

**KENTON COUNTY PLANNING COMMISSION
REGULAR MEETING**

Minutes

Mr. Wells, Chair, called the meeting to order at 6:15 PM on Thursday, November 5, 2009, and opened the proceedings with the Pledge of Allegiance and an invocation by Mr. Wells. The meeting was held in the Commission Chambers of the NKAPC Building in Fort Mitchell. Attendance of members (for this meeting as well as those during the year to date) was as follows.

Member	Jurisdiction	2009											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Mark Barnett	Taylor Mill	X	X	X	X	X	X	X	X	X	X	X	X
Diane Brown	Erlanger	-	X	X	X		X	X	X	X		X	
Barbara Carlin	Kenton Co	X	X	X	X	X	X	X	X	X	X	X	X
Barry Coates	Covington	X	X	X		X	X	X	X	X	X	X	
James Cook	Kenton Co	X	X		X	X	X	X	X	X		X	
Paul Darpel	Edgewood	X		X	X	X	X		X	X	X	X	
Chuck Eilerman	Covington	X	X	X	X	X		X		X	X	X	
Tom France, Vice-Chair	Ludlow	X	X	X	X	X	X	X	X	X	X	X	
David Hilgeford	Villa Hills		X	X	X	X	X		X	X	X		
Lynn Hood	Crestview Hills	X	X	X	X	X	X	X	X	X	X		
Marc Hult	Covington	X	X	X	X	X	X	X	X	X		X	
Kent Marcum	Fort Wright	X	X	X		X	X	X		X	X	X	
Brandon Raybourne	Elsmere	X	X		X		X		X	X	X	X	
Mark Rogge	Crescent Springs	X	X	X		X	X	X	X	X	X	X	
Phil Ryan, Treasurer	Park Hills	X	X		X	X		X	X	X	X	X	
Maura Snyder	Indepen		X	X	X	X	X	X	X	X	X	X	
Paul Swanson	Erlanger	X	-	-	-	-	-	-	-	-	-	-	-
Joe Tewes	Bromley	X	X	X	X	X		X	X	X		X	
John Wells, Chair	Fort Mitchell	X	X	X	X	X	X		X	X	X	X	
Gil Whitacre	Lakeside Park	X	X			X							

“X” denotes attendance at the regular meeting and “x” denotes attendance at the continuation meeting.

“*” denotes arrival after roll call was taken.

“-“ denotes not on the planning commission.

Also present were Mr. Matt Smith, Legal Counsel, and the following NKAPC staff: Michael Schwartz, AICP, Deputy Director for Current Planning, and Scott Hiles, Deputy Director for Infrastructure Engineering.

AGENDA:

There were no changes or modifications to the agenda for the month of November. A motion was made by Mr. France to accept the agenda with Mr. Tewes seconding the motion. A roll call vote on the matter found Mr. France, Mr. Tewes, Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Eilerman, Mr. Hult, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Ryan, Ms. Snyder, Mr. Tewes and Mr. Wells in favor. The motion carried.

APPROVAL OF THE MINUTES:

Ms. Snyder made the motion to approve the minutes from October. Mr. Eilerman seconded the motion. A roll call vote on the motion found Ms. Snyder, Mr. Eilerman, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. France, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Ryan and Mr. Wells in favor. Mr. Brown, Mr. Cook, Mr. Hult and Mr. Tewes abstained. The motion carried.

ACTIONS SINCE LAST MEETING:

The memorandum regarding the actions taken by Staff over the past month was distributed for informational purposes only. There were no questions or comments.

RECEIPTS AND EXPENDITURES:

Ms. Snyder made the motion to accept the report. Mr. Ryan seconded the report. A roll call vote on the matter found Ms. Snyder, Mr. Ryan, Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Hult, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Ryan, Mr. Tewes and Mr. Wells in favor. The motion carried.

RECENT ACTIONS BY LEGISLATIVE BODIES:

No action required.

Mr. Wells stated an email had been received with regard to issue 1987R for a request to table the matter. A motion was made by Ms. Snyder and seconded by Mr. Ryan to table the matter for up to six months. A roll call vote on the matter found Ms. Snyder, Mr. Ryan, Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. Eilerman, Mr. France, Mr. Hult, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Tewes and Mr. Wells in favor. The motion carried.

PUBLIC HEARINGS:

1985R

FILE NUMBER: Z-09-10-01/1985R
APPLICANT: City of Fort Mitchell, per Steve Hensley
REQUEST: Proposed text amendments to the Fort Mitchell Zoning Ordinance: (1) adding cooperative parking regulations; and (2) reducing the required number of off-street parking spaces for shopping centers

Staff presentation and Staff recommendation by Mr. Mike Schwartz.

