

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

November 21, 2008

I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on November 21, 2008. Members present were, Peter Brown, Louis Stout, James Griggs, Carolyn Edwards, Barry Stumbo, Kathryn Moore and Jan Meyer. Others present were Jim Hume of the Division of Building Inspection; Chuck Saylor of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; and Rochelle Boland of the Law Department. Staff members in attendance were Jim Marx, Barbara Rackers, Bill Saltee and Wanda Howard.

II. **APPROVAL OF MINUTES** - Chairman Brown announced that the May minutes had not been distributed to Board members, and therefore, would not be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman 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.

a. **A-2008-111: EMERGENCY DISASTER SERVICES** - appeals for an administrative review to determine that the display, sale and storage of semi-trailers is permitted in a Highway Service Business (B-3) zone; and whether the current use of the property qualifies as the sale of semi-trailers, on property located at 801 East New Circle Road (Council District 6).

The Staff Recommended: Approval of that portion of the administrative appeal determining that the sale and leasing of semi-trailers (and accessory storage) is permitted in the B-3 zone, for the following reasons:

- a. A semi-trailer is substantially similar to other items, such as travel trailers or mobile homes, which are permitted for sale or lease in the B-3 zone.
- b. If a determination is made that semi-trailers are not similar enough to those items specifically identified in the Zoning Ordinance as eligible to be sold or leased in the B-3 zone, then semi-trailers would not be permitted to be sold or leased in any zone as the Zoning Ordinance is currently constructed.

The Staff Recommended: Disapproval of that portion of the administrative appeal determining that the activities taking place on the subject property are appropriately considered as the sale, leasing and accessory storage of semi-trailers, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. The storage of semi-trailers on the subject property is more appropriately considered as a truck terminal, which by definition (as stated in Article 1-11 of the Zoning Ordinance) includes the storage of semi-trailers for more than 24 hours. The physical appearance of the property, with numerous semi-trailers being stored outdoors, closely resembles that of other properties (primarily in I-1 zones) that have been permitted by the Division of Building Inspection as truck terminals. A truck terminal is not a permitted use in the B-3 zone.
- b. There is no indication of any active sales or leasing of semi-trailers taking place on the subject property, as evidenced by the lack of a sales or leasing office, no on-site sales or leasing staff, and no signage indicating that semi-trailers are available for sale or lease. As such, it is not appropriate to consider the storage taking place on the subject property as accessory in nature.
- c. The nature of the appellant's business, being focused on providing semi-trailers for emergency and disaster response, is not conducive to or enhanced by the need or ability to conduct sales or leasing activities on the subject property. Given the irregular and often unanticipated timing of such events, sales and leasing transactions take place via other arrangements. In that light, the primary function of this particular property for the appellant's business is just for storage, regardless of the extent to which sales and leasing transactions are taking place at a particular time.
- d. Storage of semi-trailers as a principal use is only permitted by the Zoning Ordinance in the B-4, I-1 and I-2 zones.

Representation – Mr. Nick Nicholson, attorney, was present representing the applicant, and requested a one-month postponement. He told the Board that a meeting has been scheduled for next week with the Division of Building Inspection in order to try and resolve some of the issues associated with their appeal. It was his hope that the outcome of this meeting could shorten the Board's discussion of these issues next month.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously to postpone **A-2008-111: EMERGENCY DISASTER SERVICES** until the December 12 meeting.

2. No Discussion Items - The Chairman asked if there were any agenda items where no discussion was 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 proceeded to take action.

ABBREVIATED HEARINGS:

At this point, Chairman Brown asked all those present who would be speaking or offering testimony to stand, raise their right hand and be sworn. Several of those in attendance did so at this time, as Chairman Brown administered the oath.

