

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

March 25, 2011

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, March 25, 2011.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the December 10, 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-2011-20: JOHN and LINDA THOMSON** - appeal for a variance to reduce the required front setback from 30 feet to 25.5 feet for a room addition, in a Single Family Residential (R-1C) zone, on property located at 2293 Shannawood Drive (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The building addition will only extend less than five feet beyond the 30' building line, and will be just six inches closer to the street than the westerly wing of the existing dwelling.
- b. The alignment of the existing building relative to the platted 30' building line, with an irregular front building wall, is a special circumstance that contributes to justifying the limited variance that has been requested.
- c. Strict application of the Zoning Ordinance would prevent a reasonably sized addition intended to provide an easily accessible bedroom and bath on the first floor of the residence. Since the scope of the variance is so limited, and the purpose so strongly tied to a legitimate "aging in place" need, such

- a restriction could easily be considered as unreasonable and a potential hardship.
- d. Although the need for a variance is due to the prior averaging of the required 30' front yard, it is important to recognize that the original layout of the home on this lot was intended to preserve as many trees as possible, and will continue to do so with the proposed one-story addition.

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

1. The addition shall be constructed 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.
2. **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: Postponement, for the following reasons:

- a. The circle drive feature that is intended to serve the small commercial building that is proposed has not been designed to safely accommodate the maneuvering needs of a box-type delivery truck of 30' in length. Additional time is needed to determine if the design of the circle drive can be revised, in conjunction with a reduction in width and/or configuration of the building, to satisfy the requirement of the Zoning Ordinance that aisles and access drives be designed to provide adequate maneuvering area on site, with no backing onto or maneuvering within the street right-of-way.
 - b. The possibility of trucks having to access the property as they are traveling north on Ashton Drive, and the potential impact of that on the adjoining and nearby residential properties, needs to be further evaluated, and may influence the extent of any design revisions needed for the circle drive.
 - c. More detailed information regarding the possible uses of the building is needed, so that projections can be made regarding the types of trucks that are reasonably anticipated to need access to the site, and the frequency that different types and sizes of trucks might be coming to the site.
3. **V-2011-22: BELINDA DOTY** - appeals for a variance to reduce the required width of a perimeter landscape buffer from 15 feet to 10 feet, and alter the type of plantings required within that buffer, in order to establish a retail shop in a Neighborhood Business (B-1) zone, on property located at 2011 Rainbow Road (Council District 10).

The Staff Recommends: Approval of the requested landscaping variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, and should help to maintain the character of the neighborhood. A buffer width reduction from 15' to 10' will eliminate the need to erect a fence at an undesirable location that might adversely affect the use of the driveway on the adjoining property, and might also result in the small business on the subject property appearing separate from, rather than blended with, the surrounding residential uses.
- b. The prior use of the subject property for a residential purpose, and location of the former dwelling 10' from the southerly side property line, are special circumstances that contribute to justifying a buffer width reduction.
- c. Strict application of the Zoning Ordinance would force the appellant to place a fence along the southerly side property line, where such a structure would not be beneficial for buffering purposes given the small size of the business and historical use of the property.
- d. The circumstances surrounding this variance request have arisen largely as a result of the appellant's efforts to convert a nonconforming residential use into a conforming business use, with the goal of blending the business with the surrounding neighborhood to the maximum extent possible.

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

1. The property shall be landscaped in accordance with the submitted application and revised site plan indicating (a) the provision of continuous plantings (staggered if desired) of at least 3' in height along the southwesterly edge of the parking lot, and (b) the provision of at least one small tree or cluster of shrubs at the easterly end of the 7' wide strip of open space at the front of the property. Adjustments to these requirements for sight distance purposes are acceptable, as deemed necessary by the Division of Building Inspection or the Division of Traffic Engineering.
2. A detailed landscaping plan reflecting the above shall be presented to and approved by the Division of Building Inspection, and implemented prior to obtaining a final occupancy permit for a business use at this location.
3. The granted variance does not pertain in any way to signage that is proposed for the subject property,

nor does it reflect in any way an approval of any signage or signage location depicted on the currently submitted site plan.

4. **V-2011-23: LEXINGTON LAND COMPANY, LLC** - appeals for a variance to increase the maximum allowable floor area ratio from .35 to .50 for conversion of a multi-family building into a duplex and construction of an addition in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 331 Aylesford Place (Council District 3).

