

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 27, 2013

- I. ATTENDANCE - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, September 27, 2013. Members present were Chairman Barry Stumbo, Noel White, Joseph Smith (arrived at 2:30 p.m.), Janice Meyer, James Griggs, Thomas Glover, and Kathryn Moore. Others present were: Casey Kaucher, Division of Traffic Engineering; Jim Marx, Zoning Enforcement; Mike Sanner and Tracy Jones, Department of Law. Staff members in attendance were, Bill Sallee, Jimmy Emmons and Tammye McMullen.

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

II. PUBLIC HEARING ON ZONING APPEALS

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

Staff Comment – After the Chair sounded the agenda, Mr. Emmons commented on item #11, Solomon Lee Van Meter, stating that if there was no opposition, the Division of Planning could see no reason that this could not be held in an abbreviated fashion. Mr. Emmons also stated that item #12, A-2013-61: Clayton Farmer: that was an administrative appeal of a denial of a permit, so the Planning staff would need to report on that case.

- III. APPROVAL OF MINUTES - The Chair announced that the minutes of the May 21, 2013 and the August 23, 2013 meetings would be considered at this time.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore, and carried unanimously (Smith absent) to approve the minutes of the May 31, 2013 meeting; with one correction.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Smith absent) to approve the minutes of the August 23, 2013.

- B. Transcript or Witnesses - The Chair 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.

(Sounded Items)

1. V-2013-56: DAVID and LOUISE PENDERY - a variance to reduce the required side yard from 27 feet to 19 feet in order to construct a residential addition in the Agricultural Rural/Neighborhood Design Character Overlay (A-R/ND-1) zone, at 2560 Walnut Grove Lane (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare, nor will it alter the character of the general vicinity. The proposed protrusion into the side yard setback is minimal, and a potentially more intrusive addition could legally be built without the need for a variance.
- b. Granting the variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance. With a restriction that the side yard not be averaged, and established with a minimum width of 19', the requested variance will actually provide a greater minimum distance to the property line than the Zoning Ordinance otherwise allows.
- c. The circumstance that justifies the requested variance is that the 1.4-acre property is much smaller than the 40-acre minimum lot size to which the 25' side yard is typically applied.
- d. Strict application of the Zoning Ordinance would require that the design of the proposed additions be modified in such a way that may ultimately be more intrusive to the neighboring property owner.
- e. This variance is not the result of an action by the appellants, and there is no willful violation associated with this proposed property improvement.

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

1. The proposed additions shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy and construction, respectively.
3. At no point shall the side yard be less than 19', and averaging will not be allowed on the northern property boundary.

Staff Comment - Mr. Emmons informed the Board that the required notice for all of the applications on today's agenda; including the signage, had been posted. He also announced that he had four letters of support for the first case that he then presented to the Board.

Representation – Mr. David Pendery and Mrs. Louise Pendery, appellants, were present; and they indicated that they had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. White, seconded by Ms. Moore, and carried unanimously (Smith absent) to approve V-2013-56: DAVID and LOUISE PENDERY - request for a variance to reduce the required side yard from 27 feet to 19 feet in order to construct a residential addition in the Agricultural Rural/Neighborhood Design Character Overlay (A-R/ND-1) zone, at 2560 Walnut Grove Lane (Council District 12), as recommended by Staff and subject to the conditions as recommended by staff.

2. V-2013-58: DEREK NIELSEN and LINDSAY SCOTT - a variance to reduce the required side yard from 3 feet to 0 feet in order to retain an existing privacy fence in a Planned Neighborhood Residential (R-3) zone, at 432 Julia Way (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Reducing the required side yard from 3' to 0', only for the purpose of retaining a portion of the fence on the property line (where depicted on the site plan), should not adversely affect the public health, safety, or welfare, nor alter the character of the area.
- b. The unusually wide side yards of the subject lot, combined with the large side yards of the neighboring lots, results in an average 19' between the houses, well in excess of the minimum 3' requirement of the R-3 zone. This constitutes a unique circumstance.
- c. The location of the fencing is in an area with at least an 11' wide side yard; and, in no circumstance, will the proposed fence create a situation with an obstructed side yard of less than 6' on the subject or neighboring properties. Therefore, there will be no resulting circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would result in portions of the fence being relocated outside of the "required" side yard and would create a potential "no man's land" between the existing and new fences. This could become a maintenance problem for both the property owner and for the immediate neighbors, and would result in a much smaller fenced yard for the appellant.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellants, as they obtained a fencing permit. A field adjustment made during the construction of the fence was thought to be in keeping with the character of the neighborhood.

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

1. A revised fencing permit shall be obtained from the Division of Building Inspection that shows the fence as depicted in the submitted application and site plan, within the next 30 days.

Representation – Ms. Lindsay Scott and Mr. Derek Nielsen, appellants, were present; and they indicated that they had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (Smith absent) to approve V-2013-58: DEREK NIELSEN and LINDSAY SCOTT – appeal for a variance to reduce the required side yard from 3 feet to 0 feet in order to retain an existing privacy fence in a Planned Neighborhood Residential (R-3) zone, at 432 Julia Way (Council District 1), as recommended by Staff and subject to the one condition outlined by Staff.

3. V-2013-59: HARMONY HB, LLC - a variance to reduce the required side yard from 3 feet to 0 feet in order to allow an existing window well to remain as constructed in a Single Family Residential (R-1E) zone, at 305 White Oak Trace (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Provided the existing drainage easement is modified, reducing the required side yard from 3' to 0', only for the purpose of retaining the window well in the side yard, will not adversely affect the public health, safety, or welfare, but will improve the safety of the residents and emergency responders by providing necessary ingress and egress during times of emergency. Furthermore, the requested variance will not alter the character of the area, as only 2-3 inches of the retaining wall are visible from the street.
- b. The special circumstance that applies to this property is the existing topography and the fact that there was already a privately owned house next door, which necessitated the builders to construct the window well.
- c. Allowing the applicant's window well to remain on the lot, as it was installed, enables the protection and safety of the residents of this home. Therefore, there will be no resulting circumvention of the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance will deprive the resident of the house the use of an existing basement bedroom, as it would no longer meet the egress requirements of the Kentucky Building Code.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as a permit was applied for and a field adjustment was made during the construction of the house. Based on the topography, this was the best option available at the time. Therefore, the window well was constructed to comply with the Kentucky Building Code.

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

1. The applicant shall submit an addendum to the building permit to the Division of Building Inspection to reflect the amended construction of the window well, including a reference to the Board's action.
2. An Easement Minor Amended plat shall be filed to modify the existing private drainage easement in this side yard. This plat shall be submitted to the Division of Planning within 60 days of the Board's approval.

Representation – Mr. John Strom was present representing the appellant, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Smith absent) to approve V-2013-59: HARMONY HB, LLC – a variance to reduce the required side yard from 3 feet to 0 feet in order to allow an existing window well to remain as constructed in a Single Family Residential (R-1E) zone, at 305 White Oak Trace (Council District 2), based on the Staff's recommendation of approval and subject to the two conditions.

4. V-2013-60: JOHNSTON CHARITABLE TRUST - a variance to reduce the required parking by 50% (4 to 2 spaces) in a Neighborhood Business (B-1) zone, at 149 Jefferson Street (Council District 2).

The Staff Recommends: 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. The subject property is located in an older downtown neighborhood where few properties comply with current requirements for off-street parking. On-street parking is available in the immediate vicinity of the subject property on Jefferson Street and on Ballard Street.
- b. The applicant wishes to replace a non-conforming residential use in a B-1 zone with an allowable small business;

and within the defined Infill and Redevelopment Area, granting the requested variance will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance.

- c. The extremely small size of the property, especially for a business use, in conjunction with the existing two parking spaces that are accessible via an alley, is a special circumstance that applies to this property and is not generally applicable to other business properties along this corridor, or near the downtown.
- d. Strict application of the Zoning Ordinance would likely necessitate that the property continue to be used as a non-conforming residential use despite being on a corner lot, as it would be difficult for most commercial enterprises to meet the current parking requirements of the B-1 zone.
- e. The requested variance is not a result of the applicant's own actions or a willful violation of the Zoning Ordinance, as this lot was created in the late 19th century and has been zoned for a non-residential use for at least 60 years. The configuration of the lot and placement of the building on it, along with the commercial zoning, were well in place before the current parking regulations were in effect.

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

1. The property shall be developed in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy of the business use.

Representation – Ms. Sally Johnston and Kevin Oday, appellants, were present and they indicated that they had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously (Smith absent) to approve V-2013-60: JOHNSTON CHARITABLE TRUST – a variance to reduce the required parking by 50% (4 to 2 spaces) in a Neighborhood Business (B-1) zone, at 149 Jefferson Street (Council District 2), for the reasons recommended by Staff and subject to the two conditions.

5. CV-2013-51: TLC MILLER, LLC - a conditional use permit for a night club; and a variance to reduce the required parking by 50% (from 10 to 5 spaces) in a Neighborhood Business (B-1) zone, at 319-A South Limestone (Council District 3).

The Staff Recommends: Approval of the requested conditional use permit, for the following reasons:

- a. A small bar/nightclub at this neighborhood business location should not adversely affect the subject or surrounding properties, as the building will be soundproofed and is oriented toward South Limestone Street, which should help to minimize any potential for noise. In addition, there will be restrictions on outdoor entertainment or outdoor speakers allowed as a part of this use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of the identified variance from 100' to 91', for the following reasons:

- a. A slight reduction in the setback from a residential zone (actually used as a commercial parking lot) should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Outdoor live entertainment will not be provided; and the cocktail lounge and nightclub will occupy an existing building that is oriented toward South Limestone, with a University of Kentucky parking garage directly across the street. Furthermore, outdoor speakers will be prohibited with this use.
- b. The existing development pattern in this block of pedestrian-oriented business uses, and the configuration of the surrounding residential zoning that is being used as a commercial parking lot, are special circumstances that contribute to justifying a slight reduction in the 100-foot setback requirement to 91 feet.
- c. The intent of the distance requirement from a residential zone is to control those more intense business uses from residences, not parking lots; therefore, there will not be a circumvention of the purpose for the zoning regulation.
- d. Strict application of the Zoning Ordinance would effectively prevent a cocktail lounge (bar) or nightclub from occupying the existing building, as none of the subject property is at least 100 feet away from the nearby residential zones.
- e. The appellant is making a reasonable effort to adaptively re-use an existing building in the midst of several other neighborhood businesses. No physical expansion of the building is needed to accommodate the requested use, and there is no indication that an effort is being made to circumvent a requirement of the Zoning Ordinance.

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

1. The cocktail lounge/nightclub shall be established in accordance with the submitted application and site plan.
2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy.

3. The rear doors shall remain closed any time that live entertainment is provided, and outdoor speakers shall be prohibited on the property.
4. Soundproofing shall be provided between the two existing commercial suites.

Representation – Mr. Myke Robbins was present representing the appellant, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

Staff Comment – Mr. Emmons stated that he would like to point out, and it is detailed in the staff report, that this particular case was for a conditional use and a variance request. He stated that during the course of the review of this request, the variance that was requested which was a parking variance is no longer necessary, and has been withdrawn by the applicant; However, during the review, a less intense variance for a distance requirement from 100 feet to 91 feet was recognized, and is recommended for approval. He indicated that if the Board had any questions for the Staff, he would be more than happy to answer them. He also noted that it is a little bit odd, but not unprecedented, for the Board to act on such a variance. He stated he would like to make mention of this, that in the motion making (if the Board chose to approve it), the Board would not want to read exactly the language that was requested. He stated the Board would want to read “a conditional use permit for a night club and a variance to reduce the distance from 100 feet to 91 feet,” as recommended by the Staff and subject to the conditions that are in the agenda and the staff report. Mr. Emmons again stated that all of this is detailed in the staff report, but he wanted to go ahead and bring that forward before motions were made.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs, and carried unanimously (Smith absent) to approve CV-2013-51: TLC MILLER, LLC – request for a conditional use permit for a night club; and a variance from 100 feet to 91 feet in a Neighborhood Business (B-1) zone, at 319-A South Limestone (Council District 3), as recommended by the staff, for the reasons recommended by the Staff.

