

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

January 25, 2008

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, January 25, 2008.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the November 30 and the December 14, 2007 meetings 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-2007-99: 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.
2. **V-2008-7: CHARLESTON DEVELOPMENT, INC.** - appeals for a variance to reduce the required setback for a free standing sign from 10 feet to 5.67 feet to allow an existing sign to remain where currently located in a Professional Office (P-1) zone, on property located at 2250 Thunderstick Drive (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 installed sign complies with the overall size limitations of the Zoning Ordinance; and, due to its low height, blends well with the surrounding landscaping in front of the building it serves.
- b. The design features of the sign, in particular its low height, and the location of the required landscaping for the parking lot, resulted in a special situation that favored placement of the sign a few feet less than the 10' minimum required setback.
- c. Strict application of the Zoning Ordinance would force the appellant to move the sign 3.33' farther back from the street. At that location it would have to be elevated, probably on a pole, thereby making it much more visually intrusive and possibly interfering with sight triangles for each access drive that serves the property. Moving the sign farther back would also result in a loss of parking spaces, as well as a potentially awkward appearance of the parking lot and associated landscaping.

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

- 1. The sign may remain where currently located in accordance with the submitted application and site plan.
 - 2. A sign permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board, ensuring that all other aspects of Article 17 of the Zoning Ordinance have been complied with.
3. **V-2008-8: WAR ADMIRAL PLACE, LLC** - appeals for variances to: 1) reduce the required setback from a floodplain from 25 feet to 0 feet; and 2) reduce the required perimeter setback from 50 feet to 28 feet in order to construct a restaurant with accessory parking in a Planned Shopping Center (B-6P) zone, on properties located at 2251 and 2277 War Admiral Way (Council District 6).

The Staff Recommended: Approval of the requested variances for the restaurant and deck, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The deck will be built on pilings and will not extend into the actual floodplain, and will allow public enjoyment of the greenway associated with the floodplain. The enclosed portion of the restaurant building will not extend into the floodplain buffer; its location closer than 50' from the B-6P boundary will have no visual or other impact, due to the adjoining floodplain that separates this development from other portions of the shopping center.
- b. The location and extent of the floodplain that adjoins this property is a special circumstance that contributes to justifying the request.
- c. Strict application of the Zoning Ordinance would force the appellant to move the restaurant building and deck much farther away from the edge of the floodplain, which would likely cause a total redesign of the development, including a significant loss of potential off-street parking spaces. Such a redesign would not have any clear benefits in this particular case, and would likely result in some areas outside of the floodplain being unusable.

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

- 1. The restaurant and deck 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. Action of the Board shall be noted on an amended Final Development Plan for the subject property,

subject to approval by the Planning Commission.

4. All portions of the deck closer than 25' from the edge of the floodplain shall be constructed on pilings or other features that elevate the deck above the area intended as a floodplain buffer, subject to approval by the Division of Engineering.
4. **V-2008-9: GEORGIA RODES** - appeals for a variance to increase the allowable height of a privacy wall/screen from 8 feet to 13 feet in a Single Family Residential (R-1C) zone, on property located at 966 Mason Headley Road (Council District 11).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance will alter the character of the general vicinity, by allowing the retention of a wall/fence of a height (13') not commonly found on adjoining or nearby properties.
- b. Granting the requested variance will result in an unreasonable circumvention of the requirements of the Zoning Ordinance, given that the 5' additional wall/fence height requested is for the purpose of providing visual screening rather than for maintaining reasonable levels of privacy.
- c. There are no special circumstances pertaining to the subject property that require additional wall/fence height in order to maintain reasonable levels of privacy and use of the land. While the English Garden is no doubt a special feature of the property, a wall/fence of 13' in height is not needed to maintain or enjoy the garden.
- d. The circumstances surrounding this variance request are a direct result of the appellant's actions, as the fence was placed on top of the wall without obtaining a permit from the Division of Building Inspection.

