

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

October 31, 2014

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, October 31, 2014. Members present were Chairman, Barry Stumbo; Thomas Glover; Kathryn Moore; James Griggs; Larry Forester; Janice Meyer and Joan Whitman. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones and Andrea Brown, Department of Law. Staff members in attendance were: Director Chris King, Jimmy Emmons, and Tammye McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the August 22, 2014 and September 26, 2014 meetings would be considered at this time.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously to approve the minutes of the August 22, 2014 meeting.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman, and carried unanimously to approve the minutes of the September 26, 2014 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced 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 asked if there were 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 Vice-Chair announced 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.

There were none.

- D. **Conditional Use Appeals**
(Sounded Items)

1. **C-2014-66: LORI KOERPER** – appeals for a conditional use permit for a home occupation (handicrafts) in a Single Family Residential (R-1D) zone, at 1085 Chinoe Road (Council District 5).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This proposed home occupation for home-made handicrafts will easily meet the limitations and requirements set forth in Article 1-11, which are designed to limit the impact of such a use.
- b. There should be no need for parking as there will not be any direct sales of the handicrafts from this location. No disturbances to surrounding property owners are anticipated with this conditional use.
- c. All necessary public facilities and services are available and adequate for the proposed home occupation.

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

1. This conditional use shall be operated in accordance with the submitted application and site plan.
2. All necessary permits, including issuance of a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
3. The activity shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.
4. This conditional use shall become null and void should the appellant no longer reside at this location.

Representation – Mr. Philip Koerper was present. He indicated that he and his wife, the appellant, had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – There were no citizens to present to comment on this request.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously to **approve C-2014-66: LORI KOERPER** – an appeal for a conditional use permit for a home occupation (handicrafts) in a Single Family Residential (R-1D) zone, at 1085 Chinoe Road (Council District 5), for the reasons suggested by the staff, and subject to the four conditions recommended by the staff.

2. **C-2014-67: MERRYMAN INVESTMENT CO. XIV, LLC** - appeals for a conditional use permit to operate a pawn shop in a Highway Service Business (B-3) zone, at 212 E. New Circle Road (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, as it is surrounded on all sides by other commercial uses, and is hundreds of feet from the nearest residential use.
- 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 pawnshop shall be established in accordance with the submitted application and a revised site plan indicating the delineation of at least 18 available off-street parking spaces, including the installation of the required landscaping along the northern and eastern property lines.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to any construction and/or renovation, and prior to re-opening the pawn shop under new ownership.
3. A landscape buffer, as required for a vehicular use area pursuant to Article 18-3(a)(2)2 of the Zoning Ordinance, shall be provided along New Circle Road; and pursuant to Articles 18-2(c) and Article 18-3 (a) (2) 1 of the Zoning Ordinance; landscaping shall be provided along the northern edge of the parking lot.
4. Signage shall comply with Article 17 of the Zoning Ordinance; and in particular, at a minimum, the message board and temporary banners shall be removed from the existing non-conforming free standing sign.
5. This approval shall become null and void should the appellant no longer own the property or operate this business on the subject property.

Representation – Mr. Nick Nicholson, attorney, was present on behalf of the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by the first four, but would like to request that the fifth condition be discussed and possibly removed. He said that one LLC would own the building and a different one LLC would operate the use. He was concerned that the fifth condition, the way that it is written, would prohibit that type of business decision. Mr. Nicholson said that they are also in discussion regarding possibly leasing the operation of the pawn shop to a separate entity entirely; and, again; that would be prohibited by the fifth condition. He said that in speaking with the staff, he didn't believe there was any opposition to getting rid of condition number 5; it was being recommended because it was being passed down from the last time the subject property was before the Board.

Mr. Nicholson said that if they were to transfer the ownership of this property, without the condition, the staff would still have to review that request and transfer the new conditional use permit to the new entity.

Therefore, they do not feel there is any benefit to the condition, and there is also no hardship placed on the staff by removing this condition.