D. Conditional Use Appeals
(Sounded Items) (cont'd)

1. C-2013-53: IDLE HOUR COUNTRY CLUB - a conditional use permit to expand the country club (pool bar canopy and service area roof) in a Single Family Residential (R-1B) zone, at 1815 Richmond Road (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. The physical arrangement of the improvements on the subject property, along with the relatively small size of the two new canopies proposed near the pool and on the southeast wall of the main clubhouse, will minimize any potential negative impact of this conditional use upon the surrounding neighborhood. Thus, there will be no adverse impact upon the nearby neighborhood for this expansion of the country club.
- b. All services and infrastructure are adequate and available for this expansion of the country club's conditional use permit.

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

1. The proposed canopies shall be constructed in the locations indicated on the corollary site plan, and shall be operated in accordance with the submitted application.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to the construction of these site improvements.

Representation – Mr. Bob Featherston, appellant, was present and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

At this time, Mr. Emmons presented a letter of support to the Board for this case.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Smith absent) to approve C-2013-53: IDLE HOUR COUNTRY CLUB – request for a conditional use permit to expand the country club (pool bar canopy and service area roof) in a Single Family Residential (R-1B) zone, at 1815 Richmond Road (Council District 5), as outlined by Staff and subject to the two conditions.

2. C-2013-54: JIM WILHITE - a conditional use permit to modify a currently approved site plan, replacing a portion of the on-site parking with townhomes in a Townhouse Residential (R-1T) zone, at 3500 Arbor Drive (Council District

8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the intensity of this previously approved use is being greatly diminished. Removal of the bus parking lot is justified because the enrollment at this facility has been greatly reduced, and competitions are no longer held at this location.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The uses shall be maintained in accordance with the approved site plan and application.
2. A new Zoning Compliance Permit shall be issued for the existing conditional use by the Division of Planning.
3. Any pole lighting for the parking areas shall be of a shoebox or similar design, with light shielded from and directed away from all nearby residential properties.
4. Stormwater management shall continue to be provided as required by the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. The total enrollment of the private club and daycare use shall not exceed a maximum of 200 students.
6. Approval by the Board shall be noted on the applicable (most recent) development plan approved by the Planning Commission for the subject property.

Representation – Mr. Jason Banks was present representing the appellant, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

Board Comments – Ms. Meyer stated that, for clarification on the parking requirement, she understood that originally this was requested so there would be competitions, but what she was not sure about is if they get rid of this aspect of the business, how many students they are entitled to have at one time. Mr. Emmons replied that there are two uses on the subject property: the private club and the accessory daycare use. He noted that each of these uses has its own parking generator; but, in reality, at this facility many of the students go back and forth between the two uses. He stated that this made it a little difficult to determine exactly how many kids were allowed, based on how much parking they have. He stated that the Staff is recommending that the combination of the enrollment at the private club and the daycare shall not exceed a combined maximum of 200 students. Ms. Meyer then stated that, as she looks at it now, it appears that they have 205, but soon expect not to have 205, and asked if this was correct. Mr. Emmons stated that the Staff was taking into account that some of the students that will be enrolled in the daycare will also be enrolled in the gymnastics program and vice versa. Ms. Meyers then confirmed with Mr. Banks that his client was aware that it is 200 individuals. Mr. Banks replied that he was.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. White; seconded by Mr. Glover, and carried unanimously (Smith absent) to approve C-2013-54: JIM WILHITE – an appeal for a conditional use permit to modify a currently approved site plan, reducing a portion of the on-site parking with townhomes in a Townhouse Residential (R-1T) zone, at 3500 Arbor Drive (Council District 8), as recommended by Staff and subject to the conditions as recommended by Staff.

E. Administrative Reviews
(Sounded Items)

1. AC-2013-52: ASSOCIATES IN PEDIATRIC THERAPY - an administrative review to determine that physical therapy is substantially similar to an athletic club facility; and, if determined to be the case, a conditional use permit to operate such use in conjunction with an existing athletic club facility in a Light Industrial (I-1) zone, at 1850 Bryant Road (Council District 6).

The Staff Recommends: Approval of the administrative appeal, for the following reasons:

- a. The requested physical rehabilitation use is substantially similar to and is consistent with the definition of an athletic club, which is an allowable conditional use in the Light Industrial (I-1) zone.

The Staff Recommends: Approval of a conditional use permit for a physical therapy use, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This site is well suited to accommodate the proposed physical therapy use within an existing athletic club facility, and that use will be very limited, and conducted in accordance with the submitted application and site plan.

- b. All necessary public facilities; and services, including storm and sanitary sewer service, are available and adequate for the proposed use.

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

1. The physical therapy use shall be established in accordance with the submitted application and site plan.
2. A Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to commencing this new use.

Representation – Ms. Angela Renea Sageser, appellant, was present and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

Staff Comments – Mr. Emmons stated for the record that he just realized there was one typo on the staff report and Staff does recommend approval on both the administrative review and the conditional use, for the reasons listed in the staff report. At this time Mr. Emmons presented this information on the overhead projector.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously (Smith absent) to approve AC-2013-52: ASSOCIATES IN PEDIATRIC THERAPY – administrative review to determine that physical therapy is substantially similar to an athletic club facility; and, if determined to be the case, approve, a conditional use permit to operate such use in conjunction with an existing athletic club facility in a Light Industrial (I-1) zone, at 1850 Bryant Road (Council District 6), for the reasons stated by the Staff and subject to the two conditions.

2. A-2013-55: SOLOMON LEE VAN METER - an administrative appeal to change one legal non-conforming use (retail) to another non-conforming use (residential) in a Light Industrial (I-1) zone, at 372 Jefferson Street (Council District 1).
(Sounded item)

The Staff Recommends: Approval, for the following reasons:

- a. The requested use of a single family residential dwelling unit will be a decrease in the intensity of the previous retail non-conforming use of the subject property. It will not negatively impact the subject property, which is currently vacant as a result of a fire in the fall of 2012, nor will it negatively alter the character of the surrounding residential properties.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The property shall be used in accordance with the submitted application and site plan.
2. A Building Permit shall be obtained from the Division of Building Inspection prior to the start of construction.
3. The maximum allowable volume of the new single family dwelling unit shall be limited to 22,500 cubic feet, and shall be within the setback limits depicted on submitted site plan.

Staff Comment - Mr. Emmons announced he had one letter of opposition for this case that he then presented to the Board.

Note: Mr. Smith arrived at this time

Representation – Mr. Solomon Van Meter, appellant, was present and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Questions – Mr. Glover stated that he was still trying to absorb the content of the letter from Mr. Brumley. Mr. Glover asked Mr. Van Meter if he had seen the letter. Mr. Van Meter stated that it was handed to him that afternoon, and advised he would like to address that. Mr. Van Meter stated (noting he had only had about three hours notice of this concern), that Mr. Brumley's concern seem to be that he thinks the two-story structure will be out of character with neighborhood. Mr. VanMeter noted that he would like to point out to the Board that in the 300 block of Jefferson, there are eight other two-story structures, so it is not out of character for the neighborhood. He stated that the addresses for those are: 312, 314, 318, 325, 331, 357 Jefferson and 501 West Third Street, which actually fronts on Third Street, but the side of it is on this block of Jefferson. He added that the large building, which has apartments and the Green Lantern Tavern, also faces Third Street, but the side of it is on this block. He again stated that a two-story building is

not out of character for this block of Jefferson. He stated that the volumetric limitation that the Staff has put on whatever they build, coupled with the limitation of square footage of floor space, will limit what they could build anyway; so it can't be a towering structure. Mr. Van Meter also stated that the other thing that Mr. Brumley raised was, the 0'-lot line request on the Fourth Street side. He indicated that they do not expect to build to the sidewalk, although the building that has been there at least since the thirties was right on the sidewalk. He noted that what they are going to propose is three feet off the sidewalk, but what they do want is to have is some flexibility in that. He stated that he thinks, with the ordinance as written, that they would probably be entitled to it if they were putting back exactly what was there (which was a retail space since it was burned and demolished within the last year).

Mr. Griggs then asked if the structure that is being built, was on the same footprint as the structure that burned. Mr. Van Meter advised that it is within the footprint. Mr. Griggs then asked if it was smaller than the footprint of the building that burned. Mr. Van Meter answered that that was the case. Mr. Griggs asked if it was not any taller than the burned building. Mr. Van Meter advised it would be taller, but the burned building occupied almost the entire lot. He advised it took up the area from the sidewalk on Fourth Street to the sidewalk on Jefferson Street. He stated that he thinks it was approximately a three-foot alley-way between the property and the adjacent house and went back to a 20-foot back yard. He noted they calculated a 1,728 square-foot footprint, and their footprint would possibly be about two thirds of that. Mr. Griggs then asked if the cubic volume in their building would be less than the cubic volume in the former building. Mr. Van Meter advised that that is the requirement that has been put on them by the Staff.

Mr. Griggs then asked Staff if it was a smaller building volume-wise. Mr. Emmons replied that the Staff's condition would be that it be no greater in size. He advised that it would be equal to or smaller than 22,500 square feet. He stated that that was the calculated volume of the non-conforming building that was there prior to it being demolished.

Mr. Griggs then asked if it was less intense use in a smaller volume building. Mr. Emmons responded affirmatively.

Citizen Comments – There were no citizens present to speak to this request.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously to approve A-2013-55: SOLOMON LEE VAN METER – an administrative appeal to change one legal non-conforming use (retail) to another non-conforming use (residential) in a Light Industrial (I-1) zone, at 372 Jefferson Street (Council District 1), based on the Staff's recommendations and subject to the three recommended conditions.

3. A-2013-61: CLAYTON FARMER - an administrative appeal to review the denial of a permit to expand a non-conforming use in a Neighborhood Business/Historic District Overlay (B-1/H-1) zone, at 155 East Third Street (Council District 1).
(Discussion Item)

The Staff will report at the hearing.

At this time Mr. Farmer presented exhibits to the Board and Staff. Mr. Farmer stated that there are three pieces of property on Third Street that were purchased by the owner of the Carrick House, Mr. Lundergan, and he purchased those properties for improving the entire neighborhood for his main project. He advised that Mr. Lundergan has now spent several thousands of dollars for putting these pieces of property together; and he said that he thinks they are going to be a great improvement to the Third Street area. Mr. Farmer noted that there are two pieces of property, 155 and 159, that are identical in design, and have been since the late 1800's. He stated that they were able to prove that address 159 had an addition on the back that had collapsed, and had to be demolished. He stated that they had assumed that address 155 also once had the same addition because these are "sister" buildings. Mr. Farmer noted that there are several reasons why buildings have become historic. He stated that sometimes it is just as simple as someone slept there, or someone had a meeting there. It was his contention that in this case, these pieces of property were originally designed and developed to be exactly alike, for whatever purpose; it might have been for two brothers, two sisters, or two families, but they wanted the buildings to be the same. He stated that the intent of the design is as historic as the buildings themselves. He stated that they have now been allowed to put (as the photographs will show) an addition on the back of address 159, but they were denied that privilege on address 155 because they couldn't prove absolutely that it had an addition at one time. Mr. Farmer stated that the markings on the brick surface of 155 seem to indicate that there was a wall there at one time, but that is the only proof they have that something did exist. That is why they are asking to keep the buildings identical in nature. He advised that each building has a little less than 900 square feet, and they will make nice residences; but they want to put a small sunroom on the back. He noted that if they put the sunroom on the back of 159, they will enlarge the footprint by approximately 80 square feet. He stated that it is not like they are adding a master bedroom suite or a kitchen or a

family room; their intent is to keep the buildings the same.

