

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 24, 2016

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 24, 2016.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the March 25, 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-2016-33: EARLE & DIANE BENEZET** – request a variance to reduce the required side yard from 8 feet to 3 feet in order to construct a detached accessory building in a Single Family Residential (R-1C) zone, at 1732 Houndstooth Glen (Council District 7).

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, and this is further evidenced by the written support of the adjacent property owner. The proposed placement of the storage building will not be out of character with other properties in the vicinity, and will likely not be visible from any public street.
- b. This variance will not result in an unreasonable circumvention of the Zoning Ordinance but, rather, it is a logical outcome of the unique circumstances of this unique property. It is common for accessory structures to be within 18 inches of a property line, and the location of the storage shed on the subject site will be twice that distance.
- c. The location of the existing easements and mature trees, the size of the lot and the location of the house on the property are all unique circumstances that provide a reasonable justification for granting the requested variance.
- d. Strict application of the Zoning Ordinance would require that the applicants either not build a shed, place it in a less than optimal location in their yard, or remove existing mature trees.
- 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 Division of 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 storage shed prior to construction.
2. **V-2016-34: CM CHEVY CHASE, LLC** – requests a variance to reduce the required parking from 54 spaces to 34 spaces for office/restaurant uses in a Neighborhood Business (B-1) zone within the defined Infill and Redevelopment Area, at 630 Euclid Ave. (Council District 3).

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

- a. Granting the requested variance to reduce the required parking by 20 spaces should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. This small commercial center is in a very walkable and bikeable commercial corridor, well served by the transit system. Additionally, there are existing public and private parking options for the few times that their parking demand may exceed what is to be provided.
- b. Granting the requested variance will not negatively alter the pedestrian-friendly character of the corridor or the nearby neighborhood. The applicant is proposing to more efficiently utilize existing parking and is not attempting to provide new surface parking in the area. Furthermore, the 8 public parking spaces that are partially located on the applicant's property is a unique circumstance that only applies to a small handful of other properties in Lexington.
- c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, as the Zoning Ordinance anticipates that certain properties within the defined Infill & Redevelopment Area will be suitable candidates for modest parking variances.
- d. The applicant contends that there will be an undue hardship to their business and a negative impact on the surrounding neighborhood if the last commercial unit remains vacant solely due to parking restrictions.
- e. Although the current parking deficit is a direct result of the property owner's decisions to place higher parking generating uses than originally planned, the staff does not consider this to be a willful violation of the Zoning Ordinance. The applicant was unaware of higher parking requirements when making the arrangements prior to seeking a Zoning Compliance Permit for these uses in the shopping center.

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

1. The property shall be developed in accordance with the approved application and site plan, except as amended by the Planning Commission on a final development plan.
 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 the opening of the business in the final suite on the subject property.
 3. The Final Development Plan shall be amended to indicate the current proposed uses and their required parking, including reference to the Board of Adjustment's action of approval.
3. **V-2016-35: BRUCE WEBB** – requests a variance to reduce the required distance from a residential zone from 150 feet to 40 feet in order to occupy a building as a gymnasium in a Professional Office (P-1) zone, at 1122 Oak Hill Dr. (Council District 1).

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

- a. Granting the requested variance will not cause a negative impact on the subject or surrounding properties and will not cause a public health, safety or welfare problem. The previous athletic activities that were in operation at this location for more than two decades demonstrate that the proposed athletic activities, occurring indoors in the same structure as before, should also be able to operate without adversely affecting the surrounding neighbors or altering the character of the general vicinity.
- 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 request. The setback restriction for this use in the P-1 zone is intended to protect and buffer residential uses. This site has had a long history of providing this type of activity without complaint, long before the restriction was put in place.
- c. The existing location of the gymnasium, combined with the large lot size and its unique placement, literally surrounded by single family residential rear yards on all sides and the previous 23 years of similar usage under a different zone, creates a unique circumstance that applies to this property that does not apply to others in this immediate vicinity, or generally in this zone.
- d. Strict application of the Zoning Ordinance would require that the use of an athletic club facility would not be allowed anywhere on this property, even though it is not prohibited by conditional zoning restrictions.
- e. The requested variance is not a willful violation of the Zoning Ordinance. Rather, it is in response to the existing layout of the property and its location within the neighborhood. The athletic activities have ceased; and the applicant learned of the need for this variance during the normal zoning compliance 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.
 2. All necessary permits shall be obtained by the applicant, including but not limited to, a Zoning Compliance Permit and Certificate of Occupancy for the athletic club facility, prior to commencement of the use.
4. **V-2016-36: LEAH TAYLOR** – requests a variance to reduce the required front yard from 30 feet to 0 feet in order to construct a single family residence in a Single Family Residential (R-1C) zone, at 916 Bravington Way (Council District 9).

