

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

October 26, 2007

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, October 26, 2007.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the May 25, 2007 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-2007-78: DROPPING BIRD #1, LLC** - appeals for a variance to reduce the required 3-foot landscape buffer for a vehicular use area to 2 feet, in a Neighborhood Business (B-1) zone, on property located at 544 South Upper Street (Council District 3).

The Staff Recommended: Approval of a reduction in the required landscape buffer width from 3' to 2', for the following reasons:

- a. A 1' reduction in the required buffer width at a few points should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, since the reduced width will be limited to very small areas along the buffer, and the fact that the entire buffer area will average more than the

- 3' minimum buffer width required by the Zoning Ordinance.
- b. Special circumstances related to construction on the adjoining property contribute, at least to some extent, to justifying the requested variance. Such construction, involving the repaving of a parking lot and possible movement of a curb edge along the property line, may have resulted in the appellant having less space for the required buffer than what was originally planned for.
- c. Strict application of the requirements of the Zoning Ordinance would be of no benefit in this case, as the overall size of the buffer to be provided is larger than what would result from a buffer that meets the minimum 3' width requirement for the full buffer length.

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

1. A landscape buffer of at least 2' in width shall be provided, as reflected in the revised site plan submitted on September 10, 2007, provided that the average of the buffer width is 5' or greater.
 2. The landscape buffer shall include a minimum of four small trees to be planted at no greater than 40' intervals, with tree selection to be done in accordance with recommendations of the Landscape Examiner with the Division of Building Inspection.
 3. The buffer shall be installed within 45 days of the Board's action.
2. **V-2007-86: RICHARD PETERSON / SHERMAN-CARTER-BARNHART** - appeal for a variance to increase the allowable height of a fence from 6 feet to 6'-6", and to increase the height of a wall from 6 feet to 8'-8" in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 475 West Second Street (Council District 1).

The Staff Recommended: Disapproval, for the following reasons:

- a. Special circumstances unique to this particular property have not been identified that might justify an increase in the allowable height of a fence and wall.
 - b. The property owner's desire for increased security, in and of itself, is insufficient justification for a height variance. Such a justification would have broad applicability to virtually any other property where security was raised as an issue.
 - c. Assessments or information of any kind have not been provided by the appellants to support that the height variances requested would not alter the character of this historic neighborhood.
3. **V-2007-92: WILMES and ASSOCIATES ARCHITECTS** - appeals for a variance to increase the allowable height of gates and columns in the front yard from 6 feet to 7'-11" in a Single Family Residential (R-1B) zone, on property located at 1620 Richmond Road (Council District 5).

The Staff Recommended: 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 height variance is needed for just a small portion of the fence to be constructed, and the additional height requested for the gates and columns will be in scale with the sizes of the properties and homes in the neighborhood.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance, since most of the fence will comply with the 6' height limit.
- c. Strict application of the Zoning Ordinance does not appear to be appropriate in this instance, as it would unnecessarily restrict the ability of the appellant to design gate and column features that provide some architectural interest and emphasis to the pedestrian and vehicular entrances to the property.

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

1. The gates and columns 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.
4. **V-2007-93: NICOL DEVELOPMENT COMPANY, LLC** - appeals for a variance to reduce the required rear yard from 34 feet to 10 feet in order to attach a garage to a residence by way of a covered walkway in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 173 Old Park Avenue (Council District 3).

The Staff Recommended: 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 covered walkway will be beneficial to residents of the

duplex, and the proposal has been approved by the Board of Architectural Review to ensure that the historic character of the neighborhood, within the Aylesford Historic District, will not be adversely impacted.