Prior to the Staff presentation, Chairman Stumbo asked if anyone on the Board had any questions for Mr. Farmer.

Staff Comments – Mr. Emmons asked the Board to turn to the back of their notebooks and advised that the staff exhibits were on a white piece of paper. He said that 155 East Third Street is the property that is before the Board today. He noted that he is the staff member who reviewed and found that there was sufficient evidence to issue a zoning compliance permit for the addition on 159 East Third Street. He also noted that on that property there was photographic evidence of a larger addition on the back of the property than the addition that the Board of Architectural Review had approved. He noted that the pictures on the overhead projector were taken within the last 12 months; so the Staff had evidential proof on 159 that that building was bigger; and the addition that the applicant was putting back was smaller. Mr. Emmons advised that this is important because on both 159 and 155 East Third Street, the use of those properties was proposed to be a Non-Conforming residential use in a Neighborhood Business (B-1) Zone, in addition to the historic overlay zoning.

Mr. Emmons stated that the staff did not feel they had enough proof to issue a zoning compliance permit to allow the addition at 155 E. Third Street. Mr. Emmons, at this time, used the exhibits on the overhead projector to walk the Board through as to why staff made this decision. Mr. Emmons explained that according to Article 4-3(a) of the Zoning Ordinance, a non-conforming use shall not be enlarged or extended. He stated that, considering that the staff did not feel there was enough evidence to issue a similar zoning compliance permit for 155, staff relied upon a very strict interpretation of that section of the Zoning Ordinance in the denial of the permit.

He stated that there is very little written record for the property at 155 East Third Street. He noted that the only evidence that the staff could find for the previous use (he referred to the very last page of the staff report) was a certificate of occupancy for a home office, which is an accessory use to a residential use.

Mr. Emmons noted that the staff did explain to the applicant that had they wished to put a conforming use (a use that is first allowed is a commercial use on the first floor), the addition would have been acceptable because it is the proposed non-conforming residential use that made it difficult for staff to issue a zoning compliance permit for the enlargement.

Mr. Emmons advised that if there were any questions, this essentially concludes the staff position.

Board Comments – Ms. Moore said that if she understood this correctly, they were identical when they were built; and at some point in time it is known that there was an addition to 159, but there was no evidence that there was one added to 155. Because it is being used for a non-conforming purpose, it can't be expanded. Mr. Emmons replied affirmatively. Mr. Griggs added that there also isn't any proof that there wasn't. Mr. Emmons said that was true; but also looking at the last twelve- month period, an addition did not exist, as opposed to 159 E. Third St. He went on to state that because of the lack of information, the staff made a very strict interpretation of the Zoning Ordinance.

Mr. Griggs asked if the Board of Architectural Review had approved of adding this addition. Mr. Emmons replied affirmatively and apologized if he did not make the point clear during the staff presentation.

Chair Comments – Chairman Stumbo noted that this is just his personal opinion; and he is not an architect, and not an expert in planning and zoning; but he has to think the applicant's request is pretty reasonable. He asked if it was being done at 159, then why not on 155. He also stated that he doesn't think it is out of character, and that it actually improves the area. He advised that he can really see staff's approach, but he again repeated that he doesn't think what the applicant is asking is unreasonable, and he thinks it would be a much nicer improvement than not. He also stated that having an addition on 159. (and there's been really no proof that there wasn't one on 155) that the records are pretty old and not very clear. Chairman Stumbo repeated that he certainly does not have a problem with the applicant's request.

Board Comments – Ms. Moore asked if legal counsel had any comments or suggestions. Ms. Jones responded that it is really up to the Board as to what they believe has been demonstrated today during the course of this hearing, from either the applicant or the staff. She stated that it is the lack of information that is making it a bit difficult.

Mr. Griggs asked if Ms. Jones would be able to write findings of fact that would keep this case from a precedent setting. Ms. Jones said that she had already done that, and presented them to the Board.

Mr. Griggs then asked Mr. Farmer if this second addition would make the two buildings look identical in the back when he is done. Mr. Farmer replied yes. Mr. Griggs also asked, if a business was put in this building if that this could be done without coming before the Board. Mr. Farmer responded that this is correct and it may very well happen.

Mr. Griggs told Mr. Farmer, if putting a business in this building would give him permission to do this addition, then he wouldn't have to tear it down. Mr. Farmer responded that there have been inquiries about it being used as a residence; and as far as he knows, there has been no one who wants to rent it for business. He stated that it is really only about 900 square feet, and even as a residence that is pretty small. He noted that is the reason they want to add the sunroom on the back to give it a little patio to make it more attractive residentially.

Ms. Moore stated her opinion that the idea of non-conforming uses is that they should wither away. In this there is no evidence to support that there was an addition for at least twelve months, if it ever was there. She didn't see any evidence that a non-conforming use should continue. She stated that the appeal seems like it would be an expansion of a non-conforming use.

Chair Comments – Chairman Stumbo stated that there are potential findings of fact for the denial of the appeal, but also for the approval of the appeal. He stated that it is really up to the Board, as they wish. He noted that he had stated his facts and his opinion earlier about upholding the applicant's position. He stated that as the Chair he doesn't usually make a motion, so he would ask the Board what would be their pleasure.

Board Comments – Ms. Meyer stated that she thinks the applicant has provided some reasonable testimony, and said that if there was evidence on the brick that at some point a structure was there, she thinks the enlargement is not great. She noted that she is concerned about the precedent setting as well, and hoped that the Board could cover themselves with what the Law Department had provided.

Appellant Comments – Mr. Farmer then stated that when they got involved with these properties, they didn't look like the photographs he presented today. He noted that all three of these buildings were in severe decay on all sides; windows were broken out, doors were boarded up, the addition on the back of 159 was nearly totally collapsed. He stated that the previous owner of this property thought he might have some photographs that showed that the other building had an addition, but he could not locate them. He stated that the previous owner told him and the contractor that there was an addition at one time on the back of the one property, some 25-30 years ago. He stated that is the only evidence they had. He again noted that if the Board had seen these buildings before they started on them, he didn't think there were many people that would have been willing to put the kind of money that Mr. Lundergan had put into them to bring them back to a quality state. He stated that Mr. Lundergan, for reasons of the design itself, wanted to keep both buildings the same. He noted that, they are going to look a little strange having only one with an addition. Somewhere thirty years from now is going to be asking, if they did it to this one, why they didn't do it to that one.

Citizen Comments – There were no citizens present to comment on this request.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Ms. White, and carried 6-1 (Ms. Moore opposed) to approve A-2013-61: CLAYTON FARMER – upholding the applicant's position on the administrative appeal to review the denial of a permit to expand a non-conforming use in a Neighborhood Business/Historic District Overlay (B-1/H-1) zone, at 155 East Third Street (Council District 1); for the reason that the applicant has demonstrated that the proposed addition will not extend or enlarge the scope of the non-conforming use, thereby allowing the non-conforming residential use to enclose the small area as approved by the Board of Architectural Review.

F. Variance Appeals
(Discussion Items)

1. V-2013-57: BRIAN and ANGELA JOHNSON - a variance to increase the allowable height of an accessory structure from 20 feet to 21' 10" at mid-gable in a Single Family Residential (R-1C) zone, at 247 Shady Lane (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the height variance from 20' to 21' 10" will not adversely affect the public health, safety or welfare, as it will not impede the provision of emergency services for the subject or surrounding properties. Furthermore, the detached garage will not be out of character with the general vicinity, as there is a mixture of housing styles and roof heights, some with detached accessory structures, some with attached garages and others with only driveways.
- b. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, since the structure will have a roof pitch that is lower than, and which mimics the existing roof of the house on this lot.
- c. The subject property is an oddly-shaped lot with narrow frontage, which constitutes a unique circumstance

- since side yards are difficult to achieve, given its shape.
- d. Not granting the variance could cause an unnecessary hardship on the applicant because either removing the gabled roof and replacing it with a flat roof, or by attaching the garage to the principle structure via an enclosed floor area would likely be very expensive.
 - e. The circumstances that led to the need for the variance do not appear to be a willful violation of the Zoning Ordinance, but rather a mistake made during the construction of the garage. A building permit was obtained for this structure prior to its construction. Further work on the garage (other than the minimum necessary to keep the structure dry) has ceased pending the outcome of the Board's action on this variance request.

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

1. The applicant shall submit an amended site plan to the Division of Planning to reflect the corrected location of the garage prior to submitting an addendum to the building permit.
2. The applicant shall submit an addendum to the building permit to the Division of Building Inspection to reflect the amended construction of the garage, including a reference to the Board's action.

Representation – Ms. Angela Johnson, appellant, was present and she indicated that they had reviewed the recommended conditions and agreed to abide by them.

Staff Comment – Mr. Emmons stated that the staff had received several letters all in opposition, and presented them to the Board at this time.

Board Comments – Ms. Meyer asked Ms. Johnson who the contractor was on this job. Ms. Johnson replied that they are, and that they are building it themselves. Ms. Meyer confirmed that the Johnsons were building it themselves and then she asked if they built their house as well. Ms. Johnson advised that they are the contractor, they did hire sub-contractors. Ms. Meyer then asked if they actually did the construction themselves. Ms. Johnson responded that they did little things, but that they hired framers for the garage. Ms. Johnson went on to say that her husband worked alongside the framer and helped with the construction.

Ms. Meyer advised that one letter says that the garage was not built as proposed on the site plan, and there was now a side-yard issue now. Ms. Johnson replied that she was unaware of that. When they applied for the variance, they actually hired an architect at that point to help them; because if they attach the garage to the house, which they would still like to do, they would like to build a breezeway to attach the two. She noted that right now it seems to be up in the air as to whether they need to enclose the walls there and make that an attachment, or if they can still just consider it a breezeway, which is originally what they wanted to do. She noted that they went ahead and hired an architect at this point to help them apply for the variance and to help them design whatever attachments and in whatever manner they decide to go forth. She advised that the architect is the one who did their design plan and everything; so if it is different than what she had proposed, then what they thought they had built was accurate at the eight foot setback. She stated that she didn't realize that it was inaccurate.

At this time photos were presented on the overhead projector.

Appellant Comments – Ms. Johnson stated that this is the first time she has seen this and that she was unaware of that even being an issue until now.

At this time, Chairman Stumbo asked the Board and Staff if they had any more questions for Ms. Johnson before hearing from the opposition.

Staff Comments – Mr. Emmons responded that the staff did have a few photos of the property, but because of the sun was angle, there were really only two photos to show the Board, but they were very indicative of the issue at hand. (At this time the pictures were presented on the overhead projector). Mr. Emmons described the picture of the two-story garage at the end of the drive way. He noted that you can see the principal residence just to the right on the photograph. He noted that on the left side of the photograph is a privacy fence that was put up by the adjoining property owner (with a fencing permit), and that is the property line. Mr. Emmons went on to the next photograph, noting that it was looking down that property line, so that the location of the garage could be seen in reference to the side yard. He then presented the final picture, from the back of the applicant's property, with the garage in the background. He stated that in the foreground is the rear of the principal structure. He also stated that there is a covered porch between them. He said that, looking down the property line, directly across from the front wall of the garage, perpendicular from the property line, shows that the garage is actually indeed behind the house and not beside it. He then said that the staff did a thorough review about whether this garage also needed a side yard variance. He went on to state that the staff reviewed this in detail and found that at the closest point, the garage is about 5 feet from the property line. He stated that the facts is that, if the garage were indeed between the house and the property line, an eight-foot side yard would be required because of the requirement of the R-1C

zone; however, since the garage is behind the house, only an 18 inch (1½ foot) setback is required. He stated that staff found that an additional variance to the side yard requirements is not required for this garage, and staff did address this in detail in the staff report. Mr. Emmons stated that the only variance needed and the only request before the Board today is the request made by the applicant for the height of the garage. He stated that at the mid-gable, the maximum height of a detached garage can be 20 feet. He advised that this particular garage measures 21 feet and 10 inches at mid-gable.

