

**STAFF REPORT ON CONDITIONAL USE PERMIT & VARIANCES REQUESTED FROM PLANNING COMMISSION**

**PLN-MAR-17-00005: DAVID M. HARL AND JOSOPHIA D. HARL**

**REQUESTED CONDITIONAL USE**

1. Fraternity House

**REQUESTED VARIANCES**

1. Reduce the minimum front yard from 20' to 4'
2. Eliminate the required 15' perimeter landscape buffer (zone-to-zone screening)

**ZONING ORDINANCE**

Article 3-2 states that “the conversion of any structure or structures, either residential or non-residential, so as to accommodate an increased number of dwelling units or families, or another permitted use, shall be permitted only within a zone in which a new building for similar occupancy would be permitted under this Zoning Ordinance. The resulting occupancy shall comply with all requirements governing new construction in such zone, including, but not limited to, floor area; floor area ratios; **dimension of yards; open spaces**; and off-street parking. The aforesaid requirements with respect to **yards shall not apply if the conversion involves no exterior structural changes to a principal building**, but shall apply if an accessory building is converted to a principal building.” **(Emphasis added)**

Article 6-4(c) states: “The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days of the application, unless postponed further by the applicant.”

Article 8-12(d)8 states that a fraternity house is permitted as a conditional use in the R-3 zone, subject to approval by the Board of Adjustment (or in this case, by the Planning Commission when acting as the Board of Adjustment).

Article 8-12(h) states that the minimum front yard in the R-3 zone is 20’.

Article 8-12(i) states that the minimum side yard in the R-3 zone is 10’.

Article 8-12(k) states that the minimum useable open space in the R-3 zone is 20%.

Article 8-12(n) states that a fraternity house in an R-3 zone shall provide at least five (5) off-street parking spaces, plus one (1) space for every five (5) beds.

Article 18-2(d) states that “no use of an existing building, structure, or vehicular use area shall be commenced subsequent to a change in zoning unless property perimeter landscaping as required herein has been provided.”

Article 18-3(a)1 states that when “any office or business zone (except P-2) abuts any residential zone, a minimum buffer width of 15' adjacent to all common boundaries (located behind the building line) except street frontage is required, consisting of 1 tree/40' of linear boundary, plus 1) a double row of 6' high hedge, or 2) a 6' high fence, wall or earth mound. The 15' Landscape Buffer Area (LBA) may be reduced to 5' when used in conjunction with a 6' high wall or fence.”

**CASE REVIEW**

The appellant is requesting a conditional use permit to allow a re-use of a structure formerly used for a wholesale business, to a fraternity house. An R-3 zone is requested for the property located at 1251 Red Mile Road. Variances have also been requested to reduce the required front yard (along Red Mile Road and Uhlan Court) and the required perimeter landscape buffer yard (along the side and rear property lines).

The subject site is on the west side of Red Mile Road, and is situated at the terminus of Uhlan Court, although it does not have access to that street. The property is approximately 400 feet north of South Broadway, and currently has a full access point to Red Mile Road. The international headquarters for the Fraternity of Phi Gamma Delta is on

adjacent property to the north of the subject site. The Avis car rental business, and its extensive parking lot for fleet inventory, is situated to the southwest of the subject property. The site is screened from the Avis lot by a solid 6' high wooden fence and from the fraternity headquarters by extensive landscaping on the property line and on the Phi Gamma Delta Headquarters property. There are very few multi-family residential uses in the immediate area, and only one known single-family dwelling (located on Uhlan Court) within 250' of the subject site.

A three-story brick building, constructed with more than 8,200 square feet of floor area, is currently situated on this property, along with an off-street parking area for about 20 vehicles. It has been used in the past for office space for the past four decades. The building currently complies with the front, side and rear yard requirements of the existing B-4 zone, and the former wholesale business use on the site had an off-street parking requirement of 14 spaces.

The appellant is proposing to modernize and re-use the building and parking lot, with no additions and few (if any) site changes, into a more up-to-date fraternity house, with up to 25 beds. The applicant requests this conditional use permit to house a chapter of Alpha Sigma Phi, which was reestablished and readmitted to the Greek system at the University of Kentucky campus two years ago. This fraternity was formerly located on the campus more than 50 years ago. This new chapter is recognized as a UK student organization, and abides by all University requirements for fraternities. Some 20-25 members are proposed to reside at this location, although more students will visit the site during weekly chapter meetings, and during social events.

At this stage, the Planning staff cannot conclude that all public facilities and services are adequate to serve the proposed use. In particular, the off-street parking and open space required for this use seem to be less than necessary to allow this use to function well on the subject site. A gate is proposed on the front of the property which has the potential to cause vehicles entering the site to back onto Red Mile Road. This gate also may not be easily accessible by the Division of Fire & Emergency Services vehicles. Further, the required open space (20% of the site) may not be compliant if the off-street parking arrangement materially changes. This appears to be little more than a portion of the former parking area, since it is planned to remain nearly 100% paved. Adjustments to the parking layout could create more traditional open space, but may necessitate the need for another variance.

