

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

March 27, 2015

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, March 27, 2015.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the February 27, 2015 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.

***Note** – The next item is a continuation from the February 27, 2015 meeting.

1. **V-2015-5: BIG BLUE RENTALS, LLC.** – appeals for a variance to reduce the required front setback from 20 feet to 5 feet in order to install parking and drive aisles in a Planned Neighborhood Residential (R-3) zone, at 178 Leader Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties. The layout of the parking lot will be reviewed by LFUCG agencies to ensure the health, safety and welfare of the apartment occupants and that there will be no harm to the adjacent properties. Furthermore, the proposed parking lot expansion will be landscaped in accordance with the requirements of Article 18 of the Zoning Ordinance, similar to those for multi-family dwellings in the existing neighborhood.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, as the parking lot expansion will permit the site to comply with the alternative parking requirement of Article 8-12(n) (for 0.9 spaces/bedroom) for this efficiency apartment building.
- c. The relocation of the existing storm water basin underground, and the inability for a lot of this width to obtain a second "curb cut" are special circumstances that do not generally apply to other R-3 zoned properties. It is the intent of the Infill & Redevelopment regulations to allow reasonable accommodations for more efficient development in order to promote development that is compatible with existing neighborhoods.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship on the appellant. This would

have the effect of further limiting the available parking for the subject property, and it would be hard to recoup the investment in this property improvement.

- e. The requested variances are not the result of any willful violation of the Zoning Ordinance; but, rather, are consistent with the design of residential parking lots in this vicinity near University of Kentucky's campus.

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 modifications, if required, by the Divisions of Engineering, Traffic Engineering, Solid Waste and Fire & Emergency Services. These divisions must approve this revised site plan prior to the issuance of any Zoning Compliance Permit.
 2. A Zoning Compliance Permit and a Building Permit shall be obtained by the applicant prior to construction.
 3. The variance shall be only for the purpose of providing pavement between the building line and the landscape buffer adjacent to the public sidewalk. No portion of the multi-family building on this lot shall be located closer than 20' to the right-of-way of Leader Avenue.
2. **V-2015-19: SIDNEY VAN NESS** – appeals for a variance to reduce the required side setback from 8 feet to 1 foot for a new garage construction in a Single Family Residential and Neighborhood Design Character Overlay (R-1C & ND-1) zone, at 225 Chenault Road (Council District 5).

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

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity, as the new garage will be built on the footprint of the existing carport. The ND-1 design restrictions will further require that the new construction of the garage is compatible with the remainder of the area, as defined in the Chevy Chase ND-1 Neighborhood Character study.
- b. The existing utility easements, particularly to the rear of the property, create a special circumstance that prevents the garage from being moved to the rear of the lot, where it could meet all setback requirements, and justifies the requested variance.
- c. Strict application of the Zoning Ordinance requirements would either limit the construction of the garage to no more total square footage than the existing carport, or potentially cause it to be placed at a location in the rear yard that could destroy the functionality of the rear yard and possibly result in an existing deck being removed.
- d. This is not the result of a willful violation of the Zoning Ordinance or other attempt to circumvent the regulations; but, rather, a reasonable request considering the number of easements located on this property.
- e. The requested variances are not a direct result of the actions of the applicant, as the easements and the locations of the carport and house on this property predate the applicant's ownership of the lot.

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

1. The garage shall be built according to the submitted application and site plan.
 2. Encroachment easements shall be obtained from the appropriate utility agencies, prior to construction of the garage.
 3. The applicant shall obtain all the appropriate building permits, which includes a review of the ND-1 design standards, prior to construction.
3. **V-2015-20: MARRILLIA COMMERCIAL PROPERTIES** – appeal for variances to: 1) reduce the required side street sideyard setback from 20 feet to 6 feet; and 2) reduce the distance for an overhead door from 100 feet to 20 feet in order to construct a new warehouse/office building in a Light Industrial (I-1) zone, at 794 Manchester Street (Council District 1).

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

- d. Granting the requested variances should not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity. The large rights-of-way ensure that the proposed building setback will not be located within any sight triangles. Furthermore, although technically only 6 feet from the right-of-way, the proposed structure will have the appearance of having a setback (from the travel lanes) that will be more similar to the required 20-foot setback of the I-1 zone.
- e. The small size and unique shape of the lot, the larger than normal rights-of-way bounding three sides of the property, and the topography of the site all create special circumstances that necessitate the requested variances in order to create a useable buildable area for the purpose of constructing the proposed office/warehouse use.
- f. Strict application of the Zoning Ordinance requirements would limit the construction of the building to the point that it would no longer be functionally viable for the intended use.
- d. This request is not the result of a willful violation of the Zoning Ordinance or other attempt to circumvent the regulations; but, rather, is a reasonable request considering the number of special and unique circumstances affecting this property.
- e. The requested variances are not a direct result of the actions of the applicant, as the noted three front yard

(20 foot setback) requirements all predate the applicant's ownership of the lot.

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

1. The building shall be built according to the submitted application and site plan, allowing minor adjustments if required by the Divisions of Building Inspection, Traffic Engineering, or Engineering, if necessary, during the normal permitting process.
2. The applicant shall obtain all appropriate permits, including a Zoning Compliance Permit and Building Permit from the Divisions of Planning and Building Inspection, prior to construction.

D. Conditional Use Appeals

1. **C-2015-9: DMK DEVELOPMENT GROUP, LLC** – appeals for a conditional use permit to construct a nursing home and an assisted living facility in an Agricultural Urban (A-U) zone, at 4210 Nicholasville Road (Council District 4).

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

- a. Granting the request to permit an assisted living facility and nursing home as a conditional use will not adversely affect the subject or surrounding properties. Assisted living facilities and nursing homes do not typically generate high levels of traffic or other activities that are noisy or otherwise disturbing to neighborhoods.
- b. All necessary public services and facilities are available and adequate for the proposed use, including police, fire and EMS services.

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

1. The use shall be constructed and operated according to the submitted application and site plan, except as amended by the Planning Commission on a final development plan. If further expansion of the number of beds is needed or desired, it will require Board of Adjustment approval.
 2. Landscaping shall be installed along the southern property line at the backs of the homes that front on Toronto Road to be equivalent to the zone-to-zone screening of an R-3 zone to an R-1 zone [Article 18-3(a)(1)(7)].
 3. The applicant shall obtain all appropriate permits prior to construction, including but not limited to a Zoning Compliance Permit and Building Permit, issued by the Divisions of Planning and Building Inspection.
2. **C-2015-18: MOUNT OLIVET BAPTIST CHURCH** –appeals for a conditional use permit to construct a building addition to an existing church in a Light Industrial (I-1) zone, at 1008 Delaware Avenue (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 proposed expansion is relatively minor and will only result in a short extension of the building, and will not expand sanctuary seating. The site is well buffered from nearby residential areas by a railroad line and by a variety of commercial and industrial uses on immediately adjacent properties.
- b. All necessary public facilities are available and adequate for the proposed use.

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

1. The expansion shall be done in accordance with the submitted application and a revised site plan, as required by the Division of Traffic Engineering, to provide no less than 50 parking spaces, based on sanctuary seating for up to 250 person.
2. All necessary permits, including a Zoning Compliance Permit and Building Permit, shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
3. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

E. Administrative Reviews

1. **A-2015-17: ELVIS LEE SIMMONS** - an administrative appeal for the denial of a permit for a pool hall in a Planned Neighborhood Residential (R-3) zone, at 400 Chestnut Street (Council District 1).

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 24, 2015.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.