

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 18, 2016

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, November 18, 2016.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the October 28, 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.

- B. **Variance Appeals**

*Note – The next case is a **continuance** from the October 28th hearing.

1. **PLN-BOA-16-00023: TTTT INVESTMENT GROUP** - requests a variance to increase the maximum allowable height of a fence in the front and side street side yards from 4 feet to 5 feet in a Neighborhood Business (B-1) zone, within the defined Infill and Redevelopment Area, at 529 Georgetown Street (Council District 2).

The Staff Recommends: **Approval** of the increase in height for the Michigan Street frontage as it abuts the parking area, for the following reasons:

- a. Granting the variance (with conditions) will not adversely affect the public health, safety, or welfare as the new fence replaces a previously existing chain link fence that had fallen into disrepair.
 - b. Restricting the 5' height to the area immediately adjoining the parking lot will help minimize the potential for new fence construction to negatively affect the existing character of the general vicinity.

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

1. The fence surrounding the front and side of the building shall meet the requirement of 4 feet maximum height, but the parking lot shall be permitted to utilize the 5 ft. tall fence to provide extra security.
 2. The applicant shall obtain a fence permit from the Division of Building Inspection within 30 days of Board action and prior to completing installation of the fence.
 3. The parking area and access apron shall be developed in accordance with an after-the-fact permit issued by the Division of Building Inspection with design details subject to approval by the Division of Traffic Engineering. Any required modifications to the existing parking area and access apron shall be completed concurrent with or prior to completing the fence installation.
2. **PLN-BOA-16-00043: JANETH MARTINEZ** – requests a variance to allow a porch to remain as constructed, encroaching into the required front yard by up to 2 feet in a Single Family Residential (R-1C) zone, at 770 Sandpiper Court (Council District 1).

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

- a. Granting the variance will not adversely affect the public health, safety, or welfare, nor allow an unreasonable circumvention of the Zoning Ordinance, as the variance is relatively minor and will permit an encroachment of only 1'8".
 - b. Strict application of the Zoning Ordinance would provide minimal benefit to the overall character of the neighborhood, which does not have well-defined streetscape features along Sandpiper Court.

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

1. The applicant shall obtain a building permit from the Division of Building Inspection within 30 days of Board action and prior to completing construction of the porch.
3. **PLN-BOA-16-00045: WILLIAM STEPHEN & ROMI SIMONE HOWARD** - request a variance to reduce the required front yard from 300 feet to 150 feet in order to construct and occupy a single family residence in the Agricultural Rural (A-R) zone, at 3280 N. Cleveland Rd. (Council District 12).

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

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare, nor alter the characteristic of the general vicinity, as the residence on the adjoining property to the south is set back approximately the same distance as the proposed residence.
- b. The location of the floodplain, which bisects the property at or near the 300-foot setback, is a special circumstance that justifies the request.
- c. Strict application of the Zoning Ordinance would make it impossible for the appellant to construct a single family residence on this lot. If required to place the residence behind the pond, it could be construed as an unreasonable restriction on the use of the land.

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

1. The new residence shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

4. **PLN-BOA-16-00046: MARK HUFNAGEL/SJM HOMES** – request a variance to reduce the required side street side yard from 30 feet to 15 feet in order to construct a residence in a Single Family Residential (R-1C) zone, at 305 E. Lowry Lane (Council District 4).

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

- a. Granting a variance to reduce the side street side yard to 15 feet will not cause a hazard or nuisance to the public and should not alter the character of the vicinity. The majority of corner lots in this neighborhood have similar setbacks to what is now requested, likely based on the platted building lines from decades ago. Granting the variance will allow a residence to be built at a setback similar to that of the previous residence and other corner lots in the vicinity.
- b. Granting a variance from 30 feet to 15 feet will not allow an unreasonable circumvention of the Zoning Ordinance. The property was originally platted with a 15-foot side street side yard that was only changed with a re-write of the Zoning Ordinance, requiring side street side yards of each zone to match the front yard requirements.
- c. The circumstance that justifies granting this variance is the fact that the property is a corner lot that has two 30-foot front yard requirements, which restricts the buildable area of the property. The proposed residence will replace a residence that was built at a similar setback, based on the platted setback from the original 1955 subdivision plat.
- d. Strict application of the Zoning Ordinance would greatly limit the size and layout of a residence that could be located on the property and would likely cause any new construction to be out of character with the rest of the area.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance since the property was originally platted with a 15-foot side street side yard. It was due to a re-write of the Zoning Ordinance that the side street side yard setback is now required to be 30 feet.

