

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

May 29, 2009

- I. **ATTENDANCE** - The Chair will call the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, May 29, 2009.
- II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the December 12, 2008 and the January 30, 2009 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-2009-33: BROADVIEW BUILDINGS, INC.** - appeals for a variance to reduce the required front yard from 300 feet to 178 feet in order to construct a single family residence in the Agricultural Rural (A-R) zone, on property located at 3229 Iron Works Pike (Council District 12).

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, since the new residence will be located in the immediate vicinity of where a former residence was once located.
- b. The location of the original house site, presence of underground utilities to that site, and related

- improvements such as the existing plank fencing that surrounds the general area are all special circumstances that contribute to justifying a reduction of the 300' front yard requirement.
- c. Strict compliance with the Zoning Ordinance requirement is possible, but would require the removal of several trees and the relocation of underground utilities, to the detriment of the rural character of this area.
 - d. The circumstances surrounding the requested variance are not the result of actions taken by the appellant or current farm owner, but resulted from how this portion of the farm was developed many years ago.

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

1. The residence 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 construction.
3. Access to the residence shall be from the private drive that serves other portions of the farm, with no access to be provided directly to Iron Works Pike.
4. Sewage treatment shall be provided in accordance with the requirements of the Department of Health.

D. Conditional Use Appeals

1. **CV-2009-31: CLUB FACILITIES, LLC** - appeals for a conditional use permit to offer live entertainment and dancing as part of the operation of the open-to-the-public restaurant; and a variance to reduce the required 100-foot setback from the nearest residential zone to 19 feet in a Neighborhood Business (B-1) zone, on property located at 3256 Lansdowne Drive (Council District 4).

The Staff Recommended: Approval of the requested conditional use, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The provision of live entertainment and dancing will continue as it has been provided in the past when the club restaurant was strictly private. The indoor area where both entertainment and dancing will be provided is to be soundproofed to minimize the potential for noise disturbances. Restrictions on hours and the type of entertainment to be provided outdoors will help to minimize the potential for any disturbances from that aspect of the proposed musical entertainment.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommended: Approval of the requested variance, 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, since the decision to rezone the property to B-1 was made in response to a critical need relating to ensuring the long-term viability of the club, and was not made with the intent of attempting to circumvent any requirements of the Zoning Ordinance.
- b. The manner in which the club was developed many years ago, especially with regard to the location of the restaurant and outdoor patio, is a special circumstance that contributes to justifying a reduction in the required setback.
- c. Strict application of the Zoning Ordinance would effectively prevent the provision of any live entertainment and dancing at this restaurant location, at least as the recently renovated facilities have been laid out. Such an outcome could be considered as unreasonable and unnecessary, given the historical use of the property.

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

1. Live entertainment and dancing at this location may be provided in accordance with the submitted application and site plan, with outdoor entertainment to be limited to 6:00 PM through 9:30 PM on Monday through Saturday.
2. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days after action of the Board.
3. Outdoor entertainment shall consist only of individual musicians that use limited amplification, or two or more musicians when they are not amplified.
4. The indoor entertainment and dancing area shall be soundproofed to the maximum extent possible

using existing technology, in accordance with the requirements of the Division of Building Inspection.

5. The outdoor entertainment area shall be arranged, with a focus on the orientation of any amplification, to limit the potential for noise disturbances to surrounding residential properties, particularly those along Raven Road to the southeast of the outdoor patio.
6. In accordance with Article 8-16(d)5 of the Zoning Ordinance, live entertainment and/or dancing shall be provided in a manner that does not result in noise or other emissions creating a nuisance to the surrounding neighborhood.

2. **C-2002-2: THE EPISCOPAL DIOCESE OF LEXINGTON, INC.** - the Board of Adjustment has requested a revocation hearing for failure to comply with conditions imposed in January 2002, in association with a conditional use permit to occupy an existing building as a church (and offices), in a High Density Apartment (R-4) zone, on property located at 203 East Fourth Street (Council District 1).

The Board of Adjustment approved a conditional use permit in January 2002 for use of the subject property as a church and imposed several conditions for approval. Those conditions are as follows:

1. Establishing the church shall be done in accordance with the submitted application and an amended site plan showing a paved main driveway and a minimum of six paved parking spaces on the site.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to undertaking any construction or renovation activities.
3. The proposed layout of the driveways, access points, and parking areas (including the differentiation between areas to be paved and areas to remain as gravel) shall be subject to approval by the Division of Traffic Engineering.
4. The paved parking areas shall have spaces delineated and shall be landscaped/screened according to Articles 16 and 18 of the Zoning Ordinance.
5. Any pole lighting for outdoor areas shall be of a shoebox design with light directed downward and away from adjoining properties to prevent any disturbance to area residents.
6. Should the appellant cease to either own or occupy the subject property, this conditional use shall become null and void.

The Division of Building Inspection will report at the hearing.

3. **C-2009-14: JOY & ASSOCIATES, INC.** - appeals for a conditional use permit to construct and operate a drive-through facility for a proposed pharmacy in the Downtown Business (B-2) zone, on properties located at 366, 370, 376 and 400 East Main Street (Council District 3).

