

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

August 22, 2014

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, August 22, 2014.
- 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-2014-53: PATRICIA G. HILL** - appeals for a variance to increase the maximum allowable fence height from 6 feet to 8 feet in order to allow it to remain as constructed in a Single Family Residential (R-1C) zone, at 3002 Montavesta Road (Council District 5).

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 adversely affect the public health, safety or welfare. It will not be out of character with the existing neighborhood, as many homes in this subdivision have fenced rear and side yards. Allowing the slight increase in fence height will not have any effect on the sight triangles of the driveways of either the existing property or the neighboring driveway on Clair Road.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance, as fences are common in the side street side yards.
- c. The existing topography on the subject property, sloping downward to the rear property line, creates a unique circumstance that justifies the requested variance to the fence height.
- d. Strict application of the Zoning Ordinance would require that the fence be shortened by two feet, only for that portion of the fence that is in the required side street side yard - about 27 linear feet of the 116-foot rear yard fence.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather is a design response to the unique circumstances of this property. Furthermore, confusion regarding the height requirement at the time of the issuance of the fence permit has led to the need for a variance.

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

1. The property shall remain as developed, in accordance with the submitted site plan and application
2. **V-2014-61: RAYMOND ROSS, JR.** - appeals for a variance to reduce the required 200-foot distance from a Special Design Area in the Expansion Area to 196 feet in order to construct a single family residence in an Expansion Area Residential (EAR-2) zone, at 317 Hays Boulevard (Council District 7).

**Note – On August 11, 2014, the applicant, via email, requested to withdraw this application.*

3. **V-2014-62: HARMONY HB, LLC** - appeals for a variance to reduce the required side yard from 3 feet to 2 feet in order to allow an air conditioning condenser unit to remain where located in a Planned Neighborhood Residential (R-3) zone, at 153 Towne Square Park (Council District 2).

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 adversely affect the health, safety or welfare of this neighborhood. It will not be out of character with the existing homes in neighborhood, as some of the properties in this neighborhood do have HVAC units in the side yards, due to those yards being greater than the minimum requirement of 3 feet. In particular, there will be a total of 9 feet between the subject house and the neighboring house.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance, as there will be no other obstructions in the side yard; and maneuverability and accessibility around the condenser unit will not be compromised.
- c. The existing 5.5-foot side yard on the subject property, in conjunction with the rear garage access to the alley, creates a unique circumstance that justifies the requested variance for the relocation of this air conditioning unit. With the larger 5.5-foot side yard on the subject property, the space between the two homes will be well in excess of the minimum 6 feet of separation required by the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would require the HVAC unit to be moved to the other side of the house; which would create a nuisance to the property owner's enjoyment of the patio area. It would also require much interior demolition to relocate the unit to the other side of the house, which would result in an unnecessary hardship to the appellant.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather is 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 the submitted site plan and application, allowing minor modifications, if required, by the Division of 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 Certificate of Occupancy from the Division of Building Inspection.
3. No other obstruction, including a fence, will be allowed in this 5.5-foot side yard.

D. **Conditional Use Appeals**

1. **CV-2014-60: KELLY NURSERY, LLC** - appeals for a conditional use permit to establish a plant nursery and a commercial greenhouse; and a variance to reduce the required front setback from 300 feet to 35 feet in order to construct an accessory structure in the Agricultural Rural (A-R) zone, at 4961 Paynes Mill Road (Council District 12).

The Staff Recommends: **Approval** of the conditional use, for the following reasons:

- a. Granting the requested conditional use permit for a combination plant nursery and commercial greenhouse should not adversely affect the subject or surrounding properties, as the proposed plant nursery and a restricted commercial greenhouse will be buffered via existing and proposed landscaping, and will be restricted in scale such that there will be no customers or sales on site.
- b. All necessary public facilities and services are adequate for the proposed use including the new accessory buildings and graveled driveway that are anticipated for this use.

