

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

December 13, 2013

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, December 13, 2013.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the November 15, 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-2013-77: 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-2013-62: 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-2013-68: 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.

Note: The Board of Adjustment recommended postponement for the listed item at the November 15, 2013 meeting. Since that time, on November 26, 2013, the appellant, Mr. Brian Harris, requested that this item be withdrawn, via email correspondence.

The staff will report at the meeting.

3. **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.

4. **C-2013-78: ELNA MARIE PHILLIPS** – appeals for a conditional use permit to provide family child care for up to 12 children in a Mobile Home Park (M-1P) zone, at 423 Fairdale Drive (Council District 1).

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. A large fenced outdoor play area will be provided.
- 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 site plan.
2. All necessary permits, including issuance of a Zoning Compliance Permit and an Occupancy Certificate, shall be obtained from the Divisions of Planning and Building Inspection prior to beginning child care for more than six (6) children at this location.
3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
4. This conditional use shall become null and void should the applicant no longer reside at this location.

5. **C-2013-79: CENTER POINT CHURCH** – appeals for a conditional use permit to establish a church in a Highway Service Business (B-3) zone, at 1300 E. 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. Adjoining or nearby land uses are of a commercial nature and are not likely to be disturbed by typical church activities. The church's highest parking needs are during the off-hours of the nearby commercial entities and should not overlap; therefore, adequate parking is available for the proposed use.
- 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 commencement 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.

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 January 31, 2014.

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