

**AGENDA FOR THE BOARD OF ADJUSTMENT MEETING**

July 25, 2014

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, July 25, 2014.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the April 25, 2014 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.
  - D. **Conditional Use Appeals**
    1. **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** - a 6-month review of a conditional use permit granted by the Board for a bar/nightclub with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue (Council District 3).

In October of 2012, the Board approved a conditional use permit to operate a night club with live entertainment and dancing. One of the conditions for approval was a 6-month review of the use (after issuance of a Certificate of Occupancy), in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions. The conditions to be reviewed are as follows:

- a. That no more than 275 patrons be allowed on the subject property at a time, as permitted by the fire code.
- b. That the hours of operation be from 8:30 pm until 2:30 am, Wednesday through Saturday.
- c. That any private parties (no more than 275 persons) be held from 8:30 pm until 2:30 am, Monday and Tuesday.
- d. That no business activity, private or public, be conducted on Sunday.
- e. That some type of food items and a menu be provided on the premises.

- f. That off-site parking is provided for the employees by lease agreement approved by the UCG Law Department; and that the Planning Staff is apprised of the location.
- g. That the nightclub with live entertainment and dancing be established in accordance with the submitted application and site plan.
- h. A Zoning Compliance Permit and a new Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy as a nightclub with live entertainment and dancing.
- i. Outdoor live entertainment and/or outdoor speakers shall be prohibited, and the doors to the nightclub shall remain closed during the times when live entertainment is offered.
- j. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.
- k. The use shall be reviewed by the Board 6 months after approval.

In January of 2014, the Board approved the 6-month review to continue operation with expanded hours for a night club with live entertainment and dancing. The Board determined that an additional 6-month was needed, in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions.

- 2. **C-2014-21: SOLAR ECLIPSE, LLC** - appeals for an amended conditional use permit to construct and operate a kindergarten/nursery school/child care center in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties; and, in fact, will have a positive effect by promoting shared access to Harrodsburg Road, increasing the landscape buffer along existing residential properties and continuing to provide for regional stormwater maintenance.
- 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 property shall be developed in accordance with the submitted site plan and application, or as amended by the Planning Commission on a final development plan.
- 2. All permits, including but not limited to a Zoning Compliance Permit, Building Permit, and Paving Permit, shall be obtained by the applicant from the Divisions of Planning and Building Inspection prior to construction.
- 3. The parking lot shall at all times be maintained to the meet the minimum requirements for landscaping and lighting in the Zoning Ordinance.
- 4. Any parking lot lighting employed shall be of a shoebox (or similar) style, so that light is directed downward and away from adjoining residential properties.
- 5. A detailed landscape plan that provides an equal level of protection, as proposed on the site plan, shall be submitted to and approved by the Division of Building Inspection before the issuance of a Zoning Compliance Permit for the subject property.
- 6. The Planning Commission shall review and approve a final development plan for the subject property prior to construction of the proposed use.
- 7. There shall not be direct vehicular access to Palomar Trace Drive from the subject property.

- 3. **C-2014-35: KEENELAND ASSOCIATION** - appeals for a conditional use permit to expand operations, including the building of a new structure and accessory parking, in the Agricultural Rural (A-R) zone, at 3801-4081 Versailles Road (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as Keeneland has successfully operated at this location for nearly 80 years. Furthermore, adequate and efficiently designed parking will be available on site. The proposed event center will be approximately ¼ mile from the nearest property owner, and Keeneland's 440+ acres can easily accommodate the proposed addition to their facility without disturbing any surrounding property owner.
- b. All public facilities, including sanitary sewers and roadways, are adequate and available to serve the proposed racetrack and this addition of the "Events Center".

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

- 1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process, subject to the review and approval of the Divisions of Building Inspection, Traffic Engineering, and Engineering.

2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
4. **C-2014-43: ERIC MOBERLY** – appeals for a conditional use permit for an athletic facility (Martial Arts Instruction), in a Light Industrial (I-1) zone, at 2416 (aka 2420) Palumbo Drive (Council District 7).

The Staff Recommends: **Postponement**, for the following reasons:

- a. Information regarding the number and scale of competitions has not yet been submitted by the applicant; therefore, the required parking and impact on the subject and surrounding properties can not be fully determined at this time.
  - b. The front parking area does not meet the vehicular use area screening requirements of Article 18, and additional landscaping is warranted (and required to the rear of the property) as a condition of this use. None has been proposed as part of this application.
5. **C-2014-52: LA CUEVA BAR & GRILL, LLC** - appeals for a conditional use permit to establish a restaurant, bar & grill with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 1765 Alexandria Drive (Council District 11).

The Staff Recommends: **Disapproval**, for the following reasons:

- a. Granting the requested conditional use permit would have significant potential to adversely impact an established properties, some residential, located as close as 30 feet from the rear wall of the building in which the proposed live entertainment and dancing would take place.
- b. The proposed late hours of operation, combined with the changing character of the existing use from a restaurant to a night club both during the week, and on weekends, has a significant potential to be a disruption to the neighborhood, and therefore, is inappropriate at this location.