D. **Conditional Use Appeals**

1. **C-2005-139: CAROLYN WAGONER** - appeals for a 6-month review (from date Certificate of Occupancy was issued) of a conditional use permit to allow a vehicle storage yard in a Light Industrial (I-1) zone, on property located at 937 Williamson Street (Council District 2).

At its December, 2005 public hearing, the Board approved a conditional use permit to allow a vehicle storage yard in a Light Industrial zone, with several conditions imposed. One condition was a 6-month review of the conditional use from the date the Certificate of Occupancy was issued by the Division of Building Inspection in order to determine compliance with the conditions imposed and to determine whether use of the property as a vehicle storage yard would have any negative impact on surrounding properties. The conditions to be reviewed are as follows:

1. The vehicle storage yard shall be operated in accordance with a revised site plan, indicating a full 5' landscape buffer to be provided along the southern property line. Plantings within this buffer area shall comply with that required by Article 18-3(a)(1)A.3 of the Zoning Ordinance.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to occupying the property as a vehicle storage yard.
3. The property shall be paved and resurfaced, as necessary, prior to obtaining an occupancy permit, to comply with the requirements of the Division of Building Inspection.
4. The existing 8' chain link fence shall be restored, as necessary, prior to obtaining an occupancy permit, to provide a fully functional fence that surrounds the entire property.
5. Storm water management shall be provided in accordance with the adopted Engineering Manuals, as determined to be necessary by the Division of Engineering.
6. Access to the gated entrance at the northwest corner of the property shall be limited to the stretch of Driscoll Street that leads directly to Manchester Street from the entrance.
7. That the applicant obtain the determination relative to the 100-year floodplain in the area.
8. That the applicant work with the Divisions of Engineering and Building Inspection.
9. That the parking and resurfacing of this property be completely adhered to relative to all of the regulations regarding operation of this type of business.
10. A six-month review by the Board of Adjustment, following issuance of a Certificate of Occupancy, to include a report from the Division of Building Inspection.
11. That the applicant ensure that sufficient records relative to operating such a business are on file and adhered to.
2. **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: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The two lots to be used for employee parking will be incorporated into an overall development for an automobile dealership that will be subject to approval by the Planning Commission. All of the surrounding properties are zoned for commercial purposes, and there are no adjoining or nearby properties that will be disturbed by use of the subject lots for parking.
- 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 subject property shall be developed in accordance with the submitted application and revised site plan (designating use of the two P-1 lots for employee parking), 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 parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
 4. The final design of the parking lot shall be subject to review and approval by the Division of Traffic Engineering.
 5. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
3. **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.
4. **C-2007-108: BLUEGRASS MEATS, LLC** - appeals for a conditional use permit to allow live entertainment (music) and dancing in a Neighborhood Business (B-1) zone, on property located at 601 North Limestone Street (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. Providing live music and dancing at this restaurant & bar should not adversely affect the subject or surrounding properties. A restaurant & bar is an established use at this location, with the prior owners approved for dancing with jukebox music. Off-street parking requirements will be satisfied through a joint parking agreement, and on-site parking conditions will improve with the provision of up to ten spaces. Since shared parking in this particular case is a continuation of a pre-existing condition, and minimum off-street parking requirements have been reduced for this use, it is recognized that the nonconformity associated with the 50% restriction outlined in Article 16-7(b) is being lessened significantly for this establishment.
- 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. Live music and dancing may be provided between the hours of 8:00 PM and 1:00 AM on Thursday through Saturday, with other times reserved for dancing with a jukebox only.
 2. A minimum of one off-street parking space for every 150 square feet of floor area (not including storage) within the establishment (22 spaces based on the current floor area of 3,285 square feet) shall be provided through a combination of on-site parking and the joint use of parking areas within 300' of the subject property.
5. **C-2008-1: OUR REDEEMER LUTHERAN CHURCH** - appeals for a conditional use permit to

establish a nursery school for up to 50 children in a Single Family Residential (R-1D) zone, on property located at 2255 Eastland Parkway (Council District 6).

