

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

December 10, 2010

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, December 10, 2010.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the November 19, 2010 meeting 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-2010-105: KEN and LINDSAY DONWORTH** - appeal for a variance to reduce the required yard along Montclair Drive from 35 feet to 20 feet in order to construct a 1½-story detached garage in a Single Family Residential (R-1C) zone, on property located at 1251 Eldemere Road (Council District 3).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance would negatively alter the character of the general vicinity, by allowing a sizable accessory building nearly 15' closer to Montclair Drive than the existing

residence. Such an arrangement is not typical of this neighborhood, which is characterized by spacious front yards and clearly defined building setbacks.

- b. Special circumstances unique to this particular property have not been identified that might tend to justify a reduction in the required side street side yard setback.
- c. Strict application of the Zoning Ordinance would not unreasonably restrict use of the property or create an unnecessary hardship. The lot is relatively large, with ample space for constructing an accessory building that complies with applicable setback requirements.

2. **V-2010-108: TATES CREEK SOUTH SHELL LTD. PARTNERSHIP** - appeals for a variance to reduce the required perimeter setback from 21 feet to 15 feet, and the setback from a residential zone from 20 feet to 15 feet, for construction of car wash mechanical rooms in a Planned Shopping Center (B-6P) zone, on property located at 4201 Saron Drive (Council District 9).

The Staff Recommends: Approval of variances reducing the required perimeter setback from 21' to 15' and the required residential zone setback from 20' to 15', for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. A car wash is an established use at this location, and the proposed additions are limited in size (192 square feet) and can be reasonably screened by the 15' landscape buffer to be maintained along the property boundary.
- b. The layout of the existing facilities on the subject property, which is a relatively small lot somewhat isolated from the rest of the shopping center, has limited the options for how to accomplish needed upgrades for the car wash while maintaining safe vehicular movements on-site.
- c. Strict application of the Zoning Ordinance would force the appellant to place the mechanical rooms on the opposite side of the existing car wash building, where they would interfere with traffic flow and would also hinder the provision of related car cleaning facilities.
- d. These small additions are reasonably considered as needed improvements for the car wash facility, and the proposed location on the back side of the existing building should not be interpreted as an effort to circumvent a requirement of the Zoning Ordinance, since the adjacent residential property is vacant, and has been for some time.

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

1. The room additions shall be constructed 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. Action of the Board shall be noted on the amended Final Development Plan for the subject property.

D. Conditional Use Appeals

1. **CV-2010-98: B & S RESTAURANT MANAGEMENT** - appeals for a conditional use permit to provide live entertainment (DJ & bands) and dancing at a restaurant/bar; and a variance to reduce the required 100' setback from a residential zone to 0 feet in a Neighborhood Business (B-1) zone, on property located at 120 (aka 122) W. Maxwell Street (Council District 3).

The Staff Recommended: Postponement, for the following reasons:

- a. Written assurance has not yet been provided by the owner of the subject property indicating that the appellant is authorized to pursue a conditional use and variance for a bar & grill with live entertainment.
- b. Additional details are needed regarding: (1) the intended use of the outdoor deck/patio and courtyard adjacent to the building; (2) required off-street parking for the proposed use, which will require submittal of an indoor and outdoor seating arrangement, along with a calculation of the square footage of the building that will be used for the proposed activities; and (3) an assessment of required parking for other occupants of the building, and a description of how the available parking behind the building will be shared with those occupants and any other users in the area (e.g., Two Keys Tavern) that may have at some point been authorized to use that accessory parking lot.
- c. There are a number of residential properties in close proximity to the subject property. Alternative music venues and operational considerations should be explored by the appellant that might serve to reduce the potential for a bar/grill with live entertainment to adversely affect those properties.

2. **CV-2010-100: TOTAL GRACE BAPTIST CHURCH** - appeals for a conditional use permit to expand the parking area; and variances to reduce the required front yard from 30 feet to 0 feet in a Single Family Residential (R-1C) zone and 20 feet to 0 feet in a Planned Neighborhood Residential (R-3) zone, on properties located at 1313 & 1317 N. Limestone Street (Council District 1).

The Staff Recommended: Postponement, for the following reasons:

- a. Additional time is needed for the appellant to consider a modified proposal that reduces the extent of paving proposed in the front yards of each lot, with the goal of maintaining a comparable amount of open space as that provided on the adjoining residential properties.
- b. There are significant questions related to the overall design of the parking areas that are proposed, which should be discussed with the Division of Traffic Engineering prior to the Board's consideration of the conditional use request.
- c. The provision of landscape buffers for the proposed parking lot, whether required by the Zoning Ordinance or otherwise deemed desirable, should be addressed by the appellant. Given the narrow width of the northerly lot, and the limited space between the church building and North Limestone, such buffers may ultimately determine the feasibility and design options for expanding the off-street parking areas for this church facility.

