TO: Kenton County Joint Board of Adjustment Members

FROM: Patrick Denbow, AICP, Senior Planner

SUBJECT: BOA2001-0002

DATE: March 11, 2020

Staff has published notice for a public hearing of the Kenton County Joint Board of Adjustment at 2:00 PM on Wednesday, February 18, 2020 in the 2nd floor Fiscal Courtroom of the new Kenton County Administration Building, 1840 Simon Kenton Way in Covington (site of the old Bavarian Brewery). We submit this case review and recommendation or your consideration prior to the hearing.

The applicant will explain his/her reasons for this request during the hearing and address how he/she believes it meets legal requirements established in law. Staff will lay out the case, provide our findings and a recommendation, and address your comments and/or questions.

If you need additional information or clarification prior to then, don’t hesitate to contact me.

pd

cc: Tom Honebrink, Applicant
    Heather Jansen, President Highland Cemetery
GENERAL CASE INFORMATION

1. **Request:** A conditional use permit under the Independence Zoning Ordinance to expand a cemetery in the R-1C (Residential-One C) Zone; and, variances to decrease the setbacks for a proposed office.

2. **Location:** 5406 Madison Pike, Independence

SITE LOCATION AND BACKGROUND

1. The site in question, containing an area of approximately 0.5 acres, is located on the east side of Madison Pike, approximately 500 feet north of Walnut Hall Drive. Madison Pike is classified within the mobility element of *Direction 2030: Your Voice Your Choice* as a major collector road. Walnut Hall Drive is classified as a local street.

2. The site is currently occupied by a single-family residential structure. The property is relatively flat with one existing access point off of Madison Pike with a concrete driveway and a gravel off-street parking.
3. The surrounding area consists of single-family residential and institutional uses, including the Independence City Building and Highland Cemetery.

**ANALYSIS – Current Zoning**

<table>
<thead>
<tr>
<th>ZONING</th>
<th>MIN LOT SIZE</th>
<th>MAX DENSITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>SITE: CURRENT</td>
<td>R-1C</td>
<td>12,500 sq. ft.</td>
</tr>
<tr>
<td>NORTH OF THE SITE</td>
<td>R-1C</td>
<td>12,500 sq. ft.</td>
</tr>
<tr>
<td>SOUTH OF THE SITE</td>
<td>R-1C</td>
<td>12,500 sq. ft.</td>
</tr>
<tr>
<td>EAST OF THE SITE</td>
<td>R-1C</td>
<td>12,500 sq. ft.</td>
</tr>
<tr>
<td>WEST OF THE SITE</td>
<td>R-1C</td>
<td>12,500 sq. ft.</td>
</tr>
</tbody>
</table>

The site in question is currently zoned R-1C (Residential-One C). The R-1C Zone currently permits cemeteries as a conditional use subject to the following area and height requirements:

- a. Minimum lot area – 22,500 square feet;
- b. Minimum lot width at building setback line – 150 feet;
- c. Minimum front yard depth – 50 feet;
- d. Minimum side yard width – 50 feet;
- e. Minimum rear yard depth – 50 feet; and

**ANALYSIS – Current Land Use**

<table>
<thead>
<tr>
<th>SITE: CURRENT</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>NORTH OF THE SITE</td>
<td>Agriculture, cemetery</td>
</tr>
<tr>
<td>SOUTH OF THE SITE</td>
<td>Single-family residential</td>
</tr>
<tr>
<td>EAST OF THE SITE</td>
<td>Agriculture</td>
</tr>
<tr>
<td>WEST OF THE SITE</td>
<td>Institutional</td>
</tr>
</tbody>
</table>
SUBMISSION MATERIALS

The applicant has submitted the following information and materials (attached):
   a. a letter detailing the nature and reasons for the submitted requests; and
   b. a site plan and drawings detailing the proposed project.

