

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 20, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, November 20, 2015.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the September 25, 2015 and October 30, 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-2015-66: URBAN 221, LLC** - appeals for variances to reduce the required front yard from 10 feet to 0 feet and to reduce the ground level open space requirement from 2% to 0% in a Downtown Frame Business (B-2A) zone, at 211 & 221 Corral Street; 166, 170, 174, 178 & 180 N. Martin Luther King; 212, 214, 216, 218 & 220 Wickliffe Street & the former Barkley Street right-of-way (Council District 1).

The Staff Recommends: **Withdrawal** of the ground floor open space variance, for the following reason:

- a. The detailed recommendation for an increased pedestrian walkway, which is integral to the recommendation of approval of the setback variances, negates the need for the ground floor open space variance; as this requirement will be met.

The Staff Recommends: **Approval** of the front yard and side street side yard variances, for the following reasons:

- a. Approving the requested variances for the street setback for the second story and above 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 10' setbacks, prior to the current zoning requirements. Provided that a safe and inviting pedestrian walkway is provided at the ground level, and that the building will not be in any required sight triangles, a front yard setback on the ground level is appropriate.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, as the B-2A zone allows a great amount of flexibility in use and design in the downtown area. Granting a modest setback variance on the first floor that will still accommodate pedestrians will be similar to other downtown developments and will meet the intent of the Zoning Ordinance.

- c. The scope of this project, being almost an entire city block, the applicant's proposal to build an "architecturally significant building," and the urban context of the surrounding area, in combination created a unique circumstance that justifies the requested setback variances.
- d. The requested variances are not the result of any willful violation of the Zoning Ordinance but are, rather, are a reasonable response to the overall built environment surrounding the site.

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, or as amended by the Planning Commission on a final development plan. Minor modifications, if required, by the Divisions of Engineering, Traffic Engineering, Solid Waste and Fire & Emergency Services shall be permitted.
 2. A Zoning Compliance Permit and a Building Permit shall be obtained by the applicant prior to construction. Additionally, a Certificate of Occupancy will be required once construction is complete.
 3. The setback variance along N. Martin Luther King Boulevard shall be to 0' for the second story and above. The ground floor variance will be to the minimum necessary to provide an 8' wide pedestrian sidewalk (including any combination of architectural details and landscaping or other design elements as agreed to by the Bike and Pedestrian Planner and the Design Excellence Officer in the Division of Planning), in order to create a safe and inviting pedestrian walkway. At no point shall the building be allowed in any required sight triangles.
 4. The setback variance along Corral Street shall be to 0' for the second story and above. The ground floor variance will be to the minimum necessary to provide a 6' wide pedestrian sidewalk (including any combination of architectural details and landscaping or other design elements as agreed to by the Bike and Pedestrian Planner and the Design Excellence Officer in the Division of Planning) in order to create a safe and inviting pedestrian walkway. At no point shall the building be allowed in any required sight triangles, including those at the entrance/exit to the parking garage.
 5. Provided the Urban County Council allows Wickliffe Avenue to become a one-way alley, the setback from the right-of-way may be reduced to 0'. Should the Urban County Council not change the status of Wickliffe Avenue to a one-way alley, any variance request along this street frontage, and including the necessary setbacks for a sight triangle at the intersection of Wickliffe Avenue and N. Martin Luther King Boulevard, shall be considered null & void.
2. **V-2015-67: MARC GUILFOIL & ELISABETH JENSEN** - appeal for a variance to reduce the required front yard from 300 feet to 100 feet, in the Agricultural Rural (A-R) zone at 1861 Evans Hills Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not have a negative effect on the subject or surrounding properties and will not cause a public health, safety or welfare problem. Furthermore, it will not alter the character of the general vicinity, as there are already other properties in this stretch of Evans Mill Road that have established front setbacks in the 100' to 150' range.
- b. This request for a variance is not an unreasonable circumvention of the Zoning Ordinance but, is rather, a logical outcome of the unique circumstances of the steep topography, the confluence of several waterways, and the general character of the area, which has several properties with homes closer to the road than 300'.
- c. The location of the proposed home is logical because of the topography and the nature of the existing agricultural operation, which are unique circumstances of this farm that justify the requested variance.
- d. Strict application of the Zoning Ordinance would require that the new home be moved to a less desirable location on the farm, possibly interrupting the agricultural operations of the farm and likely requiring costly solutions to deal with the excessively long private driveway.
- e. The requested variance is not a willful violation of the Zoning Ordinance. Rather, it is in response to the unique characteristics of this property. No construction has begun, and the applicants learned of the need for this variance during the normal building permit process.

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

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Engineering; Traffic Engineering or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.
3. The Fayette County Health Department shall approve the septic system for this home as part of the permitting process.

D. Conditional Use Appeals

None

E. **Administrative Reviews**

**Note – This case is a postponement from the October 30th hearing.*

1. **A-2015-50: STEVE PERRY & LEX PROPERTIES, LLC.** – a third party administrative appeal of the decision of Zoning Enforcement to accept the as-built survey as evidence of compliance with the development plan and plat in a High Density Apartment (R-4) zone, at 201 & 205 Burley Avenue; and 1107, 1109 & 1111 Stillwell Avenue (Council District 3).

**Note – The staff will report at the hearing.*

2. **A-2015-65: ANDREW MOORE** – an administrative appeal to change one legal non-conforming use (repair of video games) to another non-conforming use (professional offices) in a Two-Family Residential/Historic District Overlay (R-2/H-1) zone, at 427 S. Mill Street (Council District 3).

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

- a. Granting the requested change in non-conforming use from a video game repair shop to an office should not adversely affect the subject or surrounding properties, as this change is very minor in scope (involving only about 25% of the building's total floor area). It will not result in an increase in scope of the non-conforming use, and should be considered as lessening its scope because the new proposed use is first allowed in the same or a less intense zone than the current combination of uses.
- b. Furthermore, such a small change in use should not negatively impact the neighborhood or alter the character of the subject or surrounding properties.

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

1. The change in use to an office space shall be done in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit, Building Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to operation of the new use.

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.

- A. **Landscape Review Committee** - The term of Ms. Karen Angelucci, Tree Board member of the Landscape Review Committee, will expire on November 30 of this year. A new member needs to be appointed to replace Ms. Angelucci, and Mr. Rory Kahly has agreed to serve in that capacity. 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
11/30/2017	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2018	Mr. Richard Weber	Landscape Architect

**Note – The Meeting & Filing Schedule had a discrepancy at the last month's hearing, and will need to be readopted.*

- B. **2016 MEETING & FILING SCHEDULE** - As part of its Bylaw-related duties, each year the Board of Adjustment must adopt its Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2016 is now in draft form and will be presented to the Board for review and/or discussion prior to its official adoption.

C. The staff would like to wish the Board members and their families a safe and happy Thanksgiving holiday.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be December 11, 2015.

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