Mr. Nicholson said that there is also some precedent: in 2009, there was a pawn shop across the street from the subject property (Dan's Discount), which came before the Board to ask for this same condition to be removed, for a similar reason, and it was granted by the Board.

Staff Comments – Mr. Emmons said that from the Planning staff's perspective, they did not have any opposition to removing the fifth condition. This condition recommended by staff because the current pawn shop that was approved at this location also had the same condition, which is the reason this applicant had to come back before the Board. Without that condition the staff would have the authority to approve the Zoning Compliance Permit for the business subject to the detailing of this application and the four conditions that are on. He said that, as drafted, the fifth condition prevents the staff from being able to transfer the Board's approval to a new applicant. Mr. Emmons said that the Board, in the past, has expressed concern in regard to the number of pawn shops in this general vicinity of New Circle Road.

Board Questions – Mr. Glover asked; if the condition were removed, upon the sale of the business, what the staff would have the authority to review. Mr. Emmons responded that if a different pawn shop operator came to the staff and asked to put a pawn shop at this location (which has a conditional use) with condition #5, the staff would refer that transfer of ownership back to the Board, for a new conditional use permit. If the pawn shop operator wanted to comply with all of the first four conditions, and they signed off saying that they would operate exactly the same as what is before the Board today, the staff would have the authority to essentially transfer the Board's previous approval to that new applicant.

Mr. Glover then asked if; without the fifth condition, it would transfer the authority from the Board to the staff to transfer the conditions to a new owner. Mr. Emmons replied that it would keep the use with the land rather than this applicant. Mr. Nicholson said that it would take of approval out an extra layer and prevents an automatic return to the Board. Mr. Emmons said that if a new applicant wanted to do something different than what is in this application and existing conditions, the staff would then refer that back to the Board of Adjustment for review and approval.

Mr. Glover questioned the language in condition number 5, and asked Mr. Nicholson if he was reading it the same way. Mr. Nicholson replied that he read it as if the owner does not own the property or does not operate the use as well, it becomes null and void. Mr. Glover then asked about the restrictiveness of the condition in the case they may ever want to sell the pawn shop. Mr. Nicholson responded that it would be very restrictive, based on the nature of the LLC in question.

Mr. Griggs asked the staff where it said that they could send the applicant to the Board if the staff was uncomfortable with the new owner or new operator with them agreeing to the four conditions. Mr. Emmons said that if staff had question as to whether the applicant would or would not comply with the conditions, then the staff could refuse to issue the permit. Ultimately, the applicant could bring in an administrative appeal of the staff's decision to the Board.

Mr. Glover asked if the staff was saying they had some discretion about whether to accept a transfer of this condition if condition #5 was removed. Mr. Emmons said that he believed that the staff would have to have a reason to question it. At this time, there was some discussion between the Board and staff with regard to the amount of discretion the staff would have in transferring the conditional use to a new owner or operator of the pawn shop. Mr. Nicholson said that this could set a precedent, noting that this same condition was removed from case #2009-73 (conditional use).

At this time, the Board agreed that the condition for #5 should have a different language, which then read as: *"This approval shall become null and void should the appellant no longer own the subject property. ~~or operate this business on the subject property.~~* Mr. Nicholson stated that they would agree and abide by the revised condition. Mr. Emmons then placed the new language of the condition on the overhead projector for review.

Citizen Comments – There were no citizens to present to comment on this request.

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester, and carried unanimously (Glover abstained) to **approve C-2014-67: MERRYMAN INVESTMENT CO. XIV, LLC** – an appeal for a conditional use permit to operate a pawn shop in a Highway Service Business (B-3) zone, at 212 E. New Circle Road, based on the staff's recommendation and subject to the five conditions with the last condition modified as

noted.

