

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 22, 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 22, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that there are no minutes of previous meetings 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-2013-72: WANDA R. BERTRAM** - appeals for a variance to reduce the required setback along Ty Court from 24 feet to 10 feet in order to construct a rear yard deck in a Two Family Residential (R-2) zone, at 735 W. High Street (Council District 2).

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 neighborhood. The second-story deck will not infringe on the use of the right-of-way of the subject property or surrounding properties and it will not be out of character, as other adjoining properties have similar rear decks.
- b. Granting the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because of the unique circumstances of this lot.
- c. The configuration of the street at the back of the property, the topographic difference between the

- street and the second-story deck, and the fact that there is no developable land on the other side of the street are all special circumstances that contribute to justifying the requested variance.
- d. Strict application of the Zoning Ordinance will deny the applicant the ability to place the second-story deck on the rear of the property. The two lots that make up this one duplex are the only two properties of the seven that have access to Ty Court that do not have a second story deck.
 - e. The need for the variance was recognized during the normal permitting process for the deck. There is not any willful violation of the Zoning Ordinance associated with this request.

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

- 1. The applicant shall obtain all necessary permits from the Division of Building Inspection for the deck.
- 2. An administrative action plat shall be filed in accordance with the requirements of the Division of Planning reflecting the action of the Board.

- 2. **V-2013-75: PAUL KRESTIK** - appeals for a variance to reduce the required setback from Ty Court from 24 feet to 10 feet in order to construct a rear yard deck in a Two Family Residential (R-2) zone, at 801 W. High Street (Council District 2).

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 neighborhood. The second-story deck will not infringe on the use of the right-of-way of the subject property or surrounding properties and it will not be out of character, as other adjoining properties have similar rear decks.
- b. Granting the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because of the unique circumstances of this lot.
- c. The configuration of the street at the back of the property, the topographic difference between the street and the second-story deck, and the fact that there is no developable land on the other side of the street are all special circumstances that contribute to justifying the requested variance.
- d. Strict application of the Zoning Ordinance will deny the applicant the ability to place the second-story deck on the rear of the property. The two lots that make up this one duplex are the only two properties of the seven that have access to Ty Court that do not have a second story deck.
- e. The need for the variance was recognized during the normal permitting process for the deck. There is not any willful violation of the Zoning Ordinance associated with this request.

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

- 1. The applicant shall obtain all necessary permits from the Division of Building Inspection for the deck.
- 2. An administrative action plat shall be filed in accordance with the requirements of the Division of Planning reflecting the action of the Board.

- 3. **V-2013-76: THE OAKS CONDOMINIUM ASSOC.** - appeals for a variance to increase the maximum allowable height of a front yard fence from 4 feet to 7 feet in a Townhouse Residential (R-1T) and a Planned Neighborhood Residential (R-3) zone, at 395 Redding Road (Council District 4).

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, as the proposed fence will not be in the sight triangle for this intersection. It will not alter the character of the vicinity or cause a nuisance to the public, as this site has long had 6' tall fence with 7' decorative posts in its front-yard.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since it is promoting the redevelopment of the entry to this property in a way that is compatible with the existing development pattern. The requested variance is minor in nature (only about 10% of the linear feet of new fencing) and not contrary to the intent of the Zoning Ordinance requirements.
- c. The subject property was developed prior to the adoption of the current Zoning Ordinance, particularly Articles 15-4(b), which now requires a maximum 4' fence height in the front yard. The majority of the existing fence surrounding this property is a legal non-conforming fence with an average height of 6' (and up to 7' at the columns). The small portion of fence requested for this variance will allow it to

- remain at a consistent height to easily tie into the existing fence.
- d. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, because it would require that a fence be constructed that is incompatible with the existing fencing and entry features of the property.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The applicant seeks to upgrade the existing gated entry to improve circulation and safety; and the height variance for the fence is a reasonable part of that redevelopment project to ensure compatibility with the existing.

