

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

July 31, 2009

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, July 31, 2009.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the past meetings, September 26, 2008; February 27, 2009; and June 26, 2009, 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-2009-43: CASTINE PROPERTIES / LEXINGTON TWO, LLC** - appeal for a variance to reduce the required setback from a residential zone (for storage units with overhead doors) from 100 feet to 60 feet, in a Light Industrial (I-1) zone, on property located at 981 Contract Street (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the area. The proposed building will be similar in appearance to other commercial buildings in the immediate area, and the door openings will not be oriented toward the residential area that borders the north side of the property. A substantial landscape buffer is to be

- provided along the rear property line that adjoins a residential zone.
- b. The relatively narrow width of the lot, although not highly unusual, has placed some constraints on how a long and narrow building with individual storage units can be sited on the property.
 - c. Strict application of the Zoning Ordinance would result in a loss of 25% of the units that can be built, or possibly force the appellant to construct two buildings rather than one in order to provide the desired number of units. Such significant implications do not appear to be warranted in this particular case.
 - d. The circumstances surrounding this variance request have arisen from the appellant's desire to use the property as efficiently as possible, and are not the result of any prior actions intended to circumvent the requirements of the Zoning Ordinance.

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

1. The storage building 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.
 3. If deemed necessary by the Division of Engineering, encroachment agreements for the portions of the handicap parking space and dumpster pad within a drainage easement at the rear of the property shall be obtained prior to the issuance of any building permits.
2. **V-2009-44: WILLIAM KEVIN MURPHY** - appeals for a variance to reduce the required side yard from 1 foot, 6 inches to 1 foot in order to add a new roof to a detached garage, in a Two-Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 141 West Bell Court (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, since the existing walls of the detached garage, and their location relative to the side property line, will be retained.
- b. Replacing the existing flat roof with a gable roof should result in the structure being more in character with other accessory structures in this historic neighborhood.
- c. The location of the existing detached garage is a special circumstance that contributes to justifying a 6" reduction in the required side yard setback, in order to allow the proposed roof replacement.
- d. Strict application of the Zoning Ordinance would require that the overall size of the detached garage not be increased, thus preventing the installation of a roof with a greater pitch. Alternatively, strict application would require that the entire structure be torn down and rebuilt with a setback of at least 18". Under the circumstances, neither option appears to be reasonable.
- e. The circumstances surrounding this variance request are not the result of actions taken by the appellant, but can be attributed to actions taken by a previous owner many years ago. The appellant's actions are intended to fix an existing leakage problem and improve the appearance and storage capacity of the garage, while retaining the historic location one foot in from the side property line.

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

1. The new roof shall be installed 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.
 3. The new roof shall be designed and constructed in accordance with a Certificate of Appropriateness issued by the Board of Architectural Review, or as otherwise approved by the Division of Historic Preservation.
3. **V-2009-45: DAVID J. and MARYROSE MARTIN** - appeal for a variance to reduce the required side yard from 8 feet to 0 feet in order to retain a detached carport, in a Single Family Residential (R-1C) zone, on property located at 1111 Eldemere Road (Council District 3).

The Staff Recommended: Disapproval, for the following reasons:

- a. Special circumstances unique to this particular property, and sufficient to justify the total elimination of the required side yard, have not been identified by the appellants and are not otherwise apparent.
- b. Justification for the requested variance provided by the appellants, which emphasizes that the chosen location for the carport is the only reasonable location on the subject property, would have very broad applicability to other properties that are also already developed with a number of improvements. This would result in an unfortunate precedent that could, over time, adversely affect the public health, safety or welfare.

- c. Allowing the carport to remain with a 0' side yard setback would negatively alter the character of the general vicinity, because such structures are not typical of this well established neighborhood.
 - d. Strict application of the Zoning Ordinance will not unreasonably restrict the use of the property or create an unnecessary hardship; it will simply result in just a portion of the vehicle storage area being uncovered, which is typical of this neighborhood and many others in Lexington. It also will not preclude additional vehicle storage areas from being provided in the rear yard of the subject site.
4. **V-2009-46: LEXINGTON HABITAT FOR HUMANITY** - appeals for a variance to reduce the required rear yard from 10 feet to 5 feet in order to retain an elevated wood deck, in a Two-Family Residential (R-2) zone, on property located at 408 Peachtree Road (Council District 7).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The deck is only 4.5' wide, and will serve not as an activity area but as a means of egress from the rear door of a one-story residence.
- b. The limited depth of this corner lot, and downward slope from front to rear, are special circumstances that contribute to justifying a reduction in the rear yard setback requirement.
- c. Strict application of the Zoning Ordinance would force the appellant to modify the deck so that it could be classified by the Division of Building Inspection as just part of a stairway rather than as a deck. At the minimum, this would require that either the width or the height of the deck be reduced. There do not appear to be any clear-cut benefits to requiring such a modification.
- d. The circumstances related to this variance request appear to have arisen out of a misunderstanding regarding the conditions under which structures such as a deck can project into a required rear yard.