NKAPC STAFF RECOMMENDATION

RECOMMENDATION A: To approve the proposed text amendment adding cooperative parking regulations.

RECOMMENDATION B: To approve the proposed text amendment reducing the required number of off-street parking spaces for shopping centers

Comprehensive Plan Documentation:

- Date of Adoption by the Kenton County Planning Commission: December 13, 2006

Supporting Information/Bases For NKAPC Staff Recommendation:

RECOMMENDATION A:

1. The proposed text amendment adding cooperative parking regulations (see Attachment A) is allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statute (KRS) 100.203 (1).
2. The proposed text amendment adding cooperative parking regulations (see Attachment A) is appropriate. Within multi-tenant shopping centers, it is accepted that the anchor store will be a draw for the other tenants in the development. This draw reduces the overall traffic generation of the development and also reduces the overall number of off-street parking spaces.
3. The proposed text amendment adding cooperative parking regulations (see Attachment A) is reasonable in that it will reduce the amount of impervious surface and the amount of stormwater runoff.

RECOMMENDATION B:

1. The proposed text amendment reducing the required number of off-street parking spaces for shopping centers (see Attachment B) is allowed to be included within the text of the zoning ordinance as authorized by Kentucky Revised Statute (KRS) 100.203 (1).
2. The proposed text amendment reducing the required number of off-street parking spaces for shopping centers (see Attachment B) is appropriate in that it is generally consistent with the standards included within the Institute of Transportation Engineers (ITE) Parking Generation manual.

The Institute of Transportation Engineers (ITE) Parking Generation report (2nd edition, 1987) indicates an average of 3.6 off-street parking spaces for each 1,000 square feet of gross leasable area for shopping centers.

3. The proposed text amendment reducing the required number of off-street parking spaces for shopping centers (see Attachment B) is consistent with a previous recommendation made by the NKAPC staff and the KCPC.

On January 4, 1990, the Kenton County Planning Commission submitted an application to amend the text of all zoning ordinances within Kenton County, reducing the required number of off-street parking spaces for shopping centers to 4.0 spaces for every 1,000 square feet of gross leasable area (Z-90-01-02/937R). On January 26, 1990, the NKAPC staff recommended approval of the proposed text amendment. On February 1, 1990, following the public hearing, the KCPC recommended approval of the proposed text amendment.

No one registered to speak for, against or neutral on the issue.

Mr. Eilerman asked for clarification on the cooperative parking. Mr. Schwartz explained that number was based on the number of uses involved. The public hearing was recessed for discussion. There being none the public hearing was closed. Mr. Barnett made the motion to approve both Recommendation A and B based on Staff's recommendations and rationale. Mr. Rogge seconded the motion. A roll call vote on the matter found Mr. Barnett, Mr. Rogge, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. France, Mr. Hult, Mr. Marcum, Mr. Raybourne, Mr. Rogge, Mr. Ryan, Ms. Snyder, Mr. Tewes and Mr. Wells in favor. The motion carried.

1986R

FILE NUMBER: Z-09-10-02/1986R

APPLICANT: City of Erlanger, per Mark Stewart

REQUEST: a proposed text amendment to the Erlanger Zoning Ordinance adding "Fuel dispensing facilities when incidental to and operated as a part of and located within 1,000 feet of a grocery store containing at least 60,000 gross square feet" to the list of permitted uses within the NC (neighborhood commercial) Zone.

Staff presentation and Staff recommendation by Mr. Mike Schwartz.

NKAPC STAFF RECOMMENDATION

Disapproval

Comprehensive Plan Documentation:

- Date of Adoption by the Kenton County Planning Commission: December 13, 2006

Supporting Information/Bases For NKAPC Staff Recommendation:

1. The proposed text amendment (see Attachment A) contradicts KRS 100.203 which states that “Cities and Counties may enact zoning regulations which shall contain: (1) A text, which shall list the types of zones which may be used, and the regulations which may be imposed in each zone, which must be uniform throughout the zone...”.

The proposed text amendment provides for several criteria in which a fuel dispensing facility must meet in order for it to be considered a permitted use. Other uses permitted within the NC Zone do not have any criteria placed on them.