The Staff Recommended: Approval, for the following reasons:

- a. A drive-through facility for a proposed pharmacy at this location should not adversely affect the subject or surrounding properties. Adequate vehicular stacking space and access from both East Main Street and East Vine Street will be provided. The facility has been designed to minimize any potential safety hazards, and raised and/or marked crosswalks will be provided at three locations to facilitate safe pedestrian movements from both East Main Street and East Vine Street to the pharmacy entrance.
- b. Landscaping required by the Zoning Ordinance will be augmented by stone and/or brick columns, as well as walls and/or decorative fencing, to improve the appearance of the parking lot that is proposed at a highly visible location in front of the new building. Architectural features, including the use of stone and brick exterior facing with windows, in addition to a prominent entrance feature, will serve to integrate the proposed building into the surrounding downtown environment.
- c. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation is made subject to the following conditions:

1. The drive-through facility shall be established in accordance with the submitted application and amended site plan of May 13, 2009, with the understanding that some further site plan revisions may be required by the Divisions of Engineering, Traffic Engineering, or Building Inspection to satisfy their requirements.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any demolition activities and prior to construction of the new facility.
3. The parking lot and associated traffic aisles shall be paved, with spaces delineated, and

landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.

4. The final design of the proposed access points, parking lot, and traffic aisles 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.
 6. Landscaping required by Article 18 of the Zoning Ordinance shall be augmented by features such as brick or stone columns and decorative fencing to provide an enhanced buffer and screen for the parking lot and drive aisles that will surround the proposed building and drive-through facility, as conceptually depicted in the landscaping plan submitted by the appellant dated 4-21-09.
 7. The exterior façade of the proposed building shall include stone and brick elements, with extensive use of windows, designed to complement the architectural features of buildings on the surrounding properties. In addition, a prominent architectural feature extending above the main roof line shall be provided at the front of the building, and extend (in some fashion) around the corner toward East Main Street. That entrance feature is intended to be a substantial walled and roofed structure, rather than a one dimensional parapet or false façade. These elements and features shall be described and depicted in detail in a set of elevation drawings, subject to review and approval by the Divisions of Building Inspection and Planning.
 8. Public right-of-way extending through a portion of the subject property shall be closed, and the individual lots consolidated, if deemed necessary.
 9. Any necessary utility relocations and easement releases shall be completed prior to the issuance of any building permits.
4. **C-2009-25: BALL & WRIGHT CAPITAL HOLDING CO., LLC** - appeals for a conditional use permit to construct and operate a drive-through facility for a proposed bank, in a Professional Office (P-1) zone, on property located at 998 Governors Lane (Council District 10).

The Staff Recommended: Postponement, for the following reasons:

- a. The proposed access to this property from Governors Lane is at a location that will not function properly due to the location of the existing median in the center of Governors Lane. This could lead to significant problems with regard to the ability of customers to safely enter and exit the property when using a drive-through facility.
 - b. A proposed amendment to the Final Development Plan that governs the development of the subject property and the adjoining property to the east is currently under review by the Planning Commission. Action by the Planning Commission has been postponed so that issues relating to access as well as internal circulation of vehicles between the two properties can be resolved. Since the impact to the drive-through is uncertain, the Board's consideration should be delayed accordingly.
5. **C-2009-26: LEXINGTON CEMETERY CO.** - appeals for a conditional use permit to add a columbarium to an existing mausoleum in an Agricultural Urban (A-U) zone, on property located at 833 West Main Street (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. The columbarium additions are very limited in size, and will be sited in a fairly isolated area of the cemetery where the existing mausoleum is located.
- 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 proposed building additions 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 construction.
 3. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
6. **C-2009-27: THE MARY E. WHARTON NATURE SANCTUARY AT FLORA CLIFF** - appeals for a conditional use permit to construct and occupy a visitor/education center as part of an existing nature sanctuary in the Agricultural Rural (A-R) zone, on properties located at 7950 & 8000 Elk Lick Falls Road and 6350 Cedarcreek Lane (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit will not adversely impact the subject or surrounding properties, and should benefit the general public. The proposed building will comply with the 300' minimum front yard requirement for properties in the A-R zone, and will be over 200' away from the nearest adjoining property to the south. Adequate parking will be provided, which will include convenient accommodations for handicapped persons. With the opening of a nature center, expanded opportunities to enjoy, appreciate and learn from this designated nature preserve will be forthcoming.
- b. All necessary public facilities and services are available and adequate for the proposed use, with sewage treatment and garbage pick-up to be handled privately.

