

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 25, 2009

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:09 p.m. in the Council Chambers, 200 East Main Street, September 25, 2009. Members present were Chairman Peter Brown, Louis Stout, James Griggs, Carolyn Edwards, Barry Stumbo, Kathryn Moore and Jan Meyer. Others present were Jim Hume, Division of Building Inspection; Jim Gallimore, Division of Traffic 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 delayed the start of the meeting by a few minutes, and asked the staff to check the legal advertisement for this meeting.

- II. **APPROVAL OF MINUTES** – Chairman Brown announced that the minutes of the March 27, 2009 meeting would be considered at this time.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stout, and carried unanimously to approve the minutes of the March 27, 2009 meeting.

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 will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- 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 – Mr. Bruce Simpson, attorney, was present representing RBHY Lexington, LLC. He requested a postponement of their request for 30 days to the October meeting. Mr. Simpson said that they were working on some possible alternatives.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously 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 October meeting.

- b. **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 along with Mr. James Fender. He said that he appreciated the Board's patience on this appeal. Mr. Murphy requested an additional one month continuance of this item, as Mr. Fender had recently secured financing and had contracted with G & G Paving and Construction, Inc. to do the required site work. He said that the rains over the past two weeks had caused a delay in this work. Mr. Murphy placed a letter from G & G, which he displayed on the overhead projector. The letter, which he read into the record, stated that they were performing the work required at this location by the Board. Mr. Murphy stated that no funerals had occurred at this location, and none will be, until the paving is completed. He told the Board that Mr. Fender had been working hard to get the paving finished, and they do appreciate the Board's patience.

Chairman Brown stated that he thought that this work would be completed by today, but this discussion made sense to him. Mr. Hume said that he was willing to go along with this postponement, as there is a signed contract in effect. He also wanted the landscaping installed 30 days from now, since this is the proper time of year for plantings to be done.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously to postpone **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 to the Board's October 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. **V-2009-61: FORCHT BANK, NA** - appeals for a variance to reduce the width of a required landscape buffer for a vehicular use area from 5 feet to 1.5 feet in a Neighborhood Business (B-1) zone, on property located at 140/144 Southland Drive (Council District 10).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Additional landscaping will be provided where none previously existed (as part of a prior use), and the buffer to be provided, when viewed in conjunction with right-of-way improvements that include street trees and a sidewalk, will appear to be wider than 5'.
- b. The amount of space between the existing pavement and the Southland Drive right-of-way, and the alignment of the "service road" along the north side of the property, are special circumstances that contribute to justifying a reduction in the width of the landscape buffer to be provided.
- c. Strict application of the Zoning Ordinance would require that a 3.5' wide strip of pavement be removed along the north side of the property that adjoins the Southland Drive right-of-way. This would result in both an existing access and a vehicular connection to the adjoining property to the east having to be partially relocated.

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

- 1. A 1.5' wide landscape buffer shall be provided along the north side of the property adjacent to the Southland Drive right-of-way. A plant from the Taxus sp. group, or a similar genus, shall be used to create the buffer, subject to approval by the Landscape Examiner with the Division of Building Inspection.
- 2. The buffer shall be in place prior to the issuance of an occupancy permit from the Division of Building Inspection.

Representation – Mr. Andrew Cattoi, Allen Engineering, was present representing the appellant. Chairman Brown asked if the appellant had reviewed the conditions recommended for approval. Mr. Cattoi answered that they had, and would agree to abide by those conditions.

Chairman Brown asked the staff if the sidewalk will, in addition to the landscape buffer, need to be installed prior to occupancy of this bank. Mr. Marx replied in the affirmative. He said that the sidewalk is an improvement that will be shown on the plat for the property.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously to approve **V-2009-61: FORCHT BANK, NA** – an appeal for a variance to reduce the width of a required landscape buffer for a vehicular use area from 5 feet to 1.5 feet in a Neighborhood Business (B-1) zone, on property located at 140/144 Southland Drive, for the reasons provided by the staff, and subject to the two conditions recommended.