The Staff Recommends: Postponement, for the following reasons:

- a. Additional details are needed regarding the location and extent of the expansion that is proposed as part of the conversion of the multi-family building on the subject property into a duplex.
- b. Information is needed pertaining to the number of bedrooms and number of occupants in the 4-unit building, and how that arrangement will change if the building is converted into only two dwelling units (a duplex).

D. **Conditional Use Appeals**

1. **CV-2011-18: C.L. REDMOND** - appeals for a conditional use permit to add a pavilion to an existing garden center; and a variance to reduce the required 300-foot setback from a residential structure to 180 feet in an Agricultural Urban (A-U) zone, on property located at 4432 Old Nicholasville Road (Council District 9).

The Staff Recommends: Approval of a conditional use permit, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This garden center is a well established use at this location, and there is no aspect of the construction or use of the pavilion that is anticipated to be disturbing to area residents.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of the requested variance, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The pavilion will cover a portion of an existing outdoor sales area, and will be sited further away from nearby residential structures than the existing store and office building.
- b. The manner in which this garden center has developed over the years, in close proximity to several residences, is a special circumstance that contributes to justifying the requested variance. The site selected for the pavilion is reasonable and should complement other existing site improvements.
- c. Strict application of the Zoning Ordinance would result in the pavilion having to be placed at an undesirable location that would negatively impact the arrangement of other improvements.
- d. The circumstances surrounding this variance request are not the result of actions taken by the appellant, as many improvements and the general arrangement of facilities were already in place when the property was purchased in 2002.

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

1. The pavilion shall be constructed 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.

2. **C-2007-101: MISSION LEXINGTON** - a review of a conditional use permit granted to establish a medical clinic in a Planned Neighborhood Residential (R-3) zone, on property located at 1321 Trent Boulevard (Council District 8).

The Board approved a conditional use permit for a medical clinic in December of 2007. A condition was imposed, requiring a review after issuance of the Certificate of Occupancy, to determine if there have been any negative impacts on surrounding properties as a result of the use. The conditions imposed by the Board are as follows:

1. The free medical clinic 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 clinic.
3. The on-street parking conditions near the corner of Trent Boulevard and River Park Drive shall be monitored by the appellant, in conjunction with the Division of Traffic Engineering, to determine if any

restricted parking arrangement is warranted in that area. If restricted parking is needed for safety purposes, as determined by the Division of Traffic Engineering, the appellant shall actively pursue such restrictions.

4. Parking shall be on the Mission site, and not on Trent Boulevard or River Park Drive.
5. The Mission shall be subject to a one-time review six (6) months after the Certificate of Occupancy.

3. **C-2009-49: RAY and KELLY VAN METRE / MONKEY JOE's** - a review of a conditional use permit granted to establish a children's entertainment center in a Light Industrial (I-1) zone, on property located at 1850 Bryant Road (Council District 6).

The Board approved a conditional use permit for a children's entertainment center in August of 2009, imposing five conditions. One of the conditions required a review to determine if on-site off-street parking has been adequate for the use. The conditions imposed by the Board are as follows:

1. The facility shall be established in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the facility, including an occupancy permit.
3. A sewer capacity study shall be undertaken during the permitting process should a determination be made by the Division of Engineering that such a study is necessary.
4. The facility shall be limited to a maximum occupancy of 250 persons, or as further limited by the Fire Marshall and/or the results of any applicable sewer capacity study.
5. The operation of the facility shall be reviewed by the Board one year from the date an occupancy permit is issued by the Division of Building Inspection to determine if off-street parking provided on site is adequate. Should a determination be made that such parking is inadequate; a specified number of additional off-street parking spaces shall be provided within a reasonable time frame, either through the construction of additional paved areas or by rearranging the layout of parking spaces in existing paved areas. Should such additional parking not be provided, the Board shall have the option of further limiting the maximum occupancy of the subject suite within the building.

4. **C-2010-85: S & M PAWNSHOP, INC.** - a review of a conditional use permit granted to establish a pawnshop in a Highway Service Business (B-3) zone, on property located at 285 E. New Circle Road (Council District 6).

