

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

March 28, 2014

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, March 28, 2014.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the February 28, 2014 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-2014-16: BARBARA B. PICKETT** - appeals for a variance to reduce the required side yard from 3 feet to 0 in order to allow an existing fence to remain in a Planned Neighborhood Residential (R-3) zone, at 109 Pleasant Ridge Way (Council District 6).

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 issue. The installed fence does have a gate, thereby not creating an obstruction in the side yard of this property, and is only partially located in the side yard of the house. It is in the most logical and least intrusive location as possible to connect the side porch to the rear yard of this lot. It will not cause an obstruction to the neighboring property owner, nor will it prevent the use of their side or rear yards, especially by emergency responders if absolutely necessary.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. At the time this particular house was built on this lot, without a typical rear access door and only a side porch door, the Zoning Ordinance did not restrict fences in the side yard as it does today.
- c. The fact that this structure does not have a typical rear door, but rather a side porch door for general access constitutes a special circumstance for this small lot that does not generally apply to most other homes in this subdivision.
- d. Strict application of the Zoning Ordinance would require the fence to be moved entirely to the rear of

the home. Functionally, this would cut off the rear yard from the rear door which; in this case, is located on the side of the house. The only alternative for this family to reach the rear yard would be through a bedroom of the house, which is not practical, nor is it logical.

- e. The requested variance is not a willful violation of the Zoning Ordinance. The lessee who built the fence was unaware that a fencing permit was needed. The owner cannot obtain the necessary permit to allow the existing fence to remain without the variance.

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

- 1. The property shall remain as developed in accordance with submitted site plan and application.
- 2. A fence permit shall be obtained by the applicant from the Division of Building Inspection within 60 days of approval by the Board.

- 2. **V-2014-17: SALAS ENTERPRISES CORP.** - appeals for a variance to reduce the required setback along Lansdowne Drive from 25 feet to 20 feet in order to construct an enclosed patio in a Planned Shopping Center (B-6P) zone, at 3501 Lansdowne Dr. (Council District 4).

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 enclosure of the existing patio will not be a substantial difference in the current development of the property, thereby making the addition largely unnoticeable.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. Granting the request will actually be consistent with the modern interpretation of the setback in this zone for new shopping centers.
- c. The combination of the history of this shopping center and the change in interpretation of the Zoning Ordinance in favor of infill & redevelopment create a unique situation for the subject property, and this proposed patio enclosure.
- d. Strict application of the Zoning Ordinance would require the applicant to re-design the enclosed patio area, or only enclose a portion of it in order to comply with the currently approved 25 - foot setback or forego the plans to enclose the patio altogether.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather a natural result of the normal review process of the pending final development plan under Planning Commission review.

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 or as amended by the Planning Commission on a final development plan.
- 2. All necessary permits shall be obtained by the applicant, including but not limited to; a building permit for the patio enclosure, prior to construction.
- 3. That the action of the Board of Adjustment be referenced on the final development plan for the shopping center.

- 3. **V-2014-18: MITCHELL CONSTRUCTION MANAGEMENT** - appeals for a variance to reduce the required side yard from 17.5 feet to 10.5 feet in order to expand a detached garage in a High Density Apartment (R-4) zone, within the defined Infill & Redevelopment Area, at 125 E. 4th St. (Council District 1).

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

- a. Based on the submitted materials, the applicant wishes to expand the height of the accessory structure, which necessitates an additional (side yard) variance. That aspect of the proposed construction was not known at the time the application materials were given to the applicant. It was not made a part of this application and has therefore not been properly noticed for the March 28, 2014 hearing.
- b. A postponement will allow the applicant time to either modify the plans to expand the garage or to amend this variance application and re-notify the required property owners.

- 4. **V-2014-19: PETER TATE** - appeals for variances to reduce: 1) the required side yard from 18 inches to 6 inches; and 2) the required rear yard from 20 feet to 8 feet, in order to build an addition on the rear of a detached accessory structure (garage) in a High Density Apartment (R-4)/Historic Overlay (H-1) zone, within the defined Infill & Redevelopment Area, at 101 Hampton Ct. (Council District 1).