3. **C-2010-88: TRILOGY HEALTH SERVICES, LLC** - appeals for a conditional use permit to construct and occupy an assisted living facility (combined residential assisted living facility and nursing home, and all ancillary uses related thereto) in a Planned Neighborhood Residential (R-3) zone, on property located on a portion of 2599 Old Rosebud Road (Council District 6).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Immediately bordering property is currently vacant, with some type of residential use anticipated at some time in the future. With the recommended 15' wide landscape buffer along the property perimeter, the specialized residential facilities that are proposed should be compatible with whatever type of residential use is developed on the immediately adjoining property. Assisted living facilities and nursing homes do not generate high levels of traffic, and the activities at such facilities are not inherently noisy or otherwise disturbing, an important consideration given the location of the existing West Wynd subdivision.
- b. All necessary public facilities and services are or will be available and adequate for the proposed use.

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

1. The facilities shall be constructed in accordance with the submitted application, and a revised site plan indicating finalized parking, employees on the maximum shift, and landscaping details.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and prior to occupying the facilities.
3. The parking lots shall be paved, with spaces delineated, and landscaped in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the access point, traffic aisles and layout of the parking spaces shall be subject to review and approval by the Division of Traffic Engineering.
5. Any outdoor pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining or nearby properties.
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. Old Rosebud Road shall be extended to the west end of the subject property, in accordance with the plans approved for the subject property by the Planning Commission. This extension shall be completed prior to the issuance of an occupancy permit from the Division of Building Inspection for this facility.
8. A 15' wide landscape buffer shall be provided around the full perimeter of the subject property (excepting the street frontage), to include (on the average) one tree for every 40' of linear boundary, recognizing that trees may be staggered rather than formally aligned. The buffer shall also include a minimum of fourteen perimeter landscaping areas, each with a minimum size of 120 square feet and planted with a mixture of shrubs and small species trees. These islands shall be located and otherwise designed to complement or be coincident with any screening required for the vehicular use areas, and shall be generally distributed as follows: five along the west side of the property;

five along the rear property line; and four along the east side of the property. The overall design of the landscaping plan for this 15' wide perimeter buffer, including a description of species of plants to be used, shall be subject to review and approval by the Landscape Examiner with the Division of Building Inspection.

9. Action of the Board shall be noted on the Final Record Plat recorded for the 10-acre subject property.

4. **C-2010-107: LWC, LLC (dba MISTER MONEY - USA)** - appeals for a conditional use permit to establish a pawn shop in a Highway Service Business (B-3) zone, on property located at 407 W. New Circle Road (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking is conveniently available, and the existing building can accommodate the proposed use without the need for any expansion. The subject property is surrounded on all sides by other commercial uses.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The pawnshop shall be established in accordance with the submitted application and site plan, and shall be limited to the 8,000 (+/-) square foot suite currently proposed.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction and/or renovation, and prior to opening the pawnshop.
3. Pawning of vehicles shall not take place at the subject property, and vehicles pawned at other locations shall not be stored on site.
4. This approval shall become null and void should the appellant cease to occupy the subject property as a pawnshop.

5. **C-2010-109: IMANI FAMILY LIFE CENTER, INC.** - appeals for an amendment to a previously approved conditional use permit for a child care center (to not require an outdoor play area for the after-school program or for a child care facility that accommodates less than 120 children) in a Planned Neighborhood Residential (R-3) zone, on property located at 1555 Georgetown Road (Council District 2).

The Staff Recommends: Approval of eliminating outdoor play area requirements for the after-school program (and any future summer camp), for the following reasons:

- a. Children attending the after school-program and summer camp will be at the facility for relatively short periods of time, and do not have a significant need for outdoor play during those times.
- b. Indoor play and recreational facilities at this church are available and adequate to serve the after-school program and summer camp.

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

1. Indoor play and recreational facilities, including the gymnasium, shall be made available for children attending the after-school program and summer camp.
2. A fenced and screened outdoor play area shall be provided for the day care portion of the child care center, with a minimum of 25 square feet of play area to be provided per child. The initial size of the play area and any subsequent expansions shall be governed by the terms and conditions of occupancy permits issued by the Division of Building Inspection.

6. **C-2010-110: VULCAN CONSTRUCTION MATERIALS, LP** - appeals for a conditional use permit to conduct underground mining of limestone in the Agricultural Rural (A-R) and Neighborhood Business (B-1) zones, on properties located at 7200, 7210 and 7230 Turner Station Road (Council District 12).

