

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

July 31, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, July 31, 2015.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the May 29, 2015 and June 26, 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-2015-50: LAWRENCE LOT, LLC** - appeals for a variance to increase the maximum allowable height of a front yard fence from 4 feet to 6 feet in a Townhouse Residential (R-1T) zone, at 422 Lawrence Street (Council District 3).

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

- a. Approving the requested variance to allow an additional 2' of fence height at this location 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. The proposed fence will not be located in any existing sight triangles and is unlikely to be in the sight triangle of any future driveway. The Board of Architectural Review will ensure that the proposed fence will meet the design guidelines of the H-1 zone, thereby keeping the proposed fence compatible with the character of the surrounding neighborhood.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance, as the vacant property functions as the rear yard of the adjacent Cigar Flats condo units. If this vacant property were a part of that lot, a 6-foot tall fence would be allowed "by right" as long as it were located at least three feet from the right-of-way, only a slight difference from the proposed location of the fence.
- c. The most unusual circumstance associated with the subject site is the fact that this vacant property was planned to be developed as one project area, including the Cigar Flats condo property, but has failed to develop as such for nearly 10 years. The condo association now owns the vacant property and wishes to continue to utilize this lot as a rear yard, rather than develop it at this time.
- d. Strict application of the Zoning Ordinance would require the appellant to either build a shorter fence, to set the fence back 5 feet from the right-of-way, or to consolidate the properties and move the fence back 3 feet from

the right-of-way. Any of these three options would likely result in a less desirable outcome for the applicant and a hardship for some or all of the condo owners.

- e. The requested variances are not the result of any willful violation of the Zoning Ordinance but are, rather, a reasonable response to this unique lotting and ownership characteristics 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 application and site plan, allowing modifications, if required, by the Division of Building Inspection to be in compliance with the actions of the Board of Architectural Review.
2. A Certificate of Appropriateness shall be obtained from the Division of Historic Preservation and a fence permit shall be obtained from the Division of Building Inspection by the applicant prior to construction.
3. Should a residential dwelling unit ever be built on the subject property, this variance shall be nullified void and the height of the fence adjusted to meet applicable Zoning Ordinance requirements.

D. Conditional Use Appeals

*Note: The next item is a continuation from the June 26, 2015 meeting.

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-2015-44: MARC T. MASON** - appeals for a conditional use permit to establish a home occupation (engraving) in a Single Family Residential (R-1D) zone, at 6464 Athens-Boonesboro Road (Council District 12).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This proposed home occupation (engraving) will easily meet the limitations and requirements set forth in Article 1-11, which are designed to limit the impact of such a use.
- b. Adequate parking is available for this use in the driveway of the residence if it's so low volume, this shouldn't be an issue. No disturbances to surrounding property owners are anticipated with this conditional use, and deliveries will typically occur once or twice each week.
- c. All necessary public facilities and services are available and adequate for the proposed home occupation.

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

1. This conditional use shall be operated in accordance with the submitted application and site plan.
 2. All necessary permits, including issuance of a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to operation of this home occupation.
 3. The activity on the subject property shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.
3. **C-2015-45: HOPE CENTER RECOVERY PROGRAM FOR WOMEN** - appeals for a conditional use permit to expand the existing rehabilitation home in a Planned Neighborhood Residential (R-3) zone, at 1524 Versailles Road (Council District 11).

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

- a. A postponement will allow the applicant sufficient time to review alternative designs that can address the ability for large vehicles to maneuver on site and to accommodate the required parking for the expanded use of the facility.
4. **C-2015-46: LIVING LEARNING CENTER, LLC.** - appeals for a conditional use permit to allow the operation of a fraternity in a High Density Apartment (R-4) zone, at 163 East Maxwell Street (Council District 3).

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

- a. A one-month postponement should allow the applicant sufficient time to provide additional information, as enumerated in the staff report, which is needed in order to evaluate the proposal and make a substantive recommendation for the requested conditional use for a fraternity at this location.
5. **C-2015-47: ANDERSON TRAIL SIDE TOWNHOMES, LLC. (CHILD CARE)** – appeals for a conditional use permit to construct and operate a child care center in a Planned Neighborhood Residential (R-3) zone, at 2935 Trailwood Lane (aka a portion of 2826 Leestown Road) (Council District 2).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as adequate off-street parking will be provided and sufficient space is available for the required outdoor play area. The child care will be internal and almost central to the surrounding neighborhoods and will be easily accessible.
- b. All necessary public facilities and services either are or will be available and adequate for the proposed use.

