

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

December 11, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, December 11, 2015.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the November 20, 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-2015-72: JEFF & JENNY STRINGER** – appeal for a variance to reduce the required side yard from 25 feet to 1.5 feet in order to construct a detached accessory garage in an Agricultural Urban (A-U) zone, at 4420 Old Schoolhouse Lane (Council District 10).

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

a. Granting the requested variance will not cause a negative effect on the subject or surrounding properties and will not cause any problem with the public health, safety or welfare. The proposed placement of the garage will not be out of character with other properties in the vicinity, and will likely not be visible from any public street.

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 this property. It is common for accessory structures to be within 18 inches of a property line, and the unique circumstances of this property make the proposed location of the garage the only viable place to construct it.

c. The sloping topography of the property and the location of the existing septic system behind the house are unique circumstances that make the proposed location of the garage the only viable place for its construction, all of which provides a reasonable justification for granting the requested variance.

d. Strict application of the Zoning Ordinance would require that the applicants either not build a garage or go to great expense to regrade their property and relocate an existing septic system, which may be impractical based on the current size and access limitations associated with the property.

e. The requested variance is not the result of a willful violation of the Zoning Ordinance. 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 garage prior to construction.
2. **V-2015-73: GREEN LANTERN FARM, LLC** – appeals for a variance to reduce the required front yard from 300 feet to 75 feet in order to (re) construct two tenant homes in the Agricultural Rural (A-R) zone, at 4400 Kenny Lane (Council District 12).

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

- a. Granting the requested variance will not cause a negative effect on the subject or surrounding properties and will not cause a public health, safety or welfare problem. The proposed placement of the tenant homes will actually increase the personal safety and welfare of the farm by keeping a presence at the farm entrance. Furthermore, it will not alter the character of the general vicinity, as there were previously tenant homes in this location, and many other agricultural properties in the area have tenant homes with similar setbacks.
- 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 that prompted the original farm owners to build a tenant home at this location many decades ago.
- c. The existing location of the tenant home, the existing location of the functioning septic system, the existing roads, the soils, the topography, and the nature of the agricultural operation are all circumstances of this farm that justify the requested variance.
- d. Strict application of the Zoning Ordinance would require that the new tenant homes be moved to a less desirable location on the farm, necessitating costly solutions to deal with the loss of the functioning septic systems, and would move the tenant homes into valuable pasture land, which would cause the owners a hardship.
- e. The requested variance is not a willful violation of the Zoning Ordinance. Rather, it is in response to the existing condition of the tenant homes on this property. No construction has begun; and the applicant 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. **V-2015-74: BERKLEY SALTERS** – appeals for a variance to increase the maximum allowable height for a front yard fence from 4 feet to 4'8" feet in a Two Family Residential (R-2) zone, at 301/303 Lakeshore Drive (Council District 5).

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare. It will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The existing fence is not located in a sight triangle, and would otherwise be permitted except for the additional 8 inches in height.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance, considering the type of fence and its height relative to the existing stone wall it was built to match.
- c. There are several special circumstances that apply to this property that do not generally apply to land in the general vicinity.
 - 1) The type of fence - a 4-plank horse farm fence has more opacity than a typical wooden residential fence;
 - 2) The fence is constructed along a steep slope area (25%) that makes the additional height of the fence basically imperceptible;
 - 3) The fence was built to the 4'8" height in order to match the height of the existing stone wall in the front yard located on Lakeshore Drive;
 - 4) There is extensive landscaping between the house and the fence that negates any potential negative effects that the additional height might have caused.
- d. Strict application of the requirements of the Zoning Ordinance would likely require the fence to be reconstructed, as it would be impractical to simply remove the top 8" of top board of this style of fence. This would be impractical and result in a financial hardship for the property owner.
- e. The circumstances surrounding the requested variance are not the direct result of a willful violation of the Zoning Ordinance. The applicant was unaware of the need for a permit, and pursued the proper permits and approvals as soon as he became aware of the need for a variance. The final stage of construction (painting)

has been delayed by the applicant, pending the outcome of the Board's action.