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

- a. Granting the requested front yard variance to the Longwood Road right-of-way (the unbuilt street) will not adversely affect the subject or surrounding properties. It will not cause a health, safety or welfare issue; nor will it have a negative impact on the character of the surrounding properties.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance. The frontyard setback requirement from the right-of-way typically applies to built streets, unlike the subject property. The residence will be at least 180' from Bravington Way, the public street that serves to access this lot, which far exceeds the 30' setback requirement from which the applicant seeks relief.
- c. Based on the complicating physical features associated with the site, it is a logical choice to build the residence at the proposed location because there are areas of steep slopes and dense tree stands that otherwise restrict the buildable area on the subject property. The size of the lot, the unbuilt street, the topography, and the dense vegetation are all unique circumstances that apply to this property that do not apply to others in the general vicinity.
- d. Strict application of the Zoning Ordinance would likely require either the loss of mature trees, increased cost of building on the more environmentally sensitive areas on the subject property, or would require a different architectural plan for the property.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The need for the 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.

D. Conditional Use Appeals

1. **C-2016-29: BLUEGRASS CHRISTIAN ASSEMBLY** – requests a conditional use permit to replace the existing swimming pool with a larger one and install an associated bath house the Agricultural Rural (A-R) zone, at 7463 Athens-Boonseboro Road (Council District 12).

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

- a. Granting the requested conditional use for a minor expansion of the existing campground by relocating and upgrading the pool and adding a pool house should not adversely affect the subject or surrounding properties, as this campground has occupied this property for approximately 67 years. The new facility will be placed in an area that is out of the floodplain, and the nearest residential use will be well protected from the proposed expansion by distance, topography and heavy vegetation.
- b. All necessary public facilities and services are available and adequate for the camp and will not need to be expanded to accommodate the requested use.

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.
 2. All applicable permits, including a Zoning Compliance Permit, Building Permit and a floodplain Special Permit Use, shall be obtained by the applicant from the Divisions of Planning, Building Inspection and Water Quality prior to construction and use of the pool.
 3. The recreational facilities, including the pool, shall be only for the use of sponsored church camp activities and will not be offered to the general public as a recreational amusement.
2. **C-2016-30: FIRST UNITED METHODIST CHURCH** – requests a conditional use permit to construct a church addition, up to an additional 10,000 square feet above what was approved in 1994, allowing up to a 17,310 (max) square-foot church in the Agricultural Rural (A-R) zone, at 4131 Todds Road (Council District 12).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the church property is nearly 10-acres in size along two major roadways, and adequate off-street parking will be provided.
- b. All necessary public facilities and services are available and adequate for the proposed expansion.

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

1. The 10,000 square-foot addition shall be made in accordance with the submitted application and site plan, except that the Todds Road access shall be deemed temporary until such time as Polo Club Boulevard is constructed and dedicated to public use, at such time it shall be removed.
 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 of the addition.
 3. That the Fayette County Health Department approve the use of a septic system for the church expansion, or that the property be connected to the public sanitary sewer system.
 4. That the development comply with the Engineering Manuals.
 5. That the temporary access point to Todds Road be approved by the Kentucky Transportation Cabinet.
 6. That any signage conform to the requirements of Article 17 of the Zoning Ordinance, and not be internally illuminated.
 7. That any outdoor play area (in association with a child care use) be fenced and screened as required by the Zoning Ordinance.
3. **C-2016-32: SOUTHSIDE CHURCH OF CHRIST** – requests a conditional use permit to demolish an existing one-story building, and rebuild a new two-story building as a Sunday school facility in a Single Family Residential (R-1C) zone, at 1533 Nicholasville Rd. (Council District 3).

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 expansion is relatively minor. Being in the H-1 zone will ensure that it will remain compatible with the district, as it requires approval of the Board of Architectural Review (BOAR) prior to issuance of a Certificate of Appropriateness and a building permit.
- 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 expansion shall be done in accordance with the submitted application and site plan, allowing minor modifications by the Divisions of Engineering, Traffic Engineering, and Building Inspection, as a part of the normal permitting process, if necessary.
2. All necessary permits, including a Certificate of Appropriateness, Zoning Compliance Permit and Demolition and Building Permits, shall be obtained from the BOAR and the Divisions of Planning and Building Inspection prior to construction.
3. That any exterior changes to the property be subject to the approval of the Board of Architectural Review.
4. That any signage be in compliance with Article 17 of the Zoning Ordinance and that it not be internally illuminated.

E. Administrative Reviews

1. **A-2016-31: EMPLOYMENT SOLUTIONS, INC.** - an administrative appeal to change one non-conforming use (child care facility) to another non-conforming use (adult day care facility) in a Single Family Residential (R-1D) zone, at 3600 Appian Way (Council District 8).

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

- a. Granting the requested change in non-conforming use from a child care center to an adult day care center should not adversely affect the subject or surrounding properties, as this change is very minor in scope and the two uses have similar impacts on the subject and surrounding properties. It will not result in an increase in scope of the non-conforming use. Rather, it should be considered as lessening its scope because the applicant will be providing additional parking, removing one non-conforming aspect of the existing legal non-conforming use.
- b. Such a similar change in uses 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 adult day care center shall be done in accordance with the submitted application and site plan, limited to the days and hours noted.
2. All necessary permits, including a Zoning Compliance Permit, Building and Paving Permits and a 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.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be July 29, 2016.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.