

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

October 30, 2009

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on October 30, 2009. Members present were Chairman Peter Brown, Louis Stout, James Griggs, Carolyn Edwards, Kathryn Moore and Jan Meyer. Board member Barry Stumbo was absent. Others present were Jim Hume, Division of Building Inspection; Jim Gallimore, Division of Traffic Engineering; Chuck Saylor, Division of Engineering, Capt. Charles Bowen, Division of Fire & Emergency Services, and Rochelle Boland, Department of Law. Staff members in attendance were Bill Sallee, Jim Marx and Wanda Howard.

Chairman Brown welcomed everyone to the Halloween edition of the Board of Adjustment meeting. He requested all with cell phones to turn them off or to place them on silent mode at this time.

- II. **APPROVAL OF MINUTES** – Chairman Brown announced that the minutes of the August 28, 2009 and September 25, 2009 meetings would be considered at this time. He thanked Ms. Howard for forwarding these minutes to the Board members.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stout, and carried unanimously (Stumbo absent) to approve the minutes of the August 28, 2009 and September 25, 2009 meetings.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, Chairman Brown asked all who wished to speak at today's meeting to raise their hand and be sworn. He administered the oath to several citizens in attendance.

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chair 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-2009-60: RBHV LEXINGTON, LLC / RBHV LEXINGTON RETAIL, LLC** - appeals for an administrative review to allow the transfer of 32 square feet of unused signage in a Planned Neighborhood Residential (R-3) zone to a free standing sign in a Highway Service Business (B-3) zone, on properties located at 2573 Richmond Road and 175 Codell Drive (Council District 7).

The Staff Recommended: Disapproval, for the following reasons:

- a. Keeping track of signage transfers between separate properties would be an administrative burden for the Division of Building Inspection, and could seriously compromise their ability to properly permit signage requests in the future. Also, there is a reasonable likelihood that legal complications with signage requests might arise if property ownership changes.
- b. The properties affected by this proposed signage transfer are located on two different streets that are not visually connected, and the properties are subject to the permitting requirements of much different zoning categories (B-3 and R-3). These circumstances prevent a reasonable assessment of the extent to which the proposed transfer of signage square footage would be beneficial or detrimental to the affected properties and the surrounding areas.
- c. Documentation has not been provided by the appellants to verify that the total permitted signage for the property at 2573 Richmond Road will not be exceeded if the requested transfer is approved. Pursuant to Article 17-8(a) of the Zoning Ordinance, the Board is not authorized to increase the maximum total permitted sign area on a single lot or building, and there is uncertainty as to whether this transfer will exceed the Board's authority.

Representation – Ms. Ryan Daugherty, attorney, was present for Mr. Bruce Simpson and for RBHV

Lexington, LLC. She said that she knew that Mr. Simpson had spoken with Mr. Marx recently about this application. She requested a postponement of this application to the Board's November 20 meeting, to allow time for additional discussion to identify possible alternatives for the proposed sign.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Stumbo absent) to postpone **A-2009-60: RBHV LEXINGTON, LLC / RBHV LEXINGTON RETAIL, LLC** – an appeal for an administrative review to allow the transfer of 32 square feet of unused signage in a Planned Neighborhood Residential (R-3) zone to a free standing sign in a Highway Service Business (B-3) zone, on properties located at 2573 Richmond Road and 175 Codell Drive, to the Board's November 20 meeting.

- b. **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 conditions imposed at the time of approval by the Board 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.

Representation – Mr. Glenn Abbott, M2D Design, was present on behalf of the Episcopal Diocese of Lexington. Chairman Brown asked for a report from Mr. Hume.

Mr. Hume stated that, as of yesterday's date, the Diocese was not in compliance with the conditions associated with their conditional use permit. Although the church had submitted plans, and had been issued permits to do work on this site, Mr. Hume estimated that only 10% of the site work had been completed. He believed that the Board should proceed with the revocation hearing.

Appellant's Presentation – Mr. Abbott disagreed that the Diocese was only 10% done with the work at this location. He said that they had pay vouchers for \$64,000 worth of contract work to be done at this site; and according to the money spent thus far, the work is 57% done. A lot of the work has been underground, and has been completed. He submitted pay requests for review by the Board, and submitted photographs of the site from the previous Wednesday of the work done at this location.