- b. **V-2009-62: BRUCE PROPERTIES, INC.** – appeals for variances to increase the allowable height of a screening wall from 6' to 9' at certain front yard locations, and from 8' to 9' at other locations, and to decrease the required side yard from 3' to 0' on lot #10 at the east end of the development, in a Planned Neighborhood Residential (R-3) zone, on property located at 3401 McFarland Lane (Council District 6).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Most of the wall complies with height limitations prescribed by the Zoning Ordinance, with a height of between 8' and 9' being limited to just a few of the many pillars that separate different sections of the wall. Potential public safety concerns related to the location of the wall on the side property line of lot #10 are minimized by the wide area of open space on the adjoining property, where any residence or other building will have to be at least 25' off the side property line due to the presence of a sanitary sewer easement.

- b. The overall design of this new subdivision on such a narrow property, which required the construction of a road along the rear and side yards of the adjoining established subdivision, is a special circumstance that justifies the requested variances. That design accentuated the need for a substantial screening wall that would not only be functional but also pleasing in appearance and adaptive to elevation changes over a length of nearly 1,400 feet.
- c. Strict application of the Zoning Ordinance would require (1) that a few of the pillars, primarily those at the pedestrian and vehicular entrance gates, be reduced in height by a few inches; (2) that the wall in the front yards of lots 1, 9, and 10 be reduced in height to 6'; and (3) that most of the wall along the easterly side property line of lot #10 be moved 3' in from that property line. With regard to the wall location on lot #10, such a shift would essentially result in a 3' wide area of "wasted" space, given the large easement adjacent to it. Since the constructed wall is intended to serve as a buffer for the entire subdivision, its location in the front yards of 3 of the 10 lots, just at the corners of the subdivision, is best considered as a technicality rather than as reflecting a need for the wall to be reduced to 6' in height just at those locations.
- d. Although the need for the requested variances has arisen partially as a result of the appellant's failure to obtain the necessary permit for this wall, it is important to recognize that most of this wall is in compliance with the existing Zoning Ordinance provisions. Requiring that those limited areas that are not in compliance be modified will not have any clear cut benefits, and may actually reduce the utility and aesthetic appeal of the wall.

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

- 1. The screening wall may remain in place as described in the submitted application and site plan.
- 2. A fence/wall permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.
- 3. The side yard reduction from 3' to 0' along the easterly side property line of lot #10 is granted only for the purpose of allowing the screening wall to remain where erected.

Representation – Mr. Dick Murphy, attorney, was present representing the applicant, and was pleased to learn that the legal ad was properly published for their application. He stated that their application had been filed to accommodate future uses on the sides of their property. He said that on the west side of the subject property, Todds Road will be improved by the state and raised in elevation, and they wanted to coordinate their development with what that highway will be in the future. On the east side, a future subdivision is planned by Ball Homes on vacant R-3 land, and it will also result in a regrade of the property. Mr. Murphy stated that he was prepared to provide a complete presentation on their application, if desired by the Board.

Mr. Griggs asked about the elevation of the fence in anticipation of the grading around this site. Mr. Murphy replied that it is one foot too tall in elevation at just a few places. Mr. Griggs asked about the restriction of the Zoning Ordinance, and asked Mr. Murphy if it was built knowing the wall exceeded the height limit. Mr. Murphy replied that it was shown on the Preliminary Subdivision Plan, on the submitted construction plans, and on the final subdivision plat. He stated that at a few locations, at the top of a few columns, there is a problem with the allowable height being exceeded. He disagreed with the assumption that the construction was deliberately in excess of the height limits of the Zoning Ordinance. He said that there was an incorrect assumption, during construction, which resulted in a few of the columns being above the 8' height limitation. Mr. Murphy said that the property is one of the cleanest construction sites he has ever seen, and that what had been done here "is not sinister." He told the Board that the violation here is that a few of the columns are above the allowable height limitation. He said that there was no premeditation by the appellant to exceed the limitations. Mr. Murphy stated that he knows that a permit is needed for a fence or a wall, but that is one of the most overlooked issues in our community.

Mr. Griggs was concerned that this construction was done at the incorrect setback, at the wrong height, and without a permit by a professional developer and home builder; and that to protect the community, someone should be held accountable. Mr. Murphy stated that Mr. Bruce did not know that the wall was at the wrong setback, and at an incorrect height. He stated that Mr. Bruce is a homebuilder, but this is his first development.