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 number of children to be served is relatively small (not to exceed fifty), and can be accommodated by using the existing church facilities. Adequate off-street parking and suitable areas for dropping off and picking up children will be provided. A previously approved outdoor play area of approximately 3,000 square feet should be more than adequate, as it will be more than twice as large as the minimum size required.
- 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 nursery school shall be established in accordance with the submitted application and site plan, with enrollment not to exceed fifty children.
 2. A Certificate of Occupancy for the expanded child care shall be obtained from the Division of Building Inspection prior to increasing enrollment above 10 children.
 3. The child care shall be operated at all times in full compliance with all applicable state and local regulations.
 4. A fenced and screened outdoor play area of at least 1,250 square feet shall be provided, in accordance with the requirements of the Division of Building Inspection. It is understood that the existing smaller play area can be used until the new play area is completed, provided that a minimum play area of 25 square feet is provided for each child enrolled.
6. **C-2008-2: GOOD SHEPHERD LUTHERAN CHURCH** - appeals for a conditional use permit to establish an elementary school, in addition to approval of an existing child care center, in a Planned Neighborhood Residential (R-3) zone, on property located at 425 Patchen Drive (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 number of children to be served is relatively small (not to exceed fifty), and can be accommodated by using the existing church facilities. Adequate off-street parking and a suitable area for dropping off and picking up children 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 elementary school and child care shall be established in accordance with the submitted application and site plan, with combined enrollment not to exceed fifty children.
 2. A Certificate of Occupancy for both the school and child care shall be obtained from the Division of Building Inspection. This certificate shall be obtained prior to opening the school and within sixty days of the Board's action for the continuation of the child care.
 3. The school and child care shall be operated at all times in full compliance with all applicable state and local regulations.
 4. A fenced and screened outdoor play area of at least 1,250 square feet shall be provided, in accordance with the requirements of the Division of Building Inspection.
7. **C-2008-3: NATIONAL ACADEMY, INC.** - appeals for a conditional use permit to incorporate an existing graveled bus/van parking area and asphalt parking lot as part of a previously approved private club and child care facility in a Townhouse Residential (R-1T) zone, on property located at 3500 Arbor Drive (Council District 8).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested amendment to a previously authorized conditional use should not adversely affect the subject or surrounding properties, provided that permitting requirements are satisfied and unauthorized fill in the floodplain is removed or otherwise handled to satisfy requirements of the Division of Engineering. No enrollment increase over that previously approved by the Board is part of this application. The additional parking areas will be required to be landscaped and paved, as necessary, to improve the overall appearance of the property and meet Zoning Ordinance requirements.
- 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 additional parking areas may be retained in accordance with a revised site plan indicating that (a) the southern parking area for buses and vans will be paved, (b) that both parking areas will be landscaped in accordance with the requirements of Article 18 of the Zoning Ordinance, and (c) that fill placed in the floodplain will be removed or otherwise handled as determined to be necessary by the Division of Engineering.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to proceeding with any paving and other alterations to this property that may be required by this approval.
 3. The northern parking lot shall be designed and striped in accordance with the requirements of the Division of Traffic Engineering.
 4. 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.
 5. Any pole lighting for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining and nearby residential properties.
 6. Enrollment shall be limited to levels previously approved by the Board.
8. **C-2008-4: TATES CREEK CHRISTIAN CHURCH** - appeals for a conditional use permit to expand the church (additional classroom and fellowship space) in a Single Family Residential (R-1C) zone, on property located at 3150 Tates Creek Road (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- a. The proposed expansion of this church should not adversely affect the subject or the surrounding properties. Additional classroom and fellowship space to be provided will be largely confined to the footprint of the existing church building, with just two additional small areas of expansion immediately adjacent to the existing building. There are no adjoining or nearby properties that are likely to be disturbed by the expansion.
- 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 site plan.
 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. Any revisions to the existing off-street parking arrangement and/or traffic circulation necessitated by the expansion shall be reviewed and approved by the Division of Traffic Engineering.
9. **C-2008-5: QUEST COMMUNITY CHURCH, INC.** - appeals for a conditional use permit to expand the church and parking areas on property zoned Light Industrial (I-1), Professional Office (P-1) and High Density Apartment (R-4), located at 410-413 Sporting Court (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. Adequate off-street parking will be provided, and sufficient space has been allocated for the purpose of installing required landscaping and storm water management features. Adjoining and nearby properties are currently used for commercial and recreational purposes, and should not be disturbed by church activities. Traffic impacts will be minimized by the provision of alternative access routes to and from the church.
- 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 expanded in accordance with the submitted application and site plan, or as amended by the Planning Commission. It is understood that all of the 250-space future parking area does not have to be constructed immediately, provided that minimum off-street parking requirements are satisfied.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction. Occupancy permits shall be conditioned upon a maximum number of sanctuary seats to be provided, to ensure that minimum off-street parking requirements are satisfied as the church grows.
3. All parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the parking areas, access and circulation shall be subject to review and approval 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 parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing nearby residential neighborhoods.