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

- 1. The rear deck may remain in place as depicted in the submitted application and site plan.
- 2. An amended building permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.

D. **Conditional Use Appeals**

1. **CV-2009-40: HAYMAKER DEVELOPMENT CO., LLC** - appeals for a conditional use permit to construct and occupy an outdoor theater; and variances to: 1) reduce the required setback from a residential zone from 1,000 feet to 0 feet, and 2) increase the allowable distance for required off-street parking from 300 feet to 1,000 feet, in a Highway Service Business (B-3) zone, on property located at 956 Midnight Pass (Council District 10).

The Staff Recommended: Approval of the requested conditional use, for the following reasons:

- a. An amphitheater at this location should be a beneficial amenity for the Beaumont community, and should not adversely affect the surrounding properties, provided that the timing of events is managed to minimize the potential for noise or other disturbances. Use of the facility will be available to a variety of community-oriented groups, and needed management oversight will be provided by a non-profit organization.
- b. All necessary public facilities and services will be available and adequate for the proposed use.

The Staff Recommended: Approval of a variance reducing the residential setback from 1,000' to 0', for the following reasons:

- a. Granting this variance should not adversely affect the public health, safety or welfare, nor alter the character of the area. The townhome development in the adjoining R-3 zone was designed with the knowledge that a central feature would be built, and the performing stage of the amphitheater will be located on the opposite side of the inner circle, away from the townhomes.
- b. The development history of the central area inside of Beaumont Centre Circle, and the provision of an open space buffer between the townhomes and the subject property, are special circumstances that contribute to justifying the elimination of the residential setback.
- c. Strict application of the Zoning Ordinance would prevent the construction of a community amphitheater at this location, which would deprive the community of an amenity that has been expected for several years.
- d. The circumstances surrounding this variance request have arisen as the details of the central feature and the surrounding developments have evolved, and are not the result of any actions taken by the

appellant intended to circumvent the setback requirement.

The Staff Recommended: Approval of a variance increasing the allowable distance from the facility to required off-street parking from 300' to 1,000', for the following reasons:

- a. Granting this variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, provided that reasonable accommodations are made for alternative parking and access arrangements for handicapped persons. Having to walk a short distance for special events is a customary practice, and many parking spaces will be available closer than 1,000' from the subject property. As nearby properties currently under the control of the appellant are developed, provisions will be made to accommodate parking needs associated with the use of the amphitheater, diminishing the importance of this variance, over time.
- b. The nature of the proposed use, the fact that many adjacent lots have not yet developed, and the desire to preserve open space around the amphitheater, are reasonably considered as special circumstances that serve to justify the requested variance.
- c. Strict application of the Zoning Ordinance would either delay construction of the amphitheater until the adjoining or nearby properties are developed, or force the appellant to substantially reduce the size of the amphitheater and seating areas so that there is sufficient space on site for the required off-street parking. An uncertain delay, which might be several years, would deprive the community of a desired amenity. Providing all of the required parking on site would result in a total elimination of open space surrounding the amphitheater, which would not be desirable.
- d. The circumstances leading to this variance request have resulted primarily from the uncertainty as to when the adjoining and nearby properties less than 300' from the subject property are developed.

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

1. The amphitheater shall be constructed and operated in accordance with the submitted application and a revised site plan depicting the following: (1) The provision of at least 6 handicap parking spaces within 100' of the subject property, or (2) A drop-off area for handicapped persons along the southerly portion of the subject property that fronts on Midnight Pass; (3) A 5' wide sidewalk from Midnight Pass to the inner circle; and (4) at least three 8' by 16' (approximate dimensions-can be amended to comply with ADA requirements) paved seating areas for handicapped persons; one where the sidewalk from Midnight Pass connects to the inner circle, one where the sidewalk from the townhome development connects to the inner circle, and one in the immediate vicinity of the amphitheater stage near where the access drive/pathway will connect to the inner circle. Any amendments to the Final Development Plan sanctioned by the Planning Commission in the future, whether related to these revisions or otherwise, shall be considered as acceptable and shall not void this conditional use.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction, with an occupancy permit to be obtained prior to opening the facility.
 3. The paved seating areas for handicapped persons shall be designed to be ADA compliant, with railings and other features provided as required therein.
 4. Shared parking agreements to the satisfaction of the Division of Building Inspection shall be obtained for a minimum of 200 off-street parking spaces located no more than 1,000' from the subject property.
 5. At such time that any of the adjoining or nearby properties currently known as 3194 & 3052 Beaumont Centre Circle and 940, 961 & 973 Midnight Pass are developed by the appellant or another entity, off-street parking spaces on those properties shall be shared with the amphitheater. Priority shall be given to providing up to 6 handicap parking spaces on that portion of 3194 Beaumont Centre Circle that immediately adjoins the north and east sides of the subject property.
 6. The final design of the loading/unloading access drive shall be subject to review and approval by the Division of Traffic Engineering.
 7. The final design of the drop-off area along Midnight Pass shall be subject to review and approval by the Division of Traffic Engineering.
 8. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
 9. The timing of and type of events taking place at the amphitheater shall be managed to ensure that the requirements of the Noise Ordinance are adhered to.
2. **C-2002-2: THE EPISCOPAL DIOCESE OF LEXINGTON, INC.** - the Board of Adjustment has requested a revocation hearing for failure to comply with conditions imposed in January 2002, in association with a conditional use permit to occupy an existing building as a church (and offices), in a

