

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

September 27, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, September 27, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the May 21, 2013 and the August 23, 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-2013-56: DAVID and LOUISE PENDERY** - a variance to reduce the required side yard from 27 feet to 19 feet in order to construct a residential addition in the Agricultural Rural/Neighborhood Design Character Overlay (A-R/ND-1) zone, at 2560 Walnut Grove Lane (Council District 12).

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 proposed protrusion into the side yard setback is minimal, and a potentially more intrusive addition could legally be built without the need for a variance.
- b. Granting the variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. With a restriction that the side yard not be averaged, and established with a minimum width of 19', the requested variance will actually provide a greater minimum distance to the property line than the Zoning Ordinance otherwise allows.
- c. The circumstance that justifies the requested variance is that the 1.4-acre property is much smaller than the 40-acre minimum lot size to which the 25' side yard is typically applied.

- d. Strict application of the Zoning Ordinance would require that the design of the proposed additions be modified in such a way that may ultimately be more intrusive to the neighboring property owner.
- e. This variance is not the result of an action by the appellants, and there is no willful violation associated with this proposed property improvement..

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

- 1. The proposed additions shall be constructed in accordance with the submitted application and site plan.
- 2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy and construction, respectively.
- 3. At no point shall the side yard be less than 19', and averaging will not be allowed on the northern property boundary.

- 2. **V-2013-57: BRIAN and ANGELA JOHNSON** - a variance to increase the allowable height of an accessory structure from 20 feet to 21' 10" at mid-gable in a Single Family Residential (R-1C) zone, at 247 Shady Lane (Council District 4).

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

- a. Granting the height variance from 20' to 21' 10" will not adversely affect the public health, safety or welfare, as it will not impede the provision of emergency services for the subject or surrounding properties. Furthermore, the detached garage will not be out of character with the general vicinity, as there is a mixture of housing styles and roof heights, some with detached accessory structures, some with attached garages and others with only driveways.
- b. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, since the structure will have a roof pitch that is lower than, and which mimics the existing roof of the house on this lot.
- c. The subject property is an oddly-shaped lot with narrow frontage, which constitutes a unique circumstance since side yards are difficult to achieve, given its shape.
- d. Not granting the variance could cause an unnecessary hardship on the applicant because either removing the gabled roof and replacing it with a flat roof, or by attaching the garage to the principal structure via an enclosed floor area would likely be very expensive.
- e. The circumstances that led to the need for the variance do not appear to be a willful violation of the Zoning Ordinance, but rather a mistake made during the construction of the garage. A building permit was obtained for this structure prior to its construction. Further work on the garage (other than the minimum necessary to keep the structure dry) has ceased pending the outcome of the Board's action on this variance request.

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

- 1. The applicant shall submit an amended site plan to the Division of Planning to reflect the corrected location of the garage prior to submitting an addendum to the building permit.
- 2. The applicant shall submit an addendum to the building permit to the Division of Building Inspection to reflect the amended construction of the garage, including a reference to the Board's action.

- 3. **V-2013-58: DEREK NIELSEN and LINDSAY SCOTT** - a variance to reduce the required side yard from 3 feet to 0 feet in order to retain an existing privacy fence in a Planned Neighborhood Residential (R-3) zone, at 432 Julia Way (Council District 1).

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

- a. Reducing the required side yard from 3' to 0', only for the purpose of retaining a portion of the fence 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 unusually wide side yards of the subject lot, combined with the large side yards of the neighboring lots, results in an average 19' between the houses, well in excess of the minimum 3' requirement of the R-3 zone. This constitutes a unique circumstance.
- c. The location of the fencing is in an area with at least an 11' 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. This could become a maintenance problem for both the property owner and for the immediate neighbors, and 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 appellants, as they obtained a fencing permit. A field adjustment made during the construction of the fence was thought to be in keeping with the character of the neighborhood.

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

1. A revised fencing permit shall be obtained the Division of Building Inspection that shows the fence as depicted in the submitted application and site plan, within the next 30 days.
4. **V-2013-59: HARMONY HB, LLC** - a variance to reduce the required side yard from 3 feet to 0 feet in order to allow an existing window well to remain as constructed in a Single Family Residential (R-1E) zone, at 305 White Oak Trace (Council District 2).