#### E. **Administrative Reviews**

1. **A-2014-44: ROSA PLAGE** – an administrative appeal to change one non-conforming use (upholstery shop) to another (beauty salon) in a High Density Apartment (R-4)/Historic District Overlay (H-1) zone, at 617 West Short Street (Council District 2).

The Staff Recommends: **Approval**, for the following reasons:

- a. The requested use of a beauty salon will not be an increase in scope, from the previous use, nor should it negatively alter the character of the surrounding properties. A small beauty salon, as proposed, is first allowed in the Professional Office (P-1) zone, which is a less intense zoning category than that required for the previous non-conforming use of an upholstery shop - first allowed in the Wholesale and Warehouse Business (B-4) zone.
- b. The proposed salon will have the same amount of off-street parking as the former use, which is another indication that the proposed use will not result in an increase in the intensity of the use at this site.
- c. All of the changes to the site have been approved by the Board of Architectural Review; and there are no changes that would constitute a structural change to the building that could otherwise be construed as an expansion of the non-conforming use.

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 any revisions required by the Board of Architectural Review.
2. All necessary permits, including, but not limited to a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to commencing the proposed use.
3. Any and 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.

**\*Note** – The staff received notification via email that applicant wished to withdraw her Administrative Appeal.

2. **A-2014-49: CRAMER COTTAGE** – an administrative appeal to change one non-conforming use (barbershop) to another (re-purposed home goods store) in a Two Family Residential (R-2) zone, at 1023 Cramer Avenue (aka 215 Owsley Avenue) (Council District 5).

The Staff Recommends: **Approval**, for the following reasons:

- a. The requested use for the retail sale of home goods will not be an increase in scope from the previous use of a barber shop, nor should it negatively alter the character of the surrounding properties. Both

uses are principal permitted uses in the Neighborhood Business (B-1) zone. The new use will have similar hours of operation as the previous use and should have no more impact on the surrounding neighborhood than the previous use(s).

- b. The proposed retail sales will require less off-street parking than the former use (barber shop), which is another indication that it will not result in an increase in the intensity of the use at this site.

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 any revisions required by the Divisions of Building Inspection or Traffic Engineering during the normal permitting process.
  2. All necessary permits, including, but not limited to a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to commencing the proposed use.
  3. There shall be no structural changes to the building made in a way that increases the floor area of the non-conforming uses.
  4. The commercial parking lot located off of Cramer Avenue shall be re-stripped to the approval of Traffic Engineering, prior to the issuance of a final Zoning Compliance Permit for the subject property.
3. **A-2014-50: CORNETT INTEGRATED MARKETING SOLUTIONS** – an administrative appeal for a projecting sign for a use/office that does not have an entrance to the outside in a Downtown Business (B-2) zone, at 249 East Main Street (Council District 1).

The Staff Recommends: Disapproval, for the following reasons:

- a. The requested projecting sign is for a business that does not have a separate and direct entrance to the outside of the building, and therefore does not meet the provisional qualifications of Article 17-7(h)(1)(f) for this type of signage.
  - b. Approval of this request would negate the provisional prerequisite to allow this type of sign.
  - c. Much discussion and thought by a variety of community members was involved in the 2009 decision to once again projecting signs in the downtown area after a 40-year prohibition. The provisional qualifications were in response to the sign clutter that existed in the downtown area nearly 50 years ago.
  - d. Other sign options that are allowable under Article 17 of the Zoning Ordinance are available to the applicant and property owner at this location without the need for a variance or administrative review
4. **A-2014-51: ANTONIO BOHORQUEZ-PEREZ** – an administrative appeal of the Division of Planning's interpretation that: 1) the requested use (providing space for private parties) is considered a banquet facility or 2) if determined that it is a banquet facility, that it should be allowed in a Highway Service Business (B-3) zone, at 1816 Oxford Circle (Council District 11).

The Staff Recommends: Disapproval, for the following reasons:

- a. A banquet facility is a defined use, that is not listed as a principal, accessory, or conditional use in the Highway Service Business (B-3) zone; therefore, it is not a permitted use in that zone. Furthermore, banquet facilities are listed as a permissible principal use in the Neighborhood Business (B-1) zone, thereby negating the "other uses substantially similar to those listed herein" language of Article 8-20(b).
- b. The proposed use, rental of space for private parties, meets the definition of a "banquet facility" as defined in Article 1-11 of the Zoning Ordinance.
- c. Other options are available to the applicant to gain approval of the proposed banquet facility, one of which is to obtain zone change for this property to a B-1 zone; and the other is to propose an amendment to the B-3 zone to list a banquet facility as a permissible use in the zone.

- 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.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be August 22, 2014, a week earlier than normal due to the Labor Day holiday.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.