The Board of Adjustment approved a conditional use permit for a pawn shop at this location in September of 2010, imposing several conditions. One of the conditions required a review to determine if there have been any negative impacts to surrounding properties related to the use. The conditions imposed by the Board are as follows:

1. The pawnshop shall be established in accordance with the submitted application and a revised site plan indicating (a) the closure of the two access points closest to the street intersection, and (b) the provision of a continuous landscape buffer of at least 150' in length that wraps around the curved corner of the intersection.
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. The two access points closest to the intersection of Bryan Station Road and East New Circle Road shall be closed in accordance with the requirements of the Kentucky Transportation Cabinet.
4. A landscape buffer, as required for a vehicular use area pursuant to Article 18-3(a)(2)2 of the Zoning Ordinance, shall be provided for a minimum of 150' in length at the curved corner of the street intersection, subject to approval by the Landscape Examiner with the Division of Building Inspection. That buffer, to consist of tree and shrub plantings only and no fence or wall, shall include the area encompassed by the two access points that are to be closed.
5. Any pawned vehicles shall be stored off site at a location approved for such a use, subject to verification by the Division of Building Inspection.
6. This approval shall become null and void should the appellant no longer own or occupy this business on the subject property.
7. The Board shall provide a review of this use in 6 months.

5. **C-2011-16: SETH D. TUSKA** - appeals for a conditional use permit to establish an historic house museum in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 147 Old Park Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A historic house museum designation will further recognition of a prominent local artist, and a significant historic structure will be preserved and renovated for a beneficial public use.
- 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 historic house museum shall be established in accordance with the submitted application, and a revised site plan indicating that the rear parking area is to remain as is. Improvements to that off-street parking area are acceptable, provided they are designed in accordance with the requirements of the Division of Traffic Engineering and the Division of Historic Preservation.
 2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the museum.
 3. Use of the rear parking area shall be limited to residents of the building and museum staff, with museum visitors directed to use on-street parking or designated off-street parking lots with shared parking agreements. Should management of this parking arrangement become problematic, with frequent use of the on-site parking area by museum visitors creating a public safety hazard, the appellant shall pursue the use of signage and/or gating the access, as determined to be most appropriate by the Division of Traffic Engineering.
6. **C-2011-17: GEORGE P. CRAWLEY** - appeals for a conditional use permit to allow continued operation of a golf driving range under new management in the Agricultural Rural (A-R) zone, on property located at 4400/4440 Athens-Boonesboro 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. A driving range has been in place at this location for many years, with no indications of any significant disturbances to the surrounding rural properties. Minor expansions to this use (involving putting greens and sand trap improvements) have not been noticeable in the past to area property owners to the point that complaints have been lodged.
- b. Lighting and signage are currently controlled for this use, and will continue to be so in the future.
- c. 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 driving range shall be operated in accordance with the existing application and site plan, but the site plan is to be revised to identify all existing off-street parking areas, sand traps and putting greens on the subject property.
2. An occupancy permit shall be obtained from the Division of Building Inspection within 60 days of action by the Board, following required revisions to the current site plan.
3. The facility shall only operate during daylight hours, and shall not install lighting directed on the driving range, putting green(s) or sand trap areas.
4. The use of this driving range should be limited to no more than 40 tee boxes, unless parking over and above 42 spaces can be documented to the Division of Traffic Engineering, and the design of that parking approved by that division.
5. Storm water management shall be provided in accordance with the requirements of the adopted Engineering Manuals, or as otherwise deemed acceptable by the Division of Engineering based on any prior permitting.
6. Sewage treatment shall be provided in accordance with the requirements of the Board of Health.
7. The existing 4' by 8' free-standing sign shall not be enlarged for use by this facility, and shall not be relocated closer than 25' to the right-of-way fence.
8. Only incidental retail sales and rentals are allowed at the pro shop, for items such as golf balls, golf clubs, golf gloves and tees.

E. Administrative Review

1. **A-2011-19: DEREK VAUGHAN** - appeals for an administrative review to determine that a catering business is permitted in the Wholesale and Warehouse Business (B-4) zone, as either a wholesale establishment or as a shop of special trade, on property located at 218 Jefferson Street (Council District 1).

There are no findings for approval, as the appellant has withdrawn this appeal.

- 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 April 29, 2011.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.