

SUPPLEMENTAL STAFF REPORT FOR CONDITIONAL USE REQUESTED FROM PLANNING COMMISSION

PLN-MAR-16-00013: BOONE CREEK PROPERTIES, LLC, DBA BOONE CREEK OUTDOORS

REQUESTED CONDITIONAL USE

Ecotourism and Agritourism activities – including a tree canopy tour, guided hiking trails, equine trails, canoeing and kayaking launch sites with recreational outfitters, educational classes, farm tours and a farm gift shop.

CASE REVIEW (Cont.)

Since the Zoning Committee met on Thursday, October 6th, the applicant has provided additional clarification about the proposed activities on the subject properties and submitted a revised development plan for the subject site. In addition, the staff has confirmed with the Department of Law that there is no legal reason why the Planning Commission cannot or should not review and act upon the requested conditional use application.

Previously, the staff reported that “the applicant plans to operate tree canopy tours within the safety guidelines of the Association for Challenge Course Technology (ACCT), and in accord with new regulations approved earlier this year in the Commonwealth of Kentucky for such uses.” The revisions approved earlier this year to KRS Chapter 247 also call for additional administrative regulations that are currently being researched. The Kentucky Department of Agriculture anticipates that the regulations will be drafted and adopted in 2017, and expects them to be effective in 2018. Even without a detailed program and set of administrative regulations in place, the Department of Agriculture will be utilizing third-party inspectors to verify that these “aerial recreational facilities” and “canopy tours” are safe for participants.

The staff requested additional information from the applicant about the following aspects of their conditional use application: equine trails, canoeing and kayaking launch sites, farm gift shop, farm tours, and the children’s play area and challenge ropes course.

The applicant informed the staff that horses would not be stabled on-site nor would customers be allowed to bring horses to this location for trail rides. Rather, the applicant intends to keep ponies and llamas on an adjacent farm and walk them to the site when historic farm tours are planned to utilize the animals. For this reason, the staff is not generally concerned about a large number of trailers or recreational vehicles at the facility. Any overflow parking areas should be indicated on the associated development plan, if deemed necessary.

The recreational outfitters will be located with the welcome center, and no other structures will be required for that use (former Jolly Roger Restaurant and Truck Stop building - a non-conforming structure). A temporary storage shed may be utilized to store the equipment during the off-season, but the Division of Building Inspection would not normally count such use as square footage as long as it was there for less than 6-months per year. Canoes and kayaks will launch from an existing natural limestone “put in” near the angler’s club lodge.

The applicant intends to offer educational sessions and training utilizing their equipment on-site. Such training may also involve temporary equipment for specialized classes. Such classes will be limited in size based upon the maximum capacity of the parking lot.

The proposed farm tours are also referred to as guided hiking throughout the applicant’s proposal. The applicant clarified to the staff that this is the same use and is intended to provide participants with the ability to walk to the 1787 mill site located along the creek, or in some rare cases, utilize ponies or llamas for the tours.

The applicant also clarified that parts of the property will remain an active farm and they wish to offer traditional farm crops and produce for sale in the requested farm gift shop.

The applicant also indicated that they would like to clarify their intention to have two different “tours” available to participants – the full tree canopy tour and a shorter family tour. Both will utilize the first four tree platforms, but the family tour would terminate in the children’s play area, prior to the long zip line which requires a minimum weight of 70 lbs. This will allow for the younger children to participate in the ecotourism activities on-site. This

additional information does not change the total square footage of the project, which does not exceed the 10,000 square-foot structure limitation established by Article 8-3(d) for conditional uses in the A-N zone. The family tour will require a termination point in the children's outdoor educational area. The tree necessary for this termination point has not yet been identified or verified, but will be determined in consultation with a certified arborist, and once complete, a platform will be constructed.

The tree canopy tour is to be located on the northern half of the subject property (on about 20 acres). The two tours previously described plan will now include: 8 zip lines, 3 sky bridges, 1 floating staircase, 1 rappel, 2 ladders, 16 tree platforms, 2 viewing platform/observation decks, a ropes challenge course, a natural/recreational activity area and a children's outdoor educational area.

