

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

January 31, 2014

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, January 31, 2014.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the November 22, 2013 and December 13, 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-2014-5: STEPHEN LEACHMAN** - appeals for a variance to reduce the required side yard on the north side of the property from 25 feet to 9'5" and a variance to reduce the required side yard from the south side of the property from 25 feet to 24 feet in order to rebuild a residence in the Agricultural Rural (A-R) zone, at 1198 Centerville Lane (Council District 12).

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

- a. Granting the requested side yard variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed residence will be situated no closer to the property line than the previous nonconforming structure, and there are many residences on nonconforming lots in the Centerville Rural Settlement that have side yards of less than 25'.
- b. Granting the requested variances will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance, as the lot is atypical for the Agricultural Rural (A-R) zone, and lots of this size typically do not have a side yard as large as 25', and the primary dwelling proposed is a principal permitted use to this zone.
- c. The narrow width of these lots in the Agricultural Rural (A-R) zone is a unique and special circumstance that contributes to justifying the requested variances.
- d. Strict application of the Zoning Ordinance would limit the ability of the appellants to construct a reasonably sized home on the subject property without an unorthodox orientation on this lot, and would

perhaps be contrary to the stated goal of the Rural Land Management Plan to stabilize and enhance housing in historic rural settlements of Fayette County.

- e. These variances have been requested prior to the issuance of a Building Permit, which is in the normal course, and in compliance with the Zoning Ordinance.

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, being no closer to the northern property line than 9 feet, 5 inches.
 2. All applicable permits, including a Building Permit and grading permit, if needed, shall be obtained by the applicant from the Division of Building Inspection on the subject property prior to any construction.
 3. Prior to occupancy of the structure, an inspection shall be conducted by the Division of Building Inspection, and a Certificate of Occupancy issued.
 4. The property shall not be used a junk yard (as defined in the Zoning Ordinance,) or as a storage site for business equipment or materials, and shall comply with any ruling or order by the court system.
 5. All construction equipment and construction materials shall be removed from this site and stored at an appropriately zoned location prior to the issuance of a Certificate of Occupancy for this dwelling, and shall comply with any ruling or order by the court system.
 6. A building permit shall be applied for within three (3) months of approval by the Board of Adjustment.
2. **V-2014-6: DALE W. TOROK** - appeals for a variance to reduce the required side street side yard from 20 feet to 5 feet in order to rebuild and expand an existing detached garage in a Planned Neighborhood Residential (R-3) zone, at 1105 N. Broadway (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. It will not be out of character with the existing neighborhood, as the garage expansion will align with an existing wall and hedge that have been on the property for approximately 60 years, thereby making the addition largely unnoticeable.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. The expanded garage will extend even with other features on the property (wall and hedge) that have existed for approximately 60 years.
- c. The existing legal non-conforming guest house with a kitchen facility, and the significant 60' tall tree, create unique circumstances that prevent the expansion of the garage in any other direction, other than southwest toward the side street.
- d. Strict application of the Zoning Ordinance would require the removal of either the legal non-conforming guest house or the significant tree to accommodate the desired expansion of the garage.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather a design response to the unique circumstances of this property.

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

1. The property shall be developed in accordance with submitted site plan and application allowing minor modifications, if required, by the Divisions of Engineering, Traffic Engineering, or Building Inspection as a part of the normal permitting procedures.
 2. All necessary permits shall be obtained by the applicant, including but not limited to a building permit for the garage expansion, prior to construction.
3. **V-2014-7: ZAHRA TAVAKOLI/ERIC OSTERTAG** - appeal for a variance to increase the maximum allowable parking from 3 to 4 spaces in the defined Infill and Redevelopment Area in a Two-Family Residential (R-2) zone, at 511 West Third 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, as the garage will be accessed via a rear alley and the adjacent property has a similarly constructed 4-car garage.
- b. The large size of the single family home, the existing paved area that could possibly accommodate up to 4 cars, the rear alley access, the adjacent industrial user, the restricted on-street parking on W. Third Street, and the similarly constructed 4-car garage on the adjacent property all create special circumstances that contribute to justifying the requested variance.
- c. Strict application of the Zoning Ordinance requirements would limit the construction of the garage to no more than 3 parking bays. The end result would be that the garage could be built smaller, or the additional space that would have been the 4th bay could be developed as storage.

- d. There is not a willful violation of the Zoning Ordinance or other attempt to circumvent the regulations; but, rather; a reasonable request considering the number of unique factors involving this property.

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

1. The applicant shall obtain a building permit from the Division of Building Inspection prior to the construction of the 4-car garage.
4. **V-2014-8: CHINGCHUN CHANG** - appeals for variances to: 1) reduce the minimum required parking from 1.5/unit to 1.0/unit; 2) reduce the minimum open space from 20% to 14%; 3) to reduce the minimum side yard from 10 feet to 5 feet; 4) to increase the maximum allowable height from a 4:1 height to yard ratio to a 6:1 ratio (30 feet tall); 5) to reduce the required front yard from 20 feet to 14 feet; and 6) to partially reduce the required vehicular use area landscaping in order to construct an apartment building in the Infill and Redevelopment Area in a High Rise Apartment (R-5) zone, at 155 Transcript Ave. (Council District 3).