Mr. Stewart addressed the Commission as the Zoning Administrator for Erlanger. He stated he was available to answer any questions. Mr. France then asked about the distance of 1,000 feet as it relates to this issue. Mr. Stewart stated there are 2 to 3 lots between the grocery store and the proposed site. Mr. France stated his concern is that the text does not specifically spell out the fact that this is an offsite location. He further stated it might have been better if the text stated “off site fuel dispensing facilities...” The public hearing was recessed for discussion. The public hearing was closed. A motion was made by Mr. Eilerman to approve based upon discussion and presentation and also that there is a precedent with the city as to the use. Ms. Brown seconded the motion. A roll call vote on the matter found Mr. Eilerman, Ms. Brown, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Marcum, Mr. Rogge and Mr. Wells in favor. Mr. Darpel, Mr. France, Mr. Hult, Mr. Raybourne, Mr. Ryan, Ms. Snyder and Mr. Tewes voted against. The motion was approved with a vote of 9-7.

1988R

FILE NUMBER: Z-09-10-04/1988R
APPLICANT: City of Edgewood, per Roger W. Rolfes, City
REQUEST: a proposed text amendment to the Edgewood Zoning Ordinance adding “Health clinics and health spas” to the list of permitted uses within the IP (Industrial Park) Zone

Staff presentation and Staff recommendation by Mr. Mike Schwartz.

NKAPC STAFF RECOMMENDATION

Disapproval

Comprehensive Plan Documentation:

- Date of Adoption by the Kenton County Planning Commission: December 13, 2006

Supporting Information/Bases For NKAPC Staff Recommendation:

1. The proposed text amendment to the Edgewood Zoning Ordinance adding “Health clinics and spas” to the list of Permitted Uses in the IP (Industrial Park) Zone is not consistent with the 2006 Area-Wide Comprehensive Plan Update for Kenton County, which states

that there is a scarcity of industrial land within Kenton County, and emphasizes the need to retain industrial land for industrial uses. “Health clinics and spas” are not industrial in nature and would permit land zoned for industrial activity to be developed with uses that are more appropriate in other zones.

2. The proposed text amendment is not consistent with the intent of the IP Zone. The IP Zone is designed to provide for various manufacturing activities and similar kinds of uses, and to permit customary accessory buildings and uses, which are required to maintain or support any use permitted in these zones.
3. Disapproval of the proposed text amendment to the Erlanger Zoning Ordinance adding “Health clinics and spas” to the list of permitted uses in the IP Zone is consistent with previous staff recommendations.

On February 9, 1993, the City of Erlanger, per Mr. David Hahn, submitted an application for NKAPC and KCPC review and recommendation on proposed text amendments to the I-1 Zone adding several uses, including corporate, regional and administration offices, and professional, medical and dental offices to the list of permitted uses (Z-93-02-02/1079R). On February 26, 1993, the NKAPC staff recommended disapproval of the portion of the text amendment adding professional, medical, and dental offices to the list of permitted uses in the I-1 Zone. On March 4, 1993, following the public hearing, the KCPC recommended disapproval of that portion of the proposed text amendment adding professional, medical, and dental offices to the list of permitted uses in the I-1 Zone. The City of Erlanger subsequently approved the text amendments.

On March 7, 2003, the City of Erlanger, per Mr. David Hahn, submitted an application for NKAPC and KCPC review and recommendation on proposed text amendments to the IP-1 (Industrial Park-One) Zone, IP-2 (Industrial Park-Two) Zone, and the IP-3 (Industrial Park-Three) Zone, adding several uses, including corporate, regional, and administrative offices, and professional, medical and dental offices to the list of permitted uses (Z-03-03-01/1613R). On March 27, 2003, the NKAPC staff recommended disapproval of the portion of the text amendment adding professional, medical, and dental offices to the list of permitted uses in the IP-1, IP-2, and IP-3 Zones. On April, 3 2003, following the public hearing, the KCPC recommended disapproval of that portion of the text amendment adding professional, medical, and dental offices to the list of permitted uses in the IP-1, IP-2, and IP-3 Zones. The City of Erlanger subsequently approved the text amendments.

Mr. Guenther addressed the Commission and stated he was the attorney on behalf of Lipo Laser, LLC which wants to open a business on Dudley Road. He stated when his client realized he was not in compliance he went to the city. He stated this area is really a mixed use area. Mr. Guenther stated he feels the use his client is recommending is an appropriate use for the area. He further stated they do not feel there will be any traffic issues with this use. Mr. Guenther stated the site has already been developed and only a small portion will actually be used for the Lipo Laser facility. He stated the owner of Lipo Laser also owns and operates Edgewood Electric which is located on the same site.