Mr. Emmons said that the staff did recognize that the neighborhood had written a letter that the site plan was drawn incorrectly. He said that the staff has recommended that should the Board approve this today, an amended site plan be submitted to the Division of Planning, prior to issuing a zoning compliance permit; and that an addendum to the existing building permit be issued for this garage with the Division of Building Inspection. Mr. Emmons advised that if there were further questions, staff would be more than happy to go more into the staff recommendation or to answer any questions that come up through the course of the hearing.

Chairman Stumbo asked were there any other questions from the Board at this time.

Board Comments – Mr. Griggs said that looking at the site plan; the staff is indicating that the garage is behind the principal structure. It was his opinion that there must be some averaging going on. Mr. Emmons used a graphic to explain how the garage was evaluated on this trapezoidal property. He noted that a detailed review of the site plan and a site visit indicated that the submitted site plan was not entirely accurate, in that the garage is about 5 feet from the property line at its closest. He further stated that, when looking at the site plan with the outline of the principal structure, it appears that it would have been a solid floor area wing of the house; but that is actually just a covered patio. He noted that when Building Inspection reviews detached accessory building, they are measured perpendicular from the property line; and in this case the garage is actually behind the house and therefore has a 1½ foot setback requirement. He stated that this is the standard way to measure lot lines that are not parallel to each other. He said this lot is actually a trapezoid; it is not a rectangle; that is how the Division of Building Inspection has consistently measured to determine whether things are behind the house, which is consistent with our Zoning Ordinance, and consistent with the Kentucky Building Code. Mr. Emmons stated that the staff felt confident in their review that this accessory structure is indeed located behind the principal residence on the lot even though it is in closer proximity to the property line than depicted on the site plan.

Board Comments – Mr. Griggs asked if the use of the second story was for storage. Mr. Emmons responded that the applicant had said that it was for storage. Mr. Emmons mentioned that typical concern with second floors in accessory structures was usage for either business or dwelling unit. He noted that during the site visit, the applicant did actually take him up into the unfinished part of the structure and he saw no indication that it was going to be used for anything other than storage. He had seen no plumbing, no kitchen, or any indication of dwelling unit or business use that would be going on in that space.

Mr. Griggs then asked if it would be heated and air conditioned upstairs, to which Mr. Emmons responded that that is a question for the applicant. Ms. Johnson stated that right now the space was for storage, and they didn't know in the future what they were going to do with it. She stated that if they finish it in the future, her husband is going to put a work-out room up there, which is kind of what he is using it for right now; but it is not heated.

Chairman Stumbo, at this time, asked if there were any other questions from the Board or Staff. Since there were none, he then called for any opposition to step forward.

Opposition – Mr. Steven Tyner-Wilson and Ms. Melanie Tyner-Wilson, who live at 243 Shady Lane spoke. (At this time Mr. Tyner-Wilson presented hand-outs to the Board and staff). Mr. Tyner-Wilson stated that he had a couple of pictures he would like the Board to see. He said that Exhibit 1 is the whole key to their frustration as neighbors, as they notified the (city including Zoning), with a personal visit and a sketch, and nothing was done about it. He stated that nine out of ten people at that time would have said, "What a great time to the roof and fix the mid-gable situation." He then went on to say that six months later, they were spending all this time and energy trying to resolve something that could have been done a long time ago. He said that he understands that is the way things happen sometimes; and he accepts that, but wanted to point out that he did try.

Mr. Tyner-Wilson stated that Exhibit 2 goes into the discussion about some of the language in the description of the appeal; and that somehow 247 Shady Lane is disadvantaged, exceptional or different, or needs special favor because of its frontage. He stated that it is 62.5 feet at 247 Shady Lane, which is pretty typical for all the neighbors, all through there. He stated that he doesn't think any weight should be given to the special shape or size of the lot because the frontage is very common to the whole area.

Mr. Tyner-Wilson noted that Exhibit 3 shows a printout from the property valuation administrator, showing the frontage of 247 Shady Lane as being 62.5 feet.

Mr. Tyner-Wilson then stated that Exhibit 4 goes directly to his concern about the Board rushing into judgment on this situation. He opined that the whole ruling should be postponed because there are at least three errors on the drawing that was submitted; the first one is the frontage that he mentioned it should be 62.5 feet, and it is shown as 53 feet. He stated that there was also an addition that he thought was put on in 2011/2012 in that vicinity, and it shows it encroaching the side yard setback. He questioned whether a variance was ever obtained for that. Mr. Tyner-Wilson then stated that the third point is that there is a second floor deck that is going on the back of this two-story garage. He wanted to know if it is an amendment or is it accessory to an accessory building. Its location should be noted exactly as well as its size and shape, because he thinks it has a bearing on the actual usage of the lot. He stated that it does encroach across the rear property line; it is not supposed to, and he thought this was something that should be addressed, too. Mr. Tyner-Wilson stated that he thinks until these items are clarified, the Board can't really make a proper judgment, because (to him) it draws in the question of whether the 1 foot, 10 inch measurement is accurate. He stated that he is starting to question a lot of the process and why this site plan has so many inconsistencies, as opposed to the reality.

Mr. Tyner-Wilson then stated that Exhibit 5 in his packet really goes to the heart of the matter in terms of their perspective as neighbors. He said that in the text of the submittal, it said: "The additional height of one foot; ten inches will not have an adverse impact." He stated that this picture shows (from their point of view), as the neighbors next door, that at 10 a.m. there is a 53 foot shadow because of the height of the building. He stated that it is not dawn or daybreak, it is 10 a.m.; and this is the kind of thing that they are trying to emotionally deal with regarding this particular addition. He stated that they understand that it's all allowable and permitted, except for the height; but these kinds of things can have an impact on anybody. He noted that they say there is no adverse effect; they strongly disagree with that.

Chairman Stumbo, at this time, asked the Board or Staff if they had any further questions for Mr. Tyner-Wilson. Mr. Emmons stated that he didn't hear anything during his report that he needed to respond to.

Board Comments – Mr. Griggs asked staff about the encroachment of the 2011/2012 addition into the side yard if this was an averaging issue, so that it's not in non-compliance. Mr. Emmons responded that it appears to meet the rules and regulations that allow averaging. Buildings are allowed to protrude up to ½ of the required side yard setback as long as that same amount of square footage is behind the building setback. He stated that the staff's only caution to the Board is that they need to get a revised site plan that that would have to be looked at again with more accurate measurements. Mr. Tyner-Wilson then said that they had a case at 256 Shady Lane, right across the street; where a variance was requested and approved for a garage addition, and it was that very same thing; it was an angle-type protrusion into the side yard easement. He asked why would this be an exception to that, and why wouldn't there be a formal review process to obtain a variance for this, if they did it across the street. Mr. Emmons replied that he was unaware of the case at 256. He advised he did not review that particular case, and that all he knows is that, based on the site plan that is before the Board today; and the information that he has available to him, it appears that the averaging provisions of the Zoning Ordinance would apply and that a variance would not be necessary. At this time, Mr. Saltee placed those provisions on the overhead projector,

Opposition – Ms. Melanie Tyner-Wilson, who lives at 243 Shady Lane, stated that she is not an architect or contractor. What she did want to talk about was the impact of this structure in their neighborhood that is being felt by many people; and from a precedence-setting issue, it was very disconcerting. Ms. Tyner-Wilson stated that the Johnsons are nice people and their neighbors; and it is not their intention to have a hostile relationship with them; but on the flip side, as a neighborhood, she thinks that's why there are such spirited responses from so many people; and why they tried so aggressively, to calling early in March to express concerns about what was going on. She said it would be a lasting impact that could possibly be repeated in several other homes throughout the street.

Board Comments – Mr. Griggs asked if the Johnsons were notified that the neighbors thought the building was too tall. Mr. Tyner-Wilson responded that it is not their job to notify the neighbors. He stated that they are not experts, but they brought it to the attention of the experts. They felt that it was their duty to follow through on a situation like that. He stated that they didn't hear a word for six months until the letter came about the variance request for an increase in height. Mr. Griggs responded that he was just curious if they had talked with them about their concerns when it was under construction. Mr. Tyner-Wilson responded that they had, noting that his wife and he had each made trips to talk about the same thing.

Opposition – Ms. Andy Castro, who lives at 254 Tahoma Road, used to be on the neighborhood board and former neighborhood president. She stated that she is here because a lot of people couldn't come at 1:30 on a Friday. She stated that is very hard to fight these variances because a person has to show up and she does think it is important to come. She said that she was a volunteer, so she doesn't know that much about the process; but she did read the variance application and it said the applicant was not made aware, not given access to the building code to which they were to comply. She stated that the Johnsons are very nice people, but they were negligent. She went

on to say that a person doesn't start building a structure of that size without making sure, doing the research, if he is not an expert builder; then he has to do his "homework." Ms. Castro stated that her mother lives on the same street and just had a deck built 3 weeks ago. (10 X 10 - very small). She said her contractor came downtown three times for this small deck. She stated that she told him about this and he told her that she needed to stand up for people like him, contractors like him, who take the time and do their homework. She said that is a very established neighborhood; and to put up something and say they didn't know, negligence or ignoring the law is not an excuse. She went on to state that she felt bad for them because she didn't think that they knew perhaps what they were doing; but that doesn't change the end product and the end products affect them all. She stated that if this variance is passed, it will say that these rules don't apply; these rules are not important because a person can do whatever he/she wants, and then they can say "well I didn't know," it just doesn't work that way.

Ms. Castro stated that she has been involved in a lot of construction. There's a lot to be done and a person has to follow the rules. She stated that she doesn't think that mistake it was done maliciously, and she does think the garage was well done and thoughtfully done.

Ms. Castro stated that she is not unsympathetic to the financial aspect the appellants are dealing with, but that is not an issue because the neighbors are going to pay for their mistake for a very long time. She stated that she is not their direct neighbor; she lives five doors down, but there are a lot of houses that are similar in their neighborhood. She went on to say that this is a very nice loop of Lexington; it backs up to the Arboretum. There are a lot of smaller houses that might get turned over soon; and if they let people just put up anything and say they didn't know, so it's ok, it would be really disastrous.

Board Comments – Mr. Griggs stated that he read in the staff report that if they connected this house to the garage with a covered walkway, then the height requirement is no longer scrutinized and it's a legal structure at this point. He noted that the property owners wouldn't necessarily have to lower the roof to fix the problem; they could connect it to the house. Ms. Castro stated again she is not their neighbor. She stated that she does think, as a neighborhood, they are going to look at these requirements. She went on to say that several people from all over, not even close neighbors, question that this looks like a single-story home that popped out of a back yard. She again stated that they are going to look at it again as a neighborhood and say they have got to do something to prevent these structures from being built. Mr. Griggs stated he doesn't disagree with her and he is sorry that this situation exists. Ms. Castro responded that she thinks that is more of a question for the direct neighbors because of the breezeway; and if that's the case, that's the case. She stated she can only complain about this particular structure at that height.

