

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

November 30, 2007

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, November 30, 2007.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the past meetings, May 25, 2007 and June 29, 2007; as well as June 2 and June 5, 1989, 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-2007-98: MARK STROMQUIST** - appeals for a variance to reduce the required front yard from 40 feet to 32 feet in order to construct a residence in a Single Family Residential (R-1B) zone, on property located at 1272 Cape Cod Circle (Council District 11).

The Staff Recommended: Disapproval, for the following reasons:

- a. Special circumstances pertaining to this particular property have not been identified that prevent reasonable use of the property. Given the depth of the lot, the 20' landscape and screening easement that encumbers the rear of the property is not appropriately considered a significant impediment.

- b. Strict application of the Zoning Ordinance will not result in an unreasonable restriction or create any kind of hardship, as a relatively large back yard can be provided without the benefit of a variance to reduce the required front yard.
 - c. Given the design of the proposed residence, the appellant can average the front yard to be provided, thereby minimizing the extent to which the residence will have to be shifted back (away from Cape Cod Circle) to comply with the 40' front yard requirement.
2. **V-2007-99: JACK STEWART** - appeals for a variance to increase the allowable lot coverage from 2,600 square feet to 4,070 square feet in order to expand a residence in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 359 South Mill Street (Council District 3).

The Staff Recommended: Disapproval, for the following reasons:

- a. Special circumstances unique to the subject property have not been identified that would justify a significant increase in the allowable size of the building (from 2,600 to 4,070 square feet) in this historic neighborhood.
 - b. Justification provided by the appellant, relating to the lack of any significant increase in the building footprint and no change to the front façade of the building, would have broad applicability to many other properties, possibly leading to a circumvention of the requirements of the Zoning Ordinance.
 - c. Strict application of the Zoning Ordinance will not deprive the property owner reasonable use of the property or create an unnecessary hardship, as the subject property is larger than many other lots in the immediate vicinity. Since allowable square footage directly relates to property size, this property is already entitled to more square footage than many nearby properties.
3. **V-2007-100: KRIS COMSTOCK** - appeals for a variance to reduce the required side street side yard along West Fifth Street from 8 feet to 0 feet in order to construct a detached carport in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, on property located at 500 North Broadway (Council District 1).

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 carport will align with the main building wall of the residence, and the proposed location at a zero-foot setback has been approved by the Board of Architectural Review.
- b. The narrow width of the lot, location of the existing dwelling and steep slope along the side property line are all special circumstances that contribute to justifying the requested variance.
- c. Strict application of the Zoning Ordinance would require that the carport be shifted 8' back from the right-of-way of West Fifth Street, placing the back edge of the carport in an area that would require fill and a retaining wall very close to the side property line. Such a design would likely result in water drainage problems along the side property line, and would also create an undesirable connection between the carport and the residence.

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

- 1. The carport 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 comply with a Certificate of Appropriateness issued by the Board of Architectural Review.

D. **Conditional Use Appeals**

- 1. **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.
2. **C-2007-94: HARGUS S. SEXTON** - appeals for a conditional use permit to construct and operate an equine hospital in the Agricultural Rural (A-R) zone, on property located at 4260 Georgetown Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. An equine hospital at this location should not adversely impact the subject or surrounding properties. The facility has been designed to avoid the floodplain along the west side of the property, with adequate space available for the construction of buildings and other improvements. The mild slope of the property is conducive to construction and future maintenance activities. The site is easily accessible from major roads in the area.
- b. Sewage treatment will be provided on site, and all necessary public services, such as police and fire protection, 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, with the understanding that (a) the muck pick-up site will be moved away from the southern property line to address concerns of an adjoining property owner, and (b) the access drive and all off-street parking areas and connecting driveways will be paved.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. The access to Georgetown Road shall be designed, constructed and maintained in accordance with the requirements of the Kentucky Transportation Cabinet.
 4. The design of the access roads and off-street parking areas shall be reviewed and approved by the Division of Traffic Engineering.
 5. 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.
 6. Any pole lighting for the off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from neighboring properties.
 7. All muck (animal waste and bedding material) shall be removed on a daily basis and disposed of in a manner that fully complies with all applicable regulations.
 8. Any fencing within the designated floodplain shall be designed in accordance with the requirements of the Division of Engineering to ensure that water flow is not impeded.
3. **C-2007-95: DIANA ROSS** - appeals for a conditional use permit to establish a 1-room bed and breakfast in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 215 North Mill Street (Council District 1).

The Staff Recommended: 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. No exterior changes to the dwelling are proposed, which will help to ensure that the historic character of the property is maintained. Occupancy of the building as a bed and breakfast will be conditioned upon compliance with all applicable local and state health regulations.
- 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 bed and breakfast shall be established in accordance with the submitted application and site plan, with the exception that only two parking spaces be provided off the driveway, thereby leaving

- ample space for vehicles to turn around.
- 2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the bed and breakfast. Such a permit shall be issued only after it is demonstrated that the facility meets all fire and building codes.
- 3. The facility shall be operated in full compliance with all applicable local and state laws, including those of the Health Department.
- 4. All provisions of Article 1-11 of the Zoning Ordinance pertaining to bed and breakfast facilities shall be complied with.
- 5. Any exterior changes to the buildings needed to comply with building or fire codes shall be done in accordance with a Certificate of Appropriateness issued by the Board of Architectural Review.
- 6. No more than one room shall be rented at any time.

4. **C-2007-96: LEXINGTON CEMETERY** - appeals for a conditional use permit to construct a building addition (expansion to an employee break room) in an Agricultural Urban (A-U) zone, on property located at 833 West Main Street (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. The addition is very limited in size, exceeds the minimum setback requirement for the A-U zone, and will be located in an active area of the cemetery that already has a number of buildings and parking areas.
- 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 proposed building 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.

5. **C-2007-97: FIRST UNITED METHODIST CHURCH** - appeals for a conditional use permit to construct a 2-story addition to an existing classroom building in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 318 South Mill Street (Council District 3).

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 proposed addition will be subject to review and approval by the Board of Architectural Review to ensure that the character of the South Hill Historic District is not altered. Office uses proposed for the additional space have little potential to be disruptive in the neighborhood.
- 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 addition shall be done in accordance with the submitted application and site plan, or as amended to comply with requirements of the Board of Architectural Review.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- 3. All construction shall comply with a Certificate of Appropriateness issued by the Board of Architectural Review.

E. **Administrative Review**

1. **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.

- 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. **Landscape Review Committee** - The term of Melissa Stephan, Tree Board member of the Landscape Review Committee, will expire on November 30 of this year. Ms. Stephan 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 |
| 11/30/2012 | Mr. Louis Hillenmeyer, III | Nurseryman |
| 11/30/2009 | Mr. Richard Weber | Landscape Architect |
| 11/30/2011 | Ms. Melissa Stephan | Tree Board |
| 11/30/2008 | Mr. Mike Cravens | Lexington Homebuilders |
- B. **Update of 2007 Mailing List** - The staff is in the process of updating the mailing list for 2008. Those wishing to remain on the list should pay the appropriate fees by December 31, 2007.
- VI. **NEXT MEETING DATE** - The Chair will announce that, due to the Christmas holiday, the next meeting date will be December 14, 2007, which is two weeks earlier than usual.
- VII. **ADJOURNMENT** - If there is no further business, the Chairman will declare the meeting adjourned.