- b. There are clear design limitations associated with the relatively narrow and deep shape of the lot that should be considered. Most importantly, providing at least some useable open space while also placing required off-street parking at the rear of the lot necessitates some reduction in the required rear yard for placement of an attached garage.
- c. Strict application of the Zoning Ordinance would force the appellant to attach the garage directly to the duplex or eliminate any covered connection between the garage and duplex. Either result would not be desirable due to open space considerations or safety and convenience issues associated with having an uncovered walkway.
- d. Since the overall project involves totally new construction with several possible design options, the importance of a useable outdoor open space area on the rear of the duplex, and the added safety benefits, are significant considerations.

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

- 1. The covered walkway 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.
- 3. All construction shall be done in accordance with a Certificate of Appropriateness issued by the Board of Architectural Review, issued in advance of the construction.
- 4. A minimum of 600 square feet of useable open space (shown as a courtyard/garden area on the submitted site plan) shall be maintained between the garage and duplex, outside of the covered walkway area.

D. Conditional Use Appeals

- 1. **CV-2007-80: JAMES LAMONT HUDSON** - appeals for a conditional use permit to allow dancing and live entertainment (e.g., live bands) at a restaurant/bar; and a variance to reduce the required 100-foot setback from a residential zone to 30 feet in a Neighborhood Business (B-1) zone, on property located at 1765 Alexandria Drive (Council District 11).

The Staff Recommended: Disapproval of the requested variance, for the following reasons:

- a. Granting the requested variance has significant potential to adversely impact a well established residential area located as close as 30' from the building to be used for live entertainment and dancing.
- b. Special circumstances, either unique to the subject property or the surrounding area, have not been identified to support the level of variance that has been requested.
- c. Strict application of the Zoning Ordinance is warranted in this particular case, due to the relatively large number of residents along Traveller Road that are likely to be adversely impacted by a reduction in the 100' setback requirement.

The Staff Recommended: Disapproval of the requested conditional use, for the following reasons:

- a. The proposed use will not be located at least 100' from the residential zone along Traveller Road, and therefore does not comply with the setback requirement established in Article 8-16(d)5 of the Zoning Ordinance.
 - b. Absent a variance to reduce the 100' setback requirement, any further consideration of a conditional use is essentially moot.
- 2. **C-2000-28: JAMES G. WILHITE** - the Board of Adjustment has scheduled a hearing for revocation of a conditional use permit issued for a child care facility (National Academy, Inc), based on lack of compliance with conditions imposed by the Board on February 25, 2000, in a Townhouse Residential (R-1T) zone, on property located at 3500 Arbor Drive (Council District 8).

On February 25, 2000, the Board granted a conditional use permit to allow an increase in the number of children from 326 to 476 in an existing child care facility, subject to several conditions. The Division of Building Inspection has requested a revocation hearing for failure to comply with the conditions imposed by the Board. The conditions to be reviewed are as follows:

- 1. That the property be developed according to the submitted application and site plan.