The Staff Recommends: **Approval** of variances to: 1) reduce the required front setback from 300 feet to 70 feet for an accessory structure; 2) reduce the required 300-foot setback from the nearest residential structure along the side of the property to 175 feet; and 3) reduce the required 100-foot setback of the driveway from the nearest adjoining property to 60 feet, for the following reasons:

- a. Granting the requested variances will not cause a negative effect on the subject or surrounding properties and will not cause a public health, safety or welfare problem. It will not alter the character of

the general vicinity, as there is already an established 70' setback for accessory structures on this property and the neighboring property. Furthermore, the variances for the accessory greenhouses and driveway are justifiable due to the unique circumstances of this request.

- b. This request for a variance is not an unreasonable circumvention of the Zoning Ordinance; but, rather, is justifiable due to the unique circumstances associated with this property.
- c. The existing alignment of two other nearby accessory structures, the relatively small size (4 acres) and shallow depth (430') of the subject lot, the sloping topography, and the fact that a barn and other accessory buildings used solely for agriculture on this property could be constructed in this location are all unique circumstances that justify the requested variance.
- d. Strict application of the Zoning Ordinance would require that the new barn and accessory greenhouses be moved to a less desirable location on the farm and would likely require them to be built on an area of steeper slope, with a longer driveway needed for access.
- e. The requested variance is not a willful violation of the Zoning Ordinance, as no construction has begun; and the applicant learned of the need for these variances during the normal building permit and conditional permit review processes.

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

1. The property shall be developed in accordance with the 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 residence prior to construction.
 3. On-site sales of plants or other materials (including those specifically listed in the definition of a commercial greenhouse) shall be prohibited without further review and amendment by the Board of Adjustment.
 4. The entrance to Paynes Mill Road shall be modified, as necessary, including but not limited to the removal of the existing vegetative hedge on the property, to ensure a safe sight distance. This will be subject to the approval of Traffic Engineering and/or the Kentucky Transportation Cabinet, as necessary.
 5. This property shall comply with the Engineering Manuals concerning storm water; and, if necessary, a storm water management plan shall be submitted to, and accepted by, the Division of Engineering.
 6. The applicant shall install a 25' wide landscape buffer on the eastern property line, with a combination of deciduous and evergreen trees and shrubs, to the approval of the Division of Building Inspection.
 7. There shall not be any loudspeakers installed or utilized on the property.
 8. All lighting, if utilized, shall be installed with shields that direct the light away from all adjoining property lines.
 9. The existing septic system shall be reviewed and approved for the proposed use by the Department of Health.
2. **C-2014-10: LEXINGTON FRIENDS MEETING** - a request to amend an existing conditional use permit to allow childcare for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Avenue (Council District

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 an institutional/church use has occupied this property for approximately 60 years, and the Lexington Friends Meeting has successfully operated at this location since 2000. The expansion of the use to allow a day care center during the week is a logical and efficient use of the established facilities, and is common at many churches throughout this community. Furthermore, adequate parking will be available on site, and the church intends to significantly increase the amount of green space behind the church.
- 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 to the drop-off area and parking lot design during the normal permitting process, subject to the review and approval of the Divisions of Planning, 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.
3. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.

