

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

June 30, 2017

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, Lexington, Kentucky.

II. **APPROVAL OF MINUTES** – The Chair will announce that the minutes of the May 19, 2017 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.

B. **Variance Appeals**

1. **PLN-BOA-17-00013: JAKE RIORDAN** – requests variances to: 1) increase the maximum front setback from 20 feet to 90 feet for Lot 1, and 2) increase the maximum front setback from 20 feet to 145 feet from the private access easement for Lot 2 in a Neighborhood Business (B-1) zone, at 4235 Harrodsburg Rd. (Council District 10).

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

- a. The orientation and architectural details of the buildings in the B-1 portion of the lot have not been finalized; therefore, the variance request is premature.
- b. The lots have not yet been created via a final record plat, and the Final Development Plan for the site was recommended for postponement. Until further action has been made by the Planning Commission, this appeal should not be acted on by the Board.

2. **PLN-BOA-17-00034: THE BARN** - requests a variance to increase the maximum allowable projection of a project identification sign from 4 feet from the wall of the building to 6 feet 8 inches from the wall of the building in a Mixed Use-3 (MU-3) zone, at 119 Marion Drive (aka a portion of 4100 Nicholasville Road) (Council District 4).

(The above application was withdrawn via email on 6/19/17)

3. **PLN-BOA-17-00037: SHAWN & KATRINA SMITH** - request a variance to reduce the side yard setback from 25 feet to 12 feet in order to construct an addition to the existing single family residence in the Agricultural Rural (A-R) zone, at 4179 Winchester Road (Council District 12).

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because the surrounding area is more characteristic of a Single Family Residential zone in which this type of setback would be more common. Several of the nearby properties have similar side yards.
- c. The circumstances surrounding the requested variance are not the result of a willful violation of the Zoning Ordinance. The residence was constructed in 1959, well before the current setbacks for the A-R zone were established.

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

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection.

4. **PLN-BOA-17-00039: JOHN SAMSON** - requests a variance to increase the allowable area of an accessory building from 1,186 square feet to 3,420 square feet in order to construct a 2,700 square-foot accessory building with a 720 square-foot open air lean-to structure at one end in the Single Family Residential (R-1B) zone, at 280 Swigert Ave. (Council District 6).

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the

- character of the general vicinity; and will not cause a hazard or nuisance to the public. The proposed accessory structure is similar to others in the area and will not be very visible from the road.
- b. Strict application of the Zoning Ordinance would deprive the applicant of the reasonable use of his land as he would be unable to utilize his property to store personal vehicles and equipment, on a large, oversized lot in an R-1B zone.
 - c. The variance request is not the result of any willful violation or attempt to circumvent the requirements of the Zoning Ordinance.

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

1. The structure 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 beginning construction.
 3. That the applicant consult with the Urban County Engineer to determine what, if any, measure might be recommended to mitigate the potential for increased runoff from the property.
 4. The two existing accessory structures shall be removed upon completion of the new structure.
 5. The new accessory structure shall be used for personal use only and shall not be used for any business purposes.
5. **PLN-BOA-17-00040: PARADE OF PUPPIES** - requests a variance to reduce the required distance from a commercial kennel to a residential zone from 100 feet to 9 feet in a Highway Service Business (B-3) zone, at 565 East New Circle Road (Council District 6).

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity; and will not cause a hazard or nuisance to the public. The existing space will be soundproofed to mitigate the closer proximity of the "kennel" use. No animals will be boarded overnight and no outdoor runs or pens will be added. The puppies will be on site during daytime hours only three times per week.
- b. The location of the existing building on the lot and configuration of the residential properties to the east are special circumstances that contribute to justifying the requested reduction.

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

1. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to opening the facility.
2. No more than 25 puppies available for sale shall be permitted on site per day.
3. Puppies available for sale shall only be present from 10 am to 5 pm, up to three times per week. No animals shall be boarded overnight.
4. The exterior wall at the rear of the suite (#11) shall be completely soundproofed to the maximum extent feasible by using existing technology.

C. **Conditional Use Appeals**

1. **PLN-BOA-17-00032: MILL RIDGE FARM** – requests a conditional use permit to establish a farm gift shop in the Agricultural Rural (A-R) zone, at 2800 Bowman Mill Road (Council District 12).

