

MINUTES FOR THE BOARD OF ADJUSTMENT SPECIAL MEETING

November 15, 2013

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, November 15, 2013. Members present were Chairman Barry Stumbo, Joseph Smith, Janice Meyer, James Griggs, Noel White, Thomas Glover, and Kathryn Moore. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were: Barbara Rackers, Jimmy Emmons, and Tammye McMullen.

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

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the September 27, 2013 and October 25, 2013 meetings would be considered at this time.

Action – A motion was made by Mr. Glover, seconded by Ms. White, and carried unanimously to approve the minutes of the September 27, 2013 meeting.

Action – A motion was made by Mr. Griggs, seconded by Mr. Smith, and carried unanimously to approve the minutes of the October 25, 2013 meeting.

III. **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.

Staff Comment - At this time, Mr. Emmons stated that there may be some postponements, but that he would open it up to the audience, and that he did not have any letters from the applicants at this point.

- a. **C-2013-62: K. WESLEY FARLEY** - an appeal for a conditional use permit to allow retail sale of antiques and home furnishings in a Light Industrial (I-1) zone, at 573 - 575 Maryland Avenue (Council District 2).

The Staff Recommends: Postponement, for the following reasons:

- a. It is unclear at this time that this location will be able to simultaneously accommodate both the proposed and the existing business uses.
- b. Improvements to the parking lot, including storm water management and landscaping, are required by the Zoning Ordinance, but are not proposed by the applicant. Additional time will allow the applicant to address these concerns.

Representation – Mr. K. Wesley Farley, for the Ugly Duckling; LLC, was present, and came to the podium at this time. Mr. Farley stated that he had spoken with the Zoning staff, and proposed a postponement at this time, in order to better prepare his information.

Action – A motion was made by Ms. White, seconded by Ms. Moore, and carried unanimously to postpone **C-2013-62: K. WESLEY FARLEY** to the December 13, 2013 Board of Adjustment meeting.

4. **C-2013-68: CENTRAL KY UNITED, INC. (aka UNITED TALENT)** - an appeal for a conditional use permit to establish an indoor recreational facility in a Heavy Industrial (I-2) zone, at 1709 Jaggie Fox Way (aka 2308 Maggard Drive) (Council District 2).

The Staff Recommends: Postponement, for the following reasons:

- a. Additional time is needed for the applicant to submit a revised deed and land use restriction form for this application.
- b. Additional time is needed to determine the future use of the other vacant industrial building on this site.
- c. It is unclear at this time whether this proposed conditional use will be able to meet the required parking or if the other industrial use will be incompatible with this proposed recreational facility.

Staff Comment - At this time, Mr. Emmons stated that he had spoken with the applicant, and they had indicated that they had agreed to a postponement; but he never received confirmation in writing. He stated that he was waiting until now to see if they were here, or if there were any interested citizens for this item.

Board Comments – Chairman Stumbo asked if there was anyone present he was in opposition or support of this case. Since there were none, Chairman Stumbo called for a motion to postpone.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously to postpone **C-2013-68: CENTRAL KY UNITED, INC. (aka UNITED TALENT)** to the December 13, 2013 Board of Adjustment meeting.

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 will proceed to take action.
- 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-2013-70: JACK H. BALLARD** - an appeal for variances to reduce: 1) the required setback along Plunkett Street from 8 feet to 0 feet; and 2) the required side yards from 1' 6" to 0 feet in order to construct a detached garage in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, at 513 S. Mill Street (Council District 3).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variances will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare. It will not alter the character of the vicinity or cause a nuisance to the public, since most other properties in this block have rear garages that are located at similar setbacks from the right-of-way of Plunkett Street.
- b. Granting these variances will not allow an unreasonable circumvention of the Zoning Ordinance since the average setback on this side of Plunkett Street is actually at 0'. The subject lot is unusually narrow, but otherwise consistent with others in this block of the historic neighborhood, and is a unique circumstance that doesn't generally apply to other lots in the R-2 zone.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, as it would be difficult to design a comparable garage on such a narrow lot and it would be 8 feet further back from the street than other buildings in this block.
- d. The requested variance is not the result of a willful violation of the Zoning Ordinance, as the subject property was developed prior to the adoption of the current Zoning Ordinance, and has already received design approval for this site improvement.
- e. The variance is not a result of the applicant's actions, as the building has not been constructed, or started.

