

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

April 29, 2011

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, April 29, 2011.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the March 25, 2011 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-2011-21: JOHN L. FOLEY** - appeals for variances to: 1) reduce the required front setback along Ashton Drive from 20 feet to 12 feet; and 2) eliminate a portion of the required landscape buffer for the parking lot and circulation drive in order to construct a new commercial building in a Highway Service Business (B-3) zone, on property located at 1260 Winchester Road (Council District 1).

The Staff Recommends: Approval of a front yard reduction from 20' to 16', and a landscaping variance eliminating the required vehicular use area buffer on the subject property between the two access drives, for the following reasons:

- a. Granting these variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The building to be constructed will be over 30' back from the sidewalk that extends along Ashton Drive, which is comparable to many commercial locations in the community. Landscaping will be provided for most of the site, with plantings to be provided along the edge of the circle drive (within the Ashton Drive right-of-way), or mitigated at an alternative area on the subject property that has available open space.
- b. The unusually wide right-of-way along Ashton Drive, and the limited depth of the subject property, are special circumstances that justify the requested front yard and landscaping variances.
- c. Strict application of the Zoning Ordinance would restrict a building on this site to a depth of approximately 25', which would be marginal for a viable commercial use.
- d. The circumstances surrounding these variance requests have arisen not as a result of actions taken by the appellant, but from the appellant's efforts to establish a reasonable commercial use on a small property encumbered by an unusually wide street right-of-way.

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

1. The site shall be developed in accordance with the submitted application and revised site plan dated April 18, 2011.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. The final design of the parking lot and access drives shall be subject to review and approval by the Division of Traffic Engineering.
 4. Landscaping for the area between the two access drives shall be placed along the edge of the pavement connection, within the Ashton Drive right-of-way, subject to the terms and conditions of an encroachment agreement obtained through the Division of Engineering. That buffer may consist of continuous plantings or one or more landscape islands, provided that the amount of plantings provided generally complies with Article 18 of the Zoning Ordinance. Should the appellant be unable to obtain the necessary encroachment agreement, a comparable amount of planting material shall be installed at an alternative area on the property, preferably the northwest corner of the lot where there is sufficient open space available for additional plantings. In either case, a detailed landscaping plan shall be prepared, subject to review and approval by the Division of Building Inspection.
 5. Delivery and pick-up of merchandise and materials at this property shall be provided only by trucks and vehicle types that are able to safely move through the circular drive without the need to maneuver within the right-of-way of Ashton Drive, as required by Article 16-2(a) of the Zoning Ordinance. Since that right-of-way is so wide along the subject property, extending for a distance of up to 17' beyond the sidewalk, the focus of this restriction is the area of street paving and associated sidewalk, where there are public safety concerns relating to both vehicular and pedestrian movements.
2. **V-2011-27: JOHNNY TEMPLE** - appeals for a variance to increase the allowable square footage and height for three directional signs, as well as allow a greater amount of text for the signs in a Professional Office (P-1) zone, on property located at 101 Yorkshire Boulevard (Council District 7).

The Staff Recommends: Postponement, for the following reasons:

- a. Two aspects of this application, relating to size and content limitations of the requested directional signs, cannot be addressed by the Board as a variance. Any relief to those restrictions of the Zoning Ordinance should be addressed as an administrative appeal, which will require that the current application be amended.
- b. Additional information is needed regarding the feasibility of transferring unused sign square footage to the oversized signs that are proposed. Assembling that information will require that the appellant consult with the Division of Building Inspection to quantify sign square footage that will not be used at this location and is potentially available for transfer to an alternative sign type and location.
- c. The requested height of the directional signs, which can be addressed by the Board as a variance, is directly related to the size issue, so the two issues should be considered by the Board at the same time. Also, additional time will provide an opportunity for the appellant to assemble more detailed justification for the requested sign heights, which will be an important consideration since two of the three directional signs at issue are to be taller than the existing directional signs that have been serving this property.

3. **V-2011-28: THOROUGHbred ATM, LLC** - appeals for a variance to reduce the required vehicular use area buffer from 5' to 3' along the northern edge of the property and from 3' to 0' on the eastern edge of the property, in order to construct a retail building in a Neighborhood Business (B-1) zone, on property located at 1760 Harrodsburg Road (Council District 10).