PETITION REVIEW

1. The submitted site plan and application materials show the following (see attached):
   a. An existing residential structure to be converted into an office for the adjacent cemetery
      i. Square footage of office?
      ii. Existing setbacks:
          1) 35 feet front yard
          2) 19 feet side yard adjacent to 5368 Madison Pike
          3) 31 feet side yard adjacent to 5418 Madison Pike
      iii. Existing gravel off-street parking area consisting of 37 percent of the existing front yard area
   b. The applicant indicated that the lot will be consolidated with the adjacent cemetery lot

2. The submission letter from the applicant indicates the following (see attached):
   a. Office hours 8:30 am -4:00 pm
   b. 1-3 staff members for appointments only
   c. Eight existing off-street parking spots
   d. A statement that having an office to meet with families will provide a needed service to these families
   e. A statement that there will likely be one employee living in the home who can provide security on site.

There are multiple requests within the submitted application. These requests are reviewed separately within this report to provide the clearest comprehensive review.

REQUEST 1: Conditional use for the expansion of a cemetery (office)
1. **Section 9.14, A.,** of the Independence Zoning Ordinance states that the board of adjustment may authorize a conditional use to be located within any zone in which such conditional use is permitted, if the evidence presented by the applicant is such as to establish, beyond any reasonable doubt; 
   a. That the proposed use at the particular location is necessary or desirable to provide a service or facility which will contribute to the general wellbeing of the neighborhood or the community; 
   and  
   **Staff findings:** The existing cemetery provides a necessary and desirable service that contributes to the wellbeing of the community. The creation of an office immediately adjacent to the existing cemetery will enhance the services provided and allow the cemetery to better serve the members of the community  
   b. That such use will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity.  
   **Staff findings:** By nature of meetings being by appointment, any impact to the vicinity should be minimal. In addition, the applicant has stated that memorial services, which would potentially have much more impact on an area will not be conducted within this office facility.

**RECOMMENDATION 1:** Favorable recommendation for a conditional use permit to expand a cemetery by creating an office for the adjacent cemetery subject to the following condition: 

a. No assembly take place within this facility.

**SUPPORTING INFORMATION/BASES FOR STAFF RECOMMENDATION 1**

1. This proposed facility is necessary or desirable to provide a service or facility which will contribute to the general wellbeing of the neighborhood or the community.

2. This facility will not be detrimental to the health, safety, or general welfare of persons residing or working in the vicinity, or injurious to property or improvement in the vicinity.

3. In order to allow the proper integration into the community, staff is recommending one condition; that no assembly (i.e., funeral services/showings) take place within this facility. The applicant has indicated that it is not the intent of the cemetery to utilize this structure for assembly purposes, however making it a condition of approval will ensure that assembly would not be permitted without further approval by the Board of Adjustment.

**REQUEST 2:** Variance requests to reduce the required setback to 35 feet in the front and 19 feet on the side adjacent to 5368 Madison Pike.

1. **Section 18.6., A., 1.,** of the Independence Zoning Ordinance states:
   a. Before any variance is granted, the board of adjustment must find 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:
   i. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
Staff finds that the existing conditions of the site create a special circumstance in this case. The applicant is not proposing to alter the existing footprint of the structure, simply to reuse it as an office.

ii. 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 of the applicant; and Staff finds that without a variance, the applicant would be deprived of the reasonable use of land and would create an unnecessary hardship. The variance requests will allow the applicant to utilize the existing structure on the lot. Without variances, the applicant would be forced to drastically alter the existing footprint of the building, or potentially tear down and rebuild a structure meeting the setback requirements.

iii. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought. Staff finds that the circumstances are not the result of actions of the applicant as the reasons for the request are due to the pre-existing conditions of the site and no office conversion has taken place prior to receiving permits.

b. The board shall deny any request for a variance arising from circumstances that are the result of willful violations of this ordinance by the applicant subsequent to the adoption of this ordinance. Staff finds that no office conversion has taken place prior to receiving proper permits.

**RECOMMENDATION 2:** Favorable recommendation on the variance requests to reduce the required setbacks.

**SUPPORTING INFORMATION/BASES FOR STAFF RECOMMENDATION 2**

1. The variance request 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.

**ADDITIONAL INFORMATION**

1. If approved, the applicant will need to provide site plans showing compliance with the following in order to receive zoning permits:
   a. Screening and landscaping as required by Section 9.17 of the Independence Zoning Ordinance;
   b. Off-street parking spaces need to be paved and delineated in accordance with Article 11 of the Independence Zoning Ordinance.