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

1. The property shall be developed in accordance with this application and site plan, unless specific changes are required by the Fire Department, Traffic Engineering, or by the Planning Commission on a revised development plan.
 2. All fence permits shall be obtained from the Division of Building Inspection prior to its construction.
 3. The Fire Department shall have final review and approval of any gate modification to this site.
 4. The applicant shall submit an amended development plan for this property, identifying the new gate, prior to the issuance of permits.
4. **V-2013-77: NEPTALI DIAZ** - appeals for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to retain a detached storage shed in a Single Family Residential (R-1C) zone, at 1910 Picadilly Street (Council District 11).

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

- a. Provided the applicant can obtain an encroachment agreement from all utility companies, as well as the Urban County Government, reducing the required side yard from 8' to 1.5', for the purpose of retaining the accessory structure in the side yard, will not adversely affect the public health, safety, or welfare, nor adversely affect the character of the area.
- b. There would not be an unreasonable circumvention of the Zoning Ordinance with this variance, as it is common for storage sheds to be 18" from side and rear property lines, as there is one on the adjacent property as well.
- c. The special circumstance that applies to this property is the unusually wide existing side yard, which is about 20 feet in width, which is more than double the required 8-foot minimum.
- d. Strict application of the Zoning Ordinance will require the property owner to move the structure a considerable distance on the lot, which due to its size and type of construction will be difficult and costly for the appellant.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as it was unknown to him at the time that a permit was required for an accessory structure.

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

1. The applicant shall obtain a building permit from the Division of Building Inspection, including a reference to the Board's action after receiving an encroachment agreement from all the utility companies and the Urban County Government prior to the issuance of a the Permit.
2. All encroachment agreements and the Zoning Compliance Permit and the Building Permit shall be obtained within four months of the Board's action, or this shed will be required to be relocated a minimum of 5 feet from the side property line at the applicant's expense.

D. Conditional Use Appeals

1. **C-2013-73: MISTER MONEY/FIRST CASH FINANCIAL SERVICES, INC.** - appeals for a conditional use permit to expand an existing pawn shop in a Highway Service Business (B-3) zone, at 1300 Winchester 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, as the subject property is surrounded on three sides by other commercial uses, and is physically separated from the nearest residential use by a privacy fence and trees.
- 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.

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 any construction and/or renovation, and prior to opening the pawn shop.
3. The applicant shall maintain signage compliant with Article 17 of the Zoning Ordinance at all times, and a Zoning Compliance Permit for this conditional use shall not be issued by the Division of Planning until window signage is in compliance with those requirements.

2. **C-2013-74: BARBARA DALE** - appeals for a conditional use permit to provide family child care for up to 12 children to in a Single Family Residential (R-1C) zone, at 4189 Forsythe Drive (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. Adequate off-street and on-street parking is available for this use. As a condition of approval, a fenced and screened outdoor play area will be provided outside of the designated floodplain. Noise and other disturbances to surrounding property owners are not anticipated, as care for the twelve children will only be provided during daytime hours.
- 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. Child care shall be provided in accordance with the submitted application and a clarified, modified, site plan; to the approval of the Division of Planning, and shall only be operated from 6:00 am - 6:00 pm Monday-Friday.
2. All necessary permits, including issuance of a Zoning Compliance Permit, Fence Permit, and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the child care use for more than six (6) children at this location.
3. The fence shall be erected outside the limits of the current floodplain in the rear of the property.
4. All play equipment for children to be located in the rear yard, shall be located between the fence and the rear wall of the dwelling, outside of the floodplain.
5. The Division of Planning shall not issue a Zoning Compliance Permit until adequate fencing is in place, is deemed to be safe, and meets the requirements of the Zoning Ordinance.
6. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
7. This conditional use shall become null and void should the applicant no longer reside at this location.

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.
- 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 December 13, 2013.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.