Mr. Rolfes addressed the Commission and stated there is not enough room for a zone change so they feel a text amendment is appropriate. He stated no additional industrial space would be taken as the owner owns Edgewood Electric. He further stated the city doesn't see it as a major problem for the area. He further noted they respect the opinion of Staff but noted they are not building any additional facility and that it would be located in an existing building so no industrial space would be lost. He also noted due to the economy the business owner is merely looking to expand his business on the same site as an existing one. The public hearing was then recessed for discussion. The public hearing was closed. A motion was made by Mr. Darpel to approve based on the fact that the use fits into the current area and the location is unique enough to warrant the use. Mr. Cook seconded the motion. A roll call vote on the matter found Mr. Darpel, Mr. Cook, Mr. Barnett, Ms. Brown, Mr. Coates, Mr. Eilerman, Mr. France, Mr. Hult, Mr. Marcum, Mr. Rogge and Mr. Wells in favor. Mr. Coates, Mr. Raybourne, Mr. Ryan, Ms. Snyder and Mr. Tewes voted against. The motion carried with a vote of 11-5.

W-705

APPLICANT: Grand Communities, Ltd.

LOCATION: an approximate 67-acre area located along the south side of Bristow Road, between Independence Road and Calvary Road, approximately 1,200 feet west of Independence Road in unincorporated Kenton County.

REQUEST FOR ACTION: to grant a waiver to the requirements of Section 5.3 of the Kenton County Subdivision Regulations; granting the request would waive the requirement for sidewalk along the portion of Bristow Road that fronts the plat.

Staff presentation and Staff recommendation by Mr. Scott Hiles.

NKAPC STAFF RECOMMENDATION

That the planning commission deny the requested waiver of Kenton County Subdivision Regulations Section 5.3 requiring sidewalk to be constructed along the portion of Bristow Road that fronts the subdivision.

Bases:

1. The modification does not include the findings necessary to grant a waiver to the regulations as set forth within Section 6.5 A, or B, or C, or D.
2. Subdivision Regulations Section 5.3 requires sidewalk along all streets.
3. While there is currently no existing sidewalk along this portion of Bristow Road, not providing a sidewalk along the entire frontage of this proposed development will eliminate the possibility of a sidewalk extension and interconnection with future development.
4. Requiring that sidewalks be constructed along the portion of Bristow Road that fronts the proposed development is consistent with the Goals and Objectives of the 2006 Comprehensive Plan Update 2006-2026. As stated in the development concepts in Chapter

3: Section 5 “*Development plans and subdivision plats should be evaluated to ensure that all modes of transportation can be accommodated. (e.d. bus pullouts and/or stops within or connected by pedestrian access; bicycle parking provided; pedestrian access from all roads to buildings with safe routes across parking areas).*”

Additional Information:

The Kenton County Subdivision Regulations clearly requires sidewalk along the portion of Bristow Road fronting the subdivision. However this particular site offers a unique opportunity for an alternative approach to this waiver request. Distinctive characteristics of this site make this application a candidate for granting a waiver in comparison to others applications that have included the same request. If the planning commission chooses to explore this alternative approach of granting a waiver staff is providing the following considerations for doing so:

1. *Location:* The proposed development is located in the upper reaches of the Banklick Creek Watershed. Since 1998, the entire 19 mile length of Banklick Creek has been on Kentucky’s “impaired” list of waterways. The severity of Banklick’s flooding and water quality problems attributed to land use activities resulting in stormwater runoff and lack of tree canopy preservation continues to be well documented. The *Comprehensive Plan Update: 2006-2026* recognizes the need to address the issues in the Banklick Creek Watershed.
2. *Proximity to the new proposed KY 536:* Current discussions with the Transportation Cabinet indicate the development is located in the general vicinity from the current alignment of the proposed new KY 536. Preliminary design of the roadway illustrates a sidewalk on one side and a multi-use path on the other side. Sidewalks provided within this development along the road extending from Bristow into the development and along streets extending into adjoining developments will enable future residents of the subdivision adequate and safe access. It is also essential that when land across this development on Bristow Road develops that a pedestrian connection be considered from Bristow Road to new KY 536.
3. *High Quality Forest Cover:* In 2003, the Banklick Watershed Council in collaboration with several agencies undertook a project called the BACE (Banklick Creek Watershed Analysis and Issue Characterization Project for Education and Outreach) project that included a GIS analysis of high quality forested areas where features are present that significantly contribute to protecting water quality and moderating water quantity in the watershed.

The front portion of this development adjacent to Bristow Road is documented as having high quality forest cover. With the issues related to Banklick Creek Watershed as outlined above, within which this development is located, the cumulative protection of high quality forest cover areas is critical to the health of the watershed.

If the planning commission chooses to grant the waiver, in order to help ensure the protection of this high quality forest cover area during construction staff would recommend requiring the

following conditions.