Opposition – At this time Mr. Tyner-Wilson stated that he just wanted to make a comment that he did struggle through the Zoning Ordinance, and he did see that the setback should be 8 feet if the garage is later attached to the main house since then the garage becomes part of the principal structure. (He referenced 8-7.[i]). He stated again that he is no expert on zoning, but it seemed pretty clear to him that attach it can't be attached and still keep five feet away from the property line. Mr. Griggs asked Mr. Emmons if this were true. Mr. Emmons replied that that is true, but the section of the Zoning Ordinance that allows averaging, where the side yard is not parallel to the building, would allow the building to be as close as four feet as long as the overall structure averaged. He stated that because the principal structure is so far away from that side property line, they have the entire width of their driveway; and it is obvious that it would average greater than the side yard requirement. He noted that the applicants actually met with the Division of Building Inspection and began applying for such an addition that would make the structure an attached garage rather than a detached garage. He stated that they did not complete that application process; instead, they chose to come to the Board of Adjustment and request the height variance that is before the Board today. Mr. Emmons stated that he does believe that the Division of Building Inspection has looked at this also, and they believe that an attachment could be made between the principal structure and the garage that would be compliant with the Zoning Ordinance. He stated that the height allowable would then go from 20 feet at the mid-gable to 35 feet at mid-gable.

Mr. Tyner-Wilson stated that when he reads that, it says that when the side wall of the building is not parallel then it can be averaged, but the garage is parallel to the property line.

At this time, Chairman Stumbo asked Ms. Johnson to come back to the podium.

Appellant Comments - Ms. Johnson asked for staff to put the site plans back on the overhead, noting she stated that she wanted to address a few issues. Ms. Johnson stated that she feels like she is at a complete disadvantage here as a homeowner who really doesn't know a whole lot about this and was really wishing her architect had come with her today. She stated that the one thing she can address is the corner of their house that projects into the side-yard. She noted that they used the existing footprint, and they went through great strides to try to maintain the original architecture of that house when all builders they had met with told them to tear it down. She went on to say they are very sensitive to maintaining the character of the neighborhood, and they've tried very hard to do that.

She stated that they used the footprint of a previous addition on the back of that house, and they used the footers and everything that was originally there; so they didn't alter what was originally there and that is where that corner originally laid. She then said that if there is a problem there, it was there when they bought the house. Ms. Johnson stated that they will not add a back porch onto their garage. She stated that they pushed the garage back to make sure it was behind the house. When they did that, they realized there was no space for a back patio; nor do they want one there now. She stated that because there are doors there now, they will put a railing across there and, it will be attached to the back of the garage for safety reasons; but there will no longer be a back patio. She noted that where the garage is now there will be no extension beyond that with any kind of patio.

Ms. Johnson stated that she came in here unaware of how many neighbors are opposed to this. She also stated that she was blind-sided and was unaware of how unhappy the Tyners were. She noted that she let them know that just a second ago. Ms. Johnson stated that she would like to do everything possible to make this right for them, although right now she feels like they are being made an example of, because there have been a lot of houses in the neighborhood that have been torn down and new houses put back with architecture that doesn't fit the neighborhood. She went on to state that there have been some variance requests that have been granted that a lot of people have disagreed with; suddenly she feels as though there are a lot of people that are showing their disinterest in this and whether she agrees or not, they are setting a precedent for this neighborhood. She stated that they want restrictions put in place and she agrees with them on that; however, she feels as though they shouldn't be penalized for creating a precedent for the entire neighborhood because it is just going to cost them more money in attaching this and heating and cooling this space, verses just putting up a breezeway, which is what they would prefer to do.

Chairman Stumbo asked at this time if anybody had any more questions for Ms. Johnson.

Staff Comments – Mr. Emmons stated that staff did have a few closing remarks. Mr. Emmons noted that it was brought up in the questions whether the City notified the applicants. He stated that he interviewed the Division of Building Inspection quite extensively when this variance request came in. He added that once the Division of Building Inspection was made aware that a height variance would be needed, they did require that the applicant stop working on the garage. He stated that they did allow the shingles to be completed to keep the structure dry, but there is a "stop work" order on that garage until such time that it complies with the Zoning Ordinance either by the Board granting a variance or through some other mechanism. Mr. Emmons also addressed the questions that came up about the accuracy of the site plan as it was submitted. The Board has seen multiple site plans that are submitted with various application, and most of them are not prepared or surveyed, but are hand drawn. He stated that the staff always has to evaluate if it is correct enough to review the application as it is being requested. He noted that when the plan was originally submitted, the staff was unaware of any inaccuracies. It was only through the review that the staff found out that the garage was actually closer to the side lot line than it appears on the submitted site plan. He stated that; in talking with the preparer of this particular site plan, they used aerial photographs and GIS property line information to prepare their site plan. He stated that at the time they did it, they thought that was the best available data. When the staff looked at this and reviewed it in the field and realized that the side yard variance was not required, then it seemed the most appropriate action, to require a corrected site if the Board approves the requested variance. It did not seem necessary to postpone another month in order to get a revised site plan.

Chair Comments – Chairman Stumbo stated that this is a very sensitive and difficult situation that the Board is facing today. He said to Ms. Johnson that he thinks all the rules were not complied with. He stated that there are a lot of folks who come before the Board and say that they didn't know or they trusted their builder or architect; and in this case they are the builders. He noted that folks should know the rules and the setbacks and the need for variances. He stated that he is leaning towards endorsing the staff's recommendation, but that he does have some problems with this request. He stated that he certainly understands the neighbors' concern and has empathy towards them.

Chairman Stumbo asked the Board if there were any more comments, questions concerns, and how they would like to proceed with this.

Board Comments – Mr. Smith said that he agreed with Chairman Stumbo. He then asked Ms. Johnson if she has purchased and built other homes. Ms. Johnson said that she has not. He then asked Ms. Johnson had she ever had conversations with the Division of Building Inspection to get building permits and things in the past, to which she responded that she had obtained small ones.

Mr. Glover then asked Mr. Emmons if he was telling them that he does not have accurate information and that the staff report is not correct with the information he has now, to which Mr. Emmons replied that that was not the case, everything in the staff report is accurate. He said that the accuracy to which he was referring was the applicant's site plan that they had submitted. It was the location of the garage, as shown on the site plan that was inaccurate -

It is actually closer to the property line than it appears on the site plan. Mr. Glover then asked if it is, in actual fact, closer to the side yard property line that it's okay if it is attached to the house. Mr. Emmons stated that where it is located, the proximity of the garage to the side yard is acceptable per the Zoning Ordinance; whether it is a detached garage or attached. He stated that at its closest point it's about 5 feet away from the property line.

Ms. Moore then asked about the opposition's point that on the left side where the garage is, it appears to be parallel to the property line. She said it is true that the house itself is not parallel (looking at its right side), and she asked if it is or if it not parallel. Mr. Emmons replied that, technically, the detached garage is not parallel along its entirety. He stated that there is a little "notch" to it; and at one corner the garage measures close to 6 feet from the property line, and at another corner it measures about 5 feet. He said that being aside, because the garage is behind the principal structure, the 8-foot side yard does not apply. He stated that the 8-foot side yard would only apply if the garage became an attached garage. If attached to the house, the entire structure would be considered and then it would be clear that that entire wall is not parallel to the property line. He then stated that either way it does appear that it would meet the Zoning Ordinance requirement, and he had looked at that in great detail prior to writing this staff report.

Ms. Moore then asked if the only issue is the height; and if the Board denied the variance, they could either knock it down and make it shorter or do a breezeway. Mr. Emmons replied affirmatively. Mr. Sallee then stated that he would like to clarify that they would have to do more than a breezeway. He stated that it would have to be habitable space floor area.

Chair Comments – Chairman Stumbo stated that there are a couple of issues to be considered, and that the Board is really having a tough time with this. He stated that normally if they wanted to deny this request, they would need a legal opinion on that. Mr. Griggs then asked; if there is a motion for approval and it fails, where that puts the Board. Mr. Sallee stated that he would refer that to Ms. Jones, but he thinks the Board would want to consider another motion and other findings. Ms. Jones then stated that if there is a motion for approval and it fails, it would be best to make a different motion to deny it and to have findings to support that.

Board Comments – Mr. Glover stated that, as he understands it, the only thing that the Board is being requested to approve in this application for a variance is the height from 20 feet to 21'10". He stated there has been a lot of talk about the property line and stuff like that, but the only thing that is before the Board to approve is an accessory structure height from 20 feet to 21 feet 10 inches. Mr. Emmons responded that he has correctly framed the issue.

Mr. Griggs asked if that was the total height or if that was the mid-point on the gable. Mr. Emmons responded that it is the mid-point on the gable; however, this particular structure has a very low sloping roof, so it's not much of a difference. Mr. Griggs then said if they were to lower the roof and leave it pitched, they would almost have to lower it (the ridge) about 4 feet, to get that average down 2 feet. Mr. Emmons said that the way that the Ordinance works, and it is verbatim at the beginning of the staff report, the height of a detached accessory structure can be no higher than the principal structure, or 20 feet at mid-gable (the 20 feet at the mid gable is an absolute). He went on to state that since the 20-foot requirement is the more restrictive portion of the Zoning Ordinance, that's the one that the applicants are asking to vary.

Mr. Griggs asked if he was correct in understanding that the mid-point of the gable means the difference between the peak of the roof and the gutter area. Staff confirmed that it was.

Chairman Stumbo asked if there were any more questions from the Board or Staff. Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover. The motion for approval failed 2-4.

Note: Chairman Stumbo declared a brief recess at 3:24 p.m. The meeting reconvened at 3:32 p.m. with the same members in attendance.

Action – A motion was made by Mr. Griggs; seconded by Mr. Glover, and carried 6-1 (Moore opposed) to deny V-2013-57: BRIAN and ANGELA JOHNSON – a request for a variance to increase the allowable height of an accessory structure from 20 feet to 21' 10" at mid-gable in a Single Family Residential (R-1C) zone, at 247 Shady Lane (Council District 4), based on the following findings of fact:

1. The applicant was made aware by neighbors that the height restriction was being exceeded, but willfully continued the construction to cause the height to exceed the zoning regulations; and
2. The granting of the variance will cause an unreasonable circumvention of the ordinance and alter the essential character of the neighborhood because there are few, if any; detached garages greater than 20

feet in height in the neighborhood.

Chair Comments – At this time Chairman Stumbo asked staff what would be some alternatives for the Johnson family to correct this situation. Mr. Sallee stated that the staff will inform the Division of Building Inspection of the Board's action. He noted, that as mentioned through the course of the hearing, he thinks the appellants could lower the height of the structure. He stated that it also appears that there is a means in which it could be attached physically to the home with floor area to where it would comply with the ordinance. He then said that there may even be more options available to the applicants that staff is not aware of at this time.

Chairman Stumbo then advised Ms. Johnson that Building Inspection will be talking to her about the alternatives and stated that there may be some solution that will be derived.

G. Conditional Uses (None remaining)

H. Administrative Reviews
(Discussion Items, cont'd)

1. C-2012-59: RYAN CONBOY - a 1-year review of a conditional use permit for an animal crematory in the Agricultural Rural (A-R) zone, at 7001 Greenwich Pike (Council District 12).
(Discussion Item)

Findings:

- a. Overall, the appellant is in substantial compliance with the conditions required by the Board at the September 28, 2012, hearing. Should the appellant continue operation of this conditional use permit at this location, it will be subject to the standard annual Zoning Enforcement staff review.
- b. The applicant has not completely complied with Condition 2 as of the writing of this staff report; however, he is in process of obtaining a temporary Certificate of Occupancy in order to be in complete compliance.
- c. Condition 4 has been met by paving the entrance; however, it had not been met during the required time frame because of extenuating circumstances, and the subsequent litigation involved with the Board's September 28, 2012, decision.
- d. Based on the logs, the service being provided; the unpredictability as to when animals may expire and require cremation; and the showing that the use of the crematory over the last year has caused no disturbance to the surrounding areas.

