

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 18, 2011

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, November 18, 2011.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the October 28, 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-2011-72: JAMES M. LUDKA** - appeals for a variance to reduce the required side yard from 3' to 0', and alley setback from 6' to 1', in order to retain an existing fence in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 432 North Broadway (Council District 1).

The Staff Recommends: Withdrawal of the alley setback variance, for the following reasons:

- a. The provisions of Article 15-6(a)(2) specifically relate to accessory buildings, not to fences.
- b. Article 15-4(b) permits a fence up to 8' in height within a front yard created by abutment to an alley.

The subject property is a "through lot" with a front yard that abuts Caldwell Alley.

- c. Driver visibility concerns are more appropriately addressed by Article 3-3 of the Zoning Ordinance pertaining to the maintenance of sight distance triangles.

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

- a. Reducing the required side yard from 3' to 0', only for the purpose of allowing the preexisting portion of the fence to remain where currently located, should not adversely affect the public health, safety, or welfare, nor alter the character of the area. Similar fences are common in the general vicinity.
- b. The location of the preexisting fence on the side property line is a special circumstance that contributes to justifying a side yard reduction.
- c. Strict application of the Zoning Ordinance would result in all portions of the fence not to the rear of the dwelling having to be placed 3' back from the side property line. This would create an awkward jog in the fence, and would result in a design that is clearly out of character with how other fences have been erected in this historic neighborhood.
- d. The appellant is attempting to maintain a historic property in a manner that is consistent with how other properties in the neighborhood have been developed, and there is no indication of any intent to circumvent a requirement of the Zoning Ordinance.

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

1. The fencing may remain where currently located, as depicted in the submitted application and site plan, subject to any modifications that may be required to comply with Article 3-3 of the Zoning Ordinance relating to the maintenance of sight distance triangles.
 2. If deemed necessary by the Division of Historic Preservation, a Certificate of Appropriateness, or other type of applicable permit, shall be obtained for the final location and design of the fence within the Northside Historic District.
 3. A fence permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board and/or the Board of Architectural Review, whichever is later.
2. **V-2011-77: SABLE HOLDINGS** - appeals for variances to reduce: a) the required lot frontage from 50' to 35'; b) the minimum front yard from 20' to 5'; c) the minimum side and rear yards from the required setback of each to 0'; d) the usable open space from 20% to 0%; e) the required parking from 5 spaces to 3 spaces; and f) setbacks for the existing accessory building from 1.5' to 0', in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, on property located at 615 - 617 West Short Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor will it negatively impact the character of the general vicinity. No building expansions are proposed, and all existing buildings will be retained at their current location. The appearance of the property from W. Short Street should improve considerably due to the replacement of asphalt paving with front yard landscaping.
- b. The manner in which this particular property has developed over the years is clearly a special circumstance that contributes to justifying the requested variances, which are intended primarily to allow the existing buildings to be retained as they are currently situated on the subject property.
- c. Strict application of the Zoning Ordinance would prevent the subdivision of the subject property in a manner that allows the existing buildings to be retained, which includes an historic home that is considered to be very worthy of preservation.
- d. There is no intent with this redevelopment project to circumvent any requirement of the Zoning Ordinance, as evidenced by the fact that the only physical alterations proposed are to comply with subdivision regulations (removal of loading dock roof) and to replace paving with grass and other landscaping.

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

1. The property shall be developed in accordance with the submitted application and site plan, subject to additional landscaping and pavement removal for lot 1 per condition #4. Pavement removal and parking lot improvements on lot 2 shall be completed only in accordance with the action of the Division of Historic Preservation/Board of Architectural Review, within one year after recording of the subdivision plat.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any

demolition, renovations, fence construction and pavement removal.

3. All exterior work on the subject property shall proceed in a manner that complies with requirements of the Division of Historic Preservation and the Board of Architectural Review.
 4. A pavement removal/landscaping plan for lot 1 shall be implemented, subject to approval by the Division of Historic Preservation/Board of Architectural Review. At the minimum, this plan shall indicate (a) the provision of a 3' or wider landscape buffer along the westerly side property line from W. Short Street to a point no more than 30' from the detached garage, and (b) a grassed/landscaped area of at least 1,500 square feet directly in front of the residence. All pavement removal and landscaping shall be completed within one year after recording of the subdivision plat.
3. **V-2011-78: LEXINGTON LAND COMPANY, LLC** - appeals for a variance to increase the allowable floor area ratio from .35 to .5 for the construction/retention of an addition to a multi-family dwelling being converted to a duplex in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 354 Linden Walk (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely impact the public health, safety or welfare, nor alter the character of the general vicinity. The number of living units to be provided will be reduced, with no increase in the number of bedrooms. Building improvements will be done in accordance with a Certificate of Appropriateness issued by the Board of Architectural Review in March of 2011, for work within the Aylesford Historic District.
- b. The size and overall layout of the preexisting structure are special circumstances that are relevant to a consideration of how floor area ratio limitations can reasonably be altered in the R-2 zone.
- c. Strict application of the Zoning Ordinance would force the appellant to maintain three living units in the building, which would not be materially different than the nine bedroom duplex now proposed.
- d. The circumstances surrounding this variance request have resulted from the appellant's desire to improve the property while also reducing the number of dwelling units, in a situation where the preexisting structure already exceeded a floor area ratio of .35.

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

1. The duplex shall be established in accordance with the submitted application and site plan, subject to compliance with the Certificate of Appropriateness issued by the Board of Architectural Review on March 10, 2011, or as amended by the BOAR.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to conversion of the dwelling into a duplex.
3. Occupancy of the duplex shall be managed in a manner that complies with the provisions of Article 1-11 of the Zoning Ordinance pertaining to two-family dwellings.