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

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. All construction shall comply with the conditions imposed earlier this year by the Board of Architectural Review.
4. The property owner shall maintain access (pedestrian gate in the fence) to the rear of 316 Pine Street.

Representation – Mr. Jack H. Ballard, appellant, was present; and he indicated that he 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 to approve **V-2013-70: JACK H. BALLARD** - an appeal for variances to reduce: 1) the required setback along Plunkett Street from 8 feet to 0 feet; and 2) the required side yards from 1' 6" to 0 feet in order to construct a detached garage in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, at 513 S. Mill Street (Council District 3), as recommended by staff and subject to the four conditions.

2. **V-2013-71: JERRY HAHN** - an appeal for a variance to increase the maximum allowable height of a rear yard fence from 8 feet to 10 feet in a Single Family Residential (R-1C) zone, at 855 Glendover Road (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. Increasing the maximum height of the fence along the arterial road from 8' to 10' should not adversely affect the public health, safety, or welfare, nor alter the character of the area, as the properties on either side of this lot currently have fences that are about 10' tall.
- b. The topography of the subject property, being approximately 4 feet below the existing sidewalk, is a unique circumstance, which justifies the requested height variance.
- c. From the right-of-way, the 10' fence will have an approximate height of 6'; therefore, there will be no resulting circumvention of the Zoning Ordinance, which allows up to an 8' fence height for double frontage lots along an arterial road.
- d. Strict application of the Zoning Ordinance would result in a fence height that does not effectively screen the subject property's rear yard from the right-of-way, especially car headlights, as this property is located adjacent to a major road intersection.
- e. There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as he is seeking the variance before obtaining the required fencing permit. The requested variance is a direct result of the physical changes (cutting of trees and other vegetation and necessary grading) required in the right-of-way in order to complete the new sidewalk, which is part of a public improvement project.

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

1. That the applicant obtain a fencing permit from the Division of Building Inspection prior to construction of the fence, and that the fence be limited to a height of 10 feet.

Representation – Mr. Jerry Hahn, appellant, was present; and he indicated that he 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. White, and carried unanimously to approve **V-2013-71: JERRY HAHN** - an appeal for a variance to increase the maximum allowable height of a rear yard fence from 8 feet to 10 feet in a Single Family Residential (R-1C) zone, at 855 Glendover Road (Council District 4), based on the staff's recommendation and subject to the one condition.

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

1. **C-2013-64: NANCY PAULEY** - an appeal for a conditional use permit to establish a cocktail lounge in conjunction with an artist studio in a Planned Shopping Center (B-6P) zone, at 3851 Mall Road (Council

District 9).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed cocktail lounge is a very specialized bar, which will be operated in conjunction with an artist's studio for painting classes. This use is more than 1,000 feet away from the nearest residential zone, and should not cause noise or other disturbances.
- 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 use shall be conducted in accordance with the submitted site plan and application.
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 establishing the use.
3. The conditional use of a cocktail lounge is only valid when operated in conjunction with an artist's studio at this location.
4. This approval shall be considered null & void if the applicant should cease operating this use at this location.

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

Staff Comment – At this time, Mr. Emmons stated that the staff had received seven letters of support for this case.

Board Question – Ms. Meyer asked Ms. Pauley if these classes were four- or six-week classes. Ms. Pauley stated that they are one-evening classes; and it's either a two-hour class or a three-hour class, depending on the painting.

