

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

April 24, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, April 24, 2015.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the February 27, 2015 and March 27, 2015 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-2015-24: HAPPY HOME KY, LLC.** – appeals for a variance to reduce the required parking for a triplex from 5 spaces to 4 spaces (a 20% reduction) in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, at 125 Ransom Avenue (Council District 3).

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

a. Granting the modest reduction in the off-street parking for this project should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. The proposed parking reduction will increase the amount of available open space on this property, while providing a reasonable number of parking spaces for the proposed use.

b. Granting the requested variance will not negatively alter the character of this area, as it will be developed similar to other properties with parking in the rear, and will ultimately be reviewed by the Board of Architectural Review for compatibility and compliance with the H-1 design guidelines.

c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance. The applicant has demonstrated that there will be less need for parking due to the decreased number of bedrooms, when compared to other typical multi-family dwellings, and because of the proximity to public transit and other amenities- all within a 20-minute walking distance of the subject property.

d. The low number of bedrooms, the walkable nature of the surrounding neighborhood, and the Board of Architectural Review's expressed concern about providing five parking spaces on the subject property are all special circumstances that apply to this property that do not generally apply to other more typical multi-family dwellings in an R-3 zone.

- e. Although some renovation is currently occurring on the property, the parking area is not yet constructed. The circumstances of this request are not the direct result of actions taken by the applicant; but are, rather, a response to the complex nature of doing an Infill & Redevelopment project within an H-1 Overlay zone.

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

1. This property shall be developed in accordance with the submitted site plan and application, or as amended to fully comply with the requirements of the Board of Architectural Review.
 2. All necessary permits shall be obtained, including but not limited to a Certificate of Appropriateness from the Historic Preservation Office and a paving permit through the Division of Building Inspection prior to construction of the parking lot.
 3. The parking area shall be developed in accordance with Article 16 of the Zoning Ordinance.
 4. Any outdoor lighting (if desired by the property owner) shall be less than 5' in height, if free-standing, and shall be directed away from any adjoining residentially zoned properties, regardless.
2. **V-2015-25: INVICTUS, LLC/DBA NOODLES & CO.** – appeals for a variance to reduce the required front setback from 10 feet to 0 feet in order to construct an outdoor patio in a Neighborhood Business (B-1) zone, at 395 South Limestone (Council District 3).

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

- a. Approving the requested variance will negatively affect public health, safety and welfare by creating an obstruction that lessens the sight distance for the two remaining perpendicular parking spaces. Lessening the available sight distance at this location will increase the potential for a vehicular/pedestrian collision in this area, which is one of high pedestrian traffic.
 - b. Although there is precedent in the general vicinity of many of other business uses having similarly situated patios and decks, the other properties in this corridor do not have any remaining non-compliant parking spaces that are designed to back across a busy pedestrian sidewalk and onto a major arterial thoroughfare.
3. **V-2015-26: SOUTH ELKHORN VILLAGE, LLC** – appeals for a variance to reduce the required 25-foot setback from the floodplain to 0 feet in order to construct an addition to an existing coffee shop in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road (Council District 10).

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

- a. Granting the requested variance should not adversely affect the subject or surrounding properties; will not cause a health, safety or welfare problem; nor will it alter the character of the general vicinity. In this case, the Special Use Permit process issued by the Urban County Engineer will ensure that the proposed addition to the existing coffee shop will be built above the regulatory flood elevation and will utilize other methods in its construction to minimize potential loss.
- b. Granting the requested floodplain setback variance will not be an unreasonable circumvention of the Zoning Ordinance, because there are provisions in Article 19 of the Zoning Ordinance to grant a Special Permit Use for unique situations such as this.
- c. The fact that the existing structure is partially in the floodplain and partially out of the floodplain, making the proposed location the only viable option for an addition outside of the floodplain, is a unique circumstance that justifies the requested variances.
- d. Strict application of the Zoning Ordinance would prohibit the construction of any addition to the existing commercial structure, or extensive engineering work in order to alter the floodplain associated with South Elkhorn Creek, is unlikely to be approved.
- e. The requested variance is not a willful violation of the Zoning Ordinance; rather, it is a design response to the unique circumstances of this property that were determined during the design phase and review of the proposed commercial addition.