D. **Conditional Use Appeals**

1. **C-2011-70: BOONE CREEK ADVENTURES, LLC** - appeals for a conditional use permit to construct and operate an agricultural market and outdoor recreational facility with accessory camping facilities in the Agricultural Rural (A-R) zone, on property located at 8291 & 8385 Old Richmond Road and 8385 Durbin Lane (Council District 12).

The Staff Recommends: Postponement of the agricultural market portion of the conditional use, for the following reason:

- a. An indefinite postponement has been requested by the appellant, which will allow them time to more fully consider the relationship between the agricultural market and outdoor recreational facility, and related issues such as management and timing of construction. The staff is in agreement with this request.

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

- a. An outdoor recreational facility of the type proposed should not adversely affect the subject or surrounding properties. All of the activities will be very passive in nature, with very little noise generated and minimal disturbance taking place to the existing topography and ground cover. No significant increase in traffic is anticipated, and most of the improvements and activities will not be visible from Old Richmond Road.

- b. The portion of the subject property close to Old Richmond Road is accessible for emergency response purposes, with a fire station located approximately 2 miles away. Emergency response provisions will be made by the appellant for the less accessible portions of the property, pursuant to an emergency response action plan to be reviewed and approved by the LFUCG Fire Prevention Office. Garbage pick-up and sewage disposal will be handled privately, subject to approval by the Fayette County Health Department.
- c. The subject property is well suited for use as an outdoor recreational facility, given the outstanding scenic values, unique geology, and significant natural and cultural resources of the Boone Creek gorge.

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

- 1. The recreational facility shall be established in accordance with the submitted application and revised site plan of November 1, 2011, limited to the portion of the subject property located only on the east side of Old Richmond Road.
 - 2. All necessary permits, including a Certificate of Occupancy, shall be obtained from the Division of Building Inspection prior to opening the facility.
 - 3. A parking area with at least 15 but not more than 30 off-street parking spaces shall be provided at the welcome center, designed in accordance with the requirements of the Division of Traffic Engineering, and landscaped as specified by Article 18 of the Zoning Ordinance.
 - 4. An Emergency Response Action Plan shall be implemented as part of the day-to-day operation of the recreational facility. This plan shall be approved by the LFUCG Fire Prevention Office prior to obtaining an occupancy permit. The plan shall include, at the minimum, provisions for handling emergencies in areas of the property not accessible by emergency response vehicles.
 - 5. Each of the 13 lodging shelters shall not exceed 225 square feet in size.
 - 6. Provisions for handling garbage and sewage shall at all times comply with the requirements of the Fayette County Health Department.
 - 7. Suspension bridges over Boone Creek to Clark County shall not be constructed, nor any related activities undertaken in Clark County, until such time that all necessary conditional use permits and other needed approvals are obtained from the Winchester/Clark County Board of Zoning Adjustments or other applicable arm of that local government.
2. **C-2011-75: GARY CLARK, DVM, PLLC** - appeals for a conditional use permit to establish an animal clinic in one suite of an existing shopping center in a Neighborhood Business (B-1) zone, on property located at 1590 Leestown Road, Ste. 128 (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 will be provided, and the building will be soundproofed in accordance with the requirements of the Division of Building Inspection. The nearest adjoining properties are used for industrial and office purposes, which are unlikely to be disturbed by the proposed 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 small animal 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 exterior wall of the suite to be occupied shall be soundproofed as determined to be feasible by the Division of Building Inspection.
- 4. All pens shall be located inside of the subject suite.

E. **Administrative Review**

- 1. **A-2011-76: DAVID BENNETT / LEXINGTON GREEN** - appeals for an administrative review to allow a shopping center identification sign on a stone planter box that will project into the street right-of-way, in a Planned Shopping Center (B-6P) zone, on property located at 161 Lexington Green Circle (Council District 9).

The Staff Recommends: Postponement, for the following reasons:

- a. A determination needs to be made regarding the correct property that this appeal should be filed under. At the minimum, documentation is needed that the appellant has sufficient legal interest in the subject property to pursue the requested sign appeal. Alternatively, it may be necessary to amend the application and re-notice area property owners to include the property known as 3211 Nicholasville Road, which is not owned by the appellant.
- b. There is some uncertainty as to whether or not the prohibition on signage projecting into a right-of-way can be waived by the Board. Further evaluation of this issue in consultation with the Department of Law is necessary.
- c. Additional investigation is needed to determine the most appropriate manner that existing signage on the mall's property can be classified, and how that might relate to the potential for erecting an additional shopping center identification sign.
- d. Depending on how these interrelated issues are resolved, it may be necessary to file a variance request to reduce the required sign setback to 0', which would give the appellant the opportunity to place the sign up to but not beyond the right-of-way boundary.

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.

- A. **2012 Meeting and Filing Schedule** - As part of its Bylaw-related duties, each year the Board of Adjustment adopts the Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2012 is in draft form and will be presented to the Board for review and/or discussion prior to its official adoption.
- B. **Landscape Review Committee** - The term of Karen Angelucci, Tree Board member of the Landscape Review Committee, will expire on November 30 of this year. Ms. Angelucci has agreed to be re-appointed for another four-year term. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jim Griggs	Board of Adjustment
11/30/2013	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2014	Mr. Richard Weber	Landscape Architect
11/30/2011	Ms. Karen Angelucci	Tree Board
11/30/2012	Mr. Mike Cravens	Lexington Homebuilders

- C. The staff would like to wish the Board members and their families a safe and happy Thanksgiving holiday.

VI. **NEXT MEETING DATE** - The Chair will announce that, due to the Christmas holiday, the next meeting date will be December 16, 2011, which is two weeks earlier than usual.

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