

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

February 26, 2016

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, February 26, 2016.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the January 29, 2016 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-2016-3: JIM & MOLLIE SAWYER** – request a variance to reduce the required side setback from 25 feet to 8 feet in order to construct a garage between the house and the side property line in the Agricultural Rural (A-R) zone, at 4949 Hidden River Drive (Council District 12).

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

- a. Granting the requested side yard variance will not adversely affect the subject or surrounding properties; will not cause a health, safety or welfare issue; and will not have a negative impact on the character of the surrounding properties, which have functionally developed as a large-lot residential enclave, surrounded by farms.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance. The smaller side yard on this lot will not be out of character with the surrounding development.
- c. Based on the complicating physical features associated with the site, it is a logical choice to expand the residence to the east because there are areas of steep slopes, dense tree stands, and an existing septic system that otherwise restrict the buildable area on the subject property.
- d. Strict application of the Zoning Ordinance would likely require the loss of several mature trees on the subject property, and would require the relocation of an existing septic system.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The need for the requested variance was discovered by the applicant's architect during the normal permitting process.

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

1. The addition to the existing house shall be constructed in accordance with the submitted application and site plan.
 2. A building permit shall be obtained by the applicant from the Division of Building Inspection prior to construction of the addition, and an occupancy permit shall be obtained once the construction has been completed.
2. **V-2016-4: LEXINGTON COMMUNITY LAND TRUST, INC.** – requests a variance to reduce the required side yards from 3 feet to 0 feet in order to install fences in a Planned Neighborhood Residential (R-3) zone, at 708, 716, 730, 734, 738, 742, 746, 750, 770, 804 and 808 De Roode Street and 400, 401, 404, 408 and 409 Nathaniel Court (Council District 3).

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

- a. Granting the requested variance will not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare issue. Once installed, the fences will have gates, thereby not creating an obstruction in the side yards of these properties. Based on the overall design proposed by the CLT, it will not cause obstructions to the neighboring property owner because each property will share a single 4' tall fence in the side yard. Granting the requested variance will not prevent the use of the side or rear yards, especially by emergency responders, if necessary.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. This community redevelopment project is a direct result of the planned efforts for the Newtown Pike Extension Project, which began prior to the regulations from which they now seek relief.
- c. The Community Land Trust (CLT), is a quasi-governmental 501(c)(3) non-profit organization, by virtue of its charter and creation, is a unique redevelopment project funded by a combination of the CLT, the Lexington-Fayette Urban County Government, and the KY Department of Transportation. Taken together this provides a level of justification for the variance request. Because of the unique nature of the CLT, they will be able to maintain the affordability and design features of this development through private restrictions such as fence heights and other design standards that have been adopted.
- d. Strict application of the Zoning Ordinance would require the fences to be moved entirely to the rear of the homes. Functionally, this would be less desirable than the proposed fencing layout.
- e. The requested variance is not the result of any willful violation of the Zoning Ordinance. The need for the requested variance was discovered during the normal permitting process.

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

1. Gates shall be installed to allow access to the side yards, and the maximum height of the fence in the side yards shall be 4' tall.
 2. Fence permit(s) shall be obtained by the applicant from the Division of Building Inspection.
3. **V-2016-5: GARY MILTON** – requests a variance to increase the maximum allowable fence height from 4 feet to 7 feet (for the columns) and to 5 feet (for the fence) in a Single Family Residential (R-1C) zone, at 3101 Tate's Creed Road (Council District 4).

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

- a. The requested variance does not arise from a special circumstance that does not generally apply to land in this same zone. There are no unique physical characteristics, such as topography or neighborhood character, that would serve as a justification to approve the requested variance to the fence height.
- b. Granting the requested variance would cause this property to have a front yard improvement that would be out of character with others in the neighborhood, as no adjacent properties and very few properties in the Tate's Creed Road corridor have any front yard fences, much less at the height(s) requested by the applicant.
- c. Strict application of the Zoning Ordinance will not deprive the applicant of a reasonable use of the property, as a 4' tall fence in the front yard is allowed by right in this zone, with the issuance of a fence permit. Additionally, a 4' fence should accomplish the same goal of providing a secure outdoor space for children to play.

D. **Conditional Use Appeals**

1. **C-2016-2: PINNACLE HOMEOWNERS ASSOCIATION** – a request to amend a conditional use permit to expand the existing neighborhood clubhouse in a Single Family Residential (R-1E) zone, at 621 Southpoint Drive (Council District 4).

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 expansion of the existing clubhouse will provide a desirable service to the surrounding neighborhood, and is already located to be conveniently accessible by the neighborhood's existing collector streets.
- b. All services and infrastructure is adequate and available for this expansion of the existing clubhouse building.

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

1. The proposed clubhouse addition shall be constructed as indicated on the corollary site plan, and shall be operated in accordance with the submitted application.
2. All necessary permits shall be obtained from the Divisions of Planning, and Building Inspection, prior to the construction and/or occupancy of the site. This will include, at a minimum, a Building Permit, a Zoning Compliance Permit and a Certificate of Occupancy.

E. **Administrative Reviews**

1. **A-2016-1: JONNY & LISA COX** – an administrative appeal to change one non-conforming use (antique sales/storage/office) to another non-conforming use (coffee shop/restaurant) in a High Density Apartment (R-4) zone, at 610 (aka 620) Ballard Street (Council District 9).

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

- a. The requested use of a coffee shop/restaurant will result in an increase in scope and intensity from the previous use (antique sales/storage/office) and therefore does not meet the requirements of either Article 4-3(e) or 7-6(c) of the Zoning Ordinance.
- b. Indicators of the increased scope in intensity of the proposed use include the required parking for each of the uses, the proposed hours of operation, and the potential for noise or other nuisances to the nearby neighborhood.
- c. Disapproval of this requested use does not mean that this site will lose its non-conforming use status, as there are a number of other, less intense uses that could be approved by the Board for this location.

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 March 25, 2016.

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