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

1. The proposed nature center shall be operated as described in the submitted application, and constructed in accordance with a revised site plan indicating compliance with the 300' front yard requirement for principal buildings in the A-R zone. Additional site plan revisions are acceptable as determined to be necessary to satisfy requirements of the Divisions of Traffic Engineering and Engineering.
 2. The design of the access to Elk Lick Falls Road, driveway and off-street parking areas shall be subject to review and approval by the Division of Traffic Engineering.
 3. The access apron to Elk Lick Falls Road and handicap parking space (including access to the ADA ramp) shall be paved. All other vehicular use areas shall be graveled in a manner that maximizes the potential for retaining permeability, with the 18-space parking area and bus parking area to be bordered by railroad ties or another similar feature to prevent the spread of gravel.
 4. If deemed necessary by the Division of Engineering, a storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals.
 5. A sewage treatment system shall be installed and maintained in accordance with permitting requirements of the Department of Health.
 6. The facility shall not have any outdoor lighting (other than for security purposes), loud speakers, retail sales, restaurants or food service.
7. **C-2009-28: DONNITA K. HUGHES** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, on property located at 668 Lombardy Drive (Council District 6).

The Staff Recommended: Approval of a conditional use for family child care for up to ten children, for the following reasons:

- a. An increase of four children, from six to ten, allowed at this family child care should not adversely affect the subject or surrounding properties, provided that appropriate precautions are taken to ensure children's safety around the dogs and pool in the rear yard. Adequate parking is available in the existing driveway, and on-street parking is available on Lombardy Drive. A large back yard is already fenced for use as an outdoor play area.
- 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. Family child care shall be provided in accordance with the submitted application and site plan, with no more than ten children to be cared for between the hours of 6:00 AM and 6:00 PM on Monday through Friday. Any children cared for above the six that are allowed as an accessory use shall be limited to family members.
2. An occupancy permit shall be obtained from the Division of Building Inspection within two months following action by the Board.
3. Prior to obtaining an occupancy permit for this use, the back yard fencing shall be improved/maintained as deemed necessary to comply with the requirements of the Division of Building Inspection.
4. During times that children are using the back yard play area, the pool shall be completely covered, and the gated access to the pool shall be locked or otherwise secured to prevent entry into the pool area.
5. Activities in the outdoor play area shall be supervised at all times by at least one certified caregiver

when children are outdoors.

6. The facility shall be operated at all times in full compliance with requirements of the Kentucky Cabinet for Health and Family Services.
8. **C-2009-29: KERRY and TINA BALL** - appeal for a conditional use permit to establish a temporary real estate sales office in an Expansion Area Residential (EAR-1) zone, on property located at 2149 Winning Colors Lane (Council District 12).

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 the sales office will be discontinued after no more than two years.
- 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 sales office shall be established in accordance with the submitted application and site plan, with the sales area to be limited to the first floor of the residence in a single room of less than 400 square feet.
 2. An occupancy permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.
 3. The office shall be used solely for sales purposes, and not by subcontractors, architects, or others typically involved in the home building industry.
 4. The sales office shall be discontinued after no more than two years from the date of Board action.
9. **C-2009-30: ST. LUKE UNITED METHODIST CHURCH** - appeals for a conditional use permit to expand the church and accessory parking in a Planned Neighborhood Residential (R-3) zone, on property located at 2351 Alumni Drive (Council District 7).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. Provisions have been made to accommodate storm water management needs, and landscaping will be provided for the new parking areas as well as for portions of the property perimeter where existing landscaping will be augmented.
- 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 new building and expanded parking areas shall be constructed in accordance with the submitted application and site plan, with the understanding that some revisions may be required to satisfy requirements of the Divisions of Engineering and Traffic Engineering.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the parking lot additions, new drive aisles and related improvements shall be subject to review and approval by the Division of Traffic Engineering.
4. All new parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. Existing landscaping along the rear property line shall be augmented as necessary to provide a continuous 10' wide buffer comparable to that required by Article 18-3(a)(1)2 of the Zoning Ordinance, with that buffer to include plantings rather than a fence, wall or earth mound. Other areas of existing landscaping, including that for the existing parking lots, shall be refurbished as necessary to comply with the requirements of the Division of Building Inspection.
6. 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.
7. Any pole lighting for the new parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing surrounding residential properties.

E. **Administrative Review**

1. **A-2009-32: LIBERTY WORSHIP CENTER** - appeals for an administrative review to allow a 200 square-foot sign to be placed on an existing 50-foot-tall support structure in a Professional Office (P-1) zone, on property located at 1975 Haggard Court (Council District 2).

The Staff Recommended: Disapproval, for the following reasons:

- a. The proposed freestanding sign, with a height of 50' and a size of 200 square feet, would be five times taller and five times larger than what is permitted in the P-1 zone. Pursuant to Article 17-7(e) of the Zoning Ordinance, a freestanding identification sign of 40 square feet is permitted in the P-1 zone, with a maximum height of ten feet.
- b. The existing 50' tall and 20' wide sign support is considered a nonconforming structure on this P-1 property. Adding a nonconforming 200 square-foot sign would increase the nonconformity of the structure, which is contrary to the intent and restrictive provisions of Articles 4-2 and 4-4(a) 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.
- 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 on Wednesday, June 24, 2009 at 4:00 p.m. in the Division of Planning conference room. The title of this conference is "Planning Law Review" and will count toward 1.5 hours of House Bill training credits 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 June 26, 2009.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.