

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

March 25, 2016

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, March 25, 2016.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the February 26, 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-2016-10: BRADLEY E. DAY** – requests a variance to allow an existing porch to project 9 feet instead of the maximum projection of 8 feet into the required front yard in a Single Family Residential (R-1C) zone, at 906 Darley Drive (Council District 1).

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

- a. Granting the requested variance should not adversely affect the subject or surrounding properties; will not cause a health, safety or welfare problem; nor will it alter the character of the general vicinity. Although not prevalent as an architectural design, there are other larger covered porches along the front elevations of houses located on this street; and this porch will not be out of character with other properties in the general vicinity.
- b. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance because, in this case, a one-foot greater projection will likely not be noticeable from the street. Furthermore, the porch is not in violation of Article 15-5(d), which sets the maximum projection allowed, regardless of other provisions of the Zoning Ordinance.
- c. The adjacent property to the south currently has a 6' tall wooden privacy fence at the shared property line with the subject property, and along Darley Drive, which hides the porch on the subject property when traveling north on Darley Drive. Additionally, because of the primary wall plane of the house is offset to the north, the porch does not visually appear to be out of scale with the house or other properties when seen traveling south on Darley Drive.
- d. Strict application of the Zoning Ordinance would likely require the demolition of the entire porch structure in order to rebuild it correctly, which would create an unnecessary hardship to the property owner.
- e. The requested variance is not a willful violation of the Zoning Ordinance. According to the property owner/applicant, he was told by the contractor that a permit had been issued for the construction when in fact, it had not. The applicant will complete his application for the proper building permit (as a condition of approval) if the variance is granted. This variance application was voluntarily filed and was not the result of any enforcement action by the Division of Planning or the Division of Building Inspection.

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

1. Within 30 days of approval the applicant shall apply for a building permit for the porch with the Division of Building Inspection.
2. Within 3 months of approval, the applicant shall plant bushes, shrubs, or equivalent vegetation adjacent to the front of the porch.
3. The remaining construction materials, stored under the porch, will be removed from the front yard, and there shall be no storage of materials under this porch.

D. Conditional Use Appeals

1. **CV-2016-6: REPUBLIC SERVICES OF KENTUCKY, LLC** – requests a conditional use permit to construct and operate a transfer station; and a variance to reduce the required landscape buffer area from 15 feet to 5 feet in a Heavy Industrial (I-2) zone, at 203 & 205 Lisle Industrial Avenue (Council District 2).

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

- a. The applicant notified the staff, surrounding property owners, and neighborhood leaders of their intent to request postponement, at the March public hearing, to April 29, 2016. Additionally, staff has relayed the applicant's intent to postpone to interested parties that would likely otherwise be at the hearing.
 - b. On March 15, 2016, via email, the applicant confirmed that they had mailed their "intent to postpone" letters to surrounding property owners within the notification area.
 - c. On March 15, 2016, also via email, the applicant notified staff that they intend to submit supplemental information for this request.
2. **CV-2016-8: IRONWORKS FARM, LLC** – requests a conditional use permit to construct and operate an Agricultural Market; and a variance to reduce the required setback distance from a residence on another property from 1,000 feet to 850 feet in the Agricultural Rural (A-R) zone, at 4561 Iron Works Pike (Council District 12).

The Staff Recommends: **Approval of the requested conditional use permit**, for the following reasons:

- a. An agricultural market on the subject property, with the building situated at least 850' from any existing

residences on adjoining properties, should not adversely affect the subject or surrounding properties. The proposed facility will substantially comply with all the detailed conditions set forth in Article 8-1(d)7 of the Zoning Ordinance, with developed portions of the property to be located entirely outside the Royal Spring Aquifer Recharge Area. An operational plan will be implemented to ensure that animal waste is managed appropriately. Anticipated traffic can be accommodated by the existing roadways, with necessary access and turn lane improvements to be made to Iron Works Pike if necessary. Based on the location and design of the facility and the operational plan, the proposed use will not constitute a nuisance by creating excessive noise, water pollution, traffic, dust or other public health hazards.

- b. All necessary utilities and public facilities and services, such as police and fire protection, will be available and adequate, with solid waste service to be privately provided.

The Staff Recommends: **Approval of the dimensional variance**, 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. The requested variance is minor in scope and there are unique circumstances that justify it. Furthermore, the applicant has agreed to further screen the property with the construction of a 10' tall solid fence in order to mitigate any potential negative impact to nearby residential properties.
- b. Granting the requested variance, a 15% reduction in the required distance, will not be an unreasonable circumvention of the Zoning Ordinance because of the thick buffer along the railroad tracks, further buffered by the applicant's proposed fence, which will meet the intent of the setback requirement.
- c. The existing railroad line, which is vegetated on both sides, the topography of the site, and the location of the Royal Spring Aquifer to the east are unique circumstances that justify the requested variance from 1,000 feet to 850' to the nearest property to the west.
- d. Strict application of the Zoning Ordinance would likely result in a shifting of the facility closer to the aquifer with increased excavation, or a subsequent reduction in the size of the facility, either of which would be considered to be an undue hardship.
- 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 design phase of the applicant's site plan proposal.

