

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

January 28, 2011

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, January 28, 2011.
- II. **APPROVAL OF MINUTES** - The Chair will announce that there are no minutes of previous meetings to 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-2011-9: STEVE TAYLOR** - appeals for a variance to reduce the required number of parking spaces from 22 to 11 for a proposed restaurant and accessory drive-through in a Neighborhood Business (B-1) zone, on property located at 350 Foreman Avenue (Council District 3).

The Staff Recommends: Disapproval, for the following reasons:

- a. Justification has not been provided that specifically addresses and supports that there will be a reduced demand for on site parking at this location for the type of establishment that is proposed.
- b. There is no on-street parking at this location that might partially mitigate for the shortage of off-

street spaces that is proposed.

- c. Any reduction in required off-street parking on the subject property will increase the likelihood of parking conflicts with the surrounding apartment complex, which has a number of parking spaces for residents in the immediate vicinity of the proposed restaurant.
- d. The need for the variance has been created to a significant degree by the appellant's desire to have an establishment with a drive-through facility.

D. **Conditional Use Appeals**

1. **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.

2. **CV-2011-2: JANICE MUELLER** - appeals for a conditional use permit to construct and occupy a banquet facility (in conjunction with a winery); and variances to reduce the required front yard from 300 feet to 60 feet along the northern property line and to 125 feet along the eastern property line of Royster Road, and from 300 feet to 75 feet along Winchester Road, for construction of a wine tasting room and a private residence in the Agricultural Rural (A-R) zone, on property located at 4051 Winchester Road (Council District 12).

The Staff Recommended: Postponement, for the following reasons:

- a. Details regarding vehicles exiting the proposed 150-175 space parking lot, and outdoor entertainment associated with planned events are insufficient to determine whether there will be an adverse impact to this neighborhood. Additional information is necessary to ensure that these related activities will not provide a negative impact to the public.
- b. The irregular shape of this lot's frontage has led to a question regarding the true dimensional variance requested for the single family dwelling proposed on the property. The submitted site plan appears to place the dwelling on or adjacent to the right-of-way fence along the Royster Road frontage, although a 60' setback has been requested for that structure.
- c. A postponement of this request could lead to additional consideration of the questions associated with the threshold issue regarding the ratio of grape arbor/"tasting room" acreage to that devoted to the banquet facility, including its off-street parking area. From the staff's perspective, this is an important consideration in evaluating whether the banquet facility can truly be considered accessory to the agricultural and residential uses otherwise permitted on this 13.25-acre property.

3. **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'.
4. **C-2011-1: JERRY BARNETTE, JR.** - appeals for a conditional use permit to establish a bed and breakfast facility in the Agricultural Rural (A-R) zone, on property located at 4343 Mt. Horeb Pike (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. A four-room bed and breakfast facility is a suitable use for this scenic rural location, and should not adversely affect any of the surrounding properties. An existing residence will be used with no need for any new construction. Ample space for parking already exists in a large paved area conveniently located next to the residence's attached garage.
- b. Sewage and garbage will be handled privately, and public services such as police and fire protection are available and adequate for the proposed use.

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

- 1. The four-room bed and breakfast shall be established in accordance with the submitted application and site plan.
- 2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the facility.
- 3. Sewage treatment and operation of this bed & breakfast facility shall be in accordance with the requirements of the Fayette County Board of Health.
- 4. The facility shall at all times comply with the conditions set forth in Article 1-11 of the Zoning Ordinance for a bed and breakfast facility.
- 5. This approval shall become null and void should the appellant no longer reside at this location.

5. **C-2011-3: DIANNE S. GIBSON** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1E) zone, on property located at 868 Gerardi 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. The site is situated on an eyebrow of Gerardi Road, which should facilitate safe dropping off and picking up of children. Adequate off-street parking will be provided in the appellant's driveway, and street parking by parents is to be monitored to ensure that neighbors' driveways are not blocked. The number of children to be cared for after 6:00 PM will be limited to six, which is no more than what is permitted as an accessory use in the R-1E zone.
- 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. Family child care shall be provided on Monday through Friday for no more than 12 children in accordance with the submitted application and site plan.
 2. A certificate of occupancy for the proposed use shall be obtained from the Division of Building Inspection prior to increasing enrollment to between 7 and 12 children.
 3. No more than six children shall be cared for after 6:00 PM.
 4. The driveway shall be left open for the parking of vehicles, with two spaces to be provided at the end of the driveway near the garage, and the other end of the driveway (toward the sidewalk) to be used primarily for vehicles temporarily parked to drop off or pick up children.
 5. The appellant shall advise all parents, verbally and in writing, that on-street parking is very limited, and cannot be done in a manner that results in neighbors' driveways being blocked.
 6. Open space to the side and rear of the home (an area of over 5,000 square feet in size) shall be used as an outdoor play area for children, and fenced in accordance with the requirements of the Division of Building Inspection.
 7. This approval shall be considered null and void should the appellant no longer reside at this location.
6. **C-2011-4: ANGELA and BRIAN SPIERS** - appeal for a conditional use permit to establish a commercial outdoor recreational/horse riding facility in the Agricultural Rural (A-R) zone, on property located at 2590 Jacks Creek Pike (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. The outdoor horse riding and training arena will comply with all applicable setback requirements. Noise and traffic disturbances are not anticipated due to the limited scope of the horse riding and training activities that will be taking place. The arena will not have lighting, and no special events or riding shows will be taking place at this location.
- b. All necessary public facilities and services are available and adequate for the proposed use, and sewage treatment and garbage pick-up will be handled privately.