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. Smith, and carried unanimously to approve **C-2013-64: NANCY PAULEY** – an appeal for a conditional use permit to establish a cocktail lounge in conjunction with an artist studio in a Planned Shopping Center (B-6P) zone, at 3851 Mall Road (Council District 9), as recommended by staff and subject to the four conditions.

2. **C-2013-65: NATHANIEL MISSIONARY SOCIETY, INC.** - an appeal for a conditional use permit to occupy an existing building as a church in a Wholesale and Warehouse Business (B-4) zone, at 1109 Versailles Road, Ste. 400 (Council District 11).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adjoining or nearby land uses, largely of a commercial nature, are not likely to be disturbed by church activities. The nearest residential area is several hundred feet away, and adequately buffered from the proposed church site.
- b. All necessary public facilities and services are available and adequate for the proposed use, including off-street parking.

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

1. The church shall be established 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 prior to the operation of this use.
3. Should a future expansion of the church at this location be desired, approval by the Board of Adjustment will be required.

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

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs, and carried unanimously to approve **C-2013-65: NATHANIEL MISSIONARY SOCIETY, INC** – an appeal for a conditional use permit to occupy an existing building as a church in a Wholesale and Warehouse Business (B-4) zone, at 1109 Versailles Road, Ste. 400 (Council District 11), for the reasons recommended by staff and subject to the three conditions listed.

3. **C-2013-66: L. ROBERTS PROPERTIES, INC.** - an appeal for a conditional use permit to establish a vehicle storage yard in a Light Industrial (I-1) zone, at 2285 Maggard Drive (Council District 2).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Furthermore, the site is well suited for the proposed use, being completely surrounded by compatible uses, well served by the collector street system, and naturally screened due to the topography and trees along two of its four sides.
- b. All necessary public facilities and services are available and adequate for the proposed use. The applicant will be required to upgrade the stormwater system, if determined to be necessary.

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

1. The use shall be conducted in accordance with the submitted application and site plan.
2. All necessary permits for construction, including a land disturbance and grading permits, shall be issued prior to commencement of the additional concrete areas or any modification to the detention basin.
3. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
4. The applicant shall provide or continue to employ both water quality and water quantity controls that meet the Engineering Manuals, to the acceptance of the Division of Engineering.

Representation – Mr. Dick Murphy 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 Ms. Moore, seconded by Ms. Meyer, and carried unanimously to approve **C-2013-66: L. ROBERTS PROPERTIES, INC.** – an appeal for a conditional use permit to establish a vehicle storage yard in a Light Industrial (I-1) zone, at 2285 Maggard Drive (Council District 2), for the reasons recommended by the staff and subject to the four conditions.

4. **C-2013-67: DR. JOSEPH G. YOCUM, DVM, PLLC** - an appeal for a conditional use permit to establish a veterinary clinic in a Neighborhood Business (B-1) zone, at 4371 - 4379 Old Harrodsburg Road (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed veterinary clinic will be indoors within a soundproofed office, and will be conducted without overnight boarding. Adequate parking is available, and the location of this suite should further prevent any potential for this use to be a nuisance to the nearby neighborhood.
- 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 use shall be conducted 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 issued by the Divisions of Planning and Building Inspection prior to the operation of this use.
3. The typical hours of operation of this use will be noted prior to the issuance of a Zoning Compliance Permit for the purpose of record-keeping regarding the joint use of parking spaces in this shopping center.
4. There shall be no overnight boarding of animals at this location, and the building shall be soundproofed in as much as possible to avoid potential noise disturbance to surrounding properties.

Representation – Mr. Dick Murphy 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 Ms. White, seconded by Mr. Glover, and carried unanimously to approve **C-2013-67: DR. JOSEPH G. YOCUM, DVM, PLLC** - an appeal for a conditional use permit to establish a veterinary clinic in a Neighborhood Business (B-1) zone, at 4371 - 4379 Old Harrodsburg Road (Council

District 10), as recommended by staff and subject to the four conditions.