Chairman Brown asked if anyone on the Board wished to have a revocation hearing today. He suggested a delay to later in the meeting, and said that he would call for the rest of the uncontested cases first.

Note: Following a sounding of the remaining items on this agenda and consideration of those sounded items (below), the Board returned to a consideration of this application.

Chairman Brown asked if the Board members had been able to review the information previously

distributed on the work done at the church property. He asked if the Board would like to conduct the revocation hearing at this time.

Mr. Abbott stated that he would like to distribute additional documents concerning the weather that had been experienced recently. He said that most of the work to be done is earthwork, and he had information about the amount of rain that had fallen over the past month. When the rain had been heavy, site work could not be done on site the following day. He distributed the paperwork to the Board at this time.

Mr. Griggs said that he had seen that the parking lot had material stacked around it, making a mess. He felt that the Diocese would not want this to leave it this way any longer than they must. He was inclined to postpone this hearing for one month, to allow them to continue work outdoors. Mr. Stout agreed. Mr. Hume agreed as well, but wanted to get the church's attention, and encourage them to finish the work. He said that he thought this was a matter of "just getting it done" at this point. Chairman Brown opined that there were grounds for a revocation, in his opinion. Mr. Hume stated that curbs and underground utilities were now in place. Mr. Abbott said that the pavement's sub-surface had been put in place. He stated that the contractor had only been on the job since the first of October. He also said that, being a national organization, the Diocese had a process to follow to approve this work, unlike most property owners.

Chairman Brown asked if asphalt can be put down before the plants close for the winter. Mr. Wayne Moore, with Moore-Gabbard-Bridges General Contracting, said that they have the contractor set to begin applying the dense grade aggregate on the following Monday. He said that the landscaping is also planned for installation beginning next Monday. He felt that this project is about 2/3 of the way finished. He said that asphalt and landscaping are the major items still needed at this point in time, but that these should "be in" in about two weeks.

Mr. Stout was in agreement that an additional 30 days would be helpful to the church. Mr. Hume stated that this case, though, had taken seven years to get to this point.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously (Stumbo absent) to postpone **C-2002-2: THE EPISCOPAL DIOCESE OF LEXINGTON, INC.** - 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, to the Board's November 20 meeting.

2. No Discussion Items - The Chair asked if there are any other agenda items where no discussion is needed...that is, (a) The staff had recommended approval of the appeal and related plan(s), (b) The appellant concurred with the staff's recommendations. Appellant waived oral presentation, but may submit written evidence for the record, (c) No one present objected to the Board acting on the matter at this time without further discussion. For any such item, the Board proceeded to take the following actions.

- a. **C-2005-53: FENDER FUNERAL DIRECTORS** - the Board of Adjustment has requested a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural Urban [A-U] zone, on property located at 1593 Russell Cave Road [Council District 2]) for failure to comply with conditions imposed at the time of approval.

The conditions imposed at the time of approval by the Board are as follows:

1. The funeral home shall be established in accordance with the submitted application and site plan, or as approved by the Division of Building Inspection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The design of the off-street parking areas and access to Russell Cave Road shall be subject to approval by the Division of Traffic Engineering.
4. The off-street parking areas shall be paved, with spaces delineated and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.

5. Any landscape buffers required by Article 18 of the Zoning Ordinance for the vehicular use areas shall be extended to include the full extent of the property perimeter, excluding frontage on Russell Cave Road. Existing landscaping shall be retained and maintained to the maximum extent feasible.
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 outdoor pole lighting for the facility shall be of a shoebox (or similar) design, with light shielded and directed downward to prevent any disturbance to surrounding residential properties.
8. That current privacy fence shall be maintained and extended to 10' from the sidewalk at Russell Cave Road, unless the affected neighbor is opposed.

The Division of Building Inspection will report at the hearing.

Representation – Mr. Dick Murphy, attorney, was present for the appellant. Mr. Murphy was pleased to report that the two remaining items for this conditional use, paving and landscaping, have been completed. On behalf of Mr. Fender, he thanked the Board for their patience on this matter. He noted that it had been a difficult time for many small businesses in the community.

Chairman Brown asked Mr. Hume if he was satisfied with the work done at this site. Mr. Hume replied that he was satisfied with the work done at this time. He thanked Mr. Murphy, and requested that the revocation hearing be cancelled.