If 1) the proposed privacy gate and off-street parking area on the site can be revised in a fashion that may gain the approval of the Divisions of Traffic Engineering and Fire & EMS, 2) the fraternity conducts itself at this location in accord with all University Greek policies, and 3) the local noise ordinance is not violated after occupancy, a fraternity house at this location might not create any adverse impacts to this neighborhood.

Two dimensional variances have been requested in conjunction with this zone change. One is to reduce the ordinarily required 15' landscape buffer (for zone-to-zone screening) around the site. The other is to allow the existing building to remain (in a new R-3 zone) to be less than 20' from Red Mile Road and Uhlan Court. After reviewing the past history of building permits issued for this B-4 site, only one of the two may be necessary.

The building was constructed by White Construction Company in 1985 for use as an office building. Some 31 off-street parking spaces were required for this use, and were to be provided on the site. Vehicular landscaping was proposed to surround the off-street parking area on three sides. The last permit issued for the construction in 1986 stated that the "Premises cannot be occupied until a final inspection has been made and a certificate of occupancy issued." Another note states that the "Certificate of occupancy will not be issued until landscaping is installed or full cash bond/letter of credit is posted." Apparently, the building was occupied for decades despite the fact that no certificate of occupancy was ever issued for the building. Had the landscaping been installed as required (and maintained over time) then this landscape variance would not be necessary.

Article 3-2 states that zoning "requirements with respect to yards shall not apply if the conversion involves no exterior structural changes to a principal building." No structural changes are proposed to the exterior of the building, other than the possibility of new or larger windows being added (which would not be structural in nature). Thus, it appears to the staff that the front yard variance is not necessary, due to the provisions of Article 3-2.

Article 18-2(d) of the Ordinance requires a 5-15' landscape buffer between a B-4 zone and an R-3 zone. Most of the property perimeter meets this requirement. The existing privacy fence, along with tree plantings along most of the southern and western property boundaries, almost fully complies with the Article 18 requirements; however a few trees are missing from the 1/40 linear feet southern property line. Along the northern property line, the double row hedge is "missing" – keeping that side of the property just short of compliance.

The Landscape Review Committee met on February 14<sup>th</sup> to review this proposed variance to the landscaping requirements. Although there was not a quorum of the Committee's five members present, commentary focused on the adequacy of the existing landscaping around the site. Only one deficiency was noted in the discussion. The lack of a hedge planting along the northern property line where there is no existing retaining wall was cited. Thus, the staff can agree that the existing landscaping fulfills the intent of the normal Article 18 requirements.

The staff would recommend approval of the landscaping variance, given that the site is well screened currently from the surrounding properties, provided that short (18" – 3') hedge material is planted along the northern property line where there is no retaining wall in existence.

**The Staff Recommends: Postponement of the requested Conditional Use Permit**, for the following reason:

- a. All necessary public facilities and services are not currently available and adequate for the proposed use. Off-street parking proposed does not offer a sufficient option on the subject site for vehicular movements, without having vehicles maneuver in a planned open space (basketball court) area.

**The Staff Recommends: Disapproval (or Withdrawal) of the requested Front Yard Variance**, for the following reason:

- a. Article 3-2 of the Zoning Ordinance does not require the existing building to meet the 20' minimum setback from Red Mile Road and Uhlan Court. No structural changes are proposed to the exterior of the principal building on this lot, so the building may be converted regardless of its setback from the adjoining streets.

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

- a. There will be no adverse health, safety or welfare impact to the adjoining neighborhood or neighboring properties from this variance. The existing building and off-street parking lot will remain as it has been for the past 32 years, and only one single family residence is located within 250' of the subject site.
- b. The unusual circumstance surrounding this proposed R-3 property or to other land in this vicinity is that the height of the existing fence and landscape material will almost completely comply with the Article 18 requirements, and materially comply with the need to buffer adjacent properties from this use. The site is bordered by another fraternity-owned land use to the north, and by a large parking lot immediately to the southwest, which necessitate little additional screening beyond that already in existence.
- c. Strict application of these Zoning Ordinance requirements would constitute an unnecessary hardship to the applicant, because it would necessitate a significant construction of privacy fencing along the northern property line amongst a significant tree stand along that property line.
- d. Approval of these variances would not result in an unreasonable circumvention of the Zoning Ordinance, as the applicant has committed to retain all of the existing landscaping on the site, which adequately screens the property from most of its neighbors.
- e. The variance has been requested by the applicant prior to the re-use of their property, and thus, there is no willful violation of any existing zoning regulation by the applicant.

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

1. Provided the Urban County Council rezones the property R-3; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. The property shall be additionally screened by the installation of an 18"-3' high hedge along the northwest property line, between the end of the existing retaining wall and the rear property line.

WLS/TLW

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