The Staff Recommends: Approval, 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. Most of the site will be landscaped in accordance with Article 18 of the Zoning Ordinance. In the area along Clays Mill Road where no buffer is to be provided, there is sufficient separation between the sidewalk and the subject property to minimize pedestrian safety concerns. Along the northerly property line, a gradual tapering of the buffer width from 5' to 3' is not likely to be easily noticed, and there is a retaining wall in that area that will help to maintain separation between the two adjoining properties.
- b. Strict application of the Zoning Ordinance would require that the proposed building be reduced in size and/or that the traffic aisle be reduced below the 24' width recommended by the Division of Traffic Engineering. Neither of those options appears to be warranted, based on traffic safety considerations and the many constraints impacting the redevelopment of the subject property, and the appellant's intention to plant all of the required landscaping on the site – just at alternate locations.
- c. The small size and irregular shape of the lot are special circumstances that have limited redevelopment and design options for this site.
- d. The circumstances surrounding the requested variances are not the result of actions taken by the appellant, who is attempting to create a viable commercial use on a small lot that has been sitting vacant for several years.

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

1. The property shall be redeveloped 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. The final design of the access points, vehicular circulation and parking areas shall be subject to review and approval by the Division of Traffic Engineering.
4. All of the planting material ordinarily required for a vehicular use area buffer in the 30' section of traffic aisle north of the Clays Mill Road access, where no buffer will be provided, shall be transferred to an alternate location along the eastern edge of the property.
5. A landscape buffer, with shrubs and trees comparable to that required by Article 18-3(a)(2)1 of the Zoning Ordinance, shall be provided along the back side of the building, as originally required when a 4' side yard was approved by the Board in that area (V-2004-11: Mike Allen & Daniel Phillips).
6. A detailed landscaping plan for the entire property, reflecting the requirements of conditions #4 and #5 above, as well as standard Zoning Ordinance requirements that have not been varied, shall be prepared, subject to review and approval by the Division of Building Inspection.
7. Action of the Board shall be noted on an amended development plan for the subject property approved by the Planning Commission.

D. **Conditional Use Appeals**

1. **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 100 feet along Winchester Road and from 300 feet to 10 feet along Royster Road for construction of a private residence in the Agricultural Rural (A-R) zone, on property located at 4051 Winchester Road (Council District 12).

The Staff Recommended: Approval of the requested Dimensional Variances for the residence and winery buildings, 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. Nearby residences and Fire Station #17 are only set back about 50-100' from Winchester and Royster Roads, as the minimum standard in the A-R zone permitted this until the mid-1990s. Also, those nearby properties were all originally developed prior to the A-R zone being created in 1969.

- b. The subject lot is non-conforming in size; and due to two sizeable sinkholes on the property, has limited options as to how residential and agricultural structures may be appropriately separated on the subject property.
- c. Strict application of the Zoning Ordinance would force the appellant to place all of the improvements on about 20% of the property, and in close proximity to one another. The resulting setbacks would be markedly out of character with most of the surrounding land uses in this immediate vicinity.
- d. The combination of the relatively small size of the subject property, the three street frontages associated with a required 300' building setback, the two large sinkhole areas on the property, and the existence of other low spots that hold water (temporarily) in heavy rains, supply the unique circumstances to this lot that are not generally applicable to land in the general vicinity or in the A-R zone.
- e. The circumstances of these requested variances are not a result of the prior actions of the appellant, as the property is currently agricultural and vacant—as it has been for decades.

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

- 1. The residential and agricultural buildings proposed shall be constructed in accordance with the submitted site plan, provided that these buildings are not constructed in any identified "buildable area" that is also located within the closed contour (or sinkhole areas) identified on LFUCG base maps.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- 3. An occupancy permit must be obtained from the Division of Building Inspection following construction.
- 4. Action of the Board shall be noted on a Final Record Plat for the subject property. This plat must be approved and recorded prior to the issuance of any building permits.