Ms. Boland recommended a motion be made to remove this item from the docket, based on the fact that the prior conditions associated with this conditional use had been met.

Action – A motion was made by Ms. Moore, seconded by Mr. Stout, and carried unanimously (Stumbo absent) to remove **C-2005-53: FENDER FUNERAL DIRECTORS** – a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural Urban [A-U] zone, on property located at 1593 Russell Cave Road) from the Board's docket, based on the fact that the prior conditions associated with this conditional use had been met.

- b. **C-2009-63: PLEASANT RIDGE BAPTIST CHURCH** - appeals for a conditional use permit to amend a previously imposed restriction so that a dwelling on the church property can be used for rental purposes, in a Single Family Residential (R-1B) zone, on property located at 624 Wilderness Road (Council District 6).

The Staff Recommended: Approval, for the following reasons:

- a. A parish house has existed at this location for many years, and has been rented from time to time when not used as a parsonage. Continuing to rent the house should not adversely impact the subject or surrounding properties.
- b. The ability to rent the parish house until a church need arises will benefit the church's long-term mission, and allow them to keep the house rather than demolish it.
- c. The building addition that required the lot consolidation, and ultimately resulted in the Board's rental restrictions, has now been completed. Any future tenants can therefore make informed rental decisions based on the existing church improvements and related activities that are clearly visible on the property.

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

1. The original conditions associated with C-2001-25, except for this rental restriction, shall remain in effect.
2. The existing parish house can be used for rental purposes in accordance with the submitted application and site plan.
3. As a rental dwelling unit the existing parish house may not be expanded.

Representation - Pastor Earl Thomas stated that he was present for the church. He said that as of this December, he would have been at this church for some 52 years. Chairman Brown complimented Pastor Thomas' longevity, and asked if he had read the recommended conditions, and if the church would agree to abide by the recommended conditions. Pastor Thomas replied in the affirmative.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Stumbo absent) to approve **C-2009-63: PLEASANT RIDGE BAPTIST CHURCH** an appeal for a conditional use permit to amend a previously imposed restriction so that a dwelling on the church property can be used for rental purposes, in a Single Family Residential (R-1B) zone, on property located at 624 Wilderness Road, for the reasons provided by the staff, and subject to the three conditions recommended by the staff.

- c. **C-2009-65: GLORIA THOMPSON** - appeals for a conditional use permit to establish a home occupation (production of candles, soaps and lotions) in a High Density Apartment (R-4) zone, on property located at 3916 Kenesaw Drive (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. Noisy equipment or potentially hazardous material will not be used to produce candles, soap and lotions. Parking issues or significant increases in traffic are not anticipated, as customers will not be coming to the appellant's home.
- 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. The home occupation shall be established in accordance with the submitted application and site plan, with the work activity to be confined to the kitchen area of the home in an area not exceeding 300 square feet.
2. The activity shall at all times comply with the restrictive provisions for home occupations as outlined in Article 1-11 of the Zoning Ordinance.
3. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to beginning the home occupation.
4. This approval shall become null and void should the appellant cease to either own or occupy the subject property.

Representation – Ms. Gloria Thompson, appellant, was present. Chairman Brown asked if she had reviewed the staff recommendation for approval. She replied in the affirmative. Chairman Brown asked if she would abide by the recommended conditions. Ms. Thompson replied in the affirmative.

Action – A motion was made by Ms. Moore, seconded by Ms. Edwards, and carried unanimously (Stumbo absent) to approve **C-2009-65: GLORIA THOMPSON** – an appeal for a conditional use permit to establish a home occupation (production of candles, soaps and lotions) in a High Density Apartment (R-4) zone, on property located at 3916 Kenesaw Drive, for the reasons provided by the staff, and subject to the four conditions recommended by the staff.