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

- a. Provided the existing drainage easement is modified, reducing the required side yard from 3' to 0', only for the purpose of retaining the window well in the side yard, will not adversely affect the public health, safety, or welfare, but will improve the safety of the residents and emergency responders by providing necessary ingress and egress during times of emergency. Furthermore, the requested variance will not alter the character of the area, as only 2-3 inches of the retaining wall are visible from the street.
- b. The special circumstance that applies to this property is the existing topography and the fact that there was already a privately owned house next door, which necessitated the builders to construct the window well.
- c. Allowing the applicant's window well to remain on the lot, as it was installed, enables the protection and safety of the residents of this home. Therefore, there will be no resulting circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance will deprive the resident of the house the use of an existing basement bedroom, as it would no longer meet the egress requirements of the Kentucky Building Code.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as a permit was applied for and a field adjustment was made during the construction of the house. Based on to the topography, this was the best option available at the time. Therefore, the window well was constructed to comply with the Kentucky Building Code.

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

1. The applicant shall submit an addendum to the building permit to the Division of Building Inspection to reflect the amended construction of the window well, including a reference to the Board's action.
2. An Easement Minor Amended plat shall be filed to modify the existing private drainage easement in this side yard. This plat shall be submitted to the Division of Planning within 60 days of the Board's approval.
5. **V-2013-60: JOHNSTON CHARITABLE TRUST** - a variance to reduce the required parking by 50% (4 to 2 spaces) in a Neighborhood Business (B-1) zone, at 149 Jefferson Street (Council District 2).

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

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The subject property is located in an older downtown neighborhood where few properties comply with current requirements for off-street parking. On-street parking is available in the immediate vicinity of the subject property on Jefferson Street and on Ballard Street.
- b. The applicant wishes to replace a non-conforming residential use in a B-1 zone with an allowable small business; and within the defined Infill and Redevelopment Area, granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance.
- c. The extremely small size of the property, especially for a business use, in conjunction with the existing two parking spaces that are accessible via an alley, is a special circumstance that applies to this property and is not generally applicable to other business properties along this corridor, or near the downtown.
- d. Strict application of the Zoning Ordinance would likely necessitate that property continue to be used as a non-conforming residential use despite being on a corner lot, as it would be difficult for most commercial enterprises to meet the current parking requirements of the B-1 zone.
- e. The requested variance is not a result of the applicant's own actions or a willful violation of the Zoning Ordinance, as this lot was created in the late 19th century and has been zoned for a non-residential use for at least 60 years. The configuration of the lot and placement of the building on it, along with the commercial zoning, were well in place before the current parking regulations were in effect.

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

1. The property shall be developed 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 prior to occupancy of the business use.

D. **Conditional Use Appeals**

6. **CV-2013-51: TLC MILLER, LLC** - a conditional use permit for a night club; and a variance to reduce the required parking by 50% (from 10 to 5 spaces) in a Neighborhood Business (B-1) zone, at 319-A South Limestone (Council District 3).

The Staff Recommends: **Approval** of the requested conditional use permit, for the following reasons:

- a. A small bar/nightclub at this neighborhood business location should not adversely affect the subject or surrounding properties, as the building will be soundproofed and is oriented toward South Limestone Street, which should help to minimize any potential for noise. In addition, there will be restrictions on outdoor entertainment or outdoor speakers allowed as a part of this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: **Approval** of the identified variance from 100' to 91', for the following reasons:

- a. A slight reduction in the setback from a residential zone (actually used as a commercial parking lot) should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Outdoor live entertainment will not be provided; and the cocktail lounge and nightclub will occupy an existing building that is oriented toward South Limestone, with a University of Kentucky parking garage directly across the street. Furthermore, outdoor speakers will be prohibited with this use.
- b. The existing development pattern in this block of pedestrian-oriented business uses, and the configuration of the surrounding residential zoning that is being used as a commercial parking lot, are special circumstances that contribute to justifying a slight reduction in the 100-foot setback requirement to 91 feet.
- c. The intent of the distance requirement from a residential zone is to control those more intense business uses from residences, not parking lots; therefore, there will not be a circumvention of the purpose for the zoning regulation.
- d. Strict application of the Zoning Ordinance would effectively prevent a cocktail lounge (bar) or nightclub from occupying the existing building, as none of the subject property is at least 100 feet away from the nearby residential zones.
- e. The appellant is making a reasonable effort to adaptively re-use an existing building in the midst of several other neighborhood businesses. No physical expansion of the building is needed to accommodate the requested use, and there is no indication that an effort is being made to circumvent a requirement of the Zoning Ordinance.

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

1. The cocktail lounge/nightclub shall be established in accordance with the submitted application and site plan.
2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.
3. The rear doors shall remain closed any time that live entertainment is provided, and outdoor speakers shall be prohibited on the property.
4. Soundproofing shall be provided between the two existing commercial suites.