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

- a. Granting the requested variances should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. It will not negatively affect the character of the surrounding neighborhood because the addition will likely be unnoticeable from anyone's property

except the applicant's. The Board of Architectural Review has approved the design of the addition and remodel, which ensures that it has met the guidelines for Historic Preservation.

- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. Adding a single post to hold a new roof at the same 0.5-foot setback as the existing structure is a functional necessity; and granting the requested variance from 20 feet to 8 feet will not be an unreasonable circumvention of the Zoning Ordinance because functionally, Ross Avenue is similar to an alley on the applicant's side of the street. Additionally, the garage will not be visible to the street because of the existing privacy fence.
- c. The existing location of the historic garage, the existing privacy fence on Ross Avenue, and the fact that Ross Avenue partially functions as an alley are all unique circumstances that justify the requested variances.
- d. Strict application of the Zoning Ordinance would require that the roof be completely redesigned, which may result in a less aesthetically pleasing and awkward building; and would likely result in any addition to the garage being prohibited. The applicant has already invested much in the design and approvals for this addition through the Board of Architectural Review, which approved the proposed addition on 2/13/2014.
- 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, and a natural outcome of the standard permitting review process.

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 Historic Preservation; 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.

D. Conditional Use Appeals

- 1. **C-2014-12: FOTIOS MORAITIS** - appeals for a conditional use permit to establish a pawn shop (including vehicles) in a Highway Service Business (B-3) zone, at 1536 (aka 1538) N. Limestone (Council District 1).

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

- a. It is unclear that the available parking area will be adequate to suit the needs of the proposed use of a pawn shop. This lot is shared by two businesses: an auto repair shop and the car sales lot with the proposed addition of the pawn shop. It is only possible to park 3 vehicles in front of the portion of the building that would be used for the pawn shop and potentially 3 more in front of the auto repair shop. Furthermore, those parking spaces are designed such that a vehicle exiting the site will need to back onto the public right-of-way, which would be a safety hazard.
 - b. The Central Sector Small Area Plan, which was adopted by the Planning Commission, recommends that this area of North Limestone be enhanced, and specifically calls for this corridor to be a "Major Gateway" into the neighborhoods that comprise the Central Sector (Sub areas D & E).
 - c. Recent redevelopments on either side of the subject property have enhanced the streetscape by adding new sidewalks, street trees, and other infrastructure improvements. Additionally, the CVS redevelopment on the northern boundary modified their site layout to increase the landscape buffer area adjacent to the North Limestone right-of-way and planted additional landscape materials. The Waller Property on the southern property boundary agreed to increase the landscaping and proposed architectural design standards for those buildings that front on North Limestone. The proposed redevelopment of this site will do little to enhance the corridor as recommended by the Central Sector Small Area Plan unless additional landscaping and other street improvements are made.
 - d. Disapproving the requested pawn shop will not deprive the applicant of a reasonable use of the land because there are a number of businesses that would be allowed to operate at this location, one of which is the sale of automobiles. The applicant has already been issued a Zoning Compliance Permit and Certificate of Occupancy for this use.
- 2. **C-2014-13: EIGHTH POLE INN, LLC** – applicant wishes to continue operation of a previously approved conditional use for a bed & breakfast under new ownership in the Agricultural Rural (A-R) zone, at 3463 Rosalie Road (Council District 12).

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

- a. Bed & breakfast facilities are permitted as a conditional use in the A-R zone, and this particular site has been used as such use for nearly 20 years, without complaint. The applicant now wishes to simply change ownership and continue the operation of this successful business. Furthermore, there have

been no adverse impacts on the neighborhood as a result of this use; and allowing the change in ownership will ensure that this facility will continue to be able to provide patrons with a personal, pleasant, easily accessible alternative for lodging.

- b. All public facilities are available and in operation for the continued use as a bed & breakfast.

