

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

October 30, 2009

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, October 30, 2009.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the August 28, 2009 and September 25, 2009 meetings 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.

None

- D. **Conditional Use Appeals**
 - 1. **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.

2. **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.

3. **C-2009-50: ROBERT H. DOUGLAS** - appeals for a conditional use permit to establish a bed and breakfast facility in the Agricultural Rural (A-R) zone, on property located at 4417 Dry Branch Road (Council District 12).

The Staff Recommended: Postponement, for the following reasons:

- a. An amended and scaled site plan is needed showing the full extent of the subject property, with the location of the proposed residence identified relative to the front, side and rear property lines.
- b. Additional information is needed regarding the overall design of the proposed bed and breakfast facility and the intent of the owners as to where they will reside.

4. **C-2009-63: PLEASANT RIDGE BAPTIST CHURCH** - appeals for a conditional use permit to amend a previously imposed restriction so that a dwelling on the church property can be used for rental purposes, in a Single Family Residential (R-1B) zone, on property located at 624 Wilderness Road

(Council District 6).

The Staff Recommended: Approval, for the following reasons:

- a. A parish house has existed at this location for many years, and has been rented from time to time when not used as a parsonage. Continuing to rent the house should not adversely impact the subject or surrounding properties.
- b. The ability to rent the parish house until a church need arises will benefit the church's long-term mission, and allow them to keep the house rather than demolish it.
- c. The building addition that required the lot consolidation, and ultimately resulted in the Board's rental restrictions, has now been completed. Any future tenants can therefore make informed rental decisions based on the existing church improvements and related activities that are clearly visible on the property.

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

1. The original conditions associated with C-2001-25, except for this rental restriction, shall remain in effect.
 2. The existing parish house can be used for rental purposes in accordance with the submitted application and site plan.
 3. As a rental dwelling unit the existing parish house may not be expanded.
5. **C-2009-64: JAMES BREWER** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1C) zone, on property located at 1187 Devonport Circle (Council District 11).

The Staff Recommended: Disapproval, for the following reasons:

- a. The addition of another, larger child care facility at this location will adversely impact the surrounding properties by increasing the potential for disturbances from noise and additional traffic on a residential cul-de-sac. Such impacts are already a neighborhood concern, due to the presence of a child care center for up to 48 children located immediately to the west of the subject property.
 - b. There are no natural buffers or other physical features in this area of the subdivision which might tend to mitigate the traffic and noise disturbances that can arise from the proposed and the adjacent child care facilities. The cul-de-sac at the west end of Devonport Circle, just four lots from the subject property, will exacerbate the potential for disturbances to nearby residents resulting from an additional child care facility.
 - c. Providing accessory child care for up to six children is a reasonable option at this location, given the intensity of child care activity that is already taking place in the immediate neighborhood.
6. **C-2009-65: GLORIA THOMPSON** - appeals for a conditional use permit to establish a home occupation (production of candles, soaps and lotions) in a High Density Residential (R-4) zone, on property located at 3916 Kenesaw Drive (Council District 12).

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 to produce candles, soap and lotions. Parking issues or significant increases in traffic are not anticipated, as customers will not be coming to the appellant's home.
- 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 the work activity to be confined to the kitchen area of the home in an area not exceeding 300 square feet.
 2. The activity shall at all times comply with the restrictive provisions for home occupations as outlined in Article 1-11 of the Zoning Ordinance.
 3. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to beginning the home occupation.
 4. This approval shall become null and void should the appellant cease to either own or occupy the subject property.
7. **C-2009-66: ARMANDO TORRES** - appeals for a conditional use permit to provide live entertainment

