

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

May 29, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, May 29, 2015.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the April 24, 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 April 24, 2015 meeting. Since that time, the application has been revised to include an additional applicant and a revised site plan.

1. **V-2015-25: INVICTUS, LLC (dba NOODLES & CO.) & SPARTAN PASTABILITIES, LLC (AMD)** - appeal 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: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare and will improve public safety by removing 4 non-compliant parking spaces that currently back through an area of high pedestrian traffic and onto a busy arterial roadway. It will not alter the character of the general vicinity, as this area is dominated by businesses with front patios, many of which are covered.
- b. The location of an existing patio, which is now proposed to be covered in its entirety; the predominance of similar patios in this Pedestrian Oriented Business District; and the removal of non-compliant parking spaces in favor of a safer and more pedestrian-friendly environment, in combination, create a unique environment for this area that justifies the requested variance.
- c. Strict application of the Zoning Ordinance requirements would limit the amount the patios can be covered, but would not result in a better design for these properties. The Board has already partially approved a variance to allow some portions of this property to have a covered patio. Granting the variance will allow for a uniform setback for these patios, located on a prominent corner near the UK campus.
- d. This application is not the result of a willful violation of the Zoning Ordinance or any other attempt to

circumvent the zoning regulations: Rather, it is a reasonable request considering the location of this property in a Pedestrian Oriented Business District, a unique designation recently approved by Council after careful study and consideration.

- e. The requested variance is not a direct result of the actions of the applicant, but rather a result of seeking the proper permits for the proposed construction.

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

1. The covered patios and/or decks shall be developed in accordance with the submitted application and site plan.
2. Parking shall be provided off site, with documentation of the parking agreements prior to issuance of a Zoning Compliance Permit or Building Permit (as necessary).
3. The applicants shall consult with the Division of Building Inspection and apply for any building permits deemed necessary prior to construction.

2. **V-2015-31: PINE KNOLL FARM/GILLIAN VALLIS** - appeal for a variance to reduce the required setback from the right-of-way from 30 feet to 25 feet (at its closest point) in order to partially enclose an existing riding arena (as defined by KRS 100) in the Agricultural Rural (A-R) zone, at 1101 N. Yarnallton Pike (Council District 12).

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 this area is dominated by equestrian related agricultural uses. Furthermore, the Metropolitan Planning Organization and the Division of Traffic Engineering have both agreed that the requested variance will not be detrimental in the unlikely event that this local rural road were to be improved.
- b. The location of the existing riding arena, which is now proposed to be covered, is a unique circumstance that justifies the requested variance.
- c. Strict application of the Zoning Ordinance requirements would either limit the amount of the riding arena that can be covered, or would possibly result in expensive operational changes to provide this function elsewhere on the farm.
- d. This is not the result of a willful violation of the Zoning Ordinance or other attempt to circumvent the regulations; rather, it is a reasonable request, considering the location of the current riding arena and drainage areas on the farm.
- e. The requested variance is not a direct result of the actions of the applicant, but are more of a response to the existing natural and built environment.

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

1. The structure shall be developed in accordance with the submitted application and site plan.
2. Encroachment agreements shall be obtained from the LFUCG and appropriate utility companies, prior to enclosure of the existing riding arena.

3. **V-2015-34: EMERGE DEVELOPMENT** - appeals for a variance to reduce the required side yards from 5 feet to 3 feet in order to construct an apartment building on each lot in a Planned Neighborhood Residential (R-3) zone, at 412, 422, and 424 East Third Street (Council District 1).

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

- a. Approving the requested variances for the internal side yards in this project will not have a negative impact on the public health, safety or welfare, nor will it have a negative impact on the overall character of the neighborhood. Many properties in this vicinity were built with less than 3' side yards, prior to the current zoning requirements.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, as the staggered locations of the three apartment buildings closely approximate the "averaging" provisions for side yards, which are typically allowed "by right", and since the reduced setbacks will be barely noticeable from the street.
- c. The unusual shape of these three lots and the fact that they are able to be developed as one project 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 construction that is more compatible with existing neighborhoods.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship on the appellant and would likely result in a less desirable outcome for the design of these properties.
- e. The requested variances are not the result of any willful violation of the Zoning Ordinance but are, rather, are a reasonable response to this unique lotting situation.

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.
 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 allowing 3' side yards between the three new apartment buildings that are a part of this development project. The exterior yards along the east and west sides of the subject properties shall be required to meet the 5' setback as shown on the submitted site plan.
4. **V-2015-35: GREER LAND COMPANY** - appeals for a variance to reduce the required project exterior yard from 20 feet to 5 feet in order to build an addition to an apartment building in a High Density Apartment (R-4) zone, at 858 Malabu Drive (Council District 4).