- a. **V-2008-102: ROBERT and MICHELE KING** - appeal for a variance to increase the allowable height of a detached garage from 14'8" to 19'11" in a Single Family Residential (R-1B) zone, on property located at 575 Kingston Road (Council District 6).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The detached garage complies with the maximum height limit of 20' established by the Zoning Ordinance for all accessory structures, and has been designed to complement the architectural features of the residence. Sloping topography of the subject property and adjoining properties tends to diminish the visual impact of the increased height of the structure.
2. The age and limited height of the principal residence, the large lot sizes in the immediate area, and the area's topography are all special circumstances that, in combination, justify the modest variance that has been requested.
3. Strict application of the Zoning Ordinance would force the appellants to modify the design of the garage roof so that the overall height does not exceed that of the principal residence. Given the features of the subject and surrounding properties, there is considerable uncertainty as to whether or not such a reduced height would be beneficial to the character of the area. In that light, and also recognizing that there may have been some confusion during the permitting of the garage, the substantial cost to rebuild the structure would create a true hardship for the applicant.
4. The circumstances surrounding this variance request do not appear to be the result of a willful violation of the Zoning Ordinance, but rather a misunderstanding that took place when construction of the garage was permitted by the Division of Building Inspection.

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

1. The detached garage may be retained, and construction completed, in accordance with the submitted application and site plan.
2. An amended building permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.
3. The detached garage shall not have a kitchen and shall not be used as a dwelling unit.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photographs of the subject property were not displayed.

Representation – Mr. and Mrs. Robert King were present. Chairman Brown asked them both whether they understood, agreed with, and would abide by the conditions recommended for approval of their request. Each replied in the affirmative.

Board Questions – Chairman Brown stated that he dislikes the fact that this will allow the construction to "remain as built" and asked Mr. Hume if this situation could have possibly been prevented had the Building Inspection staff asked more questions, perhaps, when the applicants applied for the permit. Mr. Hume replied that, in fact, this garage had been constructed larger than what was requested at the time of the building permit. He displayed on the overhead projector a drawing of the garage submitted to his office at the time of the issuance of the Building Permit. It proposed a wall height of 8 feet, and a building height of about 13± feet, with the tallest point proposed at about 18 feet in height at the top of the garage roof ridge. The applicants have also constructed a dormer on the front of the garage, which was not shown on the original drawing submission.

Chairman Brown asked if the 13' height is a "mid-gable" measurement. Mr. Hume replied in the affirmative. Mr. Hume asked the Board to consider another condition to approval of this request, to prohibit any cupolas or other extensions to the roof height of this garage. Mr. & Mrs. King were also agreeable to this condition, which was shown on the overhead by Mr. Sallee.

Mr. Griggs asked Mr. Hume if there was shared fault between the applicants and Building Inspection for this situation. Mr. Hume replied that he felt this was entirely the applicants' fault. Mr. King responded that the

staff member they worked with in Building Inspection told them that building height was measured at the highest point of the house. They asked if that included a chimney or a cupola, and were told that it did by the lady that signed their Building Permit. Mr. Griggs suggested that Mr. Hume discuss this with the staff member in Building Inspection so that this type of error is not repeated.

Mr. Griggs asked Mr. Hume if the garage is taller than the highest point on the existing house. Mr. Hume replied in the affirmative.

Ms. Moore asked if the garage currently has a cupola constructed. Mr. King replied that it does not. Chairman Brown asked if one were proposed for the house. Mr. King replied in the affirmative. Chairman Brown understood that this would allow the garage height to be taller, under the Zoning Ordinance.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously to approve **V-2008-102: ROBERT and MICHELE KING** appeal for a variance to increase the allowable height of a detached garage from 14'8" to 19'11" in a Single Family Residential (R-1B) zone, on property located at 575 Kingston Road, for the reasons provided by the staff, and subject to the three conditions recommended, revising condition #3 as follows:

3. The detached garage shall not have a kitchen, nor any cupolas, and shall not be used as a dwelling unit.

- b. **V-2008-103: ROLAND PROPERTIES, LLC** - appeals for a variance to reduce the required project exterior yard for a 7-unit residential building from 34 feet to 10 feet in a High Density Apartment (R-4) zone, on property located at 2412 Lake Park Road (Council District 5).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The front wall of the building will be shifted away from a water main that extends along the west side of the property, albeit outside of any existing easement. The reduced exterior yard to be provided will not be discernable due to the current layout of the surrounding properties, which are also developed with multi-family buildings.
2. The relatively small size of the subject property, together with the presence of water lines along the western edge of the property, is a mix of circumstances that favor allowing design of the development with a reduced project exterior yard.
3. Strict application of the Zoning Ordinance would require that the front wall of the proposed building be located very close to, and possibly over, an existing water main. The risk involved with that construction, as well as future complications relating to maintenance, might ultimately require that the water main be relocated. Strict compliance with the Zoning Ordinance would also impact off-street parking options for the seven proposed living units.
4. The circumstance driving this variance request is the result of where the existing water lines were sited, which was not under the control of the appellant.