4. The applicant shall maintain and/or replace the parking lot perimeter landscaping and buffering, including but not limited to: the vegetative buffers along the street frontages and the fence where it adjoins the neighboring residential properties. Landscaping and buffering shall meet the requirements of Article 18, except where specifically varied by the Board of Adjustment in cases CV-90-129 & CV-94-51, and shall be completed within 90 days of the Board's approval.
 5. The maximum enrolment is limited to 60 children.
 6. The hours of operation shall be from 6:30 am to 6:00 pm, Monday-Friday.
3. **C-2014-21: SOLAR ECLIPSE, LLC** - appeals for an amended conditional use permit to construct and operate a kindergarten/nursery school/child care center in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace 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; and, in fact, will have a positive effect by promoting shared access to Harrodsburg Road, increasing the landscape buffer along existing residential properties and continuing to provide for regional stormwater maintenance.
- 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 property shall be developed in accordance with the submitted site plan and application, or as amended by the Planning Commission on a final development plan.
 2. All permits, including but not limited to a Zoning Compliance Permit, Building Permit, and Paving Permit, shall be obtained by the applicant from the Divisions of Planning and Building Inspection prior to construction.
 3. The parking lot shall at all times be maintained to meet the minimum requirements for landscaping and lighting in the Zoning Ordinance.
 4. Any parking lot lighting employed shall be of a shoebox (or similar) style, so that light is directed downward and away from adjoining residential properties.
 5. A detailed landscape plan that provides an equal level of protection, as proposed on the site plan, shall be submitted to and approved by the Division of Building Inspection before the issuance of a Zoning Compliance Permit for the subject property.
 6. The Planning Commission shall review and approve a final development plan for the subject property prior to construction of the proposed use.
 7. There shall not be direct vehicular access to Palomar Trace Drive from the subject property.
4. **C-2014-54: YMCA OF CENTRAL KENTUCKY** - appeals for a conditional use permit to allow an increase in enrollment for a child care facility from 50 to 138 children in a Light Industrial (I-1) zone, at 381 W. Loudon Avenue (Council District 1).

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

- a. Granting the requested conditional use permit to expand the child care enrollment should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter the existing relationship of the subject property with the surrounding properties.
- b. Adequately designed facilities exist for the child care operations. Sufficient parking, pedestrian features, landscaping and buffering, required play areas, and infrastructure are all in place.
- c. Although the requested increase in child care enrollment will more than double total enrollment, the YMCA is eliminating infant child care at this location to enable an increase in child care capacity for 2 to 6 year olds.

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

1. The child care center shall accommodate no more than 138 children enrolled, from age 2 to 13 years, operating daily Monday through Friday between the hours of 6:30 AM and 6:00 PM.
 2. A minimum of 3,450 total square feet of indoor/outdoor play area shall be provided for the child care center, with outdoor areas to be fenced and screened in accordance with the requirements of the Zoning Ordinance.
 3. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction.
5. **C-2014-55: YMCA OF CENTRAL KENTUCKY** - appeals for a conditional use permit to establish a child care facility for up to 250 children in a Planned Neighborhood Residential (R-3) zone, at 3251 Beaumont Centre Circle (Council District 10).

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

- a. Granting the requested conditional use permit to establish the child care facility should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter its existing relationship with the subject property or the surrounding properties.
- b. Adequately designed facilities exist for the proposed child care operation. Sufficient parking, pedestrian features, landscaping and buffering, required play areas, and infrastructure are all in place.

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

1. The child care center and summer camp child care shall accommodate a total of no more than 250 children enrolled, from age 5 to 13 years, operating daily Monday through Friday between the hours of 7:15 AM and 6:00 PM.
 2. A minimum of 6,250 total square feet of indoor/outdoor play area shall be provided for the child care center, with outdoor areas to be fenced and screened in accordance with the requirements of the Zoning Ordinance.
 3. All necessary permits, including but not limited to a Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to operation of the child care use.
6. **C-2014-57: CROSSING CHRISTIAN FELLOWSHIP** - appeals for a conditional use permit to establish a church in a Wholesale and Warehouse Business (B-4) zone, at 480 Curry Avenue (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. Adjoining or nearby land uses are of a commercial or very high density residential nature and are not likely to be disturbed by typical church activities. The church will be able to provide its anticipated parking needs on site, and there are possibilities to provide additional overflow parking, if warranted, on one or more adjoining commercial properties.
- 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 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. All outreach activities shall be limited to the hours of 3:00-9:00 PM Monday through Saturday.
 4. This conditional use permit will be reviewed by the Board in one year from the date of the Certificate of Occupancy to assess the need for additional parking.
7. **C-2014-58: NEXT SHIFT KENTUCKY, LLC** - appeals for a conditional use permit to establish a passenger transportation terminal (Greyhound Bus Station) in a Highway Service Business (B-3) zone, at 1709 N. Broadway (Council District 1).