3. **C-2014-68: KEENELAND ASSOCIATION, INC.** - appeals for a conditional use permit to construct a new ticket office in the Agricultural Rural (A-R) zone, at 4251 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 more than 75 years. Furthermore, the proposed ticket office 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 and roadways are adequate and available to serve the racetrack's proposed minor addition of the new ticket office.

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

1. The ticket office 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.

Representation – Mr. Bruce Simpson, attorney, was present on behalf of the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – There were no citizens to present to comment on this request.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously to **approve C-2014-68: KEENELAND ASSOCIATION, INC.** – an appeal for a conditional use permit to construct a new ticket office in the Agricultural Rural (A-R) zone, at 4251 Versailles Road, for the reasons recommended by the staff and subject to the two conditions outlined by staff.

4. **C-2014-69: BHARATIYA TEMPLE & CULTURAL CENTER** – appeals for a conditional use permit to construct additional parking for the religious center in the Agricultural Rural (A-R) zone, at 3050 N. Cleveland Pike (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit to expand the parking should not adversely affect the subject or surrounding properties. Perimeter landscaping exists and will be maintained to buffer the church from public roads and adjoining properties to the north. Adequate off-street parking will be provided to meet the needs of the facility and designed in accordance with the requirements of Article 16 of the Zoning Ordinance.
- b. Sewage treatment and trash pickup will be privately provided, and other utilities and fire and police protection are available and adequate for the proposed use.

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

1. The parking lot shall be established in accordance with the submitted application and site plan, or as amended in order to satisfy requirements of the Division of Traffic Engineering (pertaining to design of the access and parking areas) or the Division of Engineering (pertaining to storm water management).
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
3. Access to North Cleveland Road shall be approved by the Division of Traffic Engineering and the State Transportation Cabinet.
4. The parking lot shall be paved, with spaces delineated, and designed in accordance with the requirements of Article 16 of the Zoning Ordinance, subject to 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. The property owner shall maintain the landscaped areas in accordance with a detailed landscaping plan. All new landscaping shall be approved by the Landscape Examiner prior to the issuance of a building permit. Landscaping along the northern property line shall be maintained and comparable to that required by Article 18 of the Zoning Ordinance for churches (in an office or business zone) that adjoin a residential zone, except that the existing fence shall be retained, and a 2' high hedge shall be planted, capable of reaching 6' in height.

7. Existing landscaping and fencing along North Cleveland Road shall be retained, except for the removal of trees and fencing due to disease or sight distance requirements. This shall also be included in the landscaping plan submitted to the Landscape Examiner.
8. Any outdoor pole lighting shall be of a shoebox design, with light directed downward and away from all adjoining properties.
9. The applicant shall comply with the requirements and recommendations of the Health Department for their septic system.

Representation – Mr. John Kingston was present on behalf of the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Board Questions – Ms. Meyer asked Mr. Kingston if he could address the landscaping, on the site, particularly that planned close to Cleveland Road. Mr. Emmons responded that Article 18 would require the standard vehicular use screening for all parking lots, which is essentially a 3-foot hedge and trees every 40 feet. He said that the trees around Cleveland Road are proposed to remain and are proposed to be protected with this application. Mr. Emmons then presented photos on the overhead projector and gave a brief orientation of the conditional use permit that was being proposed.

Ms. Meyer said that Cleveland Pike appeared to be “canopied” because of the proximity to the new parking lot and the road. She said that she would like it to be as hidden as possible, and that someone driving along the road would not see the parking lot. Mr. Kingston replied that he believed that the applicant would agree to do that.

Mr. Griggs asked the staff if they could tell how big the trees are near of the corner of the parking lot close to North Cleveland, and if there is any tree protection zone in that area. Mr. Emmons then presented a few pictures of the site on the overhead projector, as he gave a brief description of where the proposed parking is. He said, at its closest point, it would be about 10 feet from the right-of-way, which is essentially where the tree line is; it averages at about 25 feet back, away from the road.

