

ZONE CHANGE AND VARIANCE STAFF REPORT

City-County Planning Commission
1141 State Street
Bowling Green, Kentucky 42101
(270) 842-1953

Summary: The applicants propose to rezone a tract of land from **R-E** (Residential Estate) to **NB** (Neighborhood Business) in order to establish a business for pet cremation on 1.607 acres. The applicants have agreed to certain site restrictions as outlined in the Binding Elements. The applicants have also request a variance of three (3) foot variance from the ten (10) foot side yard setback required for a commercial district (**OP-R, NB, P and CB**) adjacent to a residential district.

Docket Number: 2011-16-Z-CO

Public Hearing Date: July 7, 2011

Pre-application Conference: March 24, 2011

Property Owner(s);

Robbie Gouvas & Cindy Young
1534 Morehead Road
Bowling Green, KY 42101

Development Plan: This zoning map amendment request was filed with a General Development Plan (Binding Elements).

Zone Map Amendment Request:

FROM: R-E (Residential Estate)
TO: NB (Neighborhood Business)

Location of Proposed Zone Change:

1300 Morehead Road

Acreage or Square Footage of Tract:

1.607 Acres (70,000.92 Sq. Ft.)

PVA Parcel Number:

030A-43B-001

Site District: Rural Conservancy District

Focal Point: 111-3 Murphy Road

Development Status: Transitional

Infra Status: U (Sanitary Sewer is Unavailable)

Characteristics: Agriculture/Open Space. Undergoing gradual transition from agriculture to low density residential.

Existing Land Use: Residential/Vacant

Zoning History: **AG** (Agriculture) is the original zoning for this property. The property was rezoned to **R-1** (Single Family Residential) in 1977. The property was converted to **R-E** (Single Family Residential) in 2001.

Surrounding Zoning and Land Use: See attached maps.

Soil Analysis:

Approx. 64% CrB: Crider silt loam, 2-6% slopes

Approx. 36% FeC: Fredonia-Vertrees complex, 6-12% slopes, very rocky

Flood Plain: The property is not located in the 100-year flood area according to FEMA FIRM map # 21227CO295 E.

Traffic Considerations: The property has frontage on the Morehead Road, a County maintained roadway with fifty (50) feet of right-of-way and eighteen (18) feet of pavement width.

Additional Documentation Required:

N/A Traffic Impact Study

N/A Environmental Assessment

N/A Other

Water: There is an eight (8) inch waterline available along Morehead Road providing less than six hundred (600) GPM with more than twenty (20) PSI. This site does not meet the fire control standards for Warren County.

Sewer: There are no sanitary sewers within 1,500 feet of the property. The applicants should contact the Barren River District Health Department for the approval of improvements to the current on-site septic system.

DEVELOPMENT PLAN REVIEW

Comprehensive Plan Element:	Application:
<p>General placement of the building(s), maximum height of the building(s), and the bulk of the building(s).</p> <p>Intended use of the property and building(s).</p>	<p>The applicant intends to use the property for a pet cremation business. According to the Binding Elements submitted, the use of the property shall be limited to the pet cremation (Binding Element 5).</p> <p>The proposed location for the cremation unit is in an existing garage with the stack to extend 2 feet above the existing roof.</p>
<p>Design elements (facade treatments, signs, drainage, utilities, sidewalks, gutter and curb, etc).</p>	<p>No signage shall be used on the property (Binding Element 3).</p>
<p>General location of internal streets and travelways, average daily trips (ADT) generated by the proposed use, access points to existing streets and parking.</p>	<p>The property shall be served by the existing access points on to Morehead Road which shall be a driveway of at least twelve (12) feet in width. All parking and travel ways shall be paved within one year of the recording of these Binding Elements (Binding Element 2).</p>
<p>Maximum density level, intensity of use, or maximum number of lots.</p>	<p>The subject property will limit the hours of operation for the business from 7:30 a.m. to 7:30 p.m. Monday-Saturday and shall not be open to the public (Binding Element 4).</p>
<p>Lighting plans.</p>	<p>Lighting on the property shall be limited to security lighting only (Binding Element 8).</p>
<p>Landscaping.</p>	<p>The property shall maintain the existing tree-line as a natural landscape buffer along the northern side of the property and shall install a minimum of a ten (10) foot landscape buffer along the southern property line. (Binding Element 7).</p>
<p>Provisions for sewage disposal.</p>	<p>The subject property shall be served by an on site septic system if required by the Barren River District Health Department. Any air quality or waste products generated by the site shall be in compliance with all state and federal guidelines, if applicable (Binding Element 1).</p>
<p>Provisions for fire protection.</p>	<p>The subject property shall meet the minimum commercial fire control standards of Warren County, Kentucky, including the installation of any necessary fire hydrants prior to occupancy, if applicable (Binding Element 9).</p>