Mr. Murphy asked Mr. Matt Carter, Vision Engineering, to display the recorded subdivision plat, which was then displayed on the overhead projector. Mr. Murphy described the recorded Final Record Plat, and the recorded easements, and the side yard variance necessary for the west end

of the property. He then outlined that the purpose of the "3' rule" in the R-3 zone is to keep side yards unobstructed by air conditioning units and the like, primarily for emergency responders. In this instance, they have provided a clear 6' unobstructed setback between the house on the eastern and western lots and the walls. He said that the property to the west has a drainage easement near the wall, which will also ensure unobstructed spacing between that development and their wall.

Mr. Murphy then described the intersection with McFarland Lane and Todds Road. He also described the right-of-way dedication provided by their plat along Todds Road. He said that the stairstep of the wall from the cul-de-sac to McFarland Lane required the columns to slightly exceed the Ordinance requirements. The wall is for the purpose of screening; and as evidenced by the fact that no objectors are at this meeting, the neighbors are not concerned with the wall. He said that there is a grade drop there today, but the Todds Road improvement will raise the grade. Mr. Murphy said that the Ball Homes property to the east will also regrade the site next to them.

Mr. Murphy continued by describing the drainage from the golf course to the subject property. The proposed wall will also serve as a headwall to the drainage from the Andover Golf Course under McFarland Lane onto their property and the adjacent Ball Homes property. He said that the wall will accommodate a number of different purposes.

Mr. Murphy continued that, although his client did not get a fence permit, he is "doing the right thing." Mr. Bruce thought that the wall was allowable under the improvement plans and the fact that it was a retaining wall shown on the plat of the property. He said that Mr. Bruce wanted to do things the right way. Mr. Murphy opined that grading could reduce the height of the wall by grading up to the base of the wall, and that could negate the need for some of the requested variance.

Mr. Murphy said that the neighbors were notified first by the applicant with a petition before he ever developed the property, then by the City during the zone change hearing and platting process. Mr. Bruce has tried to build this wall in a way that the neighbors are pleased with. Mr. Murphy said that he has tried to show today to the Board that this construction was not intentional or malicious. He concluded that Mr. Bruce has tried to provide a quality development.

Mr. Stout could not understand why a permit was not sought, and asked why the staff recommended approval of this request. Mr. Marx stated that the scope of the variance is minimal. Most of the wall is 6'-7' feet in height, and that just a few columns exceed the eight-foot height limit. He said that he personally walked the entire length of the wall, and that it would be easy to regrade the property to eliminate the problem.

Mr. Hume stated that he also thought that the problem here was minor, since it only involved the ends of the property, and that this might still have happened had the required wall permit been issued. He said that their office had closely reviewed this construction. Chairman Brown asked if Mr. Hume approved of the request. Mr. Hume replied in the affirmative.

Ms. Moore understood the minor nature (8' to 9') for parts of the wall, but asked if these types of three-foot side yard details are reviewed by the Planning Commission and the Council when they consider such plans. Mr. Saltee responded that on the original plat submission, the wall was not shown on the plat. It was added as part of the certification process, and may have been requested to be added by the Engineering Department. He said that headwalls and retaining walls are usually not treated the same as fences and screening walls.

Ms. Edwards asked if a list is usually given to a developer or a builder as to what permits are necessary when they submit a development plan. Mr. Hume replied that the Technical Committee reviews those applications and usually provides a listing of what will be necessary for the developer to do.

Ms. Meyer said that she was concerned about the number of cases that appear before the Board that involve construction without the necessary permits. She asked if there is anything "after the fact" that can be done to discourage this practice, and make people go through the proper channels. Mr. Hume replied that his office investigates such complaints, and then gives notice to the property owner. They then outline the options to comply with the Ordinance: obtain their permits, or appear before the Board. He said that in the event that someone has no interest in

doing this, they can cite that individual to Court for resolution. Mr. Hume said that, if convicted, that person is fined. In some cases, Building Inspection can also refer the matter to the Law Department to work out those situations. Mr. Sallee added that there may be discussion of increased fines underway by the Urban County Council. Ms. Boland said that this situation has come to the Council's attention, and the concept of increased fines is being researched. She was not sure when this might go into effect.