7. **C-2012-59: RYAN CONBOY** - a 1-year review of a conditional use permit for an animal crematory in the Agricultural Rural (A-R) zone, at 7001 Greenwich Pike (Council District 12).

Findings:

- a. Overall, the appellant is in substantial compliance with the conditions required by the Board at the September 28, 2012, hearing. Should the appellant continue operation of this conditional use permit at this location, it will be subject to the standard annual Zoning Enforcement staff review.
- b. The applicant has not completely complied with Condition 2 as of the writing of this staff report; however, he is in process of obtaining a temporary Certificate of Occupancy in order to be in complete compliance.
- c. Condition 4 has been met by paving the entrance, however, it had not been met during the required time frame because of extenuating circumstances, and the subsequent litigation involved with the Board's September 28, 2012, decision.

- d. Based on the logs, the service being provided, the unpredictability as to when animals may expire and require cremation and the showing that the use of the crematory over the last year has caused no disturbance to the surrounding areas.

- 8. **C-2013-53: IDLE HOUR COUNTRY CLUB** - a conditional use permit to expand the country club (pool bar canopy and service area roof) in a Single Family Residential (R-1B) zone, at 1815 Richmond Road (Council District 5).

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

- a. The physical arrangement of the improvements on the subject property, along with the relatively small size of the two new canopies proposed near the pool and on the southeast wall of the main clubhouse, will minimize any potential negative impact of this conditional use upon the surrounding neighborhood. Thus, there will be no adverse impact upon the nearby neighborhood for this expansion of the country club.
- b. All services and infrastructure are adequate and available for this expansion of the country club's conditional use permit.

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

- 1. The proposed canopies shall be constructed in the locations indicated on the corollary site plan, and shall be operated in accordance with the submitted application.
- 2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to the construction of these site improvements.

- 9. **C-2013-54: JIM WILHITE** - a conditional use permit to modify a currently approved site plan, replacing a portion of the on-site parking with townhomes in a Townhouse Residential (R-1T) zone, at 3500 Arbor 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 intensity of this previously approved use is being greatly diminished. Removal of the bus parking lot is justified because the enrollment at this facility has been greatly reduced, and competitions are no longer held at this location.
- 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 uses shall be maintained in accordance with the approved site plan and application.
- 2. A new Zoning Compliance Permit shall be issued for the existing conditional use by the Division of Planning.
- 3. Any pole lighting for the parking areas shall be of a shoebox or similar design, with light shielded from and directed away from all nearby residential properties.
- 4. Stormwater management shall continue to be provided as required by the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
- 5. The total enrollment of the private club and daycare use shall not exceed a maximum of 200 students.
- 6. Approval by the Board shall be noted on the applicable (most recent) development plan approved by the Planning Commission for the subject property.

E. **Administrative Reviews**

- 10. **AC-2013-52: ASSOCIATES IN PEDIATRIC THERAPY** - an administrative review to determine that physical therapy is substantially similar to an athletic club facility; and, if determined to be the case, a conditional use permit to operate such use in conjunction with an existing athletic club facility in a Light Industrial (I-1) zone, at 1850 Bryant Road (Council District 6).

The Staff Recommends: **Approval** of a conditional use permit for a physical therapy use, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This site is well suited to accommodate the proposed physical therapy use within an existing athletic club facility, and that use will be very limited, and conducted in accordance with the submitted application and site plan.
- b. All necessary public facilities and services, including storm and sanitary sewer service, are available

and adequate for the proposed use.

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

1. The physical therapy use shall be established in accordance with the submitted application and site plan.
2. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to commencing this new use.

11. **A-2013-55: SOLOMON LEE VAN METER** - an administrative appeal to change one legal non-conforming use (retail) to another non-conforming use (residential) in a Light Industrial (I-1) zone, at 372 Jefferson Street (Council District 1).

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

- a. The requested use of a single family residential dwelling unit will be a decrease in the intensity of the previous retail non-conforming use of the subject property. It will not negatively impact the subject property, which is currently vacant as a result of a fire in the fall of 2012, nor will it negatively alter the character of the surrounding residential properties.
- 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 property shall be used in accordance with the submitted application and site plan.
 2. A Building Permit shall be obtained from the Division of Building Inspection prior to the start of construction.
 3. The maximum allowable volume of the new single family dwelling unit shall be limited to 22,500 cubic feet, and shall be within the setback limits depicted on submitted site plan.
12. **A-2013-61: CLAYTON FARMER** - an administrative appeal to review the denial of a permit to expand a non-conforming use in a Neighborhood Business/Historic District Overlay (B-1/H-1) zone, at 155 East Third Street (Council District 1).

The Staff will report at the hearing.

- 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 October 25, 2013.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.