Staff Items of Concern

- *Compatibility with surrounding properties;*
- *Adequate Lighting and Sign Controls;*
- *Adequate Fire Protection.*

COMPREHENSIVE PLAN COMPLIANCE

Comprehensive Plan Policy:	Application:
<p><u>LU-1A-2</u> In preparing a general development plan, surrounding property owners must be consulted prior to submitting a zone change request to the Planning Commission.</p>	<p>The Staff recommends to all applicants that they contact adjacent neighbors prior to the public hearing or have a neighborhood meeting, if possible. The applicants have informed the Planning Commission staff that an attempt was made to contact all adjacent property owners via face-to-face meetings.</p>
<p><u>LU-2C-3</u> Rural Conservancy Districts are designed to prevent the premature development of land at densities and patterns to which basic services or facilities cannot be provided, as well as, preserve rural farm land, valuable woodlands and open spaces.</p>	<p>An area with severe soil limitation with respect to septic tank and absorption field systems is one of the criteria that classify an area as a Rural Conservancy District; however, the property has obtained a letter from the Barren River District Health Department does allow the use to forego any connection to an on-site septic system. Since there is no connection or use of public water – the Health Department has determined that there is not a need for a septic system.</p>
<p><u>LU-5A-10</u> Any commercial use or development occupying structures less than 6,000 square feet may use on-site sewage disposal systems where public sanitary sewer is not available and where the site is at least three acres (or structures more than 6,000 square feet but less than 10,000 square feet located on at least five acres) and a site evaluation by the Health Department indicates that a conventional or alternative septic system is acceptable.</p>	<p>The Zoning Ordinance of Warren County was recently amended to allow for commercial and industrial uses on smaller lot sizes. If the total of all structures on the site is less than 4,000 square feet, then the site must be at least one (1.0) acre in size.</p> <p>The applicants have committed that the subject property shall be served by an on site septic system if required by the Barren River District Health Department. Any air quality or waste products generated by the site shall be in compliance with all state and federal guidelines, if applicable (Binding Element 1). A letter from the local health department indicates that no on-site septic system will be required for the proposed use.</p>
<p><u>LU-5A-11</u> All commercial developments must be served with public water adequate for urban fire flow of 600 GPM and 20 PSI and be protected with fire hydrants per the applicable ordinance.</p>	<p>There is an eight (8) inch waterline available along Morehead Road providing less than six hundred (600) GPM with more than twenty (20) PSI. This site does not meet the fire control standards for Warren County; however, the applicants have committed that the subject property shall meet the minimum commercial fire control standards of Warren County, Kentucky, including the installation of any necessary fire hydrants prior to occupancy, if applicable (Binding Element 9). The applicants have also contact the Woodburn Fire Chief and anticipate a forthcoming letter to act as a “will serve” commitment from the Fire Department. The staff has deemed this policy to be “in compliance” contingent upon receipt of the letter.</p>
<p><u>LU-5A-2</u> Commercial uses include all non-residential, non-industrial uses considered under this Plan.</p> <p><u>LU-5A-5</u> Commercial uses may be located adjacent to land zoned for residential uses if buffered from the residential uses by landscaping, lighting, and noise controls.</p> <p><u>LU-5A-6</u> Sites for commercial uses located where an adjoining property on two or more boundaries is residential, must maintain at least 50 percent of the site in green space not devoted to parking. Sites larger than one acre should reserve green space of at least 20 percent of the site or one-half acre, which ever is larger.</p>	<p>As can be seen from the attached Zoning Map, the properties that surround the zone change request are zoned R-E (Residential Estate) or AG (Agriculture).</p> <p>The property shall maintain the existing tree-line as a natural landscape buffer along the northern side of the property and shall install a minimum of a ten (10) foot landscape buffer along the southern property line (Binding Element 7).</p>