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

1. That the bed and breakfast be operated in accordance with the submitted application and site plan; i.e., that it be limited to the rooms as depicted on the site plan and attachment submitted with this application, as well as those conditions imposed at the time the original conditional use(C-96-104) was approved. This includes compliance with the stipulations of Article 1-11 of the Zoning Ordinance.
 2. That a Zoning Compliance Permit and Certificate of Occupancy be obtained from the Divisions of Planning and Building Inspection.
 3. That the septic system be reviewed and approved for this use, as necessary, by the Fayette County Board of Health.
 4. That the applicant continue to provide the existing on-site parking, and that any enlargement of the parking area is to be reviewed and approved by the Board of Adjustment on an amended site plan.
 5. That any signage for the bed & breakfast be in accordance with Article 17 of the Zoning Ordinance, that it be limited to two (2) square feet in size, and that it not be internally illuminated.
 6. That the bed & breakfast be in compliance with all applicable State and local laws, including those of the Health Department and that the residence continue to meet all fire and building codes.
3. **C-2014-14: BILL MEADE** - appeals for a conditional use permit to operate an outdoor recreational facility (a botanical garden) in the Agricultural Rural (A-R) zone, at 9086 Old Richmond Road (Council District 12).

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

- a. There is a pending Zoning Ordinance Text Amendment designed to provide greater clarity in the regulation of all outdoor recreational activities, in the A-R zone and all others. The staff strongly prefers that the current application for a Conditional Use Permit postpone until the ZOTA has been fully considered by the Commission, and ultimately, by the Urban County Council.
 - b. The staff can not report to the Board that all necessary facilities are available and adequate to serve the requested conditional use permit. In particular, the majority of off-street parking proposed to serve this use is located more than ¼ mile south of the proposed zoological garden, requiring patrons to cross a federal highway, and climb a 65' slope to reach the facility. There appears to be space available on the subject property for more vehicular parking than is proposed by the appellant.
4. **C-2014-15: TIM HUBER/RAMSEY DEVELOPMENT** - appeal for a conditional use permit to establish an assisted living center for seniors in a Planned Neighborhood Residential (R-3) zone, at 2930 Spurr Road (a portion of) (Council District 2).

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

- a. Article 7-6(a)(2) requires the Board to find that all public facilities and services are, or will soon be, adequate to serve the proposed use. At this time, serious questions still exist as to the timing and design of the infrastructure. Allowing a one-month postponement will give the applicant ample opportunity to address these issues and will allow the Planning Commission time to review the corresponding plans that have been filed for their review.
- b. Article 7-6(a)(3) requires the extension or continuation of existing and proposed collector streets and, where possible, provide for the continuation of local streets. The applicant's proposed site plan does not provide for the continuation of either Magnolia Springs Drive or Cielo Vista Road in conjunction with this facility. A one-month postponement will give the applicant an opportunity to address the continuation of this road and will allow the Planning Commission time to review the corresponding plans that have been filed for their review.

E. **Administrative Reviews**

1. **A-2014-11: ERIC DEJONGE (DBA NET BIZ, LLC)** - an administrative appeal to establish an internet café (including sweepstakes, which is regulated as an adult oriented business) as part of a convenience retail store in a Highway Service Business (B-3) zone at 1555 E. New Circle Rd., Ste. 178 (Council District 7).

The Staff Recommends: **Disapproval** of the Administrative Review, upholding the Division of Planning's interpretation of the Zoning Ordinance, for the following reason:

- a. An internet café that has sweepstakes as an integral component of its business is an entertainment

use that offers participation only to adults. Thus, it is most similar to other adult oriented uses allowed in the Zoning Ordinance, and should be regulated as such.

- b. Article 8-20(b) of the Zoning Ordinance states that "other uses substantially similar to those listed herein shall also be deemed permitted." Because the use is restricted to adult participation and involves machines (including computers), it is more logically regulated as an adult arcade than a retail store, or any other use listed in this section.
- c. Should this appeal be denied, the appellant may file an application to the Planning Commission to amend the Zoning regulations in a fashion they see fit. This is a process not afforded by most Planning Commissions in Kentucky. Alternatively, a conditional use permit may be requested of the Board of Adjustment.

- 2. **A-2014-20: WALKER PROPERTIES** – an administrative appeal of Building Inspection's revocation of a sign permit in the Agricultural Rural (A-R) zone, at 3898 Haley Rd. (Council District 12).

The 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 April 25, 2014.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.