

AGENDA FOR THE BOARD OF ADJUSTMENT SPECIAL MEETING

November 15, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, November 15, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the September 27, 2013 meeting 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-2013-63: JOHN KELLY** - an appeal for a variance to increase the maximum allowable driveway width from 24 feet to 34 feet in an Expansion Area Residential (EAR-1) zone, at 460 Weston Park (Council District 7).

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

- a. The requested variance does not arise from a special circumstance that does not generally apply to lands in this same zone. There are no unique physical characteristics, such as topography or neighborhood character, that would serve as a justification to approve the requested driveway width variance.
 - b. Strict application of the Zoning Ordinance will not deprive the applicant of a reasonable use of his property, in this instance.
2. **V-2013-69: GREEN DEVELOPMENT, LLC** - an appeal for a variance to eliminate a portion of the required zone-to-zone screening in a Professional Office (P-1) zone, at 2429 Members Way (Council District 10).

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

- a. The requested variance does not arise from a circumstance that does not generally apply to lands in

this same zone. There are no unique physical characteristics, such as topography or existing vegetation, that would serve as a justification to approve the requested landscape variance.

- b. Strict application of the Zoning Ordinance will not deprive the applicant of a reasonable use of their property, as there is space available to install a solid fence along the property line.
3. **V-2013-70: JACK H. BALLARD** - an appeal for variances to reduce: 1) the required setback along Plunkett Street from 8 feet to 0 feet; and 2) the required side yards from 1' 6" to 0 feet in order to construct a detached garage in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, at 513 S. Mill Street (Council District 3).

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 in this block have rear garages that are located at similar setbacks from the right-of-way of Plunkett Street.
- b. Granting these variances will not allow an unreasonable circumvention of the Zoning Ordinance since the average setback on this side of Plunkett Street is actually at 0'. The subject lot is unusually narrow, but otherwise consistent with others in this block of the historic neighborhood, and is a unique circumstance that doesn't generally apply to other lots in the R-2 zone.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, as it would be difficult to design a comparable garage on such a narrow lot and it would be 8 feet further back from the street than other buildings in this block.
- 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, and has already received design approval for this site improvement.
- 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. The addition shall be constructed in accordance with the submitted application and site plan.
 - 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 - 3. All construction shall comply with the conditions imposed earlier this year by the Board of Architectural Review.
 - 4. The property owner shall maintain access (pedestrian gate in the fence) to the rear of 316 Pine Street.
4. **V-2013-71: JERRY HAHN** - an appeal for a variance to increase the maximum allowable height of a rear yard fence from 8 feet to 10 feet in a Single Family Residential (R-1C) zone, at 855 Glendover Road (Council District 4).

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

- a. Increasing the maximum height of the fence along the arterial road from 8' to 10' should not adversely affect the public health, safety, or welfare, nor alter the character of the area, as the properties on either side of this lot currently have fences that are about 10' tall.
- b. The topography of the subject property, being approximately 4 feet below the existing sidewalk, is a unique circumstance, which justifies the requested height variance.
- c. From the right-of-way, the 10' fence will have an approximate height of 6'; therefore, there will be no resulting circumvention of the Zoning Ordinance, which allows up to an 8' fence height for double frontage lots along an arterial road.
- d. Strict application of the Zoning Ordinance would result in a fence height that does not effectively screen the subject property's rear yard from the right-of-way, especially car headlights, as this property is located adjacent to a major road intersection.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as he is seeking the variance before obtaining the required fencing permit. The requested variance is a direct result of the physical changes (cutting of trees and other vegetation and necessary grading) required in the right-of-way in order to complete the new sidewalk, which is part of a public improvement project.

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

- 1. That the applicant obtain a fencing permit from the Division of Building Inspection prior to construction of the fence, and that the fence be limited to a height of 10 feet.

D. **Conditional Use Appeals**

1. **C-2013-62: K. WESLEY FARLEY** - an appeal for a conditional use permit to allow retail sale of antiques and home furnishings in a Light Industrial (I-1) zone, at 573 - 575 Maryland Avenue (Council District 2).

