

REVISED STAFF REPORT ON VARIANCES REQUESTED FROM PLANNING COMMISSION

PLN-MAR-16-00002: CAPKY BLUEGRASS PROPERTIES, LLC

REQUESTED VARIANCES

1. Reduce the required open space from 20% to 15%.
2. Reduce the required front yard from 20 feet to 8 feet.
3. Reduce the minimum required parking from 150 spaces to either 123 or 112 spaces (depending upon #2).

ZONING ORDINANCE

Article 6-4(c) states that the Planning Commission may hear and act upon requested variances associated with a zone change. In such cases, they may assume all of the powers and responsibilities of the Board of Adjustment, as defined in Article 7-6(b) of the Zoning Ordinance.

Article 7-6 states that the Board (or in this case, the Commission) “may grant a variance for dimensional requirements only and may not vary the number of permitted signs, minimum number of required parking spaces outside of the Infill & Redevelopment Area, or other numeric requirements or limits of the zone. However, the Board may grant a variance to the maximum number of parking spaces allowed in a zone, or reduce the minimum number of parking spaces by fifty percent (50%) of the otherwise required number in accordance with Article 16-10 for projects within the defined Infill & Redevelopment Area.”

Article 7-6(b)(1) states that before any variance is granted, it must be found 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 nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance.

Article 8-14(h) states that the minimum front yard in the R-5 zone shall be 20 feet.

Article 8-14(k) requires the minimum open space on a property in an R-5 zone to be 20%.

Article 8-14(n) [per 8-12(n)] states that, for multiple family dwellings, other than for elderly housing, three (3) parking spaces are required for every two (2) dwelling units; or, in the alternative, 0.9 spaces per bedroom, whichever is greater.

Article 16-4(c)(1) states, that in R-3, R-4 and R-5 residential zones:

- “(1) No off-street parking area, loading or unloading area, maneuvering area or aisles shall be permitted with the required front yard or side street side yard of any lot with a principal building.
- (2) No portion of the front yard or side street side yard, exclusive of driveways, shall be paved or surfaced; and all such front and side street side yards shall be enclosed by a barrier, or landscaped in such a manner, suitable to preclude any such activity as prohibited in this section.”

Article 16-10 (1) states that all parking reductions shall apply only under the following circumstances: Uses shall be limited to attached single family dwellings and multi-family dwellings in residential and/or mixed use zones.”

CASE REVIEW

The applicant wishes to rezone the property at 353 Waller Avenue from a Professional Office (P-1) zone to a High Rise Apartment (R-5) zone, and re-use the former nursing home on the site for about 100 one-level, efficiency units in a 46,000± square foot building. The subject site is within the Infill and Redevelopment Area, as Waller Avenue forms its southern boundary. There are now a total of three variances requested to allow this redevelopment to occur, following a postponement of this zone change request for one month. The applicant hopes to reuse the former nursing home building and off-street paved areas with the fewest changes that are practical to the property.

The applicant's intent is to fully re-purpose as much of the existing building as is possible, in accordance with the Comprehensive Plan's recommendations, given the Kentucky Building Code requirements and limitations. They ask for the ability to develop 10 two-bedroom dwelling units, in lieu of 20 efficiency units, if building codes permit. The interior re-design of this existing building has not been finalized, as that will involve substantial cost and time and is not feasible for the applicant until the extent of the requested variances are known.

The applicant is requesting a reduction of the minimum open space on the site from 20% to 15%. While this is a fairly minimal reduction, the staff was initially concerned that no documentation was provided to the staff documenting that even 15% of the site can be maintained in open space. That has since occurred, and because a re-use of the former nursing home structures is being proposed, the staff can recommend that this requested variance be approved. Any buildings later removed will only add to the site's open space. Thus, the staff is agreeable to this variance.

The second variance requested by the applicant is to reduce the required front yard from 20 feet to 8 feet, the purpose of which is to allow the available paved area in the front of the existing building to remain after the subject property is rezoned to R-5. The location of the parking is already in place, for the former nursing home use. There is no prohibition of parking in the otherwise required front yard area in the existing P-1 zone. Thus, approval of this variance will not result in any circumvention of the Zoning Ordinance, and will result in no alteration of the site or the existing neighborhood. Therefore, the staff can also recommend that this variance be approved.

Finally, it does not appear that adequate off-street parking can be provided without reducing the number of dwelling units, or approval of a variance to the number of parking spaces. Whether efficiency units, or a combination of those and two-bedroom units, there should only be about 100 beds/bedrooms provided in this complex. A ratio of 1.23 parking spaces per bed would be satisfactory for a housing complex so close to the University of Kentucky. Requiring the ratio to be 1.5, as opposed to what is requested, would result in an unnecessary hardship to the applicant. Approval of a modest variance to the off-street parking requirements will not result in a circumvention of the Zoning Ordinance for a 100-unit multi-family building, and would result in an unnecessary hardship for the project's developer.

The Staff Recommends: Approval of the requested variances, and a reduction in off-street parking to 123 spaces, for the following reasons:

- a. Granting these requested variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. In fact, granting the variance will help to maintain the existing character of the entire subject property, as only limited physical improvements or changes are contemplated or required, other than possibly some additional vehicular use area landscaping and a small number of parking spaces.
- b. Granting these requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, because the existing setbacks and off-street parking areas for the building are to be maintained, generally "as is," which should serve to maintain the existing character of the property, and fit into the existing neighborhood.
- c. The existing parking arrangement along the frontage of the subject site, and the close proximity of its pavement to the right-of-way of Waller Avenue, are special circumstance that applies to this site that do not generally apply to other land in the R-5 zone. These conditions are more common to P-1 and B-1 properties along this corridor.
- d. In this instance, a strict application of the requirements of the Zoning Ordinance would pose a hardship to the applicant, because it would either require the removal of existing off-street parking on the site, require a reduction in residential density, or require the need for building demolitions in order to meet the more routine off-street parking or open space requirements for this proposed site redevelopment.
- e. The circumstances surrounding the requested variance are not the result of actions taken by this applicant. The applicant has not started construction on the project, and is requesting these variances prior to any construction activities commencing on the subject site.

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

1. Provided the Urban County Council rezones the property R-5; 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, 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 variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
4. The parking areas shall be landscaped from property perimeters in accordance with Article 18 requirements.
5. The final Landscaping Plan for the parking area involved with this variance, submitted to the Division of Building Inspection for review, shall also be submitted to the Division of Planning, for placement in the appropriate file(s).

WLS/LTW

10/6/16

11/3/16 rev.

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