- d. **C-2009-66: ARMANDO TORRES** - appeals for a conditional use permit to provide live entertainment (karaoke and serenades) at an existing restaurant, in a Neighborhood Business (B-1) zone, on property located at 1858 Oxford Circle (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Live entertainment to be provided at the restaurant will consist only of karaoke and individual or small groups of musicians that provide serenading type music. The activity will be buffered from the nearest residences by Oxford Circle and by the currently vacant suite at the end of the building (at 1864 Oxford Circle) where the restaurant is located. Adequate off-street parking is conveniently available for this use in the shopping center parking lot.
- 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. Live entertainment shall consist only of karaoke (with a disc jockey) and serenading type music, with no dancing.
2. Live entertainment shall be provided only in that portion of the building that is located on property identified as 1858 Oxford Circle, and shall not extend into the adjoining suite to the north, on property identified as 1864 Oxford Circle.
3. A Certificate of Occupancy shall be obtained from the Division of Building Inspection prior to

beginning the live entertainment.

4. The building shall be soundproofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
5. All entrance and exit doors shall remain closed during times that live entertainment is being provided.
6. This conditional use shall become null & void should the appellant cease to operate a restaurant at this location.

Representation - Mr. Armando Torres, applicant, was present. Chairman Brown asked if he had reviewed the six conditions recommended, and if he would he agree to abide by them. Mr. Torres replied affirmatively.

Chairman Brown asked about the possibility of amplified music for his disc jockey, and whether there would be any limitation on the level of the amplification proposed. Mr. Marx replied that this would be cumbersome to do so.

Mr. Hume asked whether or not the hours of operation were proposed to be restricted. Chairman Brown replied that 10:00-2:30 AM on Friday, Saturday and Sunday, were listed as the hours of operation in the staff report. Mr. Marx replied that, by law, this establishment must close at 2:30 AM, regardless.

Chairman Brown asked Mr. Torres to explain how the serenading will work at this location. Mr. Torres replied that this will be similar to karaoke.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Stumbo absent) to approve **C-2009-66: ARMANDO TORRES** – an appeal for a conditional use permit to provide live entertainment (karaoke and serenades) at an existing restaurant, in a Neighborhood Business (B-1) zone, on property located at 1858 Oxford Circle, for the reasons provided by the staff, and subject to the six recommended conditions.

- e. **C-2009-67: ROBERT MILWARD** - appeals for a conditional use permit to amend a previously approved site plan for construction and operation of a funeral home, in an Agricultural Urban (A-U) zone, on property located at 1509 Trent Boulevard (Council District 8).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. A funeral home had been planned for this property for over 20 years, with Board of Adjustment approval of the original plan granted in 1989 (Robert E. Milward: C-89-104). The currently proposed plan is generally similar to the original approval, with the additional benefit of providing on-site storm water retention and a reduced amount of paving for parking. Funeral home activities are not expected to be disturbing to the adjoining church and nearby assisted living facility, and a large area of open space will serve as a suitable buffer for the adjoining residences to the south.
- 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. The funeral home shall be constructed and operated in accordance with the submitted application and site plan, or as amended to incorporate changes requested by the Division of Engineering and/or the Division of Traffic Engineering. The off-street parking spaces proposed to the south of the retention area (approximately 20 to 25 spaces) do not have to be provided with the initial construction, and may be provided at a later date if and when desired by the appellant.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The off-street parking areas 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 parking areas and traffic circulation (including access points) 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 requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
6. Any outdoor pole lighting for the facility shall be of a shoebox (or similar) design, with light shielded

and directed downward to prevent any disturbance to surrounding residential properties.

Representation – Mr. Tony Barrett, Barrett Partners, was present on behalf of both Mr. Robert Milward and Milward Funeral Home. Chairman Brown asked if he and his client had reviewed the recommended conditions, and if they would agree to abide by these conditions. Mr. Barrett replied affirmatively.

Chairman Brown said that he understood that not all the parking would initially be built on this property. Mr. Barrett replied that 80 spaces were shown on their site plan, but only about sixty of those were proposed to be built initially. He showed the site plan on the overhead projector, and identified the spaces not initially proposed for construction on the eastern end of the property, nearest the eastern access point proposed on Trent Boulevard.

Mr. Hume asked why not all would be built from the start. Mr. Barrett replied that they would like the flexibility to add additional on-site parking in the future. Mr. Barrett stated that their site plan submitted to the Division of Building Inspection (at the time of the building permit) will exclude those spaces. Chairman Brown stated that these 20 spaces could be provided later without having to come back to the Board. Mr. Barrett replied in the affirmative, and thanked the Board for this ability to do so.