2. That any applicable permits be obtained from Building Inspection. This will include building, grading, remodeling and occupancy.
 3. That the parking area be paved, with spaces delineated, and screened according to Articles 16 and 18 of the Zoning Ordinance.
 4. That a fenced and screened play area, containing a minimum of 7,500 square feet, be provided on the property. A landscape plan shall be submitted to the Urban County Landscape Inspector prior to the issuance of an occupancy permit.
 5. That the total number of children be limited to 476 for the entire facility.
 6. That enrollment records be submitted annually to Building Inspection to verify the percentage as to whether or not the child care is accessory to the private club.
 7. That a plan for storm drainage and retention be submitted to the Urban County Engineer.
 8. That signage be in compliance with Article 17 of the Zoning Ordinance.
3. **C-2007-60: LEGENDS BOXING CLUB** - appeals for a conditional use permit to occupy an existing building as an indoor recreational facility in a Wholesale and Warehouse Business (B-4) zone, on property located at 1195 Versailles Road, Bldg. A (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Continued use of the subject property for a youth boxing club should not adversely impact any of the surrounding properties. Adjoining properties are entirely commercial in nature, and do not include any nearby residential uses that might be disturbed by such a use at this location. Adequate off-street parking is available, and special events will be limited to just one per month.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The boxing club shall operate in accordance with a revised site plan indicating the provision of 25 parking spaces along the west side of the building, with two of those to be handicap spaces in front of the building entrance. The revised plan shall also identify the location of the 19 parking spaces to be provided at the Alvin Haynes Trucking Company building (at 1229 Versailles Road).
 2. Parking area improvements shall be provided along the west side of the building as required by the Division of Traffic Engineering, with special emphasis on the proper marking of the two handicap spaces.
 3. Documentation shall be provided to the Division of Building Inspection that the appellant has the permission of the property owner to utilize at least 19 parking spaces at 1229 Versailles Road.
 4. A Certificate of Occupancy shall be obtained from the Division of Building Inspection within 60 days of the Board's action.
 5. Spectator seating shall be provided for no more than 106 persons, with any special events requiring more seating to be held at an alternate location.
 6. Special events involving spectators shall be held just once per month.
4. **C-2007-87: MC DEVELOPMENT & CONSTRUCTION SERVICES** - appeals for a conditional use permit to construct a drive-through facility for a proposed bank in a Professional Office (P-1) zone, on property located at 535 Wellington Way (Council District 9).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, which includes future professional office uses that have been incorporated into the overall layout of the development as approved by the Planning Commission. The final design of the facility will be subject to review and approval by the Division of Traffic Engineering.
- b. All necessary public facilities are available and adequate for the proposed use.

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

1. The drive-through facility 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. The final design of the facility shall be subject to review and approval by the Division of Traffic Engineering.
4. Storm water management is to be provided in compliance with the Division of Engineering Storm Water Manual.

5. **C-2007-88: LEXINGTON MONTESSORI SCHOOL** - appeals for a conditional use permit to expand an existing school (1,271 square-foot addition) in a Planned Neighborhood Residential (R-3) zone, on properties located at 315 / 325 South Broadway Park (Council District 11).

The Staff Recommended: Postponement, for the following reasons:

- a. Additional time is needed so that the appellant can amend their application to address the issue of student enrollment, previously limited by the Board to 52 students. Amending the application will require that corrected notice letters be sent to surrounding property owners.
- b. With an increase in enrollment, the off-street parking situation at this location will have to be addressed to determine if and how minimum parking requirements can be satisfied.

6. **C-2007-89: LIFE COMMUNITY CHURCH** - appeals for a conditional use permit to establish a church in a portion of an existing building in a Highway Service Business (B-3) zone, on property located at 162 Todds Road, Suites 220 and 260 (Council District 7).

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 building to be occupied is surrounded by commercial uses that are not likely to be impacted by church activities. Adequate off-street parking will be provided, as church services will be held at times when most other businesses in the building are not expected to be open.
- 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 shall be established in accordance with the submitted application and site plan, with sanctuary seating limited to a maximum of 200 persons.
2. All necessary permits, including an occupancy permit, shall be obtained from the Division of Building Inspection prior to establishing the church at this location.

7. **C-2007-90: HOLSTON GASES, INC.** - appeals for a conditional use permit to allow above-ground storage of flammable gas in a Light Industrial (I-1) zone, on property located at 357 Blue Sky Parkway (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. The proposed storage and sale of gases will be a continuation of a use previously approved by the Board. Since no expansion is proposed, it is anticipated that this use can continue with no adverse impact to the subject or surrounding properties, provided that the use complies with specific requirements of the local Fire Marshall and standards prescribed by the National Fire Protection Association and the Kentucky Occupational Safety and Health Standards for General Industry.
- b. All necessary public and private facilities and services are available and adequate for the proposed use.