High Density Apartment (R-4) zone, on property located at 203 East Fourth Street (Council District 1).

The conditions imposed at the time of approval by the Board are as follows:

1. Establishing the church shall be done in accordance with the submitted application and an amended site plan showing a paved main driveway and a minimum of six paved parking spaces on the site.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to undertaking any construction or renovation activities.
3. The proposed layout of the driveways, access points, and parking areas (including the differentiation between areas to be paved and areas to remain as gravel) shall be subject to approval by the Division of Traffic Engineering.
4. The paved parking areas shall have spaces delineated and shall be landscaped/screened according to Articles 16 and 18 of the Zoning Ordinance.
5. Any pole lighting for outdoor areas shall be of a shoebox design with light directed downward and away from adjoining properties to prevent any disturbance to area residents.
6. Should the appellant cease to either own or occupy the subject property, this conditional use shall become null and void.

The Division of Building Inspection will report at the hearing.

3. **C-2005-53: FENDER FUNERAL DIRECTORS** - the Board of Adjustment has requested a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural Urban [A-U] zone, on property located at 1593 Russell Cave Road [Council District 2]) for failure to comply with conditions imposed at the time of approval.

The conditions imposed at the time of approval by the Board are as follows:

1. The funeral home shall be established in accordance with the submitted application and site plan, or as approved by the Division of Building Inspection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The design of the off-street parking areas and access to Russell Cave Road shall be subject to approval by the Division of Traffic Engineering.
4. The off-street parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. Any landscape buffers required by Article 18 of the Zoning Ordinance for the vehicular use areas shall be extended to include the full extent of the property perimeter, excluding frontage on Russell Cave Road. Existing landscaping shall be retained and maintained to the maximum extent feasible.
6. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. Any outdoor pole lighting for the facility shall be of a shoebox (or similar) design, with light shielded and directed downward to prevent any disturbance to surrounding residential properties.
8. That current privacy fence shall be maintained and extended to 10' from the sidewalk at Russell Cave Road, unless the affected neighbor is opposed.

The Division of Building Inspection will report at the hearing.

4. **C-2009-36: JERRILL JOHNSON** - appeals for a conditional use permit to establish a home occupation (career and finance coaching), in a Single Family Residential (R-1E) zone, on property located at 2813 Michelle Park (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Noisy equipment or potentially hazardous material will not be used for the counseling services to be provided. Adequate off-street parking is available for a limited number of clients that will be coming to the home, and no significant increase in traffic is anticipated.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The home occupation shall be established in accordance with the submitted application and site plan, with no more than two appointments for individual clients to take place at this location on any given day.
 2. Appointment times shall be staggered so that there will not be any overlap between arrival and departure times of clients.
 3. The activity shall at all times comply with the restrictive provisions for home occupations as outlined in Article 1-11 of the Zoning Ordinance.
 4. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to beginning the home occupation.
 5. This approval shall become null and void should the appellant cease to either own or occupy the subject property.
5. **C-2009-37: SAILESH BABHANIA** - appeals for a conditional use permit to establish a home occupation (fitness training), in a Planned Neighborhood Residential (R-3) zone, on property located at 717 Sprucewood Drive (Council District 9).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Potentially hazardous material will not be used for the fitness training to be provided, and noise disturbances are not expected to be significant. Adequate off-street parking is available for the dwelling, and for a limited number of clients that will be coming to the home, and no significant increase in traffic is anticipated.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The home occupation shall be established in accordance with the submitted application and site plan, with no more than four training sessions to be provided per day, training to be provided only for individuals or couples, and training to not take place after 7:00 PM or before 6:00 AM.
 2. Appointment times shall be staggered so that there will not be any overlap between arrival and departure times of clients.
 3. The garage door(s) shall remain closed during training activities.
 4. The activity shall at all times comply with the restrictive provisions for home occupations as outlined in Article 1-11 of the Zoning Ordinance.
 5. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to beginning the home occupation.
 6. This approval shall become null and void should the appellant cease to either own or occupy the subject property.
6. **C-2009-38: HOPE CENTER, INC.** - appeals for a conditional use permit to construct and occupy a community center, in a Light Industrial (I-1) zone, on property located at 299 West Loudon Avenue (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit will not adversely affect the subject or surrounding properties. Commercial uses to the east and north are not likely to be disturbed by the proposed community center, and property to the west and south is either currently vacant or used for a similar housing purpose. Adequate off-street parking will be provided, and significant increases in traffic are not expected due to the nature of the use.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The facility shall be constructed and operated in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the parking areas and access points shall be subject to review and approval by the Division of Traffic Engineering.
4. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