COMPREHENSIVE PLAN COMPLIANCE (Continued)

Comprehensive Plan Policy:	Application:
<p><u>LU-5A-12</u> New commercial development should follow sound design principles for buildings, parking, landscaping, signage, and setbacks.</p> <p><u>LU-5A-13</u> Commercial developments, including loading docks, vehicle use areas, public use areas, and outside storage areas should be screened from adjacent residential developments or districts.</p> <p><u>LU-5A-15</u> Freestanding signs should be in proper scale, style and bulk with the surrounding area. In general, signs should not be taller than the tallest structure on the site.</p> <p><u>LU-5A-16</u> All lighting should be directed downward and away from adjacent residential uses and should be shielded to prevent light trespass or reflection onto adjoining properties.</p>	<p>The applicants have submitted several Binding Elements to address concerns about the development of the property for commercial use. These Binding Elements stipulate:</p> <ul style="list-style-type: none"> • No signage shall be used on the property (Binding Element 3). • The subject property will limit the hours of operation for the business from 7:30 a.m. to 7:30 p.m. Monday-Saturday and shall not be open to the public (Binding Element 4). • The subject property shall meet a minimum commercial building code prior to occupancy, if applicable (Binding Element 6). • Lighting on the property shall be limited to security lighting only (Binding Element 8).
<p><u>LU-5D-1</u> Commercial uses are permitted where the transition is clearly toward commercial use and where maintenance of the historic, non-commercial use and character of the neighborhood is clearly not feasible.</p> <p><u>LU-5D-3</u> The mixing of commercial and non-commercial uses may be allowed where incompatibilities between uses can be minimized.</p>	<p>The applicants have committed that the subject property shall be limited to pet cremation (Binding Element 5).</p> <p>The applicants have further committed that in the event of cessation of use of the subject property for a period of twenty-four (24) consecutive months as a pet crematorium or upon the event of the sale of the property, the property owner shall apply to the City-County Planning Commission of Warren County, Kentucky, ninety (90) days prior to any sale, to revert the zoning classification to R-E (Residential Estate) (Binding Element 10).</p>
<p><u>LU-5F-1</u> New commercial development is not permitted.</p>	<p>The unique nature of the proposed use does require a commercial zoning classification; however, according to the local health department, area plumbing inspector and County Building Inspector – no septic tank, sprinkler system or water will be required for the site. (Please see attached letters)</p>
<p><u>TR-2</u> Measures must be taken to ensure that all private and public development is undertaken in a manner which minimizes increased traffic congestion on existing streets, roads and intersections.</p> <p><u>LU-5A-4</u> Commercial uses are appropriate only with direct accessibility to at least a minor collector street. Vehicular access to commercial development should be oriented away from residential neighborhoods.</p>	<p>The property shall be served by the existing access points on to Morehead Road which shall be a driveway of at least twelve (12) feet in width. All parking and travel ways shall be paved within one year of the recording of these Binding Elements (Binding Element 2).</p> <p>As mentioned above, the applicants have committed that the subject property will limit the hours of operation for the business from 7:30 a.m. to 7:30 p.m. Monday-Saturday and shall not be open to the public (Binding Element 4).</p>