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

1. The applicant shall obtain a fence permit for the construction of the front yard fence.

D. Conditional Use Appeals

1. **CV-2015-69: TONY & LISA HODGES** - appeal for conditional use permit to operate a nightclub with indoor live entertainment; and a variance to the required distance from a residential zone from 100 feet to 65 feet in a Neighborhood Business (B-1) zone, at 828 Lane Allen Road, Ste. 140/150 (Council District 11).

The Staff Recommends: **Approval of the conditional use**, 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.

The Staff Recommends: **Approval of a dimensional variance from 100' to 65'**, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare. It will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. No physical change or expansion of the existing buildings or parking lot is required or proposed by the applicants to accommodate this use.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because the proposed use of the private seating area for the nightclub will have the same impact as a private dining area for a restaurant, provided that no live entertainment is permitted in this portion of the establishment, as volunteered and agreed to by the applicant.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that the orientation of the nightclub/bar is to the interior of the shopping center. There will not be any direct access from the private seating room to the exterior of building, which faces the residential neighborhood across Garden Springs Drive. Because of the orientation and the prohibition of live entertainment in this portion of the bar, disturbances to the neighborhood are not expected.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicants of a reasonable use of the property, because without the variance this portion of the suite would have to be utilized as an office, storage, or some other accessory use that is not technically the nightclub use.
- e. The circumstances surrounding the requested variance are not the result of the prior actions of this applicant, but are related to the existing location and layout of the building.

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

1. The nightclub with live entertainment shall be established in accordance with expanded hours and the submitted application and site plan.
 2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy as a nightclub with live entertainment.
 3. A note reflecting the action of the Board shall be denoted on any amended Final Development Plan for the subject property, other than for ingress and egress.
 4. Outdoor speakers shall be prohibited, and the doors to the restaurant shall not be propped open during the times when live entertainment is present.
 5. Hours of operation of the live entertainment shall be limited to nights ending no later than 2:30 am.
 6. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.
2. **C-2015-70: YMCA OF CENTRAL KENTUCKY, LLC.** - appeals for a conditional use permit to develop and use the property as part of the adjoining YMCA in a Planned Neighborhood Residential (R-3) zone, at 2625 Old Rosebud Road (Council District 6).

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 use for outdoor sports programs is a very low intensity use. Furthermore, the applicant has agreed to make the fields unlighted, to the fields set back 150' from the adjacent residential properties, and to install a row of evergreen trees to screen the rear yards of those properties from 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 community center use shall be operated in accordance with the submitted site plan and application,

- allowing minor adjustments if deemed necessary by the Divisions of Planning or Building Inspection during the normal building permit process.
2. All necessary permits, including a Zoning Compliance Permit and a Building Permit for the pavilion, shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the addition.
 3. The outdoor fields shall be unlighted and located a minimum of 150' from the adjacent residential properties.
 4. A staggered evergreen screen shall be installed adjacent to residential properties to the north, with trees at least 15' on center. The screening shall be installed prior to the operation of this property as a community center.
 5. The sidewalk along Pascoli Place shall be constructed prior to the operation of this property as a community center.
 6. The applicant acknowledges that a multi-use trail is intended to be developed near the floodplain at the rear of the property and agrees to negotiate with the LFUCG should there be a need for construction of the trail on this property.
 7. The applicant shall have up to three years to exercise this conditional use permit.
3. **C-2015-71: ROMAN CATHOLIC DIOCESE OF LEXINGTON** – appeals for a conditional use permit to construct an access for the church property, which will provide access to another adjacent property in Agricultural Urban and Single Family Residential (A-U & R-1D) zones, at 4001 Victoria Way & 165-169 Toronto Road (Council District 4).

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

- a. As submitted, the proposed design of the access to Toronto Road creates an unconventional traffic pattern that causes concern for the Division of Traffic Engineering and the Fire Department. Additional time is needed for the applicant to evaluate a revised layout, in the hope of minimizing those concerns.

E. **Administrative Reviews**

Note: This case is a postponement from the November 20th hearing.

1. **A-2015-60: 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.

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

- A. The Board has requested an update from Zoning Enforcement with regard to 7524 Old Richmond Road (**CV-2006-20: AARON JAMISON / MARVIN FELDPAUSCH**).

Note: Zoning Enforcement staff will report at the hearing.

- B. The staff will distribute copies of the 2016 Meeting & Filing Schedule 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. The staff would like to wish the Board members and their families a safe and happy holiday season.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be January 29, 2016.

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