Action – A motion was made by Ms. Edwards, and seconded by Mr. Griggs, to approve **C-2009-67: ROBERT MILWARD** – an appeal for a conditional use permit to amend a previously approved site plan for construction and operation of a funeral home, in an Agricultural Urban (A-U) zone, on property located at 1509 Trent Boulevard, for the reasons provided by the staff, and subject to the six conditions recommended by the staff.

The votes on the motion were as follows:

Ayes: Brown, Edwards, Griggs, Moore, Stout

Abstained: Meyer

Absent: Stumbo

Chairman Brown declared that the motion passed by a vote of 5-0, with one abstention.

- B. Transcript or Witnesses - The agenda announced 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.

There were none.

D. **Conditional Use Appeals**

1. **C-2009-50: ROBERT H. DOUGLAS** - appeals for a conditional use permit to establish a bed and breakfast facility in the Agricultural Rural (A-R) zone, on property located at 4417 Dry Branch Road (Council District 12).

The Staff Recommended: Postponement, for the following reasons:

- a. An amended and scaled site plan is needed showing the full extent of the subject property, with the location of the proposed residence identified relative to the front, side and rear property lines.
- b. Additional information is needed regarding the overall design of the proposed bed and breakfast facility and the intent of the owners as to where they will reside.

Representation – In sounding the agenda, it was determined that no representative was present for this application.

Mr. Marx stated that he spoke with the attorney for the applicant a few days after the Board's previous meeting, and suggested an indefinite postponement of this appeal. He did not hear back from either Mr. Douglas or from Mr. Will Messer, his attorney.

Mr. Saltee stated that he called Mr. Douglas just after the start of this meeting, and left him a message, but had yet to receive a return phone call.

Note: At this point, Chairman Brown proceeded to review the other cases listed on the Board's agenda.

Note: At 1:34 PM, following the Board's consideration of the sounded items (above), and **C-2002-2: THE EPISCOPAL DIOCESE OF LEXINGTON, INC.,** the Chair returned to consideration of this application.

Representation – The appellant was not present, nor was any representative.

Mr. Saltee stated that he had phoned both Mr. Douglas and his attorney, and that there have not been any returned phone calls as of this point in time.

Chairman Brown asked the Board whether or not they wished to proceed. He stated they could either indefinitely postpone consideration of this application, or hear testimony from the staff, and then consider another motion.

Ms. Boland said that either would be appropriate. She suggested that the staff first explain what information was lacking in this application, and that any findings for disapproval could be based on the applicant's failure to provide evidence that this is an appropriate conditional use at this location.

Mr. Marx said that, without the appellant's consent, that he was not sure that the Board could indefinitely postpone this request. Ms. Meyer asked if Mr. Douglas had been in communication with the staff. Mr. Marx stated that he had not heard from the appellant since a few days after the Board's last meeting, when he communicated the Board's desire to have someone present to address this appeal. He did believe that the Board could act to disapprove this request, and believed Ms. Boland was in agreement.

Ms. Moore asked if the applicant would need to wait one year to reapply, if this were disapproved. Chairman Brown thought so, unless there were substantial differences presented in a new application. Mr. Stout stated that the appellant should be here on this matter.

Note: At 1:36 PM, Chairman Brown proceeded to call **C-2009-64: JAMES BREWER** (below) for consideration.

Note: At 1:49 PM, following consideration of **C-2009-64: JAMES BREWER**, Chairman Brown noted that a few persons had arrived at the meeting and asked if any were here for the Douglas case. There was no reply from anyone in the audience.

Chairman Brown stated that Ms. Boland had provided findings for the Board to consider on this

application.

Note: At 1:50 PM, Chairman Brown asked to continue with consideration of any **STAFF ITEMS** (below).

Note: At 1:54 PM, following consideration of the **STAFF ITEMS**, Chairman Brown resumed this hearing.

Representation – Mr. Douglas or his representative were not present.

Chairman Brown asked if everyone on the Board had taken time to review the findings provided by Ms. Boland.

Ms. Meyer asked if this is disapproved, if the appellant will have to wait one year before reapplying. Mr. Marx stated that Mr. Douglas could request an early re-hearing; and based on the outcome of that application, he possibly could re-apply. He said that it would be a two-step process. Chairman Brown stated that he must first request permission, and then reapply, if granted. Mr. Marx agreed.

