

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

September 25, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, September 25, 2015.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the July 31, 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-2015-52: LEX PROPERTIES, LLC** - appeals for variances to: 1) reduce the required front setback from 20 feet to 2 feet in order to provide parking in the front yard; 2) increase the maximum allowable width of a driveway from 10 feet to 16.5 feet; 3) eliminate the maximum 50% requirement for paving in the front yard; 4) eliminate the landscaping requirement for additional parking; 5) reduce the required driveway setback on either side of the property from 2 feet to 0 feet; and 6) reduce the required side yard (building) setback from 3 feet to 0 feet to allow a landing and stairs to remain as constructed in a Single Family Residential (R-1E) zone, within the defined Infill and Redevelopment Area, at 171 Montmullin Street (Council District 3).

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

a. There is not sufficient justification for the proposed variances to allow a parking area in the front yard of the subject property. Conversely, granting the requested variance will allow this property to be the only one in the neighborhood with 100% of the front yard devoted to pavement and parking, which would compromise the character of this vicinity.

b. The side yard variance would allow an obstruction to remain in the side yard, which could potentially hinder access to the rear of this property in the case of an emergency. The side door on this structure is not required by the Kentucky Building Code for this dwelling.

c. Although front yard parking is allowed with restrictions outside of the Infill & Redevelopment Area, it is specifically prohibited within the defined I/R Area. Additionally, the purpose of the restriction on structures in the side yard is to have an unobstructed passageway from the front to the rear of all residential lots, especially for emergency responders. Approval of these variances could be considered an unreasonable and unnecessary circumvention of the Zoning Ordinance.

- d. Based on the applicant obtaining a building permit without the front yard parking area, without the side door, or the staircase, but chose to build these items and then request relief from the regulation, it is clear that these variance requests have arisen due to actions resulting in a violation of the Zoning Ordinance, contrary to of KRS 100.243(2) and Article 7-6(b)(1)(b) of the Zoning Ordinance, which requires denial of the request.
2. **V-2015-59: LEWIS WARDEN** - appeals for a variance to reduce the required side yard from 6 feet to 0 feet in order to construct a detached garage in a Townhouse Residential (R-1T) zone, at 2705 Whitwood Place (Council District 7).

The Staff Recommends: **Approval of a variance to 2 feet**, for the following reasons:

- a. Approval of the variance will not have an adverse impact on the public health, safety or welfare; furthermore, it will not be out of character with other lots in Shadow Wood subdivision, which commonly have garages beside the detached dwellings on these lots.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance because a garage 2' off the side property line is not uncommon in this subdivision. Detached garages are often allowed to be set back 2' or less from side property lines in residential zones by other provisions of the Zoning Ordinance.
- c. The special circumstances that apply to this property in an R-1T zone is the fact that the single family homes are detached (as opposed to attached townhomes) and the unusual configuration of the lot and its rather unconventional lot frontage on the end of Whitwood Place – a “T” cul-de-sac now generally out of favor in newer developments.
- d. Strict application of the Zoning Ordinance would deprive the applicant of a reasonable use of their lot, since two of the three similarly shaped cul-de-sac lots in the closest proximity to the subject property already have garages that are very similar in style and size to the one proposed on the subject property.
- e. The variance is not the result of any prior action by the applicant, as no changes have been executed to the subject site.

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

1. The garage shall be done in accordance with the submitted application and site plan.
2. All necessary permits, including Building Permit, shall be obtained from the Division of Building Inspection prior to construction.

D. **Conditional Use Appeals**

1. **C-2015-51: ST. JOHN'S LUTHERAN CHURCH, INC.** - appeals for a conditional use permit to construct and occupy a church expansion, with associated changes in the parking and play area; and to increase the number of children in the existing child care facility from 30 to 70 in Single Family Residential (R-1B and R-1C) zones, at 516 Pasadena Drive and 2713 Southview Drive (Council District 10).

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

- f. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The church has the available room to expand its facilities on this 4-acre parcel, while new landscaping and changes to the dumpster location will mitigate the impact that this expansion will have on the surrounding properties.
- g. All necessary public facilities are available and adequate for the proposed use. Stormwater, in particular, will be designed in conjunction with the Engineering Stormwater Manual, which will require additional retention due to the known downstream stormwater problems in the neighborhood.

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, allowing slight modifications as may be required by the Divisions of Waste Management, Engineering, and Traffic Engineering during the normal permitting process.
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; and occupancy permit will be required prior to occupancy of the building addition(s).
3. A minimum of a six-foot tall hedge and trees every forty feet shall be installed along the eastern property boundary (except where adjacent to 2713 Southview Drive) in order to buffer the adjoining residential properties on Southview Drive.
4. All outdoor lighting shall be directed away from neighboring residential properties.
5. The dumpster pad shall be located along the western property boundary (near the adjacent church's parking lot), a minimum of 120 feet from the nearest residential property.
6. The property at 2713 Southview Drive shall be consolidated with the adjoining church property, by way of an appropriate plat filed with the Division of Planning and recorded prior to beginning the church use.