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

1. The outdoor riding and training facility shall be built and operated in accordance with the submitted application and site plan.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. The outdoor riding ring shall not be lighted, and shall be used for private horse riding and training purposes only, with no public events such as riding shows or related special events.
 4. Sewage treatment shall be provided in accordance with the requirements of the Department of Health.
7. **C-2011-5: EMBRACE CHURCH** - appeals for a conditional use permit to establish a church in a High Density Apartment (R-4) zone, on property located at 500-508 Maryland Avenue (Council District 2).

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 next to the building to

be occupied for church purposes. No new construction, other than interior remodeling, will be required. Related ministries serving the homeless and those in need will be implemented at off-site locations that have already been established for those specific purposes.

- 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 church facility shall be established in accordance with the submitted application and site plan, with the understanding that the westerly parking lot will be restriped in accordance with the recommendations of the Division of Traffic Engineering.
2. All necessary permits, including those required for interior remodeling and occupancy of the building, shall be obtained from the Division of Building Inspection prior to beginning church services.
3. The building shall not be occupied for any permanent residential use, and temporary overnight stays related to church-oriented activities shall be limited to no more than six nights per year.
4. The church shall not provide, as routine ministries, overnight shelter or food services for the homeless or hungry at the subject property, but is encouraged to continue to support such ministries at other established locations that provide those needed services. Support activities relating to administration/ coordination of work efforts may take place on site.
5. Landscaping for the corner parking lot at 500 Maryland Avenue shall be refurbished as necessary to comply with Article 18 of the Zoning Ordinance, subject to approval by the Division of Building Inspection.

E. Administrative Review

1. **A-2011-6: MILESTONE REALTY CONSULTANTS, LLC** - appeals for an administrative review to determine that an existing sign should be permitted as a "tract sign" at an off-site location in a Neighborhood Business (B-1) zone, on property located at 3600 Winthrop Drive (Council District 9).

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

- a. Tract signs are permitted on a "per street frontage" basis, pursuant to Article 17-6(e)(3) of the Zoning Ordinance. In such cases, Article 17-4(l) of the Zoning Ordinance requires that signs be located and oriented to the distinct street frontage by which the sign is permitted. The subject sign, described as a tract sign by the appellant, is located over ½-mile away from the property being advertised, on street frontage that is not specific to or otherwise a distinct part of the advertised property.
- b. There are no provisions in the Zoning Ordinance for a sign of this type, whether treated as a construction sign or a tract sign, to be permitted in a B-1 zone at an off premise location. Other than some types of exempt signs, such as government signs or political signs, the only type of sign permitted on property separate from the property being advertised is an advertising sign (i.e., a billboard), which is not a sign type permitted in the B-1 zone.
- c. The Board is prohibited from permitting a sign type that is not specifically permitted in the zone in which a sign is located, pursuant to Article 17-8(a) of the Zoning Ordinance.

The Division of Building Inspection will report at the hearing.

2. **A-2011-7: STEVE MITCHELL** - appeals for an administrative review to allow a mobile home to be temporarily placed on a property while a permanent single family dwelling is constructed in the Agricultural Rural (A-R) zone, on property located at 295 Chilesburg Road (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. The mobile home will be placed on the property on a temporary basis, and will be removed within 30 days after a Certificate of Occupancy is issued for the permanent residence. In this light, this temporary structure will serve more as a site construction trailer than a mobile home in the A-R zone.
- b. Allowing a mobile home only during the time a permanent residence is under construction will facilitate efforts of the appellant to deter vandals and keep the property secure.

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

1. The mobile home shall be placed on the property as generally depicted on the submitted site plan,

- in accordance with and only after obtaining all necessary permits from the Division of Building Inspection.
2. All necessary permits for construction of the permanent residence shall be obtained prior to placing the mobile home/construction trailer on the property.
 3. The mobile home/construction trailer shall be removed from the property within 30 days after a Certificate of Occupancy is issued for the permanent residence, or within two years following issuance of a building permit for the permanent residence, whichever occurs first.
 4. Commercial structures shall not be permitted on the subject property, unless specifically approved by the Board as part of a conditional use, and any accessory structures permitted (or determined to be exempt) by the Division of Building Inspection shall not be used for commercial purposes.

The Division of Building Inspection will report at the hearing.

3. **A-2011-8: MICHAEL D. CHILDERS, BUILDER** - appeals for an administrative review to allow a second kitchen in a detached garage/pool house in an Expansion Area Residential (EAR-1) zone, on property located at 200 Kelburn Court (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. The property is located in an Expansion Area Residential (EAR-1) zone, which permits a second kitchen as part of an accessory dwelling unit.
- b. The proposed pool house is to include a bathroom, full kitchen, and lounge area that could easily serve as a bedroom. As such, it closely resembles an accessory dwelling unit in terms of design and potential future use.
- c. Regardless of the extent to which the pool house is rented or occupied, it is clearly accessory, based on size and overall design, to the principal residence on the property.
- d. The subject property consists of two lots that have been consolidated to create one larger parcel of $\frac{3}{4}$ -acre in size. The proposed detached garage and pool house, although over 2,000 square feet in size, will still appear as accessory to the principal residence (over 8,500 square feet) on such a large lot.

IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

- A. Election of Officers - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting. The present officers are: Acting Chair - Louis Stout; Acting Vice-Chair - Kathryn Moore; Secretary - Jim Griggs.
- B. In the past, the duties of Secretary have been delegated to the Planning Manager or a staff member appointed by the Planning Manager. The Chair will request action on this item.
- C. 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.

VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be February 25, 2011.

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