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

- a. Granting the requested conditional use will not compromise the area surrounding Mill Ridge Farm. The primary client base for the gift shop will be guests who are on the property for a tour of the equine facility, and the purpose of the gift shop is to enhance their experience of the farm.
- b. The scale of the use, both in the size of the space and the operation of the gift shop, is minimal compared to the overall size and general operation of the farm. There will be no signage advertising the gift shop, other than interior to the property; no additional facilities or services are needed for its operation; it will be located in an existing building, adjacent to the already provided guest parking area; and traffic other than what will be associated with scheduled farm tours will be minimal and possibly non-existent.
- c. A small farm gift shop, such as the one proposed, providing memorabilia specific to Mill Ridge Farm, is an excellent example of what the recently adopted text amendment was designed to accomplish regarding agritourism in Fayette County.

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

1. That the gift shop be located and operated in compliance with the submitted application and site plan.
2. That only farm or industry memorabilia or items related to Mill Ridge Farm and its racing history be provided for sale on the property.
3. That there be no signage, other than directional or identification signs interior to the property, advertising the

farm gift shop.

2. **PLN-BOA-17-00033: CENTERPOINTE CHRISTIAN CHURCH** – requests a conditional use permit to construct an addition to the existing church in a Light Industrial (I-1) zone, at 865 Greendale Road (Council District 2).

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

- a. Granting the requested Conditional Use permit should not adversely affect the subject of surrounding properties. An addition to the church that does not increase the number of sanctuary seats should have little effect on the intensity of the use on this property.
- b. All necessary public facilities and services are or will be available and adequate for the proposed use.

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

1. The addition and shed shall be constructed in accordance with the application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection, including a Certificate of Occupancy, prior to opening the facilities.
3. The storm water management plan shall be updated and implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

3. **PLN-BOA-17-00035: FULL FORCE ATHLETICS, LLC.** – requests a conditional use permit to establish an athletic club facility in a Heavy Industrial (I-2) zone, at 195 S. Forbes Road (Council District 1).

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

1. Adequate off-street parking is not provided. Eleven parking spaces are required and must have a defined entrance to a parking lot for vehicles to enter, turn around, and then exit. Vehicles are not permitted to back out onto the street.
2. Based on traffic and a lack of pedestrian facilities, leasing parking spaces from a nearby property is not feasible and raises serious concerns regarding pedestrian safety. The likely need for participants and/or parents to cross S. Forbes Road is considered especially problematic.

D. **Administrative Reviews**

1. **PLN-BOA-17-00026: COHEN BROTHERS** – an administrative appeal to change one legal non-conforming use (scrap iron storage) to another legal non-conforming use (junk yard) in a Light Industrial (I-1) zone, at 757 East Seventh Street (Council Districts 5).

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

- a. The proposed non-conforming use is in the same classification as the current legal non-conforming use and will not result in a more intense use of the property than the current use. Additionally, the proposed use should be less noisy than the current use.
- b. The property is a mostly interior lot, with little street frontage, so the proposed change in use will have little effect on the character of the surrounding neighborhood.

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

1. The property shall be developed as a pull-apart type facility, as generally described in the submitted application.
2. All necessary permits shall be obtained from the Divisions of Planning, Engineering, and Building Inspection, including a Certificate of Occupancy, prior to opening the facility.
3. The facility shall not be operated beyond the hours of Monday through Friday from 8 am to 5 pm, and from 9 am to 4 pm on Saturday and Sunday.
4. Any outdoor pole lighting shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing nearby residential properties.
5. All fluids shall be drained from vehicles when they arrive on site in a designated “pre-treatment” area.
6. All non-conforming activities associated with the operation of the pull-apart junk yard use shall be limited to the subject property and shall not spill over onto any adjacent properties.
7. A six-foot tall privacy fence shall be installed and maintained along the NE property line adjacent to the CSX Railroad, with installation completed prior to the issuance of a Certificate of Occupancy.
8. The use of any loud speaker/outdoor amplification system shall be prohibited.
9. Outdoor burning shall be prohibited.
10. Once the new proposed use is implemented on the subject property, use of the property cannot revert back to the original nonconforming use (scrap iron storage) unless such a change is specifically authorized by appeal to the Board of Adjustment.