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

- a. Granting the requested variance will not negatively affect the public health, safety and welfare; it will not negatively alter the character of the area, nor will it cause a hazard or nuisance. Rather, granting the variance will allow a building to be replaced at the same location as the previous building that had been destroyed by fire. Allowing an apartment building to be built as it previously existed will help to maintain and stabilize the existing building to which it will be attached, thereby ensuring greater public health and safety, and will help to maintain a cohesive appearance with the remainder of the property.
- b. Granting the variance will not allow an unreasonable circumvention of the Zoning Ordinance, as it is only due to the timing of the adjoining property's development (its subdivision to allow construction of a bank, creating a property line that is only 5 feet from the proposed building's existing foundation) that the variance is needed.
- c. The special circumstances that apply to this property that are not typical of other properties in the area are the significant slope of the property downward toward Bates Creek Road, in conjunction with the tall retaining walls, which greatly limits the buildable area; the location of the common property line between the bank property and the subject property, which is only 5 feet from a previous building's foundation; and the fact that there is an existing building, originally constructed with another apartment building attached to its eastern side that was destroyed by fire, that should be replaced.
- d. Strict application of the Zoning Ordinance would disallow a structure of a reasonable size that is likely needed to provide adequate structural support for the existing building. Additionally, the existing unsupported fire wall, which was originally designed as an interior wall, could become a safety hazard over time.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance, nor is it a result of the actions of the applicant subsequent to the adoption of the Zoning Ordinance. The building that is proposed for the site is to replace a building that was destroyed by fire, was demolished, and was removed due to being a safety hazard.

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

1. That the property be developed according to the submitted application and site plan, or as amended by the Planning Commission.
2. That action of the Board be noted on an amended Final Development Plan for Kirklevington North, Tract B.

D. **Conditional Use Appeals**

1. **CV-2015-27: WINDSWEPT VENTURES, LLC** - appeals for a conditional use permit to extend the regulations of the I-1 zone 25 feet to the southern property boundary in an R-3 zone; and a variance to reduce the required 100-foot distance from a residential zone in a Light Industrial (I-1) zone, at 729 Bellaire Avenue (Council District 1).

The Staff Recommends: **Approval** of the Conditional Use, for the following reasons:

- a. Granting the request for a conditional use permit to extend the regulations of the I-1 zone 25' into the R-2 zoned portion of the property will not adversely affect the subject or surrounding properties. This property has historically been used for industrial purposes for many decades and likely pre-dates the adoption of the first Zoning Ordinance. Other similarly situated commercial properties in this general vicinity share many of these same characteristics; and approval will not be out of character with this neighborhood, which has stably existed with commercial properties since the subdivision was created.
- b. All necessary public services and facilities are available and adequate for the proposed use.

The Staff Recommends: **Approval** of the Dimensional Variance, for the following reasons:

- a. Granting a reduction in the distance for operable windows for this redevelopment project should not adversely affect the subject or surrounding properties. It should not cause a hazard or nuisance to the public, provided the use of the areas with the operable windows is restricted to accessory office uses and the zone-to-zone screening is installed and maintained along the southern property boundary.

- b. Granting the requested variance will not negatively alter the character of this area, as most site improvements exist in this neighborhood, and few physical changes are now proposed to the subject site.
- c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance. The intent of the setback regulation is to protect nearby residential properties from the typical nuisances associated with some light industrial uses. By limiting the use of this portion of the building with the operable windows to only accessory offices, the same level of protection is being afforded the nearby residential properties.
- d. The long-standing history of the non-residential use of this property; the fact that a non-industrial use (offices) will now be placed in the southern portion of the building, and the new three-planting landscape buffer to the adjacent property are all unique circumstances that justify this requested variance.
- e. The circumstances of this request are not the direct result of actions taken by the applicant; they are, rather, a response to the unique history and circumstances associated with this property.