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

1. The storage and sale of gases shall be done in accordance with the submitted application and site plan.
2. All necessary permits, including an occupancy permit, shall be obtained from the Division of Building Inspection within thirty days after the Board's action.
3. Operation of the facility shall at all times comply with the provisions of Article 8-22(d)7 of the Zoning Ordinance, which includes the requirement that written certification be obtained from the Fire Marshall. This local certification shall be obtained prior to the issuance of an occupancy permit.

E. **Administrative Review**

1. **AV-2007-84: CASTLETON LYONS, INC.** - appeals for an administrative review to allow a 70 square-foot identification sign to be attached to a wall in the Agricultural Rural (A-R) zone; and a variance to increase the maximum allowable height of the wall from 8 feet to 12 feet, on property located at 3401 Mt. Horeb Pike (a portion of 2469 Iron Works Pike)(Council District 12).

The Staff Recommended: Disapproval of the requested administrative appeal, for the following reasons:

- a. A farm identification sign in the A-R zone is limited to a maximum size of ten square feet, much

smaller than the proposed sign of 70 square feet. The Board of Adjustment is not authorized to increase the maximum total permitted sign area on a single lot or building, pursuant to Article 17-8(a) of the Zoning Ordinance.

- b. No transfer of permitted (but unused) signage has been proposed by the appellant, so there is no legal avenue to provide the relief requested.
- c. The proposed design of the wall display includes as many as ten individual signs intended to identify the names of stallions. That type of signage, clearly not for the purpose of farm identification, may not be permitted in the A-R zone. The Board of Adjustment is not authorized to permit a design type that is not specifically permitted in a particular zone.

The Staff Recommended: Disapproval of the requested variance, for the following reasons:

- a. Granting the requested variance, thereby allowing a stone wall of up to 12' in height for a farm display, would degrade the rural character of this scenic corridor. There are no similar wall features in the general vicinity, with the character of the area defined by plank fencing and stone walls/fences of no greater than four to five feet in height, each of which allows continued visibility of scenic pastures and farms along the roadways.
- b. No special circumstances unique to the subject property have been identified to support the requested 4' height variance.
- c. Strict application of the Zoning Ordinance would not deprive the appellant reasonable use of the property or create an unnecessary hardship, as an 8' tall stone wall could be constructed without the need for a variance.

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

- 2. **A-2007-73: CLAYTON SIGNS, INC.** - appeals for an administrative review to allow a pre-sale menu board as a free standing sign in a Planned Shopping Center (B-6P) zone, on property located at 2514 Nicholasville Road (Council District 4).

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

- a. A freestanding pre-sale menu board is not identified in the Zoning Ordinance as a permitted sign in the B-6P zone or any other zone. Article 17-7 of the Zoning Ordinance states that any sign not specifically permitted shall be considered as prohibited.
- b. Although the Zoning Ordinance exempts signage from permitting requirements when not visible from beyond the boundaries of a lot, the appellant's proposed pre-sale sign would be visible from the surrounding K-Mart center and Nicholasville Road.
- c. The Board of Adjustment has not been granted the authority to permit a design type for a sign that is not specifically permitted in the zone where the sign is located, nor to increase the number of permitted signs on a lot, pursuant to Article 17-8(a) of the Zoning Ordinance.

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

- 3. **A-2007-91: GREER LAND CO. MAN O' WAR, LLC** - appeals for an administrative review to allow a 13 square-foot sign above the roof line of an entrance canopy in a Neighborhood Business (B-1) zone, on property located at 3094 Helmsdale Place (Council District 6).

The Staff Recommended: Disapproval, for the following reasons:

- a. The proposed sign is to be placed on the roof of the entrance canopy at the restaurant entrance. Roof signs are prohibited in all zones of Lexington-Fayette County, pursuant to Article 17-5(c) of the Zoning Ordinance.
- b. No arguments or assessments of any kind have been presented by the appellant to support that the proposed sign should not be considered as a prohibited roof sign.
- c. Numerous options appear to be available to the appellant which would accommodate the proposed signage in a slightly modified form.

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 November 30, 2007.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.