2. **C-2015-54: ELIZABETH SLONE** - appeals for a conditional use permit to operate a home occupation (licensed massage therapy) in a Single Family Residential (R-1C) zone, at 274 Zandale Drive (Council District 4).

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

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. Adequate off-street parking will be provided, and no significant increase in neighborhood traffic is expected. The activity does not involve the use of noisy or harmful equipment of any kind, so the potential of disturbing other property owners is minimal.
- 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 massage therapy, which has been determined by the Board of Adjustment in a previous case to qualify as a home occupation, shall be established in accordance with the submitted application and site plan, and operated by the appellant only within the residence.
2. A Zoning Compliance Permit shall be obtained from the Division of Planning prior to operating this home occupation.
3. The activity shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.
4. The applicant shall provide, on a yearly basis, proof of her continued licensure as a massage therapist.
5. The conditional use permit shall become null and void should the appellant cease to either own or reside at the subject property, or maintain state licensure.

3. **C-2015-55: MEREDITH EASTBURN** – appeals for a conditional use permit to operate a home occupation (handicrafts) in a Two Family Residential (R-2) zone, at 108 Victory Avenue (Council District 5).

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

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. Adequate off-street parking will be provided for this use, and no significant increase in neighborhood traffic is expected. The activity does not involve the use of noisy or harmful equipment of any kind, so the potential of disturbing other property owners is minimal.
- 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. This handicrafts home occupation shall be established in accordance with the submitted application and site plan, and operated by the appellant within the residence.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to operating this home occupation.
3. The activity shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.
4. The conditional use permit shall become null and void should the appellant cease to either own or reside at the subject property.

4. **C-2015-57: DR. ANDREW P. & CHARLSEY Y. SHROYER** – appeal for a conditional use permit to operate a veterinary office/animal hospital in a Professional Office (P-1) zone, at 3580 Lyon Drive (a.k.a. 1096 Wellington Way) (Council District 10).

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

- a. Granting the requested conditional use permit will not adversely affect the subject or surrounding properties. The proposed veterinary clinic will be indoors, and will be conducted without overnight boarding other than the occasional overnight stay for medical purposes. Adequate off-street parking is available, and the location of this site should further prevent any potential for this use to be a nuisance to the nearby residential neighborhood. The proposed outdoor exercise area for dogs will be screened with a 6' tall solid fence, will not be used for overnight or outdoor kenneling, and will be supervised, in order to ensure there will not be any nuisance to the nearby office and residential uses.
- 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 use shall be conducted 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 issued by the Divisions of Planning and Building Inspection prior to the operation of the veterinary clinic at this location.
3. There shall be no overnight boarding of animals at this location, other than the occasional overnight stay

strictly for medical purposes.

4. The outdoor exercise area for dogs shall be enclosed and screened by a 6' solid privacy fence, and all pets shall be supervised when placed in this area. It shall be a minimum of 25 feet from the southeastern property line.

E. **Administrative Reviews**

1. **A-2015-56: ANDOVER CONSTRUCTION** – an administrative appeal to construct a second kitchen in a single family residence (townhome) in a Planned Neighborhood Residential (R-3) zone, at 1811-2053 (a portion of) Winchester Road (Council District 6).

The Staff Recommends: **Approval of the Administrative Review**, with the following finding:

- a. The proposed second kitchen on the lower level of the townhouse (lot 7 with a future address of 2113 Patchen Lake Lane) does not constitute an independent, separate, dwelling unit because the upper level and lower level will not be physically separated from one another and the living quarters will not be available for rental purposes to establish a second, independent housekeeping unit.

2. **A-2015-58: STARSTONE, LLC.** – an administrative appeal of the Division of Planning's Notice of Violation, determining that this property has a legal-non-conforming use status and may continue to operate in a Planned Neighborhood Residential (R-3) zone, at 346 South Broadway Park (Council District 3).

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

- a. The Division of Planning's Zoning Enforcement Section correctly issued a Notice of Violation stating that the parking of vehicles is an illegal use at the property known as 346 S. Broadway Park.
- b. The applicant has not sufficiently established that the use of the property by an exempt user creates a legal non-conforming use of the property. Furthermore, no application has been made for a Zoning Compliance Permit or Certificate of Occupancy for the change in user once the Sheriff's Department discontinued and abandoned the use of the property in 2011.
- c. The applicant has not sufficiently established a consistent non-conforming use of the entire subject property since the Sheriff's Department discontinued use of the property in 2011. Additionally, aerial photography from 2013 and 2014 indicated that at least the front 2/3 of the lot has been returned to grass and not had vehicles parked on it. Vehicles have been photographed earlier this month parking on the grass on the entire property.
- d. According to Article 4-3(c) of the Zoning Ordinance, once the non-conforming use of the property has been discontinued or abandoned for a period of one year or more, any legal non-conforming use status is lost.

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 October 30, 2015.

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