7. **C-2009-39: GAYLE TURNER / GET TWISTED, INC.** - appeal for a conditional use permit to establish a wine bar with live background music, in a Planned Shopping Center (B-6P) zone, on property located at 3344 Partner Place, #6 (Council District 9).

The Staff Recommended: Approval of a conditional use with no new deck construction, for the following reasons:

- a. A small wine bar with live background music at this location should not adversely affect the subject or surrounding properties. The bar and entertainment area will be more than 100' from the nearest residential zone (to the south), in compliance with the setback requirement of the Zoning Ordinance. The subject property is bordered by a parking lot to the north and other commercial uses to the east and west.
- b. All necessary public services and facilities are available and adequate for the proposed use.

The Staff Recommended: Disapproval of the requested conditional use involving a 12' by 24' deck, for the following reasons:

- a. The proposed deck is likely to interfere with delivery trucks and other service vehicles that use the back side of the building.
- b. The proposed deck location is immediately adjacent to the drive-through service lane that runs along that side of the building, thereby creating more potential conflicts.
- c. The proposed deck is oriented toward the residential area on the opposite side of Keithshire Way, thereby increasing the probability of the wine bar disturbing those nearby residents.

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

1. The wine bar with live music shall be established in accordance with the submitted application and an amended site plan indicating the deletion of the originally proposed 12' by 24' deck and specifying the bar and entertainment areas as being located toward the front of the store more than 100' from the residential zone boundary that follows the centerline of Keithshire Way.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the wine bar.
3. Live music shall consist only of individual performers providing background music with limited amplification, only between the hours of 6:00 PM to 10:00 PM on Monday through Saturday.
4. The suite to be occupied shall be soundproofed to the maximum extent feasible using existing technology, with noise emissions not creating a disturbance to the surrounding neighborhood.

E. **Administrative Review**

1. **A-2009-41: LARRY W. HAMILTON** - appeals for an administrative review to allow the construction of an additional 648 square-foot garage, in a Single Family Residential (R-1C) zone, on property located at 690 East Loudon Avenue (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. A moderate increase in the allowable square footage for accessory buildings is justified in this particular case, due to the large size of the lot and plentiful open space that is available. These conditions prevent this modest increase from being considered a circumvention of the Zoning Ordinance.
- b. An additional accessory building of the size proposed should not adversely affect any of the adjoining properties, which consist of two lots owned by the appellant or his family (on each side) and a railroad and commercial properties to the rear. This building will provide some buffering from those uses.
- c. Large accessory buildings are not uncommon in the general vicinity, so the overall character of the neighborhood should not be diminished by the proposed construction.

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

1. The additional detached garage shall be constructed and used 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.
2. **A-2009-42: MARK SIEVER** - appeals for an administrative review to allow a portable storage/shipping container to be used as an accessory garage for a single family residence, in a Planned Neighborhood

Residential (R-3) zone, on property located at 446 Silver Maple Way (Council District 1).

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. The appellant has not provided any compelling reasons as to why a shipping container should be considered a "building" or "structure" as those terms are defined and used in the Zoning Ordinance.
 - b. The appellant has not demonstrated that the proposed placement of a shipping container on a residential lot will be done in compliance with all applicable provisions of the Kentucky Building Code.
 - c. Approval of this particular request would set a dangerous precedent with regard to the placement of portable containers on residential properties for the purpose of being used for accessory storage. Such a precedent would potentially have significant ramifications for public health and safety, given the wide variety of portable containers that might be used by other property owners.
3. **A-2009-47: SANDRA SCHRYVER** - appeals an administrative review to determine that the Division of Building Inspection's issuance of a fence permit was done in error, in a Single Family Residential (R-1T) zone, on property located at 2717 Chelsea Woods Court (Council District 7).

The Division of Building Inspection will report at the public hearing.

- 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 August 28, 2009.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.