Ms. Meyer said that it looked as if they were trees that drop their leaves, and she would personally like to see, for the corner that is closer to Cleveland, trees that don’t drop their leaves; it could be softened with some nice landscaping. Ms. Meyer suggested that the condition state that the Board would like to see some sort of fir or other coniferous trees along that area that is closest to North Cleveland Pike.

Mr. Griggs agreed with Ms. Meyer, and said that he would even go a step further, and cut off the corner of the parking lot so that there would be 25 feet or more between the parking lot and the road. Mr. Griggs asked Mr. Kingston if he had any input on the design of the parking lot. Mr. Kingston said that it could be shifted. Mr. Griggs then asked if he thought he could get it at least 25 feet away from the road, and put in some evergreens, a visual barrier in the vicinity where it is closest to the road. Mr. Kingston responded affirmatively.

Mr. Glover said that the plans shown to the Board, have some kind of landscaping or something on the perimeter, and asked if some of the bushes could be placed closer together to screen the large parking area from Cleveland Road. Mr. Emmons, based on this discussion, drafted an additional condition and placed it on the overhead projector. There was a brief discussion regarding the language of the additional condition between the Board and staff, and it concluded as follows:

10. The parking lot shall be at least 25 feet from North Cleveland and be landscaped with evergreen trees along the frontage to serve as a screen.

Mr. Kingston agreed to abide by this additional condition.

Citizen Comments – There were no citizens to present to comment on this request.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs and carried unanimously to **approve C-2014-69: BHARATIYA TEMPLE & CULTURAL CENTER** – an appeal for a conditional use permit to construct additional parking for the religious center in the Agricultural Rural (A-R) zone, at 3050 N. Cleveland Pike, for the reasons recommended by the staff and subject to the ten conditions, the last condition being added by the Board relative to the close distance of the parking lot from North Cleveland Pike, and the need for an evergreen screening along that road.

5. **C-2014-70: IDLE HOUR COUNTRY CLUB** - appeals for a conditional use permit to expand the maintenance building for the golf course/country club, in a Single Family Residential (R-1B) zone, at 1815

Richmond Road (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. The physical arrangement of the improvements on the subject property, along with the relatively small size of the proposed second-story office, will minimize any potential negative impact of this conditional use upon the surrounding neighborhood. Thus, there will be no adverse impact upon the nearby neighborhood for this expansion of the country club.
- b. All services and infrastructure remain adequate and available for this small expansion.

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

1. The proposed addition shall be constructed in the locations indicated on the corollary site plan, and shall be operated in accordance with the submitted application.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to the construction of the second story of the maintenance building.

Representation – Mr. Rory Kahly, with EA Partners, was present on behalf of the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – There were no citizens to present to comment on this request.

Action – A motion was made by Ms. Moore, seconded by Mr. Forester, and carried unanimously to **approve C-2014-70: IDLE HOUR COUNTRY CLUB** - an appeal for a conditional use permit to expand the maintenance building for the golf course/country club, in a Single Family Residential (R-1B) zone, at 1815 Richmond Road (Council District 5), for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

F. **Administrative Review**

There were none

IV. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.

- A. **2015 MEETING & FILING SCHEDULE** - As part of its Bylaw-related duties, each year the Board of Adjustment must adopt its Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2015 is now in draft form and has been presented to the Board for review and/or discussion prior to its official adoption.

Action – A motion was made by Mr. Forester, seconded by Mr. Glover, and carried unanimously to **approve the 2015 MEETING & FILING SCHEDULE**.

V. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously to go into closed session for the purpose of discussing a matter of pending litigation.

The Chairman declared a closed session at 2:10 p.m. The meeting was reconvened in open session at 2:49 p.m.

*Note –Chairman Stumbo left at 2:41 p.m.

VI. **NEXT MEETING DATE** - The Vice-Chair announced that the next meeting date would be November 21, 2014.

VII. **ADJOURNMENT** - Since there was no further business, the Vice-Chair declared the meeting adjourned at 2:49 p.m.

Barry Stumbo, Chair

James Griggs, Secretary