The applicant has submitted a draft Best Practices Management Plan for the proposed outdoor recreational facility. Tree canopy tours can change over with time, since the trees can sustain damage or die, thus requiring modifications to a particular tour or course. The applicant has also submitted a Preliminary Assessment of Environmental Features and Sensitivities, which is 45 pages in length. This is now required by Article 8-3(d) of the Zoning Ordinance. The assessment, prepared by an experienced environmental management firm, states that "the planned development is expected to have a net positive impact on the natural resources of the property and potential sensitive habitat." The assessment makes this statement based on the fact that the canopy tour is by definition located substantially above the surface of the ground, the children's activity area and termination of the family tree canopy tour will be confined to an existing open area at higher elevations (away from the creek), and existing structures will be utilized for the welcome center, recreational outfitter, caretaker's quarters, and office space. Additionally, the ecotourism activities will allow for greater attention to the existing environmentally sensitive nature of the land and controlling invasive species.

The existing natural resources and scenic beauty of this portion of Fayette County cannot be over stated. These resources are being proposed for greater protection than if left untended, through annual inspections and active management. Based upon the staff's review of the information supplied by the applicant, the staff would present findings that are consistent with the staff's past recommendations supporting permitted conditional uses in rural Fayette County, when the impact of such uses demonstrates a responsible use of rural lands. Public access to appropriately scaled activities in rural Fayette County provides for important interaction between the general population and our treasured rural land resources.

The Staff Recommends: **Approval** of the Conditional Use application for ecotourism and agritourism activities, for the following reasons:

- A. Granting the requested conditional use for agritourism and ecotourism activities should not adversely impact the subject or surrounding properties. The zip lines and tree platforms needed for the proposed canopy tours have already been installed with minimal environmental impact, and are designed to adjust over time as needed to accommodate healthy tree growth. A tree canopy tour would not be inherently disturbing, as limited noise is generated and there is no aspect of the use that generates pollution. For much of the year, these facilities will not be visible from Old Richmond Road. Other recreational uses proposed (e.g., guided hiking, ropes course, children's playground, and canoeing and kayaking launch sites) are generally passive in nature and have very little, if any, potential for creating disturbances.
- B. All necessary public facilities and services are either already available or will be provided for the proposed uses. The main parking lot and welcome center/staging area for the canopy tours are easily accessible for emergency response purposes, with a fire station located approximately two miles to the north. Less accessible portions of the property will be served by ATV's and/or four wheel drive vehicles, facilitated by the existing winding drive that leads from Old Richmond Road to the bottom of the gorge at Boone Creek. Also, access to the northeastern corner of the subject property for emergency response will be accessible through the adjoining property. Refuse collection and sewage disposal will be handled privately, subject to approval by the Fayette County Health Department.
- C. Adequate safeguards are in place to ensure that the proposed agritourism and ecotourism activities will have a minimal adverse impact on the land. The recreational facilities already in place have been installed with negligible impact to the existing topography, tree canopy and ground cover. An old parking lot and former commercial building, situated in a level area just off of Old Richmond Road, will be improved and adaptively reused, which will negate the need for new development with associated adverse land disturbances. A small

dwelling unit (cabin) will also be adaptively reused for a caretaker to reside on the premises and to provide office/meeting space for the use of the applicant in operating the agritourism and ecotourism activities.

- D. Agritourism and ecotourism activities, as proposed, will be provided within the overall framework of environmental protection, education and stewardship, and will include invasive species management, as well as exposure to and protection of significant cultural and historic resources. Such activities are consistent with numerous aspects of the adopted 2013 Comprehensive Plan, specifically the Goals and Objectives, including: Theme B, Goal #3.a. – “identify and protect natural resources and landscapes before development occurs;” and Theme E, Goal #2.b. – “protect and enhance the natural, cultural, historic and environmental resources of Lexington’s-Fayette County Rural Service Area and Bluegrass farmland to help promote the general agricultural brand.”