E. **Variance Appeals**
(Discussion Items)

1. **V-2013-63: JOHN KELLY** - an appeal for a variance to increase the maximum allowable driveway width from 24 feet to 34 feet in an Expansion Area Residential (EAR-1) zone, at 460 Weston Park (Council District 7).

The Staff Recommends: Disapproval, for the following reasons:

- a. The requested variance does not arise from a special circumstance that does not generally apply to lands in this same zone. There are no unique physical characteristics, such as topography or neighborhood character, that would serve as a justification to approve the requested driveway width variance.
- b. Strict application of the Zoning Ordinance will not deprive the applicant of a reasonable use of his property, in this instance.

Representation – Mr. Steve Taylor with Taylor Made Pools was present representing the appellant.

Staff Comment – At this time, Mr. Emmons presented aerial photos and photos of the property on the overhead. Mr. Emmons stated that; in this case, there is a request to enlarge the width of the driveway for the subject property. He stated that the property is located at the corner of Weston Park and Ellerslie Blvd. He stated that during the construction of a pool in the rear of the property, the property owner asked the people who were working on the pool to widen the driveway during construction. He also stated that the contractor, unaware there was a required permit, went ahead and widened the driveway. Mr. Emmons stated that; in this particular case, the existing driveway is about 34 feet wide. He stated that the pictures were submitted by the applicant, and then pointed out the 34-foot wide driveway. He stated that they also widened between the area of the sidewalk and the street; that is actually public right-of-way and not part of the driveway, but they did widen the turn into the driveway so that it was all one continuous movement. Mr. Emmons stated that the applicant also submitted several pictures of other properties in the neighborhood.

He stated that the Zoning Ordinance currently limits the maximum width of a driveway outside of the Infill Redevelopment Area to 24 feet.

Mr. Emmons then stated that the applicant also submitted photos of some other area where there is a lot of pavement; however most of the other examples submitted don't exceed the requirements of the Zoning Ordinance. He did state that the property at 217 Ellerslie Park Blvd., has a 29-foot driveway and the staff could not figure out whether that was put in legally or illegally. He stated that staff did not know whether it was put in before there were limits on the width of the driveway or not. He explained why each of the other submitted examples of large driveways met the requirements of the Zoning Ordinance.

Mr. Emmons said that the staff did prepare the exhibit of an alternative layout that would require the removal of some of the concrete that is there, that would be compliant with the Zoning Ordinance and, that would allow the applicant to keep most of what was existing. He then stated that if the requested variance is not approved, some of the area that is pavement would have to be removed, and the grass would have to be restored. He also stated that they would have to restore the driveway flare to match up with the narrowed driveway.

Mr. Emmons said that when the staff was looking at the requested variance for the subject property, they could not really find any special circumstances, and they did find that there is a reasonable solution that could still afford the applicant most of the additional parking that he desires and be compliant with the Zoning Ordinance. He stated that staff recommended disapproval because they felt that the requested variance does not arise from a special circumstance that doesn't apply to other properties in the area; and that strict application of the Zoning Ordinance would not deprive the applicant of a reasonable use of his property.

Board Comments – Mr. Griggs asked staff; when referring to flaring out beyond the sidewalk to any width, as long as the coverage ratios for the lot are not exceeded, what the 6-foot dimension was; because it seems that if it is flared off right at the end of the sidewalk, there is not 6 feet of a 24-foot width. Mr. Emmons stated that the flare that staff was talking about is not particularly codified anywhere in the Zoning Ordinance; but it is a common practice, because a reasonable amount of concrete is needed so that the driveway does not become rutted. He stated that; in this particular case, because the EAR-1

zone has a variable front yard building line, only the first six feet of the width of that from the back of the sidewalk to the paving actually qualifies as driveway according to the Zoning Ordinance.

He stated that the Expansion Area Residential zones do allow the additional parking, whereas many of the other zones (especially in the Infill & Redevelopment Area) do not; but this is because the Expansion Area was intended to have a certain amount of flexibility; noting that they are the most flexible residential zones that we have.

