

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

December 14, 2007

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, December 14, 2007.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the November 30, 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-2007-110: DAMON PLEASANT** - appeals for a variance to reduce the required front yard from 30 feet to 27 feet in order to construct a sunroom in a Single Family Residential (R-1C) zone, on property located at 1725 Palmyra Avenue (Council District 6).

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 front yard reduction requested is relatively small, and is not likely to be noticeable from the street, given the physical features of the site.
- b. The broad curve that defines the intersection of Palmyra Avenue and Dover Road, and the angled

orientation of the existing home, are special circumstances that contribute to justifying the requested reduction of the front yard building line.

- c. Strict application of the Zoning Ordinance would require that the sunroom be shifted toward the rear of the lot, placing a portion of the sunroom past the rear wall of the residence. While such a design is feasible, it would result in a much less desirable amenity for the home.

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

1. The sunroom shall be built 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. An Administrative Action plat shall be recorded for this property, documenting the Board's approval of this variance.

2. **V-2007-111: HARROD'S VILLAGE, LLC** - appeals for a variance to increase the allowable height of a fence for screening purposes from 8 feet to 10 feet in a Neighborhood Business (B-1) zone, on property located at 3901 Harrodsburg Road (Council District 10).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor degrade the character of the general vicinity, since the intent of the 10' tall fence is to provide an effective screen for residential properties that border a new commercial development.
- b. The proximity of the commercial development to an established residential neighborhood is a special circumstance that contributes to justifying the request.
- c. Strict application of the Zoning Ordinance would prevent a taller, and presumably more effective, screening fence along the rear of the subject property. Given the desire of the affected properties for a substantial screen, as well as the accommodations made by the Planning Commission for a taller fence, such a restriction would appear to diminish rather than improve the overall quality of the development as a neighborhood amenity.

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

1. A 10' tall fence may be erected at the rear of the subject property in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. A fence permit shall be obtained from the Division of Building Inspection prior to erecting the fence.
3. The fence shall be properly maintained to provide a safe, secure and enduring screen.
4. The action of the Board shall be noted on the Final Development Plan for the subject property.

D. Conditional Use Appeals

1. **CV-2007-108: BLUEGRASS MEATS, LLC** - appeals for a conditional use permit to allow dancing and live entertainment (music); and a variance to increase the allowable distance for required off-street parking from 300 feet to 1,450 feet in a Neighborhood Business (B-1) zone, on property located at 601 North Limestone Street (Council District 1).

The Staff Recommended: Postponement, for the following reasons:

- a. Additional time is needed to develop and evaluate other options for providing off-street parking for this proposed use, as it does not appear that such a sizeable variance can be justified.
- b. Additional time will allow the appellant to assemble more detailed information regarding the operational aspects of the establishment, which may impact minimum off-street parking requirements. Such details include floor space revisions and possible reductions in seating resulting from recent changes in liquor laws, as well as the days and hours that dancing with live music and/or dancing with just a jukebox will be taking place.

2. **C-2007-88: LEXINGTON MONTESSORI SCHOOL** - appeals for a conditional use permit to expand an existing school (1,271 square-foot addition and an increase in enrollment from 52 to 65 students) in a Planned Neighborhood Residential (R-3) zone, on properties located at 315 / 325 South Broadway Park (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect any of the surrounding properties. The addition will fill in an open area to the rear of the building, without the loss of any

available off-street parking spaces. Maintaining enrollment at no more than 65 students, an increase of just 13 students since 1989, is not anticipated to generate any traffic problems or other disturbances on South Broadway Park.

- 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 building addition and operation of the school shall be done in accordance with the revised application and site plan submitted on November 17, 2007.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. Enrollment at the school shall not exceed 65 students.

3. **C-2007-101: MISSION LEXINGTON, INC.** - appeals for a conditional use permit to establish a church-sponsored free medical clinic for adults in a Planned Neighborhood Residential (R-3) zone, on property located at 1321 Trent Boulevard (Council District 8).

The Staff Recommended: Approval, for the following reasons:

- a. A free medical clinic is compatible with other church ministries taking place on the property, and should not adversely affect the surrounding properties. The building to be occupied is nearly 150' away from the nearest residential properties, on the opposite side of River Park Drive. Convenient off-street parking is available at the church's existing parking lot.
- b. A very similar use, although at a different location on the property, was previously approved by the Board in 2001.
- c. 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 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. **C-2007-102: SOUTH ELKHORN BAPTIST CHURCH** - appeals for a conditional use permit to establish a child care center accessory to the church in the Agricultural Rural (A-R) zone, on property located at 4867 Versailles Road (Council District 12).