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

1. Provided the subject properties are rezoned A-N by the Urban County Council; otherwise, any Planning Commission action of approval is null and void.
2. The agritourism and ecotourism activities shall be established and operated in accordance with the certified Preliminary Development Plan, or as amended via a Final Development Plan approved by the Planning Commission, as well as the supplemental application documents relating to: (a) environmental assessment and protection (Smith Management Group report dated September 1, 2016); (b) emergency response plan (dated April 19, 2013); and Best Practices Management Plan (operational details) (dated September, 2016).
3. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Division of Planning and Division of Building Inspection prior to opening the facility.
4. The existing septic system shall be enlarged and/or improved, if necessary, in accordance with the requirements of the Fayette County Health Department.
5. The parking lots and driveways shall be paved, with spaces delineated, and landscaped/screened along Old Richmond Road.
6. The final design of the parking lots, access drives and internal circulation shall be subject to review and approval by the Division of Traffic Engineering.
7. Location and design of the entrance and exit points from the parking lot to Old Richmond Road (US Highway 25/421) shall be subject to review and approval by the Kentucky Transportation Cabinet (KYTC). Any associated improvements to that road shall be provided as determined to be necessary by the KYTC.
8. A stormwater management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
9. Installation and operation of the tree canopy tour facilities, including all zip lines, tree platforms, catwalks and other elements, shall be certified by the Association for Challenge Course Technology (ACCT), or by one of their accredited vendors, with evidence of such certification provided to the Division of Planning prior to issuance of a Zoning Compliance Permit.
10. The tree canopy tour, ropes course and any other activity that falls under the authority of the Commonwealth of Kentucky shall be inspected by a qualified third-party inspector on an annual basis or as required by the Kentucky Department of Agriculture. Inspection reports, training logs, and tour logs shall be provided to the Division of Planning during annual conditional use inspections and site visits.
11. Each canopy tour shall include no more than ten (10) guests, with tours spaced at least thirty minutes apart throughout the day and no more than three tours underway at any given time. Any use of the tree canopy tour facility by members of the private anglers club (approved by the Board of Adjustment on August 25, 2000: ACV-2000-128) is subject to this limitation.
12. The last canopy tour on any given day shall begin at least two hours prior to dusk.
13. Any use of All Terrain Vehicles (ATV’s) is strictly prohibited, except for the following uses: emergency response, direct transport of private club members to the angler’s club lodge, or maintenance of the property/facilities.
14. Patrons of the agritourism and ecotourism activities shall not use the angler’s club lodge, unless they are club members.
15. Overnight accommodations shall not be provided as part of the agritourism or ecotourism activities, with the exception that a caretaker may live onsite.

16. Recreational uses and associated improvements (such as tree platforms and zip lines, etc.) permitted as part of this facility shall be limited to those specific uses and features noted and described on the Preliminary Development Plan. Such features may be removed or modified as amended via a Final Development Plan approved by the Planning Commission, but no additional tree platforms may be added to the tree canopy tour or new agritourism or ecotourism activities, added to the site without Board of Adjustment approval.
17. The existing variance, granted by the Board on August 25, 2000 (ACV-2000-128), and conditioned upon removal of the existing building that is now to be used as part of this requested conditional use (proposed welcome center), is essentially considered as null and void for as long as that existing building remains in place and part of this use.
18. An office, restrooms, welcome center/ticket sales, recreational outfitters (rental of equipment only) and a gift shop (maximum of 500 square feet) shall be located within the welcome center building or the caretaker's cabin. These two structures are limited to 2,700 square feet, or as amended by the Planning Commission via a Final Development Plan.
19. Outdoor lighting (other than for security purposes), loud speakers, and restaurants or food service are not permitted.
20. If the tree canopy tour ceases operation and is abandoned, the elements of the tour and the associated challenge ropes course shall be removed from the site to ensure public safety.
21. If during the annual inspections of this use, evidence of soil erosion, tree canopy degradation or other negative environmental impacts are documented on-site due to the operation of the tree canopy tour and related agricultural or ecotourism activities, the Board of Adjustment may consider measures to sustain the land, mitigate impacts and stop further degradation.

WLS/TLW/JD/dw

10/4/2016, 10/25/2016 supp

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