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

1. The property shall be developed in accordance with the submitted application, site plan, and operational plans, allowing minor changes to the site plan during the normal permitting process if required by the Divisions of Engineering, Traffic Engineering, or Fire Department.
2. All necessary permits, including a Zoning Compliance Permit, Building, and Land Disturbance permits shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to construction.
3. The facility shall at all times comply with the operational conditions specified in Article 8-1(d)7 of the Zoning Ordinance.
4. The design of the off-street parking areas and internal circulation shall be subject to review and approval by the Division of Traffic Engineering.
5. The following improvements to Iron Works Pike shall be provided:
 - a. a right turn lane for vehicles traveling west and attempting to enter the property;
 - b. a left turn lane for vehicles traveling east and attempting to enter the property; and
 - c. a three-lane access from the subject property (one entry and two exits).

All of these improvements shall be designed in accordance with the requirements of the Division of Traffic Engineering, subject to permitting by the Kentucky Transportation Cabinet, and shall be completed prior to opening the facility.

6. The facility shall be constructed and operated in compliance with all applicable local, state and federal storm water and water quality regulations, with a storm water management plan to be implemented in accordance with the adopted LFUCG Engineering Manuals, subject to acceptance by the Division of Engineering.
7. The facility shall be operated in compliance with the Operational Plan submitted by the applicant, dated February 2016.
8. The proposed wastewater disposal system shall be subject to review and approval by the Fayette County Health Department, or connected to an appropriate municipal sewer.
9. In accordance with Article 8-1(d)(7)(s) of the Zoning Ordinance, this use shall be reviewed annually to ascertain compliance of the accessory uses with the Zoning Ordinance and the Board's conditions of approval.

3. **C-2016-7: TRANSYLVANIA UNIVERSITY, INC.** – a request to amend a currently approved site plan for a conditional use in a High Density Apartment (R-4) zone, at 331, 333 & 345 North Broadway and 456 West Fourth Street (Council District 1).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding

properties. Off-street parking is available and adequate and has not proven to be a problem to the immediate neighborhood in the past, as the University owns and manages about four times the required parking on their campus. Some on-street parking is also available in this vicinity for visitors to the University.

- b. The addition of green space and other amenities for the students will enhance the area adjacent to the new residence halls and should improve the quality of student life on campus.
- c. All necessary public facilities and services are available and adequate for the proposed use, including police and fire protection.

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

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process. This will be subject to the review and approval of the Divisions of Historic Preservation, Planning, Building Inspection, Traffic Engineering, and Engineering, as necessary. It is understood that Board approval is required for (but not limited to) any additional buildings or an increase in the total gross floor area.
 2. All applicable permits, including Building Permits, Fence Permit(s), Zoning Compliance Permits, and Certificates of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
 3. Any construction on the property at 331 N. Broadway will be subject to review & approval by the Board of Architectural Review.
 4. The applicant is allowed up to three years to exercise this conditional use permit, with the ability to phase construction for the expected build-out to occur over a period of time for an additional five years.
4. **C-2016-9: JASON ELSEA** – requests a conditional use permit to open a cocktail lounge in a Neighborhood Business (B-1) zone, at 3090 Helmsdale Place, Stes. 265-270 (Council District 6).

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

- a. A cocktail lounge/bar (without live entertainment) at this location should not adversely affect the subject or surrounding properties, or alter the character of the area. The shopping center as a whole is well buffered from the surrounding properties, and the central location of this use within the shopping center will further reduce the potential for any disturbances. Additionally, parking requirements will be met for the proposed use of the property.
- b. All necessary utilities and public facilities and services, such as police and fire protection, are available and adequate, with solid waste service to be privately provided.

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

1. The cocktail lounge/bar shall be established in accordance with the applicant's stated hours of operation, 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 cocktail lounge, without live entertainment.
3. A minor amended development plan shall be submitted, documenting the uses and seating and the required and provided parking for all uses in the site statistics of the final development plan. Additionally, a note reflecting the action of the Board shall be denoted on any amended Final Development Plan for the subject property.
4. Outdoor televisions or speakers shall be prohibited for this use.
5. There shall be no live entertainment offered at this establishment.

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 April 29, 2016.

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