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 child care center will be located in an existing church building well back from both Versailles Road and Rosalie Lane, with a safe location designated for the drop-off and pick-up of children. Adequate off-street parking is conveniently located next to the building, and an outdoor play area will be provided in an open but protected area between the church buildings and parking lot.
- b. Sewage treatment and garbage collection will be handled privately, and other necessary public facilities and 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 child care 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 facility.
3. The facility shall at all times be operated in compliance with all applicable state and local regulations pertaining to child care.
4. An outdoor play area of at least 750 square feet shall be provided in the area bounded by the church buildings to the north and west and the easterly parking lot. This play area shall be fenced and screened in accordance with the requirements of the Division of Building Inspection.
5. Care shall be provided for no more than 30 children.

5. **C-2007-103: DJ ACQUISITIONS, LLC** - appeals for a conditional use permit to construct a parking lot

to serve an adjoining commercial use in a Professional Office (P-1) zone, on property located at 2011/2015 Liberty Road (Council District 5).

The Staff Recommended: Postponement, for the following reasons:

- a. Significant modifications to the intended use of the proposed parking lot on the subject property are needed in order to qualify for consideration as a conditional use in the P-1 zone. Such modifications may be feasible, but will require that the conditional use application be amended accordingly.
- b. The overall development plan for the subject property, as well as several adjoining properties, is currently under consideration by the Planning Commission. Additional time is needed to ensure that any modifications to the conditional use application are accurately reflected in the plan to be reviewed by that body.

6. **C-2007-104: DAVID ALLEN** - appeals for a conditional use permit to establish a child care center in an existing church building in a High Density Apartment (R-4) zone, on property located at 313 Burley Avenue (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the surrounding properties, provided that the drop-off and pick-up arrangements are actively managed to ensure that vehicles do not back up onto Burley Avenue. Off-street parking and the outdoor play area to be provided will exceed the minimum requirements of the Zoning Ordinance. The site is well buffered within the neighborhood by a park and commercial/office buildings.
- 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 child care center 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 facility.
3. The outdoor play area shall be fenced and screened in accordance with the requirements of the Division of Building Inspection.
4. The facility shall at all times operate in compliance with applicable state and local regulations pertaining to child care.
5. The drop-off and pick-up arrangements shall be actively managed to ensure that vehicles do not back onto Burley Avenue. If problems arise, alternative arrangements shall be pursued that provide additional stacking space for vehicles.
6. Child care may be provided for no more than 100 children.

7. **C-2007-105: CONSOLIDATED BAPTIST CHURCH** - appeals for a conditional use permit to construct a new ministry center for the church in an Agricultural Urban (A-U) zone, on property located at 1625 Russell Cave Road (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. There are no adjoining or nearby uses that are likely to be disturbed by church activities. Off-street parking will be provided in excess of the minimum required by the Zoning Ordinance. Storm water will be managed in accordance with the requirements of the Engineering Manuals, and the design of the new driveway and parking area will be subject to review and approval by the Division of Traffic Engineering.
- b. All necessary public facilities and services are available and adequate for the proposed church expansion.

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

1. The new ministry center 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. 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.
4. The additional driveway and parking area shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. The design of the new driveway and parking area shall be subject to review and approval by the

Division of Traffic Engineering.

8. **C-2007-106: KY DATA LINK, INC.** - appeals for a conditional use permit to construct a public utility building (fiber optic terminal) in a Light Industrial (I-1) zone, on property located at 307 Newtown Pike (Council District 2).

The Staff Recommended: Postponement, for the following reasons:

- a. More detailed information is needed to correctly identify the subject property, with notices sent to surrounding property owners based on a corrected 400' notification area map. This information shall include a full copy of any consolidation plats that affect the subject property.
- b. Unless the proposed location of the building is shifted to satisfy the 20' front yard requirement, this application must be amended to include a variance request to reduce the required front yard.
- c. A revised site plan, drawn to scale, is needed that clearly shows the subject property, proposed building, and how vehicular access to the property will be achieved.

9. **C-2007-107: CMW, INC.** - appeals for a conditional use permit to extend the regulations of the Planned Neighborhood Residential (R-3) zone up to 50 feet into the adjoining Single Family Residential (R-1C) and Agricultural Urban (A-U) zones on the same property for the purpose of providing additional parking spaces, at 935 Red Mile Road (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the surrounding properties, as the A-U and R-1C portions of the subject property to be used for parking are small and isolated parcels that have limited practical value for other uses.
- b. The A-U and R-1C parcels to be used for parking have been integrated into the overall design of the parking lot, and will be developed in accordance with a development plan already approved by the Planning Commission.
- c. Avoiding the A-U and R-1C parcels would result in a poor design for the parking areas intended to serve the apartment complex, and open space areas are proposed elsewhere on the property.

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

1. The parking areas 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. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

10. **C-2007-109: COMMONWEALTH CREDIT UNION, INC.** - 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 201 Ruccio 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 are either vacant or are used for commercial purposes. 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 vehicle stacking associated with this drive-through 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.

E. **Administrative Review**

None

- 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. 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 25, 2008.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.