The Staff Recommends: Approval of all the requested variances, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties. All applicable building codes will be met, ensuring the health, safety and welfare of the occupants without causing harm to the adjacent properties. Furthermore, the proposed use and scale of the new building will be similar to other multi-family dwelling in the existing neighborhood.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, as every design effort has been made to reduce the requested variances to the minimum number necessary for such a small lot in the R-5 zone. Furthermore, the parking would still comply with the alternative parking requirement of 0.9 spaces/bedroom for this efficiency apartment building.
- c. The extremely small size and width of the lot (45' wide by 135' deep) is a special circumstance that does not generally apply to other R-5 zoned properties. It is the intent of the Infill & Redevelopment regulations to allow reasonable accommodations for efficient development that is proposed to be compatible with the context of the existing neighborhood.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship on the appellant. This would have the effect of limiting the use of the property to only the single family home, which exists on the lot today, and it would be hard to recoup their investment in the property.
- e. The requested variances are not the result of any willful violation of the Zoning Ordinance, but rather a design response to the severe limitations of the R-5 zone on such a narrow lot.

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, allowing minor modifications, if required, by the Divisions of Engineering, Traffic Engineering, or Building Inspection during the routine building permit review process.
2. All applicable permits, including a Zoning Compliance Permit, Building Permit, and Certificate of Occupancy, shall be obtained by the applicant.
3. Prior to issuance of a final Zoning Compliance Permit, the applicant shall submit an administrative action record plat to the Division of Planning, recording the reduced building lines and other action of the Board.

D. **Conditional Use Appeals**

1. **CV-2013-62: K. WESLEY FARLEY** - appeals for a conditional use permit to allow retail sale of antiques and home furnishings in a Light Industrial (I-1) zone; and a variance to reduce the required parking from 5 spaces to 3 spaces, at 573-575 Maryland Avenue (Council District 2).

The Staff Recommends: Approval of the requested Parking Variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. Based on the small size of this retail business, operation of this use should not require more than 3 parking spaces. If there is a need for additional parking, on-street parking is available on Maryland Avenue and even on the surrounding streets in this immediate neighborhood.
- b. Granting the requested variance will not negatively impact the pedestrian-oriented character of the immediate area. It promotes the efficient use of an existing building and its historically graveled parking area because the applicant is proposing to utilize the gravel parking and is not attempting to provide new surface parking on any nearby vacant land.
- c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance,

as this site was originally developed prior to the current requirements for parking lots, and there is a previous action of the Board allowing a retail use on this property utilizing the gravel parking lot.

- d. The variance is not a result of the willful actions of the appellant, as his business needs do not warrant a full complement of 5 parking spaces at this location, and would essentially allow a continuation of the status quo on the site.
- e. Requiring the full amount of parking for this use, where the requirement far exceeds the demand, will require an additional financial burden and hardship to the appellant in order to procure off-site parking agreements in perpetuity.

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

1. The antique/home furnishings store shall be established in accordance with the submitted application and site plan, except that a paved area shall be provided to accommodate a handicap parking space where it is easily accessible to the entrance of the building. The final design of the handicap parking space shall be subject to the review and approval of the Division of Traffic Engineering.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation; and prior to opening the antique/home furnishings store, a Zoning Compliance Permit from the Division of Planning, as well as a Certificate of Occupancy from the Division of Building Inspection, shall be obtained.
 3. The applicant will maintain all existing vehicular use area screening on the property in accordance with the submitted site plan.
 4. All signage shall comply with Article 17 of the Zoning Ordinance.
2. **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** - a 6-month review of a conditional use permit granted by the Board for a bar/nightclub with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue (Council District 3).
In October of 2012, the Board approved a conditional use permit to operate a night club with live entertainment and dancing. One of the conditions for approval was a 6-month review of the use (after issuance of a Certificate of Occupancy), in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions. The conditions to be reviewed are as follows:
1. That no more than 275 patrons be allowed on the subject property at a time, as permitted by the fire code.
 2. That the hours of operation be from 8:30 pm until 2:30 am, Wednesday through Saturday.
 3. That any private parties (no more than 275 persons) be held from 8:30 pm until 2:30 am, Monday and Tuesday.
 4. That no business activity, private or public, be conducted on Sunday.
 5. That some type of food items and a menu be provided on the premises.
 6. That off-site parking be provided for the employees by lease agreement approved by the UCG Law Department; and that the Planning Staff be apprised of the location.
 7. That the nightclub with live entertainment and dancing be established in accordance with the submitted application and site plan.
 8. A Zoning Compliance Permit and a new Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy as a nightclub with live entertainment and dancing.
 9. Outdoor live entertainment and/or outdoor speakers shall be prohibited, and the doors to the nightclub shall remain closed during the times when live entertainment is offered.
 10. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.
 11. The use shall be reviewed by the Board 6 months after approval.
3. **C-2014-1: THE LIVING ARTS & SCIENCE CENTER** - appeals for a conditional use permit to expand the existing facility (community center and accessory parking) in a Planned Neighborhood Residential (R-3) and a High Density Apartment (R-4) zone, at 362 (aka 364) N. Martin Luther King Blvd. (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, as the Living Arts & Science Center has successfully operated at this location for over 40 years. Furthermore, adequate and more efficiently designed parking will be available on site; and on-

street parking is available on several of the surrounding streets to accommodate overflow parking, if needed. In general, the hours of operation are primarily during the day, with some classes and events scheduled in the evenings, which should not cause a nuisance to the surrounding residential neighbors.