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

- 1. The landscaping company shall operate according to the submitted application and site plan, with minor amendments to the parking layout or drainage areas as approved by the Divisions of Traffic Engineering and Engineering during the normal permitting process.
 - 2. The southern property line adjacent to 721 Bellaire Avenue shall be planted with new trees to meet the zone-to-zone screening requirements of Article 18-3(a)(1)(3), such that the applicant will provide a 5' landscape buffer area in conjunction with a 6' high wall or fence plus 1 tree for every 40 linear feet, prior to, or in conjunction with, the redevelopment of this site.
 - 3. The southern portion of the building with the operable windows shall be used only for accessory office space; otherwise the applicant must comply with the provisions of Article 8-21(o) of the Zoning Ordinance.
 - 4. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy of the building. Additionally, any paving and/or remodeling permits must be obtained from the Division of Building Inspection.
2. **C-2015-28: FIRST ALLIANCE CHURCH** - appeals for a conditional use permit to expand and pave an existing grass parking lot in an Agricultural Urban (A-U) zone, at 2201 Old Higbee Mill Road (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, provided that the parking lot is developed to specifications of a professional engineer and any required storm water improvement complies with the adopted Engineering Manuals. The site chosen for the parking expansion is mostly used for overflow parking today and will still be further back from Old Higbee Mill Road than most other uses in this corridor. Furthermore, it will be landscaped as required by Article 18 of the Zoning Ordinance.
- 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 parking area shall be established in accordance with the submitted application and site plan, with minor changes allowed by the Divisions of Engineering or Traffic Engineering during the normal course of the permitting process. Additional parking beyond the 81 spaces now proposed will require further approval by the Board of Adjustment.
 - 2. All necessary permits, including grading and paving permits, shall be obtained from the Divisions of Engineering and Building Inspection prior to construction of the parking lot.
 - 3. All paving and detention facilities shall be approved by the Division of Engineering, subject to the requirements of the Engineering Manuals.
 - 4. Landscaping for a vehicular use area shall be provided, per Article 18-3 of the Zoning Ordinance
3. **C-2015-29: TATES CREEK PRESBYTERIAN CHURCH, INC.** - appeals for a conditional use permit to construct a building addition to an existing church (nursery expansion) in an Agricultural Urban (A-U) zone, at 3900 Rapid Run (Council District 8).

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 nursery addition will be built along Man O' War Boulevard, behind the required screening. The modest proposal for a nursery addition will primarily be used on Sundays by the church, and will not require additional off-street parking, nor will it negatively affect the approved private school or preschool.
- b. All necessary public facilities and services are adequate for the proposed use, and no new free-standing buildings or parking are required for this use.

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

1. The church shall be operated in accordance with the submitted application and site plan, either removing the fenced outdoor play area from the utility easement or documenting all the encroachment permits prior to construction.
 2. All necessary permits, including a Zoning Compliance Permit and a Building Permit shall be obtained from the Divisions of Planning and Building Inspection.
 3. All parking areas and access shall be paved, with spaces delineated, and landscaped/screened as would be required for vehicular use areas, in accordance with Articles 16 and 18 of the Zoning Ordinance.
 4. All pole lighting for off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from adjoining residential properties.
 5. The layout of the parking areas and access to Rapid Run Drive shall be subject to approval by the Division of Traffic Engineering.
 6. A storm water management plan shall be implemented in accordance with the adopted Engineering manuals, subject to acceptance by the Division of Engineering.
 7. All existing tree lines and fencing along the church property boundaries shall be preserved and maintained to the greatest extent possible.
4. **C-2015-30: SUMYA ELGUMATI** - appeals for a conditional use permit to operate a community outreach center (health screening, food and clothing bank, etc.) in a High Density Apartment (R-4) zone, at 572 Georgetown Street (Council District 2).

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 of use is relatively minor. Furthermore, the parking area will now be upgraded in order to provide the required ADA accessible parking space, which it currently lacks.
- 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 community center shall operate in accordance with the submitted application and site plan.
2. The parking lot shall be re-stripped within three (3) months of approval by the Board, so in accordance with the submitted site plan.
3. The applicant shall provide documentation of an extended parking agreement with the Robert Williams Cultural Center, or provide other appropriate parking for their patrons and employees. This documentation shall be provided at the time of the annual Zoning Enforcement review of this conditional use permit.

E. Administrative Reviews

1. **AV-2015-32: BRENDIA MACK** - an administrative appeal to change one non-conforming use (beauty salon) to a new non-conforming use (cocktail lounge/bar); and a parking variance to reduce the required parking by 50% in a Planned Neighborhood Residential (R-3) zone, at 400 Chestnut Street (Council District 1).

The Staff Recommends: **Disapproval of the Administrative Appeal**, for the following reasons:

- a. The requested use of a cocktail lounge/bar will result in an increase in scope and intensity from the previous use (a beauty salon) and therefore does not meet the requirements of either Article 4-3(e) or 7-6(c) of the Zoning Ordinance.
- b. Indicators of the intensity of use include the zoning category in which the use is first allowed, the required parking for each of the uses, the hours of operation, and the potential for noise or other nuisances. The applicant's proposed use is more intense in each of these categories and is therefore an inappropriate use for the subject property since it is surrounded by residential uses.
- c. Disapproval of this requested use does not necessarily mean that this site will lose its non-conforming use status, as determined by the Board at their March, 2015 public hearing.

The Staff Recommends: **Disapproval of the Parking Variance**, for the following reason:

- a. The requested parking variance is dependent upon the requested change in use, which is recommended for disapproval; therefore, it is inappropriate to grant the requested parking variance.

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 June 26, 2015.

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