It is important to note that if these conditions are not required then essentially the bases for granting the waiver could be rendered moot. In addition, if these conditions are required but not implemented, the waiver will be rendered void.

1. That the limits of disturbance required for land development including roadways shall be clearly indicated on the initial improvement plan / grading plan, shall contain the smallest amount of land possible and shall not exceed the disturb limits as shown on the exhibit provided by the applicant.
2. That a written statement from an certified arborist be submitted prior to approval of the initial final plat ensuring the following:
 - a. That condition #1 (above) has been complied with; and
 - b. That all appropriate pre-construction tree protection techniques were employed and sustained during construction to ensure protection of the tree area along Bristow Road.

Mr. Huss addressed the Commission and stated Mr. Hiles pretty much covered everything and he doesn't have a lot to add. He stated with this development they tried to be sensitive to the destruction of trees. He stated with the turn lanes required they are aware of what will be necessary in order to put in those turn lanes. He stated he is asking for a waiver request and if so would agree to the conditions of Staff. Mr. Wells asked if any consideration was given to putting in a wall along with the sidewalks. Mr. Huss stated it becomes a cost issue. He stated the area is steep to put in sidewalks. Mr. Hult then stated the map does not show a 3-1 grade as the applicant stated that are present in areas along where sidewalks are required. Mr. Huss then stated the grading information exists, they just didn't feel it was necessary given the fact that Cardinal Engineering prepared the drawings. Mr. Hiles then stated if necessary the matter could be tabled and the burden put on the applicant to provide the information necessary. Mr. Huss then stated they do not want to tear down the trees and that it why they are requesting the waiver. The public hearing was then recessed for discussion. The public hearing was closed. Mr. Raybourne then noted the scale ratio is incorrect on the drawing and stated the scale actually is probably more like the 3:1. Mr. Ryan then asked if Mr. Huss was opposed to tabling and coming back with additional information. Mr. Huss than stated he would not be opposed to that and it wasn't like they were trying to hide anything. Mr. Tewes then stated everyone seemed to be concerned with the trees and that he would make a motion to table the matter to get more information. Mr. Barnett then asked if the Commission could then advise what additional information they would require if it is tabled. A motion was then made to table the matter for up to 30 days by Mr. Tewes. Mr. Hult seconded the motion. Mr. Raybourne then stated he didn't feel comfortable tabling when he doesn't know what would be gained from that anyway. He further stated it's questioning a reputable firm when a lot of time and money has been spent to prepare the document. A roll call vote on the motion found Mr. Tewes, Mr. Hult and Mr. France in favor. Mr. Barnett, Ms. Brown, Ms. Carlin, Mr. Coates, Mr. Cook, Mr. Darpel, Mr. Eilerman, Mr. Marcum, Mr. Rogge, Mr. Ryan, Ms. Snyder and Mr. Wells voted against. The motion failed. Ms. Brown then asked why the Commission is requiring them to build a sidewalk that for the

unforeseeable future there will not be any development on either side. Mr. Darpel then stated it is for planning and that if the opportunity is lost and another development goes in next year next to this development there will be no sidewalks. Ms. Brown then made the motion to deny the request for a waiver because it does not meet the requirements necessary to grant the waiver. Mr. Darpel seconded the motion. A roll call vote on the matter found Ms Brown, Mr. Darpel, Mr. Barnett, Ms. Carlin, Mr. Coates, Mr. Eilerman, Mr. France, Mr. Hult, Mr. Marcum, Mr. Rogge, Ms. Snyder and Mr. Wells in favor. Mr. Cook, Mr. Raybourne, Mr. Ryan and Mr. Tewes voted against. The motion carried with a vote of 12-4.

Unfinished Business:

Reports from Committees:

By-Laws – Nothing to report.

Executive- No meeting held but Mr. Wells stated they need to schedule a meeting.

Model Zoning Ordinance – No report.

Subdivision Regulations Review – Nothing to report.

Report from legal counsel – Nothing to report.

Announcements from Staff – Mr. Schwartz stated a continuing education opportunity would be held next Tuesday regarding the comprehensive plan. He asked that those interested contact Lori so appropriate accommodations would be made.

Mr. Wells then commented that Lynne Hood has had back surgery and the Commissioners wish her well and hope to see her soon.

Correspondence – Nothing to report.

New Business: None.

Public Comments: None.

There being nothing further to come before the Commission, Ms. Snyder made the motion to adjourn. Mr. Eilerman seconded the motion. The meeting then adjourned at 8:55 p.m.

APPROVED:

Chair

Date