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

1. That the property be developed in accordance with the submitted application and site plan.
2. That a building permit be obtained from the Division of Building Inspection prior to construction.

C. Conditional Use Appeals

*Note – The next case is a **continuance** from the October 28th hearing.

1. **PLN-BOA-16-00031: DENISE EDMONDS** - requests a conditional use permit to re-establish a previously approved child care facility for up to 60 children and a variance to reduce the required front yard from 30 feet to 0 feet to accommodate parking in a Single Family Residential (R-1C) zone, at 3580 Caulder Road and 1228 Hot Springs Court (Council District 8).

The Staff Recommends: **Approval of a conditional use, limiting the number of children to 32**, for the following reasons:

- a. Granting an amended conditional use permit should not adversely affect the subject or surrounding properties, as a child care center has operated at this location for many years. The applicant wishes only to re-open the facility, although there will be a reduction in the number of children cared for (from 60 to 32).
- b. All necessary public facilities are available and adequate for continued use of the property as a child care center.

The Staff Recommends: **Approval of a variance to 6 feet on Hot Springs Court**, for the following reasons:

- a. Granting the variance to 6 feet to allow parking on the Hot Springs Court property will not adversely affect the subject or surrounding properties, will not cause a hazard or nuisance to the public, and will not alter the character of the vicinity. Granting a variance to 6 feet will actually benefit public safety, as it will allow a safer

parking situation for employees, parents and neighborhood traffic because vehicles will not be forced to back into traffic as they are now. Additionally, the 3-space parking area will be screened as required by Article 18 of the Zoning Ordinance.

- b. Granting the requested variance will not allow a circumvention of the requirements of the Zoning Ordinance. Parking for six vehicles was required by the Board of Adjustment when the use was first approved for a child care facility to allow the applicant(s) at the time to provide child care for up to 60 children. Granting the variance will allow at least some of that parking to be put in place.
- c. The circumstance that justifies granting the variance is the condition imposed by the Board in the 1970s when the child care was first approved for up to 60 children. The only logical (and safe) place for additional parking is on the Hot Springs Court property once it is consolidated with the property on Caulder Road.
- d. The requested variance is not the result of a willful violation of the Zoning Ordinance on the part of the applicant. The applicant wishes to re-open the child care and operate it as it was previously operated. The only way additional parking can be provided and be in compliance with the requirements of the Zoning Ordinance is to allow a 6-foot setback, as opposed to the 30-foot requirement of the zone.

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

1. The child care center, when expanded to accommodate up to 32 children, shall be operated in accordance with the submitted application and a revised site plan, indicating: a) design requirements as specified by condition #3; and b) a fenced and screened play area of at least 1,500 square feet on the Hot Springs Court property.
 2. All necessary permits, including a Zoning Compliance Permit, Land Disturbance and Paving Permits, and a Certificate of Occupancy shall be obtained from the Divisions of Planning (Zoning Compliance), Engineering (Land Disturbance) and Building Inspection (Paving and Occupancy), as appropriate. The Occupancy Permit shall be obtained prior to opening the child care facility.
 3. The number of children to be cared for shall be limited to 24 until parking, as recommended by the Urban County Traffic Engineer, is provided (i.e., two spaces with room for turnaround purposes on the Caulder Road property and three spaces with room for turnaround on the Hot Springs Court property). Should the child care facility not expand in the future to accommodate any more than 24 children, the space in the front yard of Caulder Road may continue to be used as parking for up to four vehicles.
 4. The curb cut for the existing parking on Caulder Road shall be designed according to current standards and paved with concrete, subject to approval of the Urban County Traffic Engineer.
 5. No freestanding signs and only one wall sign, not to exceed two square feet, shall be permitted.
 6. The conditional use permit shall become null and void should the appellant cease to own or occupy the property as a child care facility.
2. **PLN-BOA-16-00039: SOCCER TRAINING CENTER** – requests a conditional use permit for an indoor recreational facility (soccer training) in a Light Industrial (I-1) zone, at 700 Allenridge Point (Council District 12).