Staff Comments – At this time Mr. Emmons stated that he had several hand-outs on this particular case and presented them to the Board, Mr. including a temporary Certificate of Occupancy which had been obtained since the staff report was written, as well as two packets of letters: those that are in opposition and those that are in support of this applicant. He advised that all of these letters had been received since the previous hearing one year ago on this case.

Representation – Mr. Ryan Conboy, appellant, was present.

At this time Chairman Stumbo asked for staff to come to the podium and report on the findings for the one-year review.

Staff Comments – Mr. Emmons stated that subsequent to the hearing one year ago, a lawsuit was filed on this case. He stated that, as such, the judge had ruled that this review also be a public hearing. The staff would like to point out for the record that they did notify all the property owners within the original notification area. He noted that they did put a sign on the property and also advertised today's hearing in the legal ad in the Herald-Leader. He stated that, in addition, they made sure that they sent additional notices to the plaintiffs in the court case.

Mr. Emmons stated that about one year ago, September 28, 2012, the Board of Adjustment did approve the animal crematorium; of the six conditions, the last was the one-year review of this use. He said that they were asked to look at each of the six conditions and look at findings on how each of the conditions was or was not being met. Mr. Emmons then went through each of the six conditions, which were as follows:

1. The animal crematory will be operated in accordance with the submitted site plan and application.
Explanation: Mr. Emmons stated that this is a fairly common condition that the Board of Adjustment has. He also stated that the Division of Planning, Zoning and Enforcement, did make a site visit on September 20, 2013 and found that the operation at that time was consistent with the submitted application and site plan; so they found that they are in compliance with condition number one.
2. A Zoning Compliance Permit shall be obtained from the Division of Planning, and a Certificate of

Occupancy from the Division of Building Inspection.

Explanation: Mr. Emmons stated that at the time of writing the report, the Division of Planning has issued a temporary Zoning Compliance Permit for the applicant that would expire that day, based on the one-year review. He then stated that the applicant had received a temporary Certificate of Occupancy from the Division of Building Inspection. In the staff report, it was found that number two is in substantial compliance. Based on the newly obtained temporary Certificate of Occupancy, they can say that number two is in complete compliance. Mr. Emmons noted that the reason why both the Zoning Compliance Permit and the Certificate of Occupancy are temporary is because the Board had required the one-year review of this use. They were issued as temporary permits, knowing that it would be up to the Board today as to whether to allow this use to continue or not.

3. The applicant shall comply with any applicable State and Federal regulations regarding the operation of an animal crematory, including those for the transport of dead animals and air quality regulations.
Mr. Emmons stated that the applicant has supplied the Division of Planning several items that indicate that they are actually operating in accordance with all of the required State regulations. He also stated that during the staff review, the staff could not find any particular Federal regulations that apply in this matter. He stated that if there are Federal regulations, Mr. Conboy still has to comply with them.
Mr. Emmons noted that staff has learned that the Kentucky Department of Agriculture does license Conboy Enterprises under KRS Chapter 257.160, and that Conboy Enterprises does have a current license.
Mr. Emmons also stated that staff found that they were inspected and staff has a copy of the inspection report. He noted that the most recent report the applicant submitted was the third quarterly report, and it is from the Office of the State Veterinarian; and they had no violations and found that it was in complete compliance with the state regulations.

Mr. Emmons stated that there are two items from the Kentucky Division of Air Quality, the first stating that this incinerator is registered with the Division of Air Quality, but it does not require a permit to operate. He then stated that there is a secondary report from the State Division of Air Quality, stating that they did an inspection (October 8, 2012) and found that the incinerator did comply with all their regulations. He noted that the Division of Air Quality did recommend that a written operator's log book be kept for the incinerator. He went on to state, that after that report, the applicant has submitted a 2012 and a 2013 log. He stated that the applicant is keeping a log for the incinerator use; as recommended by the Division of Environmental Quality. He noted that that log starts on October 1, 2012, right after the Board's approval of this use; it notes how many animals were burned and whether it was a clean burn, it also notes whether any maintenance was required and how much fuel it uses. Mr. Emmons stated that that log continues into 2013; the last entry was entered September 17, 2013. He re-iterated that the staff finds that the applicant is in compliance with the Board's condition of approval.

4. The farm road entrance to Greenwich Pike shall be modified within the next three months by adding asphalt, concrete, a gravel pan, or other similar paved condition approved by the Division of Traffic Engineering and the Kentucky Transportation Cabinet in order to prevent gravel for spilling onto the public road.
The applicant is in substantial compliance with this condition. He stated that the entrance to the farm road onto Greenwich Pike is actually paved today, and they have submitted photographic evidence that it is paved. Staff (both he and Zoning Enforcement) have been on site and can verify that the farm road is paved out to Greenwich Pike. Mr. Emmons stated says this condition is reported to be in substantial compliance because it was not done within the three-month time frame of the condition. He stated that the applicant had made honest efforts to have it done within the three-month time frame to meet the Board's condition of approval. He noted that Mr. Conboy took several steps and made arrangements with a paving company to have that done; however, because of the pending law suit and the fact that the law suit might jeopardize the conditional use, the applicant was in the decision-making process when the asphalt plant closed. He noted that it is done today, and the staff can report that condition number four was substantially met. He stated that the essence of the condition was met just not within the three-month time frame.
5. Document state approval for the large animal crematory being operated at this location.
Explanation: Mr. Emmons stated that the staff feels this condition that is met, based on the information presented in the discussion of condition number three.
6. The use shall be reviewed by the Board 12 months after approval.
Mr. Emmons said that today's public hearing fulfills this condition. In conclusion, the staff is recommending findings that, overall, the applicant is substantially compliant with the conditions required by the Board on September 28, 2012; and should the appellant continue operation of this conditional permit at this location, it would be subject to the standard annual Zoning and Enforcement Staff review.

He recommended that, based on the now submitted temporary Certificate of Occupancy, the Board you could completely delete finding "B" because the applicant has met that condition.

Mr. Emmons stated that based on the logs and services being provided as well as the unpredictability of this particular use, staff found that this, over the last year, has caused no harm or disturbance to the surrounding areas.

Mr. Emmons stated that the staff has not received any formal zoning complaints about this particular use in the year since it has been approved; the only thing staff has received were the opposition letters that were recently submitted for today's hearing and that were passed out to the Board. He stated that the staff is recommending that this use continue; based on the findings A, C, and D.

At this Chairman Stumbo asked time if any one had any questions for Mr. Emmons and then asked Mr. Conboy if he would like to make any comments or statement at this time.

Appellant Comments – Mr. Conboy stated that he would respond if the Board or staff had any questions for him. He stated that some of his neighbors were present that adjoin his property; and they were willing to speak; if necessary, that they approve of this use. He said that, other than that, he does not have anything at this time.

At this time Chairman Stumbo called any opposition to the podium.

At this time, Mr. Hank Graddy passed out information to the Board.

Opposition – Mr. Hank Graddy, 137 North Main, Versailles, Kentucky, was present. He is the attorney who filed suit against the Board for their decision one year ago to approve this facility. Mr. Graddy stated that he wanted to discuss a little more about that law-suit, but specifically wanted to make a request to the Board that they have not been able to work out by agreement with the applicant and the applicant's attorney. Mr. Graddy stated that he would be talking about two items that are not directly in front of the Board, but he needed to say it on the record. He argued that the Board has an obligation to consider some of the limitations on the scope and size of this operation that they failed to do when they granted the conditional use a year ago.

Mr. Graddy then said that he wanted to talk about what wanted on the record, but is not in front of the Board; based upon the decision of Judge Goodwine. He said that it is his opinion and was his argument in Circuit Court (and he has lost this argument in Circuit Court), that under the Zoning Ordinance that governs the activity, there is no authorization for an animal crematory in the agricultural district. He also said that if the Board would read the text of the Zoning Ordinance that governs their decisions, it authorizes four types of burials: crematory, cemetery, mausoleum, and another term that escapes him; and there is another phrase "including an animal cemetery". Mr. Graddy then stated that there is expressed reference to an animal cemetery and nothing else. He believes that the law requires that the Board should have turned it down a year ago because they had no authorization to grant an animal crematorium unless the words animal crematorium are found in the Zoning Ordinance, and they are not. He stated that the Board s relied on staff's interpretation, which essentially edited the Ordinance illegally by adding words that are not in it.

Mr. Graddy stated that his client, Mrs. Horne, is not a lawyer, and she did not know to raise that issue with the Board; but he is raising it, and he has argued this vigorously before Judge Goodwine. She ruled against him, and she has ruled that the Board is authorized under their current wording to allow an animal crematorium even though those words are not found in the Zoning Ordinance together.

Mr. Graddy referred the Board to the letter he had written to Mr. Graves asking for a copy of the operator's logs. He said that Mr. Emmons reports that the applicant is in substantial compliance and noted that he thinks Mr. Emmons is overstating the degree of compliance. Mr. Graddy stated that Mr. Conboy is under an obligation to maintain a log of the animals that he cremated from the time he began operation. He noted that he had begun operation two years before he came to the Board for a permit. He stated that Mr. Conboy was operating for two years without a conditional use permit. He stated that under the State's instructions, two years before he was told to maintain a log; and when they came back to check last year, they noted that he had still not kept a log as he was required to do. He stated that; as he understands it, the log arrived two weeks ago, and that he was curious about when the applicant started maintaining the log.

At this Mr. Graddy time asked the Board to turn to the page below his cover page, noting that Mr. Graves's response to his request was there, as was the operator's log that he was provided yesterday. He stated that he wanted the Board to look at the 2012 log and would like for them to look down that list. He stated that it seems kind of strange that horse #8 (presumably it is a horse- it is not noted in the log), was incinerated on 12/3/13, horse #9 was incinerated on 12/18/13, horse #10 was incinerated on 12/20/13, and

fuel was purchased and the filter cleaned on 12/20/13. It was his opinion that this looked like something that had been put together very recently in order to try to come into compliance. He stated that it does not look like a record that has been maintained contemporaneously with the actual incineration, and that it looked suspicious.

Mr. Graddy stated that on the next page was a reference to a break-down, and that may be worth further exploring. He did not believe it was correct to say that this applicant is in substantial compliance. He went on to state that if he is in compliance, he is barely in compliance and has only recently come into compliance.

Mr. Graddy stated that he is turning in a petition of 34 names of people in the neighborhood, including people in the residential community of Jimtown; are in opposition to this application.

Mr. Graddy stated that the final items in his letter are some of the trucks that they have photographed and would ask the Board to require the applicant to provide a photograph of the vehicles he is going to be using. He noted that in his discussion with him a couple of minutes ago before, he learned that the vehicle he is using is very similar to a horse trailer; but because this is located on a narrow, Fayette County road; and because of the risk of overloading the road with traffic that is not needed, they would ask that the Board require the applicant to provide an accurate photograph of the vehicle he is using to transport the horses.

Mr. Graddy reiterated his concern about inaccuracies in the submitted log and ask that the Board include a requirement that Mr. Conboy provide an accurate log to the Board on at least an annual basis so that the public can know the volume of animals he is burning. He also stated that he would request that the log contain more entries than horse #001. He noted that he think it would be helpful to include where the horse came from, (i.e., it is Fayette County, Western Kentucky, the area of service is, and identify what animal it is; if it is a horse or some other animal. Mr. Graddy stated that he thinks the log is something that the public is entitled to know about. He then stated that he thinks it is the Board's obligation to ask him to provide them with the log so that the public can know what is going on there.