Mr. Griggs asked Mr. Emmons to read the part of the Zoning code that says there is supposed to be 6 feet of driveway before the width can be increased, and then to explain how the flare is not increasing the width before the 6 feet ends. Mr. Emmons said that the ordinance is not expressly stated that way; how to arrive at that 6 feet, is to look at what they are allowed in the EAR-1 zone to have as their additional parking and their minimal front yards, and then look at the definition of "driveway." He stated, as he mentioned earlier, the flare is not mentioned anywhere in the Zoning Ordinance; but it is a common practice, and has been a common practice in this community for decades.

Mr. Griggs then asked if the solution Mr. Emmons had on the board was common practice, even though it is not specifically defined in the ordinances. Mr. Emmons stated that the solution that has been proposed and shown on the overhead has an alternative layout; and it does meet all of the Zoning Ordinance requirements, as well as the policies and practices; this would be approvable if it were submitted this way.

Mr. Griggs asked staff if they would pursue the examples that the applicant presented, that look like the driveways are not in compliance. Mr. Emmons stated that staff certainly can, but there only appears to be one; the other ones appear to be in compliance with the Zoning Ordinance because of the green space that they allowed. Mr. Emmons stated that it is the one property with the 29 feet of pavement.

Mr. Glover asked staff how this application came before the Board- if it is already built at 34 feet. Mr. Emmons said that was the case; and to the best of his knowledge, the applicant was building the pool. They had all of their proper permits for the pool. They also did this extra work on the driveway, unaware that there was a paving permit required. He stated that whenever the Building Inspector came out to do the final inspection on the pool is when the wider driveway was observed, and that kicked in the process of either correcting the violation or asking the Board for a variance.

Chair Comment – Chairman Stumbo asked for clarification as to whether that the staff is asking for the 6 foot by 10 foot area to be removed by the applicant. Mr. Emmons responded the 10 feet of additional parking, with a flare beginning at 6' behind the sidewalk, would be the pavement that would be allowable under the Zoning Ordinance. He stated that the triangle of grass on the staff exhibit is the pavement that would have to be removed. He said the aerial photo on the overhead shows the original driveway.

Board Comments – Mr. Glover stated that the fix would require removal of the green triangle that's shown, and a portion of the driveway. Mr. Emmons added that the flare from the sidewalk to the street would also need to be restored.

At this time, Mr. Glover asked for Mr. Emmons to put the photo back on the overhead showing the 34' width. He stated that when he first saw it; he thought he had seen a column. Mr. Taylor stated that that is a protective column because of the gas meter; to make sure that someone pulling in would not hit it.

Representation – At this time, Mr. Taylor stated that "ignorance of the rules is no excuse" and that is all he really had coming in to the hearing. He said that he has been a general contractor for five years and never had any violations of any type until this property.

He stated that they improved this property by over \$100,000; and if anyone was to drive by and see this driveway extension, it is not in anyway a negative feature for this neighborhood or the property in question.

Mr. Taylor stated that a lot of the comments that he has heard have been about frontage; however, this is a side street. He said that he realizes that the ordinance does allow for cars to be parked; but he thinks that if someone went out and looked, they would just be seeing the driveway. He said that everything that has been done on this property; has been done to enhance the neighborhood as far improvements go.

He stated that, with this particular pool, they went downtown and submitted their plans; they were approved, not showing the driveway improvements, and not showing the deck improvements because the

owner had not decided totally on what he wanted to do with his deck. He then stated that they had pulled a fence permit and a pool permit, with the intention of pulling a deck permit once the owner decided what he wanted to do with the new balusters and new stairs. He then stated that while they were digging the hole, the deck collapsed into the swimming pool hole; so they called in an engineer, and he thought he was doing everything properly. He said that they knew they needed a deck permit; but they went ahead and reinforced the deck, got new reinforcements put in and got all engineered stamps. Then they got cited for building a deck without a permit. He then stated that this is how this got started. He said that the Building Department knew that they were going to pull a deck permit, but they started the work before a permit was issued and were fined \$500.