Action – A motion was made by Ms. Moore to disapprove **C-2009-50: ROBERT H. DOUGLAS** – an appeal for a conditional use permit to establish a bed and breakfast facility in the Agricultural Rural (A-R) zone, on property located at 4417 Dry Branch Road, for the following reasons:

1. The applicant has failed to provide needed information concerning ownership of the proposed bed & breakfast and verification that the owner will reside on the property as required by the Zoning Ordinance.
2. Deficiencies in the submitted site plan have prevented any determination that the proposed facility will comply with all applicable requirements of the Zoning Ordinance.

Mr. Stout seconded the motion.

The motion passed unanimously (Stumbo absent).

2. **C-2009-64: JAMES BREWER** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1C) zone, on property located at 1187 Devonport Circle (Council District 11).

The Staff Recommended: Disapproval, for the following reasons:

- a. The addition of another, larger child care facility at this location will adversely impact the surrounding properties by increasing the potential for disturbances from noise and additional traffic on a residential cul-de-sac. Such impacts are already a neighborhood concern, due to the presence of a child care center for up to 48 children located immediately to the west of the subject property.
- b. There are no natural buffers or other physical features in this area of the subdivision which might tend to mitigate the traffic and noise disturbances that can arise from the proposed and the adjacent child care facilities. The cul-de-sac at the west end of Devonport Circle, just four lots from the subject property, will exacerbate the potential for disturbances to nearby residents resulting from an additional child care facility.
- c. Providing accessory child care for up to six children is a reasonable option at this location, given the intensity of child care activity that is already taking place in the immediate neighborhood.

Representation – Mr. James Brewer was present for his application.

Staff Presentation – Mr. Marx described the location of the subject property using an aerial photo. He identified the subject property, and stated that it is for sale. The applicant wishes to purchase this property, and operate a family child care facility. He stated that some 40 years ago, immediately next door, a commercial child care facility was approved as a conditional use, which is a critical factor in this case. State licensing allowed 48 children at the commercial child care center next door to the subject property.

Mr. Brewer stated that the facility next door does transport about ½ of their children for which they provide care, so the traffic flow here is not what it would normally be for such a facility.

Mr. Marx stated that Devonport Circle ends in a cul-de-sac, and that there are usually negative impacts from family child care on cul-de-sacs. One issue that goes along with family child care is on-street parking. It happened that the aerial photo showed a vehicle parking in the driveway of the commercial child care, blocking the sidewalk there.

Discussion - Chairman Brown asked about the addition on the structure to the west of the subject property. He replied that it does appear that it is to the rear of the residence, but that it was also planned to be a commercial child care center. The photos showed the subject property and the street, but another photo identified the subject property and the commercial child care next door. While the subject property had room for the required parking and outdoor play area, the intensity of the adjoining use was a major concern with this appeal. Another photo displayed by Mr. Marx showed crowded on-street parking conditions on this street. He stated that the staff recommended disapproval of this request, based upon the intensity of the adjoining use, and he identified the three reasons listed on the staff report and the agenda.

Chairman Brown asked if this was the only child care on the block, without the adjoining use, if it would be acceptable. Mr. Marx agreed with that assessment, as the subject property would meet the minimum requirements. Mr. Hume added that his office had received a complaint about the adjacent child care facility over the past 10 days. The large amount of traffic was cited in the complaint. He thought that use may have outgrown this neighborhood.

Appellant's Presentation – Mr. Brewer said that this family child care use would be for school children and their siblings. He planned to transport the children so that there would not be a traffic impact from this use. He also planned to transport them home. He said that his vehicle would be the only one there. He said that he would transport the children from school to this family child care and again from the child care facility to their homes at the end of each day. Mr. Brewer stated that there is a chain link fence on the property today, but that he planned to install a privacy fence like the neighboring property, so that both properties have privacy fences, which will help reduce noise from the outdoor play area.

Discussion – Mr. Griggs asked Mr. Brewer if he owns the subject property. Mr. Brewer said that he had a contract to purchase it, and that he is trying to attain independence with this use. Mr. Griggs supported his goal to be self-employed at home, but was worried about this use at this location. He hoped that Mr. Brewer could find another location for a family child care.

