

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

August 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, August 26, 2016.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the July 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.

None to be presented

D. **Conditional Use Appeals**

1. **PLN-BOA-16-00016: MORNING STAR MISSIONARY CHURCH** – requests a conditional use permit to expand an existing church; and a variance to reduce the required rear yard setback from 28.4 feet to 12 feet in a Two Family Residential (R-2) zone, at 424 Ash Street (Council District 2).

The Staff Recommends: **Approval of the requested conditional use**, 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 and will connect to the existing building. Sanctuary seating will not be increasing, so no increase in traffic or parking demand is anticipated.
- b. All necessary public facilities are available and adequate for the proposed use.

The Staff Recommends: **Approval of the requested variance**, for the following reasons:

- a. The location chosen for the building addition, while fairly close at one point to the rear property line, can be used without the need to alter any of the existing parking spaces, which should be highly beneficial for church activities.
- b. The relatively shallow lot depth, combined with the much deeper lot depth on the adjoining lots to the rear of the property, are special circumstances that together serve to justify the moderate setback reduction that has been requested.

- c. Strict application of the Zoning Ordinance would result in any reasonable expansion having to take up some of the existing parking lot. This would likely result in having to add parking spaces to the rear of the building addition, which might ultimately result in more disturbances to adjoining/nearby properties than an actual building addition.

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 Zoning Compliance Permit and Building/Occupancy Permits (and possibly a Land Disturbance Permit), shall be obtained from the Divisions of Planning, Engineering and Building Inspection prior to construction.
 3. The two lots shall be consolidated by plat in accordance with Division of Planning requirements prior to the initiation of any construction activity.
2. **PLN-BOA-16-00008: THOMPSON ENGINEERING PARTNERS** - requests a conditional use permit to establish a bar/restaurant with karaoke (live entertainment); and a variance request to reduce the required 100 foot distance from a residential zone to 75 feet in a Planned Shopping Center (B-6P) zone, at 3330 Partner Place (Council District 9).

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 restaurant/bar will occupy an existing suite in the shopping center and adequate off-street parking will be provided.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: **Approval of a dimensional variance from 100' to 75'**, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, as no physical change or expansion of the existing building or shopping center parking lot is required or proposed to accommodate this use.
- b. A setback reduction to 75' will not result in an unreasonable circumvention of the Zoning Ordinance, because the level of variance requested is fairly modest and the actual entertainment area will come very close (within 5' or less) to complying with the required 100' setback.
- c. The layout of the shopping center relative to the residential zone to the east is, at least to some extent, a special circumstance that contributes to justifying a modest setback reduction.
- d. Strict application of the requirements of the Zoning Ordinance, including a determination that the 100' setback applies to the rear building wall rather than the actual entertainment area, would make it physically impossible (without a tear down of a portion of the building) to provide any live entertainment at all at this location.

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

1. The restaurant and bar with karaoke shall be established in accordance with the submitted application and site plan, indicating use of Suite 140.
 2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to opening the business.
 3. Outdoor speakers and seating shall be prohibited, and any exterior doors (front and rear) shall not be propped open during the times when karaoke is being provided.
 4. Live entertainment shall consist only of karaoke.
 5. Hours of operation of the karaoke shall be limited to beginning no earlier than 8:00 PM and 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.
3. **PLN-BOA-16-00015: ERIN GREEN** - requests a conditional use permit to expand an existing daycare facility in a Planned Neighborhood Residential/Historic District (R-3/H-1) zones, at 455 East Maxwell Street (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 a child care center has been operating at this location for many years. The minor increase in the number of children should have no real impact on the area. The existing parking and play areas more than meet the requirements of the Zoning Ordinance.
- b. All necessary public facilities are available and adequate for continued use of the property as a child care center.