(karaoke and serenades) at an existing restaurant, in a Neighborhood Business (B-1) zone, on property located at 1858 Oxford Circle (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Live entertainment to be provided at the restaurant will consist only of karaoke and individual or small groups of musicians that provide serenading type music. The activity will be buffered from the nearest residences by Oxford Circle and by the currently vacant suite at the end of the building (at 1864 Oxford Circle) where the restaurant is located. Adequate off-street parking is conveniently available for this use in the shopping center parking lot.
- 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. Live entertainment shall consist only of karaoke (with a disc jockey) and serenading type music, with no dancing.
 2. Live entertainment shall be provided only in that portion of the building that is located on property identified as 1858 Oxford Circle, and shall not extend into the adjoining suite to the north, on property identified as 1864 Oxford Circle.
 3. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to beginning the live entertainment.
 4. The building shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
 5. All entrance and exit doors shall remain closed during times that live entertainment is being provided.
 6. This conditional use shall become null & void should the appellant cease to operate a restaurant at this location.
8. **C-2009-67: ROBERT MILWARD** - appeals for a conditional use permit to amend a previously approved site plan for construction and operation of a funeral home, in an Agricultural Urban (A-U) zone, on property located at 1509 Trent Boulevard (Council District 8).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A funeral home has been planned for this property for over 20 years, with Board of Adjustment approval of the original plan granted in 1989 (Robert E. Milward: C-89-104). The currently proposed plan is generally similar to the original approval, with the additional benefit of providing on-site storm water retention and a reduced amount of paving for parking. Funeral home activities are not expected to be disturbing to the adjoining church and nearby assisted living facility, and a large area of open space will serve as a suitable buffer for the adjoining residences to the south.
- 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 funeral home shall be constructed and operated in accordance with the submitted application and site plan, or as amended to incorporate changes requested by the Division of Engineering and/or the Division of Traffic Engineering. The off-street parking spaces proposed to the south of the retention area (approximately 20 to 25 spaces) do not have to be provided with the initial construction, and may be provided at a later date if and when desired by the appellant.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The off-street parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the parking areas and traffic circulation (including access points) shall be subject to review and approval by the Division of Traffic Engineering.
5. 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.
6. 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.

E. **Administrative Review**

1. **A-2009-60: RBHV LEXINGTON, LLC / RBHV LEXINGTON RETAIL, LLC** - appeals for an administrative review to allow the transfer of 32 square feet of unused signage in a Planned Neighborhood Residential (R-3) zone to a free standing sign in a Highway Service Business (B-3) zone, on properties located at 2573 Richmond Road and 175 Codell Drive (Council District 7).

The Staff Recommended: Disapproval, for the following reasons:

- a. Keeping track of signage transfers between separate properties would be an administrative burden for the Division of Building Inspection, and could seriously compromise their ability to properly permit signage requests in the future. Also, there is a reasonable likelihood that legal complications with signage requests might arise if property ownership changes.
- b. The properties affected by this proposed signage transfer are located on two different streets that are not visually connected, and the properties are subject to the permitting requirements of much different zoning categories (B-3 and R-3). These circumstances prevent a reasonable assessment of the extent to which the proposed transfer of signage square footage would be beneficial or detrimental to the affected properties and the surrounding areas.
- c. Documentation has not been provided by the appellants to verify that the total permitted signage for the property at 2573 Richmond Road will not be exceeded if the requested transfer is approved. Pursuant to Article 17- 8(a) of the Zoning Ordinance, the Board is not authorized to increase the maximum total permitted sign area on a single lot or building, and there is uncertainty as to whether this transfer will exceed the Board's authority.

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. **Discussion of 2010 Meeting and Filing Schedule** - As part of its Bylaw-related duties, each year the Board of Adjustment adopts the Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2010 is in draft form, with dates that require discussion prior to its being officially adopted.
- B. **HB 55 Training Opportunity** – There will be an APA audio conference on Wednesday, November 11, beginning at 4:00 p.m. in the Division of Planning (Phoenix Building, 7th floor) conference room. The title of this audio conference is “Planning with Large Institutions,” and will count toward at least one hour of training credit for Board of Adjustment and Planning Commission members, as well as staff.

VI. **NEXT MEETING DATE** - The Chair will announce that, due to the Thanksgiving holiday, the next meeting date will be November 20, 2009, one week earlier than usual.

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