Ms. Moore questioned whether the Board could impose a condition that the appellant transport the children to and from this location, so that they will not be dropped off here. Ms. Boland replied that this is the type of condition that can be imposed when related to the impact of the use, and that all transportation to and from this use be supplied by the appellant for this conditional use. Mr. Hume cautioned that this would be extremely difficult. Mr. Brewer stated that State regulations require that a sign-in/sign-out sheet be required when transportation is provided for the children.

Ms. Moore asked if this fact would change the staff's recommendation. Mr. Marx replied that, this alone, would not sway the staff recommendation about this location. He said that the staff is concerned about the level of impact of this use on the neighborhood. Fortunately, Mr. Marx said, Mr. Brewer had not yet purchased this property, and perhaps an alternative location could be found.

Ms. Meyer asked Mr. Brewer if the difference in 12 children versus six children was significant. Mr. Brewer replied that the additional six children would allow him to buy food, and generally, be able to live.

Ms. Edwards asked if he was assured that the family child care could be viable here, since there is a commercial child care nearby. Mr. Brewer replied that he had spoken with the provider of the adjoining facility, and that they can not take in any more children, and were turning them away. He stated that this location is in a low-income area, where folks go to work and child care is needed. This is why he is willing to provide transportation services. He also noted that there are five different apartment complexes within ½ mile of this general area.

Chairman Brown asked Mr. Brewer if he had anything else to present to the Board. Mr. Brewer declined.

Action – A motion was made by Mr. Griggs to disapprove **C-2009-64: JAMES BREWER** – an appeal for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1C) zone, on property located at 1187 Devonport Circle, based upon the staff recommendations.

Mr. Stout seconded the motion, and said that this is a difficult situation to refuse, but results in a safer situation.

The motion passed unanimously (Stumbo absent).

IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time. There were none.

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

- A. Revocation Hearing Requested – Mr. Hume requested a revocation hearing for Clays Mill Road Baptist Church. He stated that one of the prior conditions had been violated. Some of the required landscaping had been removed, along with some of the fencing, allowing cars to be parked on an adjoining residential property. He had delivered a notice of violation to them, and notified them that he would be asking for this hearing if both were not restored. Mr. Stout asked if this was being proposed to have the church restore the fencing and landscaping. Mr. Hume replied affirmatively, and that the violation was that the use was no longer in agreement with the approved site plan.

Action – A motion was made by Mr. Stout, seconded by Mr. Griggs, and carried unanimously (Stumbo absent) to schedule a revocation hearing for **C-99-16: CLAYS MILL ROAD BAPTIST CHURCH**.

- B. Discussion of 2010 Meeting and Filing Schedule - As part of its Bylaw-related duties, Mr. Sallee said that each year, the Board of Adjustment adopts the Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2010 is in draft form, with two dates that require discussion prior to its being officially adopted.

Mr. Sallee stated that a highlighted draft schedule had been circulated to the Board, and he asked the Board to review the proposed BOA meetings in May and December of 2010. The usual meeting in May will be held on the last Friday of the month, but this would mean that the Board would meet just before the Memorial Day holiday. In the past, the Board had moved its August meeting to avoid the Labor Day holiday. Mr. Stout and Chairman Brown thought that the meeting should be moved back to avoid this conflict.

In December, the opposite is proposed. Mr. Stout asked for the December meeting date this year. Mr. Sallee replied that it is set for December 11. He and other members felt that the December 10, 2010 date was justified.

Mr. Sallee said that this would be done, and the revised schedule would be mailed to the Board the following Month.

- C. HB 55 Training Opportunity – Mr. Sallee stated that there would be an APA audio conference on Wednesday, November 18, beginning at 4:00 p.m. in the Division of Planning (Phoenix Building, 7th floor) conference room. The title of this audio conference is "Planning with Large Institutions," and will count toward at least one hour of training credit for Board of Adjustment and Planning Commission members, as well as staff.

Mr. Stout asked if the Board could be sent an e-mail reminder of this. Mr. Sallee replied in the affirmative.

VI. **NEXT MEETING DATE** - The Chair announced that, due to the Thanksgiving holiday, the next meeting date would be November 20, 2009, one week earlier than usual.

VII. **ADJOURNMENT** - There being no further business, Chairman Brown declared the meeting adjourned at 1:56 PM.

Peter Brown, Chairman

James Griggs, Secretary