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

1. The child care center shall be operated in accordance with the submitted application and site plan, with a minimum of ten (10) off-street parking spaces to be maintained (the requirement as stated in the Zoning Ordinance).
 2. All necessary permits, including a Zoning Compliance Permit, a Building Permit, possibly a Land Disturbance Permit and a Paving Permit, and a Certificate of Occupancy shall be obtained from the Divisions of Planning, Building Inspection and Engineering (Land Disturbance Permit), as appropriate.
 3. The number of children cared for shall be limited to 76.
 4. No freestanding signs and only one wall sign, not to exceed two square feet, shall be permitted.
 5. The conditional use permit shall become null and void should the appellant cease to own or occupy the property as a child care facility.
 6. Any exterior changes to the property shall be subject to the approval of the Board of Architectural Review.
4. **PLN-BOA-16-00017: VILLA AT CHEVY CHASE, LLC.** - requests a conditional use permit to expand the existing personal care facility, and to provide off-street parking spaces for the facility in a Planned Neighborhood Residential (R-3) zone, at 319 Duke Road (Council District 5).

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

- a. Granting the requested conditional use permit will not adversely affect the subject or surrounding properties, as the use will remain the same; there will be no increase in the number of residents that can be accommodated – only an expanded and modernized facility to better serve the residents and staff; the parking in the rear of the property will resolve a currently non-conforming situation, alleviating the on-street parking that is currently experienced on Duke Road; and the facility will be inspected and approved by both the Office of the Inspector General and the Division of Health Care with the State of Kentucky, as well as all appropriate local government agencies.
- b. All public facilities and services continue to be available and adequate for the expanded facility.

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

1. That the property be developed according to the submitted application and site plan.
2. That any permits, including a Zoning Compliance Permit, a Land Disturbance Permit (if necessary), a Paving Permit, a Building Permit and a Certificate of Occupancy Permit be obtained from the Divisions of Planning, Engineering and Building Inspection, as appropriate.
3. That all encroachment agreements be obtained from the Urban County Government, as well as all applicable utilities.
4. That the parking area be paved and screened, in compliance with Articles 16 and 18 of the Zoning Ordinance.

E. **Administrative Reviews**

1. **PLN-BOA-16-00013: STEVE WRIGHT & JIM BALL** - an administrative review to determine that a self-service car wash may have up to 4 employees rather than the previously allowed one employee; and a request for a conditional use permit for a self-service car wash in a Planned Shopping Center (B-6P) zone, at 440 W. New Circle Rd. (Council District 1).

The Staff Recommends: **Approval** of the administrative review, for the following reasons:

- a. The proposed car wash will be fully automated and will be designed/operated as a self-service facility. Customized services by employees, such as vacuuming, drying, polishing or detailing will not be provided.
- b. Activities of employees on site will be limited to performing maintenance and clean-up, addressing overall management needs and tending to related functions.

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

- a. A new fully automated self-service car wash should not adversely impact any of the surrounding properties, as this location is along a heavily commercialized section of New Circle Road and there are no nearby residential uses that might be disturbed.
- b. The potential for any significant traffic impacts will be minimized by having the facility designed in accordance with the recommendations of the Division of Traffic Engineering, with a focus on the most efficient use of the service roads that border the subject property.
- c. 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 car wash shall be built and operated in accordance with the submitted application, to be a fully automated self-service facility with no customized services (e.g., detailing) provided by employees.
2. The final design of the car wash shall be subject to review and approval by the Division of Traffic Engineering.

3. All necessary permits, including a Zoning Compliance Permit and building/occupancy permits from the Divisions of Planning and Building Inspection, shall be obtained at the appropriate times during the construction process.
2. **PLN-BOA-16-00010: SCHNEIDER SALES CO.** - an administrative appeal to transfer 18 square feet of available unused signage from one sign to another in a Highway Business (B-3) zone, at 180 E. New Circle Rd. (Council District 1).

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

- a. Granting the requested 18 square-foot transfer and the additional 15 square feet of signage from unused allowable square footage to the proposed 108 square-foot free standing business sign is a reasonable request and will make the sign, which was originally permitted for 75 square feet, legally conforming.
- b. The new sign will be in scale with its surroundings, and its increased size will likely be unnoticeable to the traveling public on New Circle Road.

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

1. A sign permit shall be obtained from the Division of Building Inspection prior to expansion of the sign.
2. The sign shall be located as shown on the submitted application and site plan.
3. Any future transfer of square footage shall be limited to 36 square feet, unless existing signage is either removed or reduced in size.

- 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 September 30, 2016.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.