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

- a. The staff cannot determine that the proposed conditional use will not have a negative effect on the surrounding properties at this location. Concerns about idling buses, lighting, loudspeakers, early morning and late night hours of operation, and lack of pedestrian accommodations along North Broadway indicate that this location is inappropriate for the proposed passenger transportation terminal, which is within close proximity to a residential neighborhood.
8. **C-2014-59: KARL SCHNEIDER** - appeals for a conditional use permit to construct an assisted living facility in a High Density Apartment (R-4) zone, at 4251 Saron Drive (Council District 8).

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

- a. Granting the requested conditional use permit for an assisted living facility on this property should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter the existing relationship of the subject property and surrounding residential and commercial properties
- b. There are adequate facilities in the surrounding established area to serve all appropriate uses. Sufficient parking, pedestrian features, landscaping, stormwater management, and infrastructure are all in place
- c. The site is particularly well suited to the proposed use, in all respects

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

1. The facility shall be constructed in accordance with the submitted application and site plan or as

- amended by the Planning Commission on the required find Development Plan.
- 2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and prior to occupying the facility.
- 3. The parking lot shall be screened and landscaped in accordance with Article 18 of the Zoning Ordinance
- 4. The parking lot and layout, including access to Saron Drive, is subject to the review and approval of the Division of Traffic Engineering.
- 5. The site shall comply with the Engineering Manuals for stormwater, and the drainage plan for this location shall be subject to acceptance by the Division of Engineering.

E. **Administrative Reviews**

1. **A-2014-50: CORNETT INTEGRATED MARKETING SOLUTIONS** - an administrative appeal for a projecting sign for a use/office that does not have an entrance to the outside in a Downtown Business (B-2) zone, at 249 East Main Street (Council District 1).

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

- a. The requested projecting sign is for a business that does not have a separate and direct entrance to the outside of the building, and therefore does not meet the provisional qualifications of Article 17-7(h)(1)(f) for this type of signage.
 - b. Approval of this request would negate the provisional prerequisite to allow this type of sign.
 - c. Much discussion and thought by a variety of community members was involved in the 2009 decision to once again projecting signs in the downtown area after a 40-year prohibition. The provisional qualifications were in response to the sign clutter that existed in the downtown area nearly 50 years ago.
 - d. Other sign options that are allowable under Article 17 of the Zoning Ordinance are available to the applicant and property owner at this location without the need for a variance or administrative review.
2. **A-2014-56: SPRING FORK, LLC** - an administrative appeal to allow an accessory structure, which exceeds the allowable size limit, to remain as constructed in a Single Family Residential (R-1D) zone, at 124 Burley Avenue (Council District 3).

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

- a. A restricted approval of the appeal will allow this larger than allowed (but at one time permitted) detached accessory structure to remain, but will otherwise ensure the long-term compliance with the allowable uses in the Zoning Ordinance for the subject property.
- b. Provided that the use of the 2nd floor does not include any dwelling units and that all associated interior plumbing and other improvements (such as kitchen facilities) indicative of dwelling units are removed, the accessory structure will be substantially similar to the building permit issued for this structure in 2007.

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

1. This property shall be restricted to one single family dwelling unit, and the accessory uses in the R-1D zone.
2. The second floor of the accessory structure shall not be utilized, and no construction activities shall commence without the issuance of a new building permit from the Division of Building Inspection.
3. Prior to occupancy or other use of the second floor of the accessory structure, all the plumbing shall be removed from the second floor except for one bathroom. One "living quarter, without cooking facilities and not rented, for guests and employees of the premises" shall be allowed as an accessory use, should the property owner choose to do so.
4. The accessory structure shall not be used for any commercial activity.
5. Any use of the accessory structure that is not customarily accessory, clearly incidental, and subordinate to the principal use of a single family home shall not be permitted.

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 September 26, 2014.

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