The Staff Recommends: Approval of a conditional use for the southerly half of the proposed mining area, for the following reasons:

- a. An underground mining operation confined to this area should not adversely affect the subject or surrounding properties. The area to be mined is immediately adjacent to an existing underground mining and quarrying operation that has been in place for over fifty years. Property to the west and southwest of this area, consisting of several hundred acres of land, is owned and managed by the same landowner that is leasing the land to be mined to Vulcan. All aspects of the mining operation

have been located and designed to satisfy concerns of Floracliff Nature Sanctuary, which is located immediately to the south of Vulcan's existing mine and over ½ mile away from the new mining area. Existing residences on the adjoining properties to the east and north will be at least 800' away, which should help to minimize the potential for disturbances from blasting.

- b. Excessive noise or dust is not anticipated, as the mining activity will be entirely underground, and reclamation of the site and drainage control will be easily accomplished since only very minor alterations will be needed on the surface of the subject property.
- c. The appellant has not had a permit revoked or bond or other security forfeited for failure to comply with any Federal, State or local mining laws, regulations or conditions.
- d. All necessary public facilities and services are available and adequate for the proposed use.

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

- 1. Construction and operation of the mine shall be done in accordance with the submitted application, and a revised site plan indicating: (a) an area to be mined equivalent to roughly half of the 107 acres that was originally proposed, with the northerly limit defined by a line extending from the centerline of Grimes Mill Road (as it intersects with Old Richmond Road) in a westerly direction to a point approximately 400' south of the north end of the impoundment of Elk Lick Creek; and (b) a setback of at least 200' to be provided from the impoundment and all portions of Elk Lick Creek.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- 3. Surface alterations shall be limited to the construction of air ventilators needed to comply with regulatory requirements, and reasonable access to those sites for construction and maintenance.
- 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.
- 5. The facility shall at all times comply with the provisions of the Mining/Quarrying Ordinance (Code of Ordinances #252-91), as well as all Federal and State regulations pertaining to mining activities, air pollution and waste management, and surface and ground water protection.
- 6. Blasting shall take place, on the average, no more than once per day, and shall be designed and implemented in strict compliance with all applicable regulatory standards relating to a "scale-distance formula".
- 7. Upon initiation of underground mining to the north of Vulcan's property, Vulcan shall not concurrently conduct any mining on their property (7430 Elk Lick Falls Road) at a depth greater than level 2 (approximately 300'), or otherwise conduct mining at both locations to the extent that historical levels of production are exceeded.
- 8. All underground mining on the approved portion of the subject property shall take place at a level 2 depth of approximately 300'.

E. Administrative Review

- 1. **A-2010-90: NCJPM PROPERTIES** - appeals for an administrative review to allow a sign that projects above the roof line and overhangs the building in a Neighborhood Business (B-1) zone, on property located at 1315 W. Main Street (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 existing signage has elements that render it appropriately considered as a roof sign and/or as a freestanding sign that overhangs the building, both of which are prohibited by Article 17-5 of the Zoning Ordinance.
- b. Granting the appeal would set a damaging precedent that would significantly change the manner in which signage on or over a roof is regulated in Fayette County, resulting in a clear circumvention of the intent of the Zoning Ordinance.
- c. Numerous options are available for creative and unique signage, of the artistic character desired by the appellant, which would comply with the design, size and height allowances for signage within the Neighborhood Business (B-1) zone.

The Division of Building Inspection will report at the meeting.

- 2. **A-2010-103: RANDALL PETERSON** - appeals for an administrative review to allow a second kitchen in a single family residence in a Single Family Residential (R-1B) zone, on property located at 1535/1545 Lakewood Drive (Council District 5).

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

- a. The property is located in a Single Family Residential (R-1B) zone, which permits just one dwelling unit per property, and one kitchen facility to serve that single unit.
- b. Special circumstances, such as a living situation involving a handicapped person or elderly family member, have not been identified by the appellant to justify the need for a second kitchen.
- c. Permitting second kitchens as a routine matter, without any special needs or living conditions involved, could lead to a proliferation of multiple living units on properties that are zoned for just one dwelling unit. This would be a direct circumvention of the intent of the Zoning Ordinance, and could ultimately result in adverse impacts to many neighborhoods.

The Division of Building Inspection will report at the meeting.

- IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.
 - A. **Possible By-Law Revision** - The issue of possibly establishing guidelines/requirements related to streamlining cases (e.g., speaker time limits) has arisen, which may require a revision to the Board's adopted By-Laws, and which will be discussed as a Board item after the disposition of cases at today's hearing.
- V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.
 - A. **House Bill 55 Training Opportunity** - There will be an APA audio conference on Wednesday, January 19, 2011, lasting from 4:00 till 5:30 p.m., in the Division of Planning conference room, 7th floor of the LFUCG Phoenix Building. The title of this conference is "Retrofitting Corridors" and will count toward 1.5 hours of House Bill 55 training credit for Board of Adjustment/Planning Commission members and Staff.
 - B. The Staff would like to wish the Board members and their families a happy and safe Christmas and New Year holiday.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be January 29, 2011.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.