

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

December 16, 2011

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, December 16, 2011.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the November 18, 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-2011-82: HALLMARK STUDENT DEVELOPMENT CO., LLC** - appeals for a variance to reduce the required front yard from 20 feet to 5 feet in order to accommodate drive aisles and parking in a Wholesale and Warehouse Business (B-4) and an Agricultural Urban (A-U) zone, proposed for rezoning to a High Rise Apartment (R-5) zone, on a portion of 1200 Red Mile Road and a portion of 843 South Broadway (Council District 11).

The Staff Recommends: Postponement, for the following reasons:

 - a. The subject property has not yet been rezoned to a High Rise Apartment (R-5) zone.

- b. Taking action on the requested variance prior to the property being zoned R-5 would create a number of unnecessary complications that can easily be avoided with a modest delay.
- c. The Board's next hearing is scheduled for January 27, 2012, which is just one day after the Urban County Council is anticipated to consider action on the zone change request. As such, a postponement of the variance request at this time will not result in any significant delay in the overall project.

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-2011-79: BETHSAIDA BAPTIST CHURCH** - appeals for a conditional use permit to expand an existing

church (13,500 square-foot addition) in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, on property located at 3700 Bates Creek Road (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The new building is to be centrally located on the lot, which should minimize the potential for noise or other types of disturbances. The combination of existing privacy fencing, new tree plantings and hedges will create an adequate buffer along the southern property boundary where new parking areas are proposed. The new access will be designed in accordance with the requirements of the Division of Traffic Engineering, and more than the minimum number of off-street parking spaces will be provided.
- 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 expansion shall take place in accordance with the submitted application and revised site plan dated December 8, 2011, which indicates a new access width of 12', a fenced child play area of 20' by 40' to the front of the church (west of the courtyard) for the child care facility, and a 6' tall hedge to be provided along the side and rear of the adjoining property at the southwest corner of the site.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The new parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. The design of the new parking lot and access shall be subject to review and approval by the Division of Traffic Engineering.
5. Any pole lighting for the new parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing the surrounding 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. Open space areas between the southern property line and the edge of the new parking lot shall be augmented with a landscape buffer, with deciduous trees to be planted every 25' along the full length of the southern property line. In the area where that buffer widens, south of the new access and east of the right angle jog in the property line, additional tree plantings shall include a mix of evergreens, with a minimum of two evergreens south of the new access and a minimum of six evergreens in the eastern portion of the buffer.

E. Administrative Review

1. **A-2011-71: BALL and WRIGHT CAPITAL HOLDINGS** - appeals for an administrative review to allow a third wall sign on a bank building in a Professional Office (P-1) zone, on property located at 998 Governors Lane (Council District 10).

The Staff Recommends: Disapproval, for the following reasons:

- a. Article 17-7(e)1 of the Zoning Ordinance states that one wall sign per street frontage is permitted in the Professional Office (P-1) zone, with a maximum of two wall signs per building.
 - b. There are no provisions in Article 17-7(e) for canopy signs in the P-1 zone.
 - c. Permitting a third wall sign for this building would be contrary to a condition previously imposed by the Board (case # A-2010-27).
 - d. The Board is not authorized to increase the number of permitted signs, pursuant to Article 17-8(a) of the Zoning Ordinance.
2. **A-2011-80: CRESTWOOD CHRISTIAN CHURCH** - appeals for an administrative review to allow four directional signs to be placed on the church property, in a Single Family Residential (R-1C) zone, on property located at 1882 Bellefonte Drive (Council District 4).

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

- a. Under Article 17 of the Zoning Ordinance, directional signs are not a permitted type of sign in the R-1C zone, for any type of use.
- b. The Board is not authorized to increase the number of permitted signs on a particular property, nor permit a design type that is not specifically permitted by Article 17 of the Zoning Ordinance for the zone where the sign is to be located.

- c. The inability to erect directional signage is not considered to be a significant hardship for the church, and many other options are available that might assist them in their efforts to clarify access to and navigation around the church property. Further, they could apply for an amendment to the sign ordinance.
3. **A-2011-81: GREG KUJAWSKI** - appeals for an administrative review to determine that dispatch and vehicle use associated with a taxi business is permitted in a Professional Office (P-1) zone, on property located at 1084 Wellington Way (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Taxis are not stored on site at this location, but rather use the parking lot for accessory purposes only, which is the intent of allowing accessory parking for office uses in a P-1 zone. Recent observation of taxi parking on the subject property indicate a maximum of six vehicles on-site at any one time, which is consistent with limitations required by the Board in a similar instance in 1988.
 - b. Taxis are not leased on site at this particular location, as the actual leasing activity (retaining the services of the taxi) takes place where the customer and the taxi meet, contrary to on-site leasing that takes place at a car rental business, which is clearly prohibited in a P-1 zone.
 - c. The dispatching of taxis is done from this business office via a computerized system that directs information to taxis that are not stored on site but are distributed throughout Lexington-Fayette County.
- 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. **House Bill 55 Training Opportunity** - There will be an APA audio conference on Wednesday, January 18, 2012, lasting from 4:00 till 5:30 p.m., in the Division of Planning conference room, 7th floor of the LFUCG Phoenix Building. The title of this conference is "Resilient Planning Agencies" and will count toward 1.5 hours of House Bill 55 training credit for Board of Adjustment/Planning Commission members and Staff.
 - B. The Staff would like to wish the Board members and their families a happy and safe Christmas and New Year holiday.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be January 27, 2012.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.