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

1. The building shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary building permits shall be obtained from the Division of Building Inspection prior to construction.
3. The existing landscape buffer along the eastern property line and easterly 150' of the northerly property line shall be preserved. This buffer shall be maintained, at the minimum, to provide landscaping comparable to that required by Article 18-3(a)(1)7 of the Zoning Ordinance.
4. A note regarding action of the Board shall be placed on an amended Final Development Plan for the subject property.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photographs of the subject property were not displayed.

Representation – Mr. Gary Roland was present. Chairman Brown asked Mr. Roland if he agreed with the staff recommendation. Mr. Roland replied that he understood, agreed with, and would abide by the conditions recommended for approval of the request.

Board Questions – Chairman Brown asked if the proposed townhouse units on the original plan were to be up closer to the access road. Mr. Roland replied in the affirmative. He said that the original plan, like the one now before the Board, proposed garages accessed from the front for the townhomes. However, the original plan also had surface parking to the rear of the units. Chairman Brown asked if that was to accommodate the parking requirements of the Zoning Ordinance. Mr. Roland replied that it was solely to meet parking requirements. He said that parking with the new proposal would still be increased with the new plan.

Mr. Griggs asked whether Mr. Roland had a copy of the original development plan. Mr. Roland did, and displayed it on the overhead projector for the Board. The original building had a drive aisle behind it, which was no longer part of the plan. Chairman Brown asked if this plan was much better. Mr. Roland replied in the affirmative, and stated that the longer driveways in front of the garages would allow better and more functional parking arrangements for these units, especially given the unforeseen water line situation.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously to approve **V-2008-103: ROLAND PROPERTIES, LLC** appeal for a variance to reduce the required project exterior yard for a 7-unit residential building from 34 feet to 10 feet in a High Density Residential (R-4) zone, on property located at 2412 Lake Park Road for the reasons provided by the staff, and subject to the four conditions recommended by the staff.

- c. **C-2008-100: PORTER MEMORIAL BAPTIST CHURCH** - appeals for a conditional use permit to expand a child care facility at the church from 90 to 130 children, in a Single Family Residential (R-1D) zone, on property located at 4300 Nicholasville Road (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 and a safe drop-off and pick-up location are already in place, and both outdoor and indoor play areas will be provided. Any increase in traffic from the expanded child care facility is not expected to be problematic.
- 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. This use shall be conducted in accordance with the submitted application and site plan.
2. An occupancy permit for the expanded child care shall be obtained from the Division of Building Inspection within 30 days following action by the Board.
3. The child care center shall accommodate no more than 130 children between the ages of 3 and 6, with hours limited to Monday through Friday from 8:45 AM to 4:45 PM.
4. The child care center shall at all times comply with requirements of the Kentucky Cabinet for Health and Family Services.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photographs of the subject property were not displayed.

Representation – Ms. Mandy West, Weekday Education Director, was present for the applicant. Chairman Brown asked if she understood, agreed with, and would abide by the conditions recommended for approval of their request. She replied in the affirmative.

Board Questions – Chairman Brown understood that only 90 children were approved for this day care in 1997. However, the staff report states that there are up to 130 children cared for there. Ms. West replied that not all 130 are at the child care facility at the same time. Some children are only cared for on Monday, Wednesday and Friday, while others are cared for only on Tuesday and Thursday. There was a maximum of 112 children cared for at any one time. She stated that, the state has permitted them to care for more than 200 children.

Chairman Brown asked if this constituted a violation of the prior conditional use permit. Mr. Hume replied that this application was the result of his annual inspection of the child care facility. There he found more than 90 children, and thought the church needed to come into compliance. He felt that the children there were well cared for, and that the church was a "good steward" of their conditional use permit. Mr. Hume wanted the church to be up to date. Chairman Brown thanked Mr. Hume for this helpful information.