COMPREHENSIVE PLAN COMPLIANCE SUMMARY

The staff evaluated the following **sixteen (16)** policies for compliance:

POLICIES IN COMPLIANCE

- LU-1A-2
- LU-5A-2, 5, 6, 10, 11, 12, 13, 15 & 16
- LU-5D-3
- TR-2

POLICIES **NOT** IN COMPLIANCE

- LU-2C-3
- LU-5A-4
- LU-5D-1
- LU-5F-1

MOTIONS

I make the motion to **approve** the proposed zoning map amendment, together with and conditioned upon the General Development Plan, docket number, **2011-16-Z-CO**. My motion is based on the findings of fact as presented in the staff report, and the testimony presented in this public hearing, that the zoning map amendment is in agreement with the adopted Comprehensive Plan as demonstrated by its compliance with the Comprehensive Plan's following Policies:

LU-1A-2;
LU-5A-2, 5, 6, 10, 11, 12, 13, 15 & 16;
LU-5D-3;
and
TR-2

Further, I request that the findings of fact and recommendation include a summary of the evidence and testimony presented by the proponents and/or opponents of the proposed amendment.

OR

I make a motion to **deny** the proposed zoning map amendment, docket number **2011-16-Z-CO**. My motion is based on the findings of fact as presented in the staff report and the testimony as presented in this public hearing that the zoning map amendment is **not** in agreement with the adopted Comprehensive Plan as demonstrated by its non-compliance with the Comprehensive Plan's following Policies:

(State Specific Policies, such as :)

LU-2C-3;
LU-5A-4;
LU-5D-1
and/or LU-5F-1

Further, I request that the findings of fact and recommendation include a summary of the evidence and testimony presented by the proponents and/or opponents of the proposed amendment.

DESCRIPTION OF REQUEST

The applicants are requesting a three (3) foot variance from the ten (10) foot side yard setback required for a commercial district (OP-R, NB, P and CB) adjacent to a residential district.

ZONING ORDINANCE REFERENCE

Article 4.6.8

VARIANCE REQUEST REFERENCE

The provision of the Zoning Ordinance from which this variance is requested is referenced in Article 4.6.8

Additional Setback Adjacent to Residential District

4.6.8.C.2 Commercial District Adjacent to Residential District (OP-R, NB, P and CB). A rear yard abutting a residential district shall have a minimum 25-foot rear yard setback, and a side yard abutting a residential district shall have a minimum 10-foot side yard setback.

VARIANCE FINDINGS

KRS 100.243 - Findings necessary for granting a variance:

- (1) Before any variance is granted, 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.
- (2) 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 regulation from which relief is sought.

MOTIONS

MOTION TO **APPROVE** THE **VARIANCE** REQUEST:

I make the motion to **approve** the request for a three (3) foot variance from the ten (10) foot side yard setback required for a commercial district adjacent to a residential district (OP-R, NB, P and CB) for the property located at 1300 Moorehead Road, Docket number 2011-V-13.

The testimony presented in this public hearing has shown that the granting of this 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.

OR

MOTION TO **DENY VARIANCE**:

I make the motion to **deny** the request for a three (3) foot variance from the ten (10) foot side yard setback required for a commercial district adjacent to a residential district (OP-R, NB, P and CB) for the property located at 1300 Moorehead Road, Docket number 2011-V-13.

Sufficient testimony has **not** been presented in this public hearing that the requested variance meet the criteria set forth in KRS 100.243, "Findings necessary for granting variances," as:

(Choose one or more appropriate finding(s) and specific items)

- **will** adversely affect the public health, safety or welfare.
 - **will** alter the essential character of the general vicinity.
 - **will** cause a hazard or a nuisance to the public
 - **will** allow an unreasonable circumvention of the requirements of the zoning regulations.
-
- The proposed development plan does **not** show that the requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
 - The proposed development plan does **not** show that the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant;
 - The circumstances are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulation from which relief is sought.