

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 26, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 26, 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.

1. **V-2015-33: ECONOMY HOME IMPROVEMENT** - appeals for variances to: 1) reduce the required front setback from 8 feet to 0 feet; 2) reduce the required side yards from 6 feet to 0 feet; 3) reduce the rear yard from 10 feet, 6 inches to 0 feet; 4) exceed the maximum allowable floor area by 500 square feet; and 5) reduce the required parking from 4 spaces to 2 spaces, in order to construct a duplex in a Two Family Residential (R-2) zone, at 524 Lawrence Street (Council District 3).

Note: This request was withdrawn via email, by the applicant on June 18th. No Board action is required.

2. **V-2015-42: ALICIA DEBOOR & GORMON COLLINS** - appeal for a variance to reduce the required side yard from 3 feet to 0 feet in order to remove a non-conformity regarding the residence in a Planned Neighborhood Residential (R-3) zone, at 2673 Red Leaf Drive (Council District 6).

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

- a. Granting the requested variance should not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity, as utility encroachment agreements have been obtained and no new construction will result from this request.
- b. The location of the existing house in the side yard, in conjunction with the fact that it was not recognized for 13 years (even during the home's construction), is a unique circumstance that justifies the requested variance.
- c. Strict application of the Zoning Ordinance requirements would mean that this house will remain non-compliant with the Zoning Ordinance, which may jeopardize any lending institution's willingness to loan money to a prospective buyer.

- 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 response to what appears to be a field mistake that was made during the construction of the home many years ago.
- e. The requested variance is not a direct result of the actions of the applicants, as the error occurred prior to their purchase of the home, but is a response to the existing location of the house and an attempt to remedy its non-compliance with Article 8-12(o) of the Zoning Ordinance.

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

- 1. Encroachment agreements from the LFUCG and appropriate utility companies shall be obtained and recorded at the County Clerk's office.

- 3. **V-2015-43: SPARTAN PASTABILITIES, LLC** - appeals for a variance to increase the maximum distance from 300 feet to 750 feet in order to accommodate the off-site parking requirements in a Neighborhood Business (B-1) zone, at 395 South Limestone Street (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, because a safe and convenient route is available to provide access to the proposed off-street business from the parking location. It will not alter the character of the general vicinity, as this area is dominated by pedestrian activity.
- b. The Pedestrian Oriented Business District, the safe and pedestrian-friendly environment of the immediate area, and the lack of available parking closer to the establishment, (in combination), create a unique set of circumstances for this area that justifies the requested variance.
- c. Strict application of the Zoning Ordinance requirements would limit the amount seating or may prevent the issuance of a Zoning Compliance Permit for this restaurant.
- 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 their 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 use.

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

- 1. As long as parking is provided off site, the applicant shall provide documentation of the parking agreements as a condition to issuance of an Occupancy Permit for the proposed restaurant use at this location.

D. Conditional Use Appeals

- 1. **CV-2015-40: BEN AFSHARI** - appeals for a conditional use permit to establish a bed and breakfast with up to five (5) rooms; and a variance to reduce the required 1-mile distance (5,280 feet) to 752 feet in the Agricultural Rural (A-R) zone, at 4950 Jennie Kate Lane (Council District 12).

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

- a. Bed & breakfast facilities are permitted as a conditional use in the A-R zone. The existing home and parking area are large enough to accommodate the proposed use of a bed & breakfast without making any physical changes to the property. No adverse impacts on the neighborhood are expected as a result of this use; and allowing this use will create an opportunity for an adaptive use for a uniquely situated property, and a location able to provide patrons with alternative for lodging near Keeneland, which one of the major tourist destinations in the county.
- b. All public facilities are available, adequate and in operation for the proposed use as a bed & breakfast facility.

The Staff Recommends: **Approval of the Requested Dimensional Variance**, 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 there will be no physical change to the subject property. A total of 10 bedrooms for rent in this area will not have an adverse impact on the general vicinity.
- b. There are several unique features to consider that justify the proposed variance. Although located 750 feet from property line to property line, the subject properties are located about ½ mile from each other via the traveling distance along the existing driveways and roads; and due to the topography of the area and existing tree lines, these properties are not visible from each other. Also, the subject property is located within 1-mile of Keeneland, which is a unique tourist destination in Fayette County.
- c. Strict application of the Zoning Ordinance requirements would mean that this proposed bed & breakfast facility could not be approved unless and until the existing bed & breakfast facility at 3463 Rosalie Road ceases to operate, which would result in an undue hardship to the appellant.
- 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 unique location and attributes of the improvements located currently on the subject property.

- e. The requested variances are not a direct result of the actions of the applicant, as the location of their home and of the existing bed & breakfast facility have not changed over the last 20 years.