The Staff Recommended: Disapproval of the requested Conditional Use Permit for the banquet facility, for the following reasons:

- a. Despite the fact that wine production is planned year-round for the subject property, the dominant use on this site will not be the agricultural or single family residential (permitted) uses, but will be the proposed banquet facility, for the following reasons:
 - b. More than 100 times per year, it is planned to host events for 25-250 persons, unlike most other conditional uses (other than churches or schools) in the Agricultural Rural (A-R) zone.
 - c. The largest building on the 13.25-acre subject property will be the proposed banquet facility, by a factor of two.
 - d. The area of this 13.25-gross-acre farm will be nearly equally devoted to all permitted uses and this proposed conditional use.
 - e. For these reasons, it can not be said that the proposed banquet facility will be "clearly incidental and subordinate" to the permitted winery and residential uses on the subject property. Such a requirement is the only means by which this use may be authorized by the Board of Adjustment under Article 8-1(d)(27) of the Zoning Ordinance.
2. **C-2011-24: CLASSIC CUT LAWN** - appeals for a conditional use permit to establish a plant nursery in the Agricultural Rural (A-R) zone, on property located at 3897 Winchester Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adjoining property to the west was previously authorized by the Board for a very similar plant nursery use. All of the other adjoining properties are currently used for commercial purposes. Any increase in traffic is expected to be insignificant, as no retail or wholesale sales are to be taking place.
- 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 plant nursery 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 within 60 days of approval by the Board.

3. Retail or wholesale sales of trees and shrubs, and any other items typically sold at a garden center or similar facility, shall not take place on the subject property.
 4. Signage for this business use shall not be erected on the subject property or on any adjoining lot or right-of-way.
 5. No more than four trucks and eight trailers shall be parked on the subject property.
3. **C-2011-25: KAREN KNAPP** - appeals for a conditional use permit to establish a home occupation (fabricating dental appliances) in a Single Family Residential (R-1C) zone, on property located at 429 Cromwell Way (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. There are no aspects of this home occupation that might be disruptive, with any noise generated not likely to be heard outside of the home. Parking and traffic issues are not expected, since clients will not be coming to the home to drop off orders or pick up dental appliances.
- 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 home occupation 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 within one month of approval by the Board.
 3. All dental appliances shall be sterilized appropriately, and packaged in a safe manner for shipping and delivery purposes.
 4. This conditional use shall be considered null and void should the appellant cease to own or occupy the subject property.
4. **C-2011-26: CLARITY POINTE - LEXINGTON** - appeals for a conditional use permit to establish an assisted living/dementia care facility in a Professional Office (P-1) zone, on property located at 1744 Alysheba Way (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit for an Alzheimer care facility should not adversely affect the subject or surrounding properties. The general area is developed with several office buildings, some that provide medical services, and a child care facility, all of which should be compatible with the type of care facility that is proposed. Immediately bordering property to the south is planned for a future trail and greenway, which will serve to buffer the activity from the residential zones on the opposite side of the trail/greenway. Very minimal traffic will be generated by the facility, and excessive noise or other types of disturbances are not anticipated.
- 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 facility shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission. A reduction in the number of off-street parking spaces may be provided, based on the application of "nursing home" rather than "assisted living facility" criteria, subject to concurrence by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and prior to occupying the facility.
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 residential 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. Action of the Board shall be noted on the development plan approved by the Planning Commission for the subject property.

E. Administrative Review

1. **AC-2007-37: TEEN CHALLENGE OF KENTUCKY** - a review of a conditional use permit granted by the Board in April of 2007 to occupy a former church parsonage as a rehabilitation home in a Single-Family Residential (R-1B) zone, on property located at 407 Kingston Road (Council District 6).

In April 2007, the Board approved a conditional use permit for occupancy of a church parsonage as a rehabilitation home for teenagers, subject to several conditions, one of which was a review after an occupancy permit had been issued for the use to determine if there were any adverse impacts to surrounding properties as a result of the use and to determine compliance with conditions imposed. The conditions to be reviewed are as follows:

1. The rehabilitation home shall be operated in accordance with the submitted application and site plan, with a maximum of eight residents, and must be operated in concert with the approved church at this location.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to establishing the rehabilitation home.
3. Supervision shall be provided on a 24-hour basis every day of the week by at least one staff person on site and one on call.
4. Counselors and other professional staff shall be certified as required by the Commonwealth of Kentucky for the provision of rehabilitation services.
5. The loop drive that currently serves the parsonage shall be maintained as a separate drive for the rehabilitation home, with no connection to the church parking lot.
6. Document waiver of Commonwealth of Kentucky standards for provision of rehabilitation services to the Division of Building Inspection prior to Certificate of Occupancy.
7. The Board shall review this use 6 months after occupancy with full notice to be provided by the applicant.
8. This use shall become null and void should the applicant cease this use for any reason.

The Division of Building Inspection will report at the public hearing.

- 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.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be May 20, 2011.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.