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

- a. It is unclear at this time that this location will be able to simultaneously accommodate both the proposed and the existing business uses.
 - b. Improvements to the parking lot, including storm water management and landscaping, are required by the Zoning Ordinance, but are not proposed by the applicant. Additional time will allow the applicant to address these concerns.
2. **C-2013-64: NANCY PAULEY** - an appeal for a conditional use permit to establish a cocktail lounge in conjunction with an artist studio in a Planned Shopping Center (B-6P) zone, at 3851 Mall Road (Council District 9).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed cocktail lounge is a very specialized bar, which will be operated in conjunction with an artist's studio for painting classes. This use is more than 1,000 feet away from the nearest residential zone, and should not cause noise or other disturbances.
- 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 site plan and application.
 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 establishing the use.
 3. The conditional use of a cocktail lounge is only valid when operated in conjunction with an artist's studio at this location.
 4. This approval shall be considered null & void if the applicant should cease operating this use at this location.
3. **C-2013-65: NATHANIEL MISSIONARY SOCIETY, INC.** - an appeal for a conditional use permit to occupy an existing building as a church in a Wholesale and Warehouse Business (B-4) zone, at 1109 Versailles Road, Ste. 400 (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. Adjoining or nearby land uses, largely of a commercial nature, are not likely to be disturbed by church activities. The nearest residential area is several hundred feet away, and adequately buffered from the proposed church site.
- b. All necessary public facilities and services are available and adequate for the proposed use, including off-street parking.

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

1. The church shall be established 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 prior to the operation of this use.
 3. Should a future expansion of the church at this location be desired, approval by the Board of Adjustment will be required.
4. **C-2013-66: L. ROBERTS PROPERTIES, INC.** - an appeal for a conditional use permit to establish a vehicle storage yard in a Light Industrial (I-1) zone, at 2285 Maggard Drive (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. Furthermore, the site is well suited for the proposed use, being completely surrounded by compatible uses, well served by the collector street system, and naturally screened due to the topography and trees along two of its four sides. Furthermore
- b. All necessary public facilities and services are available and adequate for the proposed use. The applicant will be required to upgrade the stormwater system, if determined to be necessary.

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

1. The use shall be conducted in accordance with the submitted application and site plan.
 2. All necessary permits for construction, including a land disturbance and grading permits, shall be issued prior to commencement of the additional concrete areas or any modification to the detention basin.
 3. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
 4. The applicant shall provide or continue to employ both water quality and water quantity controls that meet the Engineering Manuals, to the acceptance of the Division of Engineering.
5. **C-2013-67: DR. JOSEPH G. YOCUM, DVM, PLLC** - an appeal for a conditional use permit to establish a veterinary clinic in a Neighborhood Business (B-1) zone, at 4371 - 4379 Old Harrodsburg Road (Council District 10).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed veterinary clinic will be indoors within a soundproofed office, and will be conducted without overnight boarding. Adequate parking is available, and the location of this suite should further prevent any potential for this use to be a nuisance to the nearby neighborhood.
- 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 site plan.
 2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be issued by the Divisions of Planning and Building Inspection prior to the operation of this use.
 3. The typical hours of operation of this use will be noted prior to the issuance of a Zoning Compliance Permit for the purpose of record-keeping regarding the joint use of parking spaces in this shopping center.
 4. There shall be no overnight boarding of animals at this location, and the building shall be soundproofed inasmuch as possible to avoid potential noise disturbance to surrounding properties.
6. **C-2013-68: CENTRAL KY UNITED, INC. (aka UNITED TALENT)** - an appeal for a conditional use permit to establish an indoor recreational facility in a Heavy Industrial (I-2) zone, at 1709 Jaggie Fox Way (aka 2308 Maggard Drive) (Council District 2).

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

- a. Additional time is needed for the applicant to submit a revised deed and land use restriction form for this application.
- b. Additional time is needed to determine the future use of the other vacant industrial building on this site.
- c. It is unclear at this time whether this proposed conditional use will be able to meet the required parking or if the other industrial use will be incompatible with this proposed recreational facility.

E. **Administrative Reviews** - None

- IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.
- A. **2014 Meeting and Filing Schedule** - As part of its Bylaw-related duties, each year the Board of Adjustment adopts the Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2014 is in draft form and will be presented to the Board for review and/or discussion prior to its official adoption.
 - B. The Department of Law will request that the Board convene to a closed session in order to discuss a matter of pending litigation.
- 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 November 22, 2013.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.