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

1. The site shall be constructed in accordance with the submitted application and site plan, except as amended by the Planning Commission on a final development plan.
 2. Provided the addition complies with Article 19-7(f), or the Urban County Engineer grants a Special Use Permit, as authorized in Article 19-8 of the Zoning Ordinance. Furthermore, the applicant shall comply with all recommendations or conditions of approval set forth as a part of the permitting process.
 3. All other necessary permits, including but not limited to a Zoning Compliance Permit and a Building Permit, shall be issued by the Divisions of Planning and Building Inspection prior to construction.
4. **V-2015-27: WINDSWEPT VENTURES, LLC** – appeals for variances to: 1) reduce the required 100-foot distance from a residential zone to 27 feet in order to allow operable windows for an office as part of an office/warehouse building; and 2) reduce the required front setback from 20 feet to 5 feet to allow parking in front of the building in a Light Industrial (I-1) zone, at 729 Bellaire Avenue (Council District 1).

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

- a. There is an error on the base map and zoning information used to prepare the required notice for the subject property. As a result, the required notice was inadequate- both in the number of properties notified and the extent of the variance needed for the applicant's request, which was insufficient.
- b. A postponement will allow the applicant time to submit a new application, including a conditional use request to extend the regulations of the I-1 zone 25 feet to the actual property line.

D. Conditional Use Appeals

1. **C-2015-15: CENTRAL KY GARDEN SHOP, LLC** - appeals for a conditional use permit to construct and operate a garden center, with mulch sales; and a variance to reduce the front setback from 50 feet to 15 feet in an Agricultural Urban (A-U) zone, at 1400 Higbee Mill Road (Council District 9).

*Note – On 4/10/2015, the applicant requested a postponement, via email until the July 31, 2015 hearing. There will not be a staff recommendation or staff report on this case at this time.

2. **C-2015-21: IDEAL EXCHANGE** – appeals for a conditional use permit to change the location of a pawnshop within an existing shopping center in order to expand its retail space in a Highway Service Business (B-3) zone, at 510 E. New Circle Road, Suite 125 (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 this type of use is not concentrated along this general portion of New Circle Road; and the applicant will not be displaying or selling merchandise outside. The use already exists at this address, and is proposed for relocation and expansion within the existing shopping center.
- 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 pawnshop 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 from the Divisions of Planning and Building Inspection prior to any construction and/or renovation, and prior to opening the pawn shop.
 3. No outdoor display or sales of merchandise will be allowed on the property, including on the right-of-way of New Circle Road.
 4. Firearms will not be sold or purchased at this location without approval of an amended application by the Board of Adjustment.
 5. This approval shall become null and void should the appellant no longer own the property or operate this business on the subject property.
3. **C-2015-22: SHILOH BAPTIST CHURCH** – appeals for a conditional use permit to enclose a portion of the building in order to allow an elevator shaft to be constructed in a Planned Neighborhood Residential (R-3) zone, at 237 East Fifth Street (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. It will only result in a short extension on one side of the building and will not expand sanctuary seating, and the site is well buffered from nearby residential areas by vacant properties owned by the church.
- 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 site plan.
 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.
4. **C-2015-23: LEXINGTON CEMETERY** – appeals for a conditional use permit to construct additional mausoleum buildings accessory to the cemetery in an Agricultural Urban (A-U) zone, at 833 W. Main Street (Council District 2).

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

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. The new mausoleums will be sited in a fairly isolated area of the cemetery where the existing mausoleum is located.

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

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

1. The proposed buildings shall be constructed in accordance with the submitted application and site plan.
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. Approval of this use may be exercised over an extended period of time, and not necessarily within one year of the date of the Board's approval of these mausoleums.

E. **Administrative Reviews**

There were 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 May 29, 2015.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.