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

1. That the bed and breakfast facility be operated in accordance with the submitted application and site plan.
 2. That a Zoning Compliance Permit and Certificate of Occupancy be obtained from the Divisions of Planning and Building Inspection, prior to operation of this use.
 3. That the septic system be reviewed and approved for this use, as necessary, by the Fayette County Board of Health.
 4. That any signage for the bed & breakfast facility 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.
 5. That the bed & breakfast be in compliance with all applicable State and local laws, including those of the Fayette County Health Department and that the residence meet all applicable fire safety codes.
 6. That any outdoor lighting used for this property be limited to a maximum of eight (8) feet in height.
2. **C-2015-36: BEAUMONT PRESBYTERIAN CHURCH OF LEXINGTON, KY., INC.** - appeals for a conditional use permit to construct an addition to the existing church in a Single Family Residential (R-1C) zone, at 1070 Lane Allen Road (Council District 11).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the addition is very minor in scope and adequate off-street parking will be provided.
- 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 additional square footage 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 Division of Planning and Building Inspection prior to construction of the addition.
3. **C-2015-37: FIRST UNITED METHODIST CHURCH** - appeals for a conditional use permit to establish a church in addition to an existing child care center in a Planned Neighborhood Residential (R-3) zone, at 474 Stone 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. Adjoining or nearby land uses are of a residential and commercial nature, and are not likely to be disturbed by typical church activities. The church's maximum parking needs are during the off-hours of the existing child care center, which operates only during weekdays.
- b. All necessary public facilities and services are available and adequate for the proposed use.
- c. The current use of a child care center, and the proposed church, are effective transitional uses between the existing single-family residential areas to the north and west and the commercial use areas along Stone Road farther to the south.

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, unless amended by the Urban County Planning Commission.
 2. All necessary permits, including a Zoning Compliance Permit, a Certificate of Occupancy, and/or a sign permit shall be obtained prior to the commencement of this use.
 3. Should a future expansion of the church at this location be desired, approval by the Board of Adjustment will be required.
 4. Five additional parking spaces shall continue to be provided by the adjacent Kentucky Utilities facility for this use, unless or until there is an amendment to the approved Final Development Plan for this location.
4. **C-2015-38: AMITABHA BUDDHIST EDUCATION SOCIETY OF KENTUCKY** - appeals for a conditional use permit to occupy an existing building for religious assembly purposes in a Single Family Residential (R-1D) zone, at 920 Bates Creek Road (Council District 3).

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

- a. Churches, Sunday schools and places of religious assembly are permitted as conditional uses in the Single Family Residential (R-1D) zone with Board of Adjustment approval.
- b. Granting the requested conditional use permit should not adversely affect the subject property or surrounding

properties, since the existing facilities will be used as they currently exist. The proposed use will be much less intense than the former church, with a parking requirement that would be about 1/3 of that required for the previous church. No new structures are proposed that would affect storm water drainage on the property, and other facilities are available and adequate for this proposed use.

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

1. The use shall be operated in accordance with the submitted application and a revised site plan that eliminates the proposed parallel parking spaces along the northern property boundary, or otherwise revised as required by the Division of Traffic Engineering. A minimum of 6 parking spaces shall be maintained at this location.
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 operating the proposed facility.
3. A minimum 3- foot tall screen hedge or fence shall be placed along the western property line, where adjacent to the existing parking lot.
4. Any outdoor lighting shall be shielded and directed away from the adjacent residential uses.
5. **C-2015-39: CRESTWOOD CHRISTIAN CHURCH** – a request to amend a conditional use permit to build an addition (expand the nursery and children's ministry areas) in a Single Family Residential (R-1C) zone, at 1882 Bellefonte Drive (Council District 4).

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

- a. Additional building square footage at this existing church should not adversely affect the subject or surrounding properties. Off-street parking and outdoor play areas are conveniently located and well exceed the minimum requirements of the Zoning Ordinance. The expansion of the building is to be located toward Bellefonte Drive in a highly landscaped area, away from the adjacent residential properties.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. Additional building square footage for this proposed use shall be provided in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Building Permit, shall be obtained prior to construction of the proposed nursery expansion.

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

- A. **RECOGNITION OF BOARD OF ADJUSTMENT MEMBERS** - At this time, the Board (and the staff) would like to formally express their sincere appreciation to Ms. Kathryn Moore and Mr. Jim Griggs for their dedication and service to the Urban County Board of Adjustment and to the citizens of Lexington-Fayette County.
- B. **LANDSCAPE REVIEW COMMITTEE** - The term of Jim Griggs, Board of Adjustment member of the Landscape Review Committee, will expire on June 30 of this year, due to the end of his third term on the Board of Adjustment. Ms. Jan Meyer has agreed to be appointed to this advisory Committee as his replacement. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jan Meyer	Board of Adjustment
11/30/2015	Ms. Karen Angelucci	Tree Board
11/30/2016	Mr. Mike Cravens	Lexington Homebuilders Association
11/30/2017	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2018	Mr. Richard Weber	Landscape Architect

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 July 31, 2015.

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