Chairman Brown asked if Mr. Murphy's client agreed to the conditions recommended by the staff. Mr. Murphy replied that they had read them, and would agree to abide by them.

Mr. Stumbo stated that he would agree to approve this request, but with some reluctance. He was disturbed that this work did not follow proper procedure, but was pleased that the site was very well maintained at the time of his recent site visit.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards, to approve **V-2009-62: BRUCE PROPERTIES, INC.** – an appeal for variances to increase the allowable height of a screening wall from 6' to 9' at certain front yard locations, and from 8' to 9' at other locations, and to decrease the required side yard from 3' to 0' on lot #10 at the east end of the development, in a Planned Neighborhood Residential (R-3) zone, on property located at 3401 McFarland Lane, for the reasons provided by the staff, and subject to the three recommended conditions set forth by the staff.

Discussion – Chairman Brown said that he agreed with Mr. Stumbo, and that the relief was reasonable, but that he didn't like the way this came about. He said that he considers this as "one gimme" for the applicant, and might not be so inclined to approve something like this the next time.

The votes on the motion were as follows:

Ayes: Brown, Edwards, Moore, Stout, Stumbo

Nays: Griggs, Meyer

The motion passed by a vote of 5-2.

- c. **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 – No representative was present.

Mr. Marx stated that the staff recommendation was for postponement of this request, and that the new information requested on this application had not yet been received by the staff.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously to postpone **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, to the Board's October meeting.

- d. **C-2009-57: CRESTWOOD CHRISTIAN CHURCH CHILDCARE** - appeals for a conditional use permit to increase the allowable number of children from 99 to 138 in a Single Family Residential (R-1C) zone, on property located at 1882 Bellefonte Drive (Council District 4).

The Staff Recommended: Approval, for the following reasons:

- a. Additional children at this existing child care center should not adversely affect the subject or

surrounding properties. Child care has been provided at this location for many years, with no indication of any disturbances to adjoining or nearby residents. Off-street parking and outdoor play areas are conveniently located and exceed the minimum requirements of the Zoning Ordinance, and no physical expansion of the buildings is proposed.

- 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. Child care shall be provided in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to increasing enrollment at the facility.
3. The number of children served by the facility shall not exceed 138.
4. The facility shall at all times operate in compliance with the requirements of the Kentucky Cabinet for Health and Family Services.

Representation – Mr. Nadju Mindiodo was present for the appellant, along with several representatives from the church. Chairman Brown asked if they had reviewed the recommended conditions for approval, and would the church agree to abide by those conditions. Mr. Mindiodo replied in the affirmative and said that they are in agreement with the staff recommendation. A letter of opposition was circulated to the Board members at this time.

Chairman Brown stated that sometimes there is an increase made in the number of children cared for at a child care facility before it is requested from the Board. He wanted the church to understand that they will need a revised Occupancy Permit if this is ever proposed. Mr. Mindiodo understood, and said that the 138-child limit was being requested from the State, and that they would agree to obtain the Certificate of Occupancy as well.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, to approve **C-2009-57: CRESTWOOD CHRISTIAN CHURCH CHILDCARE** – an appeal for a conditional use permit to increase the allowable number of children from 99 to 138 in a Single Family Residential (R-1C) zone, on property located at 1882 Bellefonte Drive, for the reasons provided by the staff, and subject to the recommended conditions for approval set forth by the staff.

Discussion – Mr. Griggs asked Mr. Mindiodo if he felt that the letter had substance, especially about the screening of the dumpsters. Mr. Mindiodo stated that the dumpsters are independent of the day care operation. Mr. Griggs asked if the church could “be a good neighbor” and try to address these concerns. Mr. Mindiodo stated that the church hopes to continue to be a good neighbor, and would try to do so.

The motion passed, 7-0.