Chairman Brown wanted to make sure that Ms. West understood that, before the 131st child attends this facility, that the church came back to the Board for permission. Ms. West agreed and understood.

Action – A motion was made by Ms. Edwards, seconded by Ms. Moore, and carried unanimously to approve **C-2008-100: PORTER MEMORIAL BAPTIST CHURCH** appeal for a conditional use permit to expand a child care facility at the church from 90 to 130 children, in a Single Family Residential (R-1D) zone, on property located at 4300 Nicholasville Road, for the reasons provided by the staff, and subject to the conditions recommended by the staff.

- B. **Transcript or Witnesses** - Any applicant or objector to any appeal before the Board was entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn. There was no response.
- C. **Variance Appeals** – None remaining.

D. **Conditional Use Appeals** – None remaining.

E. **Administrative Reviews** – None remaining.

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time. There was no response.

A. **UPDATE ON REQUIRED TRAINING** – Mr. Stumbo asked if the staff could provide an update to the Board members on their required continuing education training. Mr. Sallee replied that the staff could provide that information to the Board members in the next week or so.

B. **OFFICIAL MEETING AND FILING SCHEDULE FOR 2009** – Mr. Sallee presented copies of the recommended "Official Meeting and Filing Schedule for 2009" and requested the Board's consideration of adoption. After adoption by the Board, as required by the Board's By-Laws, the 2009 schedule will be distributed to Board and to the public. Mr. Sallee stated that the Board's By-Laws require adoption of an annual schedule in advance.

Chairman Brown asked if the Board was agreeable to the proposed meeting schedule.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously to approve the recommended Meeting & Filing Schedule for 2009, as presented.

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

A. **Landscape Review Committee** - The term of Mike Cravens, Lexington Homebuilders member of the Landscape Review Committee, will expire on November 30 of this year. Mr. Cravens has agreed to be re-appointed for another four-year term. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jim Griggs	Board of Adjustment
11/30/2009	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2010	Mr. Richard Weber	Landscape Architect
11/30/2011	Ms. Melissa Stephan	Tree Board
11/30/2012	Mr. Mike Cravens	Lexington Homebuilders

Mr. Sallee asked that the Board consider the recommended appointment for the Landscape Review Committee. He stated that this group meets and advises the Board when variances are requested to the landscaping requirements of Article 18 of the Zoning Ordinance.

Mr. Brown asked if anyone on the Board opposed Mr. Griggs' appointment. There was no objection.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards, and carried unanimously to reappoint the members recommended to the Landscape Review Committee.

B. The staff would like to wish the Board members and their families a safe and happy Thanksgiving holiday.

VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be December 12, 2008.

VII. **AUDIENCE ITEM** – Mr. Buddy Hoskinson, Executive Director for Spencerian College on Winchester Road, was present to discuss case **A-2008-111: EMERGENCY DISASTER SERVICES** on property located at 801 East New Circle Road, on the former Continental Inn property. He and two other citizens were present to discuss this matter with the Board.

Chairman Brown stated that this item had been postponed at the start of this meeting to the Board's December 12 meeting. Mr. Hoskinson stated that Spencerian College was worried about the ability of the Fire Department to serve the west side of their building, in case of an emergency, given the current storage of truck trailers on the site.

Mr. Stout asked if anything could be done in the weeks between now and the December 12 meeting. Mr. Hume replied that a meeting is planned with that applicant's attorney next Tuesday, and that his office could bring this issue to their attention at that time. Chairman Brown asked if the College would be able to contact Building Inspection about their concerns. Mr. Hume replied in the affirmative.

Mr. Hoskinson stated that they were worried about possible fire damage to the College. Mr. Hume replied that this was the first he had heard of this problem. Mr. Hoskinson said he would provide some photos to Building Inspection and to Mr. Hume.

VIII. **ADJOURNMENT** - There being no further business, the Chairman declared the meeting adjourned at 1:26 p.m.

Peter Brown, Chairman

James Griggs, Secretary