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.

2. **A-2008-6: ATHENS SCHOOLHOUSE PARTNERS, LLC** - appeals for an administrative review to allow antique sales and an accessory restaurant, considered by the appellant as a change in nonconforming use, on properties zoned Single Family Residential (R-1D) and Agricultural Rural (A-R), located at 6251 and 6270 Athens-Walnut Hill Road (Council District 12).

The Staff Recommended: Disapproval, for the following reasons:

- a. The proposed retail use, for the sale of antiques with an accessory restaurant, is first listed as a principal permitted use in the Zoning Ordinance in the Neighborhood Business (B-1) zone, which is a much less restrictive zone than the Agricultural Rural (A-R) zone. The retail sale of antiques is prohibited in the A-R zone, whereas the prior use for a school for academic instruction at this location is actually allowable in the A-R zone as a conditional use. Therefore, based on an analysis of zoning categories, the proposed use is not in the same or a more restrictive classification as the prior use, and does not satisfy the criteria set forth in Article 4-3(e) of the Zoning Ordinance.
- b. The fact that schools for academic instruction, retail sale of antiques, and restaurants are all permitted in the B-1 and B-2B zones is insufficient justification for concluding that the proposed retail/restaurant use is in the same classification as a school use. If zoning categories are to be used as an indicator of how uses are classified, the entire scope of the Zoning Ordinance, and how particular uses are treated in all zones, must be evaluated in order to make a reasonable determination.
- c. The proposed use is anticipated to be more intense, with greater potential for adversely impacting the surrounding community, than the prior use. This is expected due to a likely increase in the number of people visiting the property, a substantial increase in the demand for off-street parking (as supported by a comparison of parking requirements for a retail use compared to a school), and more frequent activities on weekends and in summer months. Therefore, based on a comparison of potential adverse impacts associated with the prior and proposed uses, the proposed use would be considered to involve an "increase in scope" compared to the prior use, and does not satisfy the limitations set forth in Article 7-6(c) of the Zoning Ordinance.

IV. BOARD ITEMS - The Chair will announce that any items a Board member wishes to present will be heard at this time.

- A. **Election of Officers** - At the January meeting each year, the Board shall elect a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting. The present officers are: Chair - Mike Owens; Vice-Chair - Louis Stout; Secretary - Jim Griggs.

- B. In the past, the duties of Secretary have been delegated to the Planning Manager or a staff member appointed by the Planning Manager. The Chair will request action on this item.

- 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 in the Division of Planning Conference Room on Wednesday, February 13, 2007, beginning at 4:00 p.m. The title of this conference is "Mastering Density" and will count toward 1.5 hours of House Bill 55 training credit for Board of Adjustment and Planning Commission members, as well as staff.

- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be February 29, 2008.

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