Mr. Graddy stated that he would try to summarize why he was here and why he asked for these conditions. He said that believes that animal incineration should be considered an industrial activity and should not be located in a residential area or in an agricultural area that is also used for residential. He stated that this is a dangerous precedent to put animal incineration in the agricultural zone anywhere someone wants it to be, and that this is the kind of commercial activity that this Board has had to consider in other contexts. It creates a precedent of industrial uses that he thinks the Board should be worried about.

He stated that the remedy for an industrial activity that someone wants to locate in the rural sector of Fayette County, based upon his experience of what happens in the rural sector of Fayette County, is to limit the intensity of the activity. He stated that the way an industrial activity or a commercial activity or an urban activity is brought to a level of intensity that can fit in the agricultural sector of Fayette County is to reduce the intensity of the activity and reduce the risk that it will transform an area from agricultural to commercial. He then said that is why the Board's conditions, imposed a year ago, he thought, were legally inadequate. He noted that this was the second part of his challenge to this case: 1) was it lawful in the first place; and 2) did the Board put adequate limits on the scope and intensity of this activity to make sure it was compatible with an agricultural and residential area. He said that the Board has an obligation to put restrictions on the activity that may not put it out of business, but that makes sure that it does not convert an area from agricultural to commercial.

Mr. Graddy stated that he has asked for restrictions concerning hours of operation, days of the week, and the rate of burn. He stated that he has not been able to get an agreement from Mr. Graves and Mr. Conboy on those issues. He asked the Board to impose hours of operation so that the burning of an animal occurs between 8 a.m.-5 p.m., and they not cremate animals after 5:00 p.m. when people come home; and when there is an increased risk of exposure to odor or other nuisances. He also requested that burning of animals would occur on week days, and not on weekends. He also stated that he would ask that the conditional use permit have a limit of no more than one horse; or the equivalent of the weight, per day. He noted that Mr. Conboy is burning one per week, so that limit does not impose upon his activities; but right now there is no limit. Mr. Graddy stated that he thinks that the Board has an obligation to the area and to the community at large with a conditional use permit application, to recognize that a conditional use is a use that they may decide to allow; but if limits are not imposed upon it that are appropriate for the area, then it will destroy the integrity and character of the area. Mr. Graddy then stated that he believes those limits are missing; and those are the limits that he would ask the Board to impose.

Mr. Graddy stated that it has been requested, and he is authorized to say to the Board that he is here on behalf of the Hacker family, the owners of Hacker Farm, across the road. At this time he read into the record a letter from Mr. Elvan J. Hacker, dated 9/26/13; which is attached as an exhibit to these minutes.

Mr. Graddy stated that if there are no questions from the Board, he would like to call Ms. Charlene Horne, another member of the Hacker family, to the podium to give her statement to the Board.

At this time Chairman Stumbo asked the Board and staff, if they had any questions for Mr. Graddy.

Opposition – Ms. Charlene Hacker-Horne, whose property is located at 6978 Greenwich Pike, owner of a farm at 6922 Greenwich Pike and 1/3 owner of the Hacker Family's small farm that Mr. Graddy spoke about, spoke about her family. She said there are about 90 or so acres in her farms that are being exposed to Ryan Conboy's use.

Mr. Graddy came back to the podium and stated that he did leave out one request and that was what ever action the Board takes, be for another one year period and that they be in the position to review the operation next September as a conditional use. It was her belief that it should be in an industrial zone. She noted that she doesn't think that it fits in with the agricultural community.

At this time, Chairman Stumbo asked the Board and Staff if they had any questions for Ms. Horne or Mr. Graddy and then asked if Mr. Conboy or his representative would like to respond.

Appellant's Comments – Mr. Guy Graves, attorney, approached the podium at this time and stated that he thinks that the Board is aware that the only issue that is before them today is whether or not Mr. Conboy complied with the requirements that were implemented when the conditional use permit was approved last year; and they have heard from the staff, who believes that they are. He then stated that the only other issue before the Board is in response to Judge Goodwine's request that the Board consider whether or not any other conditions on the use of the property are appropriate in order for this Board to make an annual review, or the staff to make an annual review. He stated that the Board heard Mr. Graddy say that he has asked whether or not they agree on any of those conditions. He stated that they haven't agreed on any of those conditions because they don't think they are appropriate or reasonable. Mr. Graves then stated that Mr. Conboy is like any other farmer conducting his business operation on a regular and daily basis. He noted that the only difference between his farm and the other farms is that he has a piece of equipment out there that has statutory, regulatory components to it, which have all been approved; he is in compliance. He stated that this piece of machinery is smaller than a combine or many other typical pieces of farm equipment.

Mr. Graves noted that the records show that Mr. Conboy has been operating for three years without any complaint concerning noise, odor or any other obnoxious, harmful or nuisance use. He stated that there is nothing in the record that suggested that any of that has transpired. He stated that this is a 24/7 business to the extent that it needs to be. He went on to say that it is a service that is necessary and useful for the disposal of dead animals, particularly horses. He stated that horses hold a special place for a lot of owners.

Mr. Graves said that Mr. Graddy had stated that this is some sort of industrial purpose, but that issue is long gone. He noted that Judge Goodwine has confirmed the Board's decision that it is a proper use in an agricultural zone. He went on to say that Mr. Graddy alluded that the intensity of operation increased some risks, but he hasn't heard what that is. He then stated that: The trucks that Mr. Conboy uses is to dispose of horses are a pick-up truck and a two horse trailers. He noted that is the kind of vehicle that runs up and down the road in front of his property all day long. He said there is nothing unusual about; that so there is no need to put in some sort of restriction on the type of truck that is used. He noted there is no evidence there is an improper use of vehicles.

Mr. Graves asked why limit Mr. Conboy to a Monday through Friday operation or an 8-5 weekday operation. He stated that there is no rational basis for that. He noted that no other farmer conducts operations based on those limitations; and that's exactly what Mr. Conboy should be compared to. He stated that there are no additional concerns or risks here with his operation that aren't prevalent in an ordinary farming operation.

He then went on to state that Mr. Conboy has no objection to keeping a more detailed log, but there are some potential confidentiality/privacy issues. He thought that maybe the Board would have some questions as relates to that.

Mr. Graves then stated that he doesn't think that the petition that has been submitted on behalf of Ms. Horne is particularly relevant; it doesn't have any specifics about anything that would constitute an adverse effect on the public safety, health and welfare. He then stated he doesn't see how that is germane to this Board's consideration of conditions or requirements that may need to be imposed.

Board Comments – At this time Mr. Griggs asked that Mr. Conboy address the log sheet. He wanted to know when he labeled this log, if he gave each animal a sequential number. He then said that he is assuming Mr. Conboy keeps another log so that he can do his billing to the right people. Mr. Conboy replied that he was correct, that it is all pulled out of their computer system; it has owner's name, horse's name, the owner's contact information, and how much he charges them. He stated that he just pulled out the necessary information that was required by the EPA and put that in a piece of paper that was presentable for the Board's use.

Mr. Griggs then asked if he was keeping a log for each time he uses the machine, and the log is updated; that it's not concocted months later. Mr. Conboy replied affirmatively.

At this time, Chairman Stumbo said that Mr. Graves had mentioned that he had a couple of people that wanted to speak, and he asked them to come to the podium.

Supporter Comments – Mr. Peter Kerwin, Mr. Conboy's neighbor, stated that his house is closer to this incinerator than anybody's. He stated that he is about 200 feet away. He said that they are not adversely affected by anything that goes on there. He stated that animals are a 7-day-a-week job, and that they don't just die on Friday; but also on Saturday or Sunday. He said it's a service that is needed because people who like horses; often cremate them and keep the remains.

Board Comments – Mr. Griggs then asked Mr. Kerwin if he has ever smelled any odors from Mr. Conboy's machine. Mr. Kerwin responded that there are some odors. Mr. Griggs asked him to describe it to the Board. Mr. Kerwin stated it is an odor like when hair is burned, Mr. Griggs asked Mr. Kerwin how strong the odor is. Mr. Kerwin stated that they smell it all the time. He went on to state that when the wind blows from the north, it blows towards his house and, he smells it; but otherwise he doesn't. Mr. Griggs then asked if Mr. Kerwin was south of Mr. Conboy. Mr. Kerwin stated that he was southwest. Mr. Griggs then stated that Mr. Kerwin would not be in the direction of the prevailing wind. He noted that the wind would blow over him and then generally to Mr. Conboy's neighbors further east, which Mr. Kerwin verified. Mr. Griggs stated that he was just wondering if neighbors further around, on the other side of Mr. Conboy from Mr. Kerwin, could smell any odors. Mr. Kerwin stated they are on the same side as he. Mr. Griggs asked if he meant Ms. Horne. (Mr. Kerwin demonstrated where Ms. Horne was relative to his house) and said that they shouldn't smell it. Mr. Griggs said that he was just wondering if Mr. Kerwin just may not be getting the brunt of it. He then stated that the smell of burning hair is pretty distasteful. (Mr. Kerwin then demonstrated where the machine was relative to his house.)

Supporter Comment – Mr. Frank Penn, who lives at 4741 Mount Horeb Pike, said he has a farm at 2330 Ferguson Road. He said that he thinks the Board should look at this in total perspective. He then stated that dead animals are an issue that traditional agriculture can't deal with anymore. He noted that sinkholes are not appropriate places for dead animals, shallow graves are not appropriate places for dead animals; so these animals have to be picked up. He went on to state that with the invention of cell phones, an animal can't be left out by the gate for the rendering truck to pick up; because people will call the Humane Society. He also stated that when an animal dies, somebody has to pick it up; and the sooner the better. He stated that it has changed the whole way dead animals are handled.

Mr. Penn went on to say that this is a different use for agriculture; and there is debate also whether it is industrial or not. He stated that he thinks the intensity of the operation is important in making that decision.

He then said that his farm is south of Mr. Conboy's, but he is below Jimtown, so he doesn't get much odor at all, if any. He noted that by the time it gets there, they just don't smell it. He also stated that he does not live there, but it is a 200-acre tobacco, horse and grain operation, so he is there quite a bit.

Mr. Penn stated that he is here in support of this because he thinks hauling animals out of state to some landfill is absolutely divesting the county of what our responsibility is. He also said that is what is happening, now that we cannot put livestock meat in dog food anymore because of mad cow disease. He stated that something has to be done with them.

He noted that it is expensive to cremate a horse, but they can't be left out beside the road. The dog food company won't pick them up anymore, and something has to be done with them, it was his opinion that a

crematory is the way it is going to go. Whether we want to disregard our responsibility in Fayette County or take care of it, is something that the Board would have to decide today.

At this time, Chairman Stumbo, asked if anyone else on the applicant's side would like to speak.

Supporter Comment – Mr. Jeremy Wales, who lives at 7034 Greenwich Pike, directly across the road from the Conboys, stated that the Conboys are good neighbors, good people, and an asset to the community; and he is in support of them. He stated that none of his activities bother him or his wife.

Chairman Stumbo then asked Mr. Graddy if there was anything he would like to say in response.

At this time, Ms. Moore asked that Mr. Wales come back up to the podium. She then asked Mr. Wales in which direction he lives from Mr. Conboy. Mr. Wales responded that his address is 7034 Greenwich, directly across the road. Ms. Moore noted that he was south also. Mr. Wales replied that he didn't think he was south, but more to the east. He noted that the Conboy's driveway is on the left side of the road; and his driveway is on the right side of the road; their driveways are 100 yards apart. He also stated that Mr. Conboy's farm is on the west side of Greenwich, and his farm is on the east side. Ms. Moore then stated that they were talking earlier about the prevailing winds. Mr. Wales then stated that the winds from the west blow across his farm- no issues.