- e. **C-2009-58: BRETT SETZER / SETZER INVESTMENT NO. 5, LLC** - appeals for a conditional use permit to establish an indoor shooting range in a to-be-expanded building, in a Light Industrial (I-1) zone, on property located at 1105 Industry Road (Council District 1).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided that the building is soundproofed and that the interior renovation and building addition are properly designed for public safety purposes. Commercial uses on all of the surrounding properties are not expected to be impacted by the proposed indoor shooting range. The overall appearance of the property should improve with the installation of interior and perimeter landscaping for all of the vehicular use areas, and adequate off-street parking will be provided.
- b. All necessary public facilities and services, such as police and fire protection, are available and adequate for the proposed use.

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

1. The facility shall be constructed and operated in accordance with the submitted application and site plan.
2. All necessary permits related to interior renovation, new construction and occupancy shall be obtained from the Division of Building Inspection prior to initiating those activities.

3. Any applicable permits shall be obtained from the Department of Public Safety prior to opening the facility, and the facility shall be operated at all times in compliance with any federal, state and local laws pertaining to the operation of an indoor shooting range.
4. The building shall be soundproofed to the maximum extent feasible, and shall be designed to address public health and safety concerns related to the operation of an indoor shooting range, with special attention given to fire protection, maintaining indoor air quality, and the provision of a certified backstop from a national manufacturer for all shooting banks.
5. The parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
6. Outdoor fences shall be removed, or relocated beyond the "limits of VUA parking" as shown on the submitted site plan. A permit for the fence relocation shall be obtained from the Division of Building Inspection, if necessary.
7. The layout of the proposed off-street parking spaces and access drives shall be subject to review and approval by the Division of Traffic Engineering.
8. Storm water shall be managed in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
9. Space allocated to the sale of guns and other related items shall be limited to no more than 30% of the total floor area provided.

Representation – Mr. Tom Lambdin, Midwest Engineering, was present representing the applicant. Chairman Brown asked if the appellant had reviewed the recommended conditions for approval, and would agree to abide by those conditions. Mr. Lambdin replied in the affirmative. Chairman Brown stated that he wished to emphasize condition number six, that will require a fence permit to be issued. After today's meeting, Mr. Lambdin said that he clearly understood the reason for that condition.

Mr. Stout asked if this indoor shooting range will be just for handguns. Mr. Lambdin thought so, but was not sure that it would be so limited.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout, and carried unanimously to approve **C-2009-58: BRETT SETZER / SETZER INVESTMENT NO. 5, LLC** – an appeal for a conditional use permit to establish an indoor shooting range in a to-be-expanded building, in a Light Industrial (I-1) zone, on property located at 1105 Industry Road, based upon the staff recommendation and subject to the nine conditions recommended.

- B. Transcript or Witnesses - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. Variance Appeals - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

There were none remaining.

D. **Conditional Use Appeals**

There were none remaining.

E. **Administrative Review**

1. **A-2009-59: JOHN KEMPER** - appeals for an administrative review to allow a 1½-story detached garage to be more than 50% of the size of the principal residence, in a Single Family Residential (R-1C) zone, on property located at 816 Della Drive (Council District 11).

The Staff Recommended: Disapproval, for the following reasons:

- a. No information or documentation of any kind has been provided by the appellant to substantiate that storage needs cannot be accommodated in an accessory building that complies with the size limitations of Article 15-6(c) of the Zoning Ordinance.
- b. This neighborhood is characterized by detached garages to the rear of the principal residences that appear to comply (in most instances) with the current size limitations, many of which have a less steep roof pitch than the dwelling. Complying with the size limits for the proposed detached garage will make it appear more in character with improvements on other properties in the general vicinity.
- c. Modifying the design of the proposed detached garage is feasible at this location, and can require only that the proposed second floor have most of its space devoted to attic-type storage, rather than finished floor area.

Representation – Mr. John Kemper was present for his appeal. Given today's meeting agenda, Chairman Brown praised Mr. Kemper for doing things the right way, and in the right order.

Mr. Marx showed a few photos of the subject property, the first from Della Drive. He said that the subject property is zoned R-1C, and the Ordinance allows a detached structure as large as 625 sq. ft., or a limit of 50% of the size of the dwelling on the lot. In this case, due to the size of the dwelling, some 772 square feet is allowable for a detached structure at this location. Mr. Marx stated that a two-story garage of 946 square feet is proposed, 28' by 24' in size, which is 174 square feet over the Ordinance's size limitation.

