individual music instruction, thus, it meets the requirements stated in Article 1-11 of the Zoning Ordinance.
- b. Adequate parking is available for this use in the driveway of this home, or on street should the need arise. No disturbances to surrounding property owners are anticipated with this conditional use.
- c. All necessary public facilities and services are available and adequate for the proposed home occupation use.

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

- 1. This conditional use shall be operated in accordance with the submitted application and site plan.
- 2. All necessary permits, including issuance of a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to commencement of the home occupation use.
- 3. The activity shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.
- 4. This conditional use shall become null and void should the appellant no longer reside at this location.

- 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 September 27, 2013.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.