Opposition – At this time, Mr. Graddy, returned to the podium, noting that his only and final comment was that Mr. Penn said that this is needed, but then he said there may be an issue with volume, and that may be something the Board should address. He said that he has asked the Board not to approve it; but if it is going to be approved, then he would ask that the Board put the limits on it that he thinks they are entitled to, that the community needs, and that they have asked for in spite of Mr. Graves not agreeing to them.

Board Comments – Mr. Griggs then said that he did not see what limits Mr. Graddy was asking for, noting that Mr. Graddy had said that Mr. Conboy is only doing one animal a week now (or actually less). He asked what the limits would be. Mr. Graddy thought no more than one animal per day was appropriate, adding that he is doing less than that, so a limit of one animal per day is one that he can meet. He also asked for hours of operation to be, 8-5, 5 days a week, with another review in one year. He said that he did ask for a more detailed operator's log to be submitted to the Board, that the public has access to; but the limits that he is asking for are hours of operation, days of week, volume, and a one-year review.

Mr. Griggs said that he was curious to know that if some of those conditions were added, if it would make this lawsuit go away. Mr. Graddy said that what he can tell the Board is that is what he thinks the Judge is looking for; and it may. He said that would be a matter he would have to discuss with his client. He noted that he came here to ask for the limits that his client has authorized him to ask for. He stated that if they get those limits, that is one of the things that they think they are entitled to, and that would satisfy one aspect of the case. He went on to state that he doesn't want to negotiate in open session, but he will need to talk to his client and report back to the Board. He noted that it is what he has asked for in the lawsuit; so if he gets those limitations, then he has accomplished the purpose of his lawsuit. Mr. Graddy said that he believes that the Board has an obligation to impose a limit concerning intensity and concerning volume; not simply that there is only one facility out there and it can only burn so fast, so it limits itself. He stated that the Board of Adjustment is not doing its job. He again stated that he thinks they (the Board) have to put a limit on volume and duration as part of what they are supposed to be doing for this community. He stated that he has asked for that, and he thinks the Judge is looking for that.

Mr. Griggs stated that he doesn't remember from the case a year ago, but it may take a number of hours to get a machine up to temperature, to load the horse into the incinerator, and to complete the process. He stated that if a weekend comes and a horse has to be held for three days because he can't get it accomplished between 8 and 5 then, there are all types of logistics that he can't address to. Mr. Graddy responded that he understands that, but Mr. Conboy has a freezer inside the barn for the purpose of storing the dead animals until he can get them into the incinerator. Mr. Graddy went on to say that Mr. Conboy has a facility to manage his operation in a way that would help to reduce the potential impact on the neighbors.

Supporter Comments – At this time, Mr. Penn came back up to the podium and clarified that, when he stated that volume is something the Board may want to look at, he was talking about other counties hauling their animals in here for Mr. Conboy to incinerate. He state he is not talking about what he picks up in the central Kentucky area. He went on to stated that he is talking as a neighbor now, not as a horse farmer; but as a neighbor, he wouldn't want to see a bunch of trucks running in here from other counties and other states to use his crematorium; and he didn't think that Mr. Conboy had intended to do that. He stated that

was his point and he didn't want Mr. Graddy to take his testimony and turn it in to what he wanted for limited days or hours, etc. He also stated what he doesn't want it to do is to turn into a commercial operation where he incinerates animals from other parts of the state or other states.

Opposition – At this time, Mr. Graddy returned to the podium and stated that he had asked for county of origin to be on the log, in part because in the materials from last year, it appeared that Mr. Conboy was advertising to receive animals from all 120 counties in Kentucky. He stated that he was describing his business as able to cremate dead animals from across the state of Kentucky, and that is not what Mr. Penn is talking about. He went on to say that that's why they are concerned about his ambition and his intentions. He stated that if it could be limited it to Fayette County and adjoining counties, that is a good limitation. He stated that their concern was that he advertised himself as 24/7 and servicing 120 counties in Kentucky; and that is what scared them.

Board Comments – Ms. Moore then stated that, to her recollection, the Board clearly approved it based on the site plan and application. According to the site plan, it had the one incinerator and he said that it was only possible to burn one horse per day. She then stated that, based on the application, he would have to come back and ask for a second incinerator if he wanted to increase his business. Ms. Moore then stated that the Board chose not to impose any conditions because one incinerator was inherently part of the application and site plan,

Opposition – Mr. Graddy then stated that he would ask that they look at the documentation from the Division of Air Quality, which rates this facility at a much higher burn rate than one animal per day. He also stated that if it operates 24/7; then it does have a much greater capacity than that. He again stated that is why they are asking for limits on hours of operation and limits on the number of animals. Mr. Graddy stated that his facility is incapable of burning much more than one animal per day based upon the specifics that he sent to the Division of Air Quality and what they have approved.

Appellant Representative Comment – Mr. Graves then returned to the podium and stated that Mr. Conboy has no objections to limiting his operation to one animal per day, which, by his count would be 365 a year. He stated that, as a practical matter, with the capacity of the one incinerator that he has, he couldn't do more than that; so that limitation would not pose a problem. Mr. Graves stated that he thinks what Judge Goodwine is looking for from this Board is whether or not any additional conditions are necessary in order for the staff to have a meaningful annual review. He stated that Ms. Moore just made an appropriate comment that no additional conditions were imposed last year because of the site plan that was presented. He stated that just the physical limitations of this equipment prevent this from being the large industrial operation that Mr. Graddy makes reference to, which doesn't exist here. He went on to say that what might happen in the future will be subject to an annual review by the staff. If there had been a material change in circumstances; that will get reported to the Board, and the whole question will come back to the Board. He stated that until then, he thinks it would be appropriate; and he would request that the Board make findings that no additional limitations, except perhaps a limit of one animal per day, would be appropriate. Any more than that, he thought would be an unreasonable and unwarranted intrusion into Mr. Conboy's business operations. He noted that the Board doesn't restrict any other farmer when the farmer might operate a combine on the weekends, and he noted that they do not combine between 8 and 5. He stated that combines make a lot of noise, odor, smoke and exhaust. He went on to state that these things have to have some kind of balance; and unless some harm has occurred or some nuisance is ongoing (none of which is present), additional conditions would not be appropriate.

Chairman Stumbo asked Ms. Jones if she wanted to make a comment at this time.

Legal Comments – Ms. Jones said that she did want to be clear on what Judge Goodwine ordered because, since it has been addressed here, all the way around it. She stated that there was an argument as to whether or not the Ordinance gave the Board the authority to even make a decision on this as a conditional use. Specifically, the argument was made by Mr. Graddy and his client that, because it didn't say an "animal crematorium" the Board didn't even have the authority to act on that as a conditional use. Ms. Jones said that the judge found that the Board does have the authority; and she thinks that the Ordinance does permit that as a conditional use, which would be something to be decided by the Board.

Ms. Jones stated that earlier there was a statement made that additional conditions are what the Judge was looking for. She stated that she did not interpret her ruling that way. She said that the same arguments heard today about conditions were made to her and our initial argument on the summary judgment motions. What the Judge said was, since everyone alluded to this upcoming hearing, she thought that there would be information or things that might come up through the course of this hearing; and she would like for it to be a public hearing that might address some of those issues. Ms. Jones stated that Judge Goodwine did not

indicate in any way to them specifically that she wanted the Board to make certain findings or find certain things; one way or the other. She said that she just wants the Board to support whatever decision is made today with some type of findings. The animal crematorium is being reviewed as an agricultural conditional use, and it is not in an industrial zone, nor is it being reviewed as an industrial use.

Staff Comments – Mr. Emmons rebutted Mr. Graddy's assertion that the staff is overstating the level of compliance whenever it was reported that this use is in substantial compliance. The Board placed six conditions on this applicant. He has completely met five of those six conditions. He stated that the last condition was met, just not within the three-month time frame that was specified; and that was because there were extenuating circumstances. Mr. Emmons stated that the staff does not feel that they are overstating their recommendation whenever they say that the use is in substantial compliance with the conditions that this Board placed on Mr. Conboy a year ago.

He went on to say that there was a lot of talk about the log and confusion about the log. He stated that he is not an expert on the State Department Environmental Quality regulations; but reading the inspector's report, they recommended that a written operator's log book "should" be kept for the incinerator. Mr. Emmons stated that the Board did not require Mr. Conboy to keep a log, so questions about whether there are or are not any discrepancies in the log is inconsequential. He thinks the most important thing that the log does show is that the testimony that Mr. Conboy gave to the Board a year ago, about the number of animals, the type of fuel, and the clean burn is supported by the log. Moreover, it gets to the heart of the matter that when the Division of Air Quality made a recommendation, Mr. Conboy started following that recommendation as soon as it was made. Mr. Emmons reiterated that the staff feels confident in the recommendation that the applicant is in substantial compliance with the conditions that the Board placed on him one year ago.

At this time, Chairman Stumbo asked the Board if they had any other questions. There were none.

Chair Comments – Mr. Stumbo stated that what was before them today, as Mr. Emmons summed it up is the one-year review of the conditional use permit. Obviously, in the staff's opinion, the applicant has substantially met the conditions. He noted that the State regulatory agencies have said that, there are no violations. He stated that there have been a lot of opinions, and reporting that show that Mr. Conboy has been in compliance. He went on to say that he is not prepared, unless another member of the Board, is to add additional conditions to this. Chairman Stumbo stated that the staff has reviewed this case and studied it in depth; and the Board's job today is to support the staff's recommendation of the one-year review. If any member of the Board wants a review one-year from now, that is up to the Board members themselves. He went on to say that to add conditions of one animal per day or, to put a condition limiting it to 8-5, five days a week, is just a little unreasonable to request.

Board Comments – Ms. Meyer then stated that she would like to add to that that when the Board had this hearing a year ago, she thinks that they made it pretty clear that if there were any problems with the burning or the smell or whatever other issues people might have, that they could be reported to the people at the City or be here at the hearing today. She went on to say that there haven't been any complaints about the operation, and there are no people here talking about any issues with it.

Chair Comments – Chairman Stumbo agreed with Ms. Meyer's statements. He then asked Ms. Jones and Staff if the Board needed a motion to support their findings. It was Ms. Jones' opinion that they do, because they need to take something back to Judge Goodwine. She noted that this is a little unusual in terms of an annual review, but we are trying to conduct an annual review that meets the Judge's ruling. She thought that the staff's report and the findings that they made are probably adequate.

Board Comments – Mr. Glover then stated that he was about to ask the same question as to what the Board was being asked to do. He stated that he could probably craft some kind of a motion if it pleased the Chair.

Action – A motion was made by Mr. Glover, seconded by Ms. Moore, and carried unanimously to approve C-2012-59: RYAN CONBOY – in connection with the annual review, that the Board find that it has conducted a public hearing in conjunction with that review; and that the Board adopt the findings of the staff, which are listed in the agenda, and they include four separate findings.

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.

Mr. Sallee announced; as a reminder for the Board; that another round of the conferences would begin this fall. He stated that the staff does not yet have the schedule; but as soon as they get that, they will be forwarded to the Board members so that they can make arrangements to meet their required training.

VI. NEXT MEETING DATE - The Chair announced that the next meeting date would be October 25, 2013.

VII. ADJOURNMENT – Since there was no further business, the Chair declared the meeting adjourned at 4:47 p.m.

Barry Stumbo, Chair

James Griggs, Secretary