11. The current nonconforming use (scrap iron storage) shall be discontinued once the new use is initiated, with the exception that vehicles brought to the site for parts may be crushed on site and stored temporarily once they are no longer valuable for parts.
2. **PLN-BOA-17-00028: RODNEY D. & SEAN MCMULLIN** - an administrative appeal to determine that applying eyelash extensions is a permissible home occupation and is not equivalent to a beauty parlor; and a conditional use permit for a home occupation (application of eyelash extensions) in a Planned Neighborhood Residential (R-3) zone, at 2111 Patchen Lake Lane (Council District 6).

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

- a. Application of eyelash extensions is a service that is typically provided at a beauty parlor. As such, it is appropriate to consider the application of eyelash extensions as substantially similar to a beauty parlor, which is first permitted on a limited basis in the Professional Office (P-1) zone, and is specifically excluded from consideration as a home occupation by Article 1-11 of the Zoning Ordinance.
 - b. Application of eyelash extensions is a service that, if done as a home occupation, would require that individuals desiring this service travel to a home. Customers traveling to and from the applicant's home would potentially disrupt the neighborhood with increased traffic, and would be contrary to the intent of the Zoning Ordinance's regulation of home occupations.
3. **PLN-BOA-17-00036: CORE LIFE** – an administrative appeal to transfer 108 square feet of unused wall signage to allow a projecting sign of up to 120 square feet in a Mixed Use Community (MU-3) zone, at 4040 Finn Way (aka a portion of 4100 Nicholasville Road) (Council District 4).

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

- a. Granting this request will not cause a hazard or nuisance to the public; will not adversely affect public health, safety, or welfare; nor will it alter the essential character of the vicinity. The sign is over 300' from the public thoroughfare and will be only somewhat visible to passing motorists. In addition, contextually, the request signage is not out of scale or overwhelming due to the size of the development and in relation to other projecting signs proposed by several other tenants throughout the site.
- b. Granting this request will not allow an unreasonable circumvention of the Zoning Ordinance, as the applicant will forgo wall signage on the northeast elevation of the tenant space in order to transfer signage to this projecting sign.
- c. The circumstances that justify granting this request are the large scale of the development, the size of similar signs throughout the development, and the limited visibility this location will have from Nicholasville Road due to the existing and proposed buildings on the North and South sides of the adjacent parking lot. The sign will likely only be visible from Nicholasville Road for the short distance where travelers are directly parallel to Core Life and could possibly look directly across the parking lot. Given the distance from the road and the angle of the sign, the sign faces would still be difficult to see from this vantage point.

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

1. Signage shall be established in accordance with the submitted application and site plan.
2. All necessary permits for signage shall be obtained from the Division of Building Inspection.
3. No wall signage shall be installed on the north wall of the Core Life tenant space.

4. **PLN-BOA-17-00038: BLUEGRASS STOCKYARDS** - an administrative appeal to request a transfer of 150 square feet of unused allowable wall signage to allow a 200 square-foot free standing sign along the interstate in the Agricultural Rural (A-R) zone, at 4561 Iron Works Pike, 110 (Council District 12).

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

- a. Granting this request will not cause a hazard or nuisance to the public; will not adversely affect public health, safety, or welfare; nor will it alter the essential character of the vicinity. Contextually, based on the large size of the subject property, the distance the sign will be from the interstate, and the speed of the vehicular traffic on the interstate, the requested signage is not out of scale or overwhelming.
- b. Special circumstances that justify granting this request are the large size of the property and the type of traffic on I-75. A compliant sign would be very difficult to see for passing motorists. Due to the speed and number of vehicles travelling I-75, the increased size of the sign may actually contribute to the safety of motorists traveling in the area.

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

1. The proposed signage shall be established in accordance with the submitted application and site plan.
2. All necessary permits for signage shall be obtained from the Division of Building Inspection.

5. **PLN-BOA-17-00041: THOMAS W. MILLER** - an administrative appeal to determine that the Division of Panning erred in considering the operation of a clothing business as a zoning violation in a Single Family Residential (R-1B) zone, at 821 Chinoe Road (Council District 5).

*Note – Staff will report at the time of the hearing.

D. **Revocation Hearing**

1. **C-2015-57: DR. ANDREW P. & CHARLSEY Y. SCHROYER** - the Board of Adjustment has requested a revocation hearing for a conditional use permit to operate a veterinary clinic/animal hospital in a Professional Office (P-1) zone, at 3580 Lyon Drive aka 1096 Wellington Way (Council District 10).

*Note – Staff will report at the time of the hearing.

- IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.
- V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be July 28, 2017.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.