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

1. The child care center shall be established in accordance with the submitted application and site plan.
 2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to opening the center. This includes, at a minimum, a Zoning Compliance Permit, a building permit, and a Certificate of Occupancy.
 3. The facility shall provide care for no more than 170 children.
 4. A fenced and screened outdoor play area of at least 12,027 square feet, designed and constructed in accordance with the requirements of the Division of Building Inspection, shall be provided. Furthermore, where the outdoor play area is near the rear and side yards of residential uses a privacy fence shall be installed.
 5. The formal closure of the two street stubs into the subject site shall occur prior to opening of the facility, in accordance with the approved final development plan, or as amended by the Planning Commission.
 6. A land disturbance permit shall be obtained from the Division of Engineering prior to commencement of any site construction.
6. **C-2015-48: ANDERSON TRAIL SIDE TOWNHOMES, LLC. (NEIGHBORHOOD CLUBHOUSE)** – appeals for a conditional use permit to construct a neighborhood clubhouse facility in a Planned Neighborhood Residential

(R-3) zone, at 2945 Trailwood Lane (aka a portion of 2826 Leestown Road) (Council District 2).

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

- a. The physical arrangement of the improvements on the subject property, along with the relatively large size of the lot, will minimize any potential negative impact of this conditional use upon the surrounding neighborhood. The proposed neighborhood clubhouse will provide a desirable service to the nearby neighborhoods, and will be located so as to be conveniently accessible by the neighborhood's existing collector streets.
- b. All services and infrastructure are or will be adequate and available for this proposed use.

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

1. The proposed clubhouse shall be constructed as indicated on the corollary site plan, or as amended by the Planning Commission on a final development plan, and shall be operated in accordance with the submitted application.
 2. All necessary permits shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to the construction and/or occupancy of the site. This will include, at a minimum, a Land Disturbance Permit, a Building Permit, a Zoning Compliance Permit and a Certificate of Occupancy.
 3. The right-of-way stub street into the subject property shall be officially closed prior to the operation of the proposed clubhouse.
 4. The membership of the club shall be limited to a maximum of 332 members, to ensure compliance with the minimum off-street parking requirement.
7. **C-2015-49: MICHAEL VANHOOSER** – appeals for a conditional use permit to operate an indoor recreational facility in a Wholesale and Warehouse Business (B-4) zone, at 340 & 342 Richmond Avenue and 949 National Avenue (Council Districts 3 & 5).

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

- a. Granting the requested conditional use permit to operate an indoor recreational (soccer training) facility should not adversely affect the subject or surrounding properties, provided that adequate off-street parking will be available when this business is in operation. As the site exists today, with a minor addition of new off-street parking spaces, adequate parking can be achieved; for the proposed use.
- 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 facility shall be operated and conducted in accordance with the submitted application, including the revised site plan, or as amended by the Planning Commission on a final development plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction or remodeling of the building. In addition, prior to an issuance of Certificate of Occupancy by the Division of Building Inspection, a Zoning Compliance Permit shall be obtained from the Division of Planning.
3. The applicant shall provide a minimum of 36 paved off-street parking spaces for this conditional use. The location of the parking spaces shall be either within the redevelopment area known as National Station or by an off-site parking agreement within 700 feet of the subject property. The final design of any newly paved parking areas shall be subject to review and approval by the Division of Traffic Engineering.
4. New parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance and the approved Final Development Plan.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

E. **Administrative Reviews**

1. **A-2015-41: LEXMARK INT'L., INC.** - an administrative review to transfer 42 square feet of unused wall signage to a free standing sign in order to erect a 117 square-foot replacement sign in a Light Industrial (I-1) zone, at 740 W. New Circle Road (Council District 1).

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

- a. Granting the requested 42-square foot transfer of signage from an unused wall sign to the proposed 117 square-foot free standing business sign is a reasonable request.
- b. Building 4, which faces New Circle Road and is the closest building to the proposed sign, has an allowable but unused 2,325 square feet of signage that could be used. Allowing 42 square feet to be transferred to a single free-standing sign constitutes less than 2% of this total wall signage.
- c. The new sign will be in scale with its surroundings, and its increased size will likely be unnoticeable to the traveling public on New Circle Road, considering the size of the campus, the size of the nearby buildings, the amount of open space, and its distance from the road.
- d. Although not required, Lexmark has coordinated their proposed sign location and design with the Kentucky

Transportation Cabinet and has made arrangements for the sign's location such that it will not be impacted by future widening of New Circle Road. As a result the sign will be 35 feet further away from New Circle Road than the existing free standing sign.

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

1. All sign permits shall be obtained from the Division of Building Inspection prior to their construction.
2. The sign shall be located as shown on the submitted application and site plan.

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

- A. **Election of Officers** - Generally, at the January meeting each year, the Board elects a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. However, due to the expiration of the terms, of Ms. Moore and Mr. Griggs, a Vice-Chair and a Secretary must be elected. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting.
- B. **Delegation of Secretarial Duties** - In the past, the duties of Secretary have been delegated to the Planning Manager or a staff member appointed by the Planning Manager. The Chair will request action on this item.
- C. **Closed Session** – The Department of Law has requested that the Board go into closed session to discuss a matter related to pending litigation.

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 August 28, 2015.

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