- b. All necessary public facilities and services are available and adequate for the proposed expansion.

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

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process, subject to the review and approval of the Divisions of Building Inspection, Traffic Engineering, and Engineering.
2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.

4. **C-2014-2: MAXWELL STREET PRESBYTERIAN CHURCH** - appeals for a conditional use permit to permit a coffee house as part of the existing church use in a High Density Apartment (R-4) zone, at 319 Lexington Ave. (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, and will not alter the character of the area. There are no exterior changes proposed to the historic McCauley House, which has been restored by the church over the past two decades; and this use will continue to be entirely church-related. Half of the adjoining land uses are university-related, and another quarter is church-owned properties, so the likelihood of any adverse impact to area residents from this new use would be minimal.
- b. The requested conditional use will be clearly incidental and subordinate to the church's use of their campus. The coffee shop will occupy less than 5% of the church's total floor area, and will not appreciably raise traffic levels above what would be anticipated in this area. It would also provide an enhancement to the church congregation, and at the same time, provide an avenue for out-reach to church visitors.
- c. All necessary public facilities and services are available and adequate for the proposed use, including off-street parking available on the church property, and on-street parking available on Lexington Avenue.

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

1. This church-related use 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. This portion of the church's operation shall be limited to the hours of 7:00 AM to 11:30 PM daily, and shall operate only on the first floor of the McCauley House.
4. Signage for this conditional use shall comply at all times to the limitations of Article 17 of the Zoning Ordinance for the R-4 zone.

5. **C-2014-3: ELIZABETH EPPERSON** - a request to modify conditions from a previously approved conditional use (extended hours and operation of jukebox during business hours) in a Neighborhood Business (B-1) zone, at 1418 Village 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 this site has consistently operated as a cocktail lounge with live entertainment and dancing since the live entertainment was first approved by the Board of Adjustment in 2003. Allowing an extension of the hours of operation of the jukebox until the new closing time of 3:00 AM is appropriate considering that this use is confined to indoors and is oriented to other commercial uses. Additionally, the Council adopted Ordinance No. 200-2007, allowing increased hours of alcohol sales after the Board's initial approval of this use in 2003.
- 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 cocktail lounge shall be operated in accordance with the submitted application and site plan, recognizing the extended hours of operation (until 3:00 AM).
2. Live bands with dancing may be provided on Fridays, Saturdays and holidays from 9:00 PM until 12:30

- AM. Dancing to a jukebox is allowed during the hours of operation of the business.
- 3. The establishment shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
- 4. The dance floor and band setup area shall be located either in the middle section of the suite or at the rear of the suite, in order to minimize any noise disturbance to nearby residential properties

E. **Administrative Reviews**

- 1. **A-2013-80: STEVE PERRY** - an administrative appeal under KRS 100.261 to determine that a note placed on a record plat for property located in a High Density Apartment (R-4) zone at 301-343 Burley Avenue (Council District 3), was done in error.

Note - As of January 24, 2014, this request has been withdrawn by the applicant.

- 2. **A-2013-81: STEVEN F. HOUSE** - appeals for an administrative review to allow an existing garage/barn that exceeds the allowable square footage to remain where located/constructed, in a Single Family Residential (R-1B) zone, at 229 Eastin Road (Council District 6).

The Staff Recommends: Disapproval, for the following reasons:

- a. The Board approved a similar appeal in August, 2013 for the building in question, under a detailed set of site-specific conditions agreed to by this appellant. The circumstances of the subject property and the area have not changed in the intervening six months, with the exception of the construction that has recently taken place.
 - b. Denial of this appeal would necessitate that the applicant remove an existing garage on the property, and relocate the constructed building so as to maintain a greater amount of floor area in the single family dwelling on the property than all of the accessory structures on the subject lot, as approved in August, 2013 (AV 2013-45).
 - c. Historically, in any zone, accessory uses have not been allowed by permitting agencies to occupy more floor area than for principal uses on the same property.
- 3. **A-2014-4: QUEST COMMUNITY CHURCH** - an administrative appeal of the Division of Planning's and the Division of Building Inspection's determination that a church entrance sign that is placed on a separate property constitutes an off-premise sign in a Light Industrial (I-1) and a Professional Office (P-1) zone, at 410 Sporting Court and 483 West Reynolds Road, respectively (Council District 9).

Note – Staff will report at the public 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 February 28, 2014.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.