Mr. Marx said that evaluating the request was difficult due to the relatively small increase in size proposed. He said that there did not seem to be any unique circumstances with the subject property. Over the past nine years, only three have been approved, and all of those involved special circumstances that played a role in the BOA approval. He outlined the information to this effect in the Staff Report.

Mr. Marx showed a photo of the house next door, which does have a larger accessory building than typical in this neighborhood. On the other side of the subject property, a one-story garage is present. Mr. Marx said that other accessory buildings on properties in the neighborhood, typically are smaller than proposed in this case. A smaller accessory building or one with a reduced roof pitch would probably be compliant with the Ordinance. He then showed photos of a few examples, and indicated that these were typical of the neighborhood. The staff thought that a modification to the second floor would be appropriate in this instance to reduce the size of floor area in the structure to a level that meets the Ordinance.

Mr. Stout asked Mr. Kemper why he would not follow the staff's suggestion. Mr. Kemper replied that this garage is to be built for a couple due to be married in October. They have three vehicles and a motorcycle to store inside the garage, for which he supplied photographs. He showed a photo of a 30 x 24' garage on Yorktown Drive, to show the building on which they have modeled their plans. Mr. Kemper said that their version of this same garage is compliant with the Ordinance, except for the second floor. His clients can also build the structure without a variance. He said that they want the additional space to store furniture, which requires it to be floored on the second level.

Mr. Hume noted that the garage on Yorktown was permitted as a one-story garage. It was restricted to only storage on the second floor. Mr. Kemper stated that PVA office identifies some 1356 square feet on that residence on Yorktown, and an additional 720 square feet for that garage. He then showed photos of a few other homes and garages in the neighborhood. One was shown on Lynn

Drive with a 900 square-foot garage with a possible second floor. All were within walking distance of the proposed garage on Della Drive.

Mr. Kemper stated that four of the eight cases shown today were constructed without prior permits. Of the three remaining, two were approved. Mr. Kemper questioned why, if the building can be built to look the same, the use of the attic space matters.

Mr. Griggs asked Mr. Kemper if they are basically asking whether the Zoning Ordinance restrictions matter. He said that this application is asking that the Ordinance be ignored without any special circumstances; and, in essence, they are asking that the Board approve this application anyway. Mr. Kemper replied that his clients need the additional storage space. This seems to be a plus for the neighborhood, to allow these vehicles to be parked off the street. He said that on Della Drive, he has photos of cars parked up and down the street. These folks are trying to get their vehicles off the street into this garage.

Mr. Stout asked that if the staff recommendation is followed, if the applicants could park their vehicles off of the street. Mr. Marx replied that the footprint of the garage could be reduced. He asked the Board to focus upon the amount of storage space that is proposed in this garage, instead, and the height of the second floor being above seven feet.

Chairman Brown agreed with Mr. Marx's assessment. He asked Mr. Kemper if his clients opposed the ceiling being reduced to be below 7' in height. Mr. Kemper said that that is correct.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer to disapprove **A-2009-59: JOHN KEMPER** – an appeal for an administrative review to allow a 1½-story detached garage to be more than 50% of the size of the principal residence, in a Single Family Residential (R-1C) zone, on property located at 816 Della Drive, for the reasons provided by the staff.

The votes on the motion were as follows:

Ayes: Brown, Edwards, Griggs, Meyer, Moore

Nays: Stout, Stumbo

The motion passed by a vote of 5-2.

- IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present will be heard at this time. There were none.
- V. **STAFF ITEMS** - The Chair asked if there were any items a Staff member wished to present.
- A. House Bill 55 Training Opportunity – Mr. Sallee announced that there will be an APA audio conference Wednesday, October 14 from 4:00 till 5:30 p.m. in the Division of Planning Conference room. The title of this presentation is "Monetizing Sustainability" and will count toward 1.5 hours of training for Board of Adjustment members, as well as staff.
- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be October 30, 2009.
- VII. **ADJOURNMENT** - There being no further business, Chairman Brown declared the meeting adjourned at 2:24 PM.

Peter Brown, Chairman

James Griggs, Secretary