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

- a. Adverse impacts to surrounding properties are not anticipated, as the soccer training should not be an inherently disturbing activity and will be confined to the interior of an existing building.
- b. Surrounding properties are exclusively commercial/industrial in nature, which should greatly limit the potential for any disturbances from indoor soccer training activities, particularly since the training will be conducted during evenings and on weekends.
- c. Adequate parking will be provided on site, and all other necessary public facilities and services (roads, sewers, garbage collection) are already in place.

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

1. The soccer training facility shall be confined to the interior of the existing building and shall be established in accordance with the submitted application and site plan.
2. Off-street parking shall be provided to ensure that there will be a minimum of 8 spaces to accommodate the soccer training facility. This parking shall be striped or otherwise delineated as parking.
3. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy from the Divisions of Planning and Building Inspection, shall be obtained prior to opening the facility.

D. **Administrative Reviews**

1. **PLN-BOA-16-0038: FIRST CORBIN, LLC.** – an administrative appeal to transfer 42 ½ feet of unused wall signage to a freestanding sign; and a variance to increase the allowable height of the freestanding sign from 10' to 18' in a Professional Office (P-1) zone, at 2404 Sir Barton Way (Council District 6).

The Staff Recommends: **Disapproval of the height variance**, for the following reasons:

- a. Compelling circumstances related to the subject property have not been identified that are sufficient to support

- a 90% increase in the allowable height of a freestanding sign at this location.
- b. An 18' tall freestanding sign would be out of character with other established signage along Sir Barton Way, and is not necessary to maintain sign visibility.
- c. Strict application of the Zoning Ordinance will not create an unnecessary hardship, as the existing freestanding sign is fully functional at a height of 7'. Also, there is some opportunity to increase the height of that sign to 10' with the addition of an artistic feature, without the need for a variance.

The Staff Recommends: **Postponement of the administrative appeal**, for the following reasons:

- a. An appropriate amount of unused sign square footage for transfer cannot be determined until the proposed sign is redesigned to comply with a 10' height limit.
 - b. Additional time is needed for the applicant to consider and develop alternative designs for review by staff and the Board.
2. **PLN-BOA-16-00040: DENNIS MOORE, MARKUS EMIG, CHERYL TUDOR & BUCK BUSB**– an administrative appeal of the Division of Planning's decision to allow multiple RVs and trailers for housing workers during church construction in a Single Family Residential (R-1B) zone, at 516 Pasadena Drive (Council District 10).

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.

- A. **Landscape Review Committee** - The term of Mr. Mike Cravens, Lexington Homebuilders member of the Landscape Review Committee, will expire on November 30 of this year. Mr. Cravens has agreed to serve another four year term. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jan Meyer	Board of Adjustment
11/30/2017	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2018	Mr. Richard Weber	Landscape Architect
11/30/2019	Ms. Ann Bowe	Tree Board
11/30/2020	Mr. Mike Cravens	Lexington Homebuilders

- B. **2017 MEETING & FILING SCHEDULE** - As part of its Bylaw-related duties, each year the Board of Adjustment must adopt its Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2017 is now in draft form and will be presented to the Board for review and/or discussion prior to its official adoption.

C. The staff would like to wish the Board members and their families a safe and happy Thanksgiving holiday.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be December 16, 2016.

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