Mr. Taylor said that, in the meantime, the driveway that was in place was in extremely poor repair; he didn't know what the original person did, but the driveway was coming apart. It was heaving and had huge cracks, and Mr. Kelly asked them to repair/replace the driveway. Then, in the meantime, Mr. Kelly requested the additional space. Mr. Taylor did not pull a permit because he had no idea that he was supposed to have one for a driveway, and that was before the Board looking for forgiveness.

Board Comments – Mr. Glover then asked Mr. Emmons what kind of precedent the Board would be setting if they granted the variance. Mr. Emmons stated that it is hard to say, but looking at the unique circumstances of this particular lot, it does back up to a greenway within the development, and it is also a corner lot on two major streets within the Ellerslie Park Blvd. area; so, in that sense, there are not going to be many extra driveways along Ellerslie Park Blvd. to deal with in the future because of that large open space; few of them are going to be at the corner of the two major streets within that local subdivision.

Mr. Glover stated that it looks to him that the other driveway to the left looks to be larger than the 24 feet that Mr. Emmons has marked on Mr. Kelly's driveway. Mr. Griggs also asked if this was the 29-foot driveway that Mr. Emmons had marked on the picture. Mr. Taylor responded affirmatively.

Mr. Glover then asked Mr. Taylor how much trouble it would be, and how much it would cost to take the part of the driveway out that doesn't comply with the ordinance. Mr. Taylor stated that; if he were to guess, probably about \$1500; but the problem is that all of these driveways have a nice tooled finish on the edges; and everywhere they would have to make alterations, there would be a jagged saw cut. He said that it is going to look like it has been cut, and he thinks it is going to deteriorate from what looks very good right now.

Mr. Griggs then stated that the apron, the way it flares out at the curb (39 feet, maybe another 4 feet on one side, and maybe another 5 or 6 feet on the other), it is getting it really close to 50 feet. He stated that he thought it was too much concrete at the curb, and he thought it didn't enhance the property or the neighborhood.

Chair Comment – At this time, Chairman Stumbo stated that many times before the Board, there have been people who did not pull their permits properly, and the Board has been asked for "forgiveness;" and the Board doesn't normally grant forgiveness because they feel that, as a licensed contractor, they should know these issues.

He then asked the staff, if the Board does vote to have this corrected, what would be a reasonable time-frame. Mr. Marx stated that it always helps to hear from the applicant as to what constraints they have in getting the work done. Mr. Taylor stated that he could make the alterations in 30 days.

Chairman Stumbo then asked staff if the owner does not want to comply with this alteration within 30 days, what the ramifications of that would be. Mr. Emmons stated that if the property owner does not agree, he could choose to file suit against the Board within 30 days; so that would be the first 30-days in looking at anything regarding enforcement. Mr. Emmons stated that the staff's goal is compliance and not to drag things out. He stated that; other than that, if there is no action beyond the 30 days, it can always get reported back to the Board.

Representation – Mr. Taylor then stated that he has received several opinions from the Board, and wanted to know if the rest of the Board felt the same way. The Board responded affirmatively.

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 to disapprove **V-2013-63: JOHN KELLY** - an appeal for a variance to increase the maximum allowable driveway width from 24 feet to 34 feet in an Expansion Area Residential (EAR-1) zone, at 460 Weston Park (Council District 7),

based on the staff's recommendations.

2. **V-2013-69: GREEN DEVELOPMENT, LLC** - an appeal for a variance to eliminate a portion of the required zone-to-zone screening in a Professional Office (P-1) zone, at 2429 Members Way (Council District 10).

The Staff Recommends: Disapproval, for the following reasons:

- a. The requested variance does not arise from a circumstance that does not generally apply to lands in this same zone. There are no unique physical characteristics, such as topography or existing vegetation, that would serve as a justification to approve the requested landscape variance.
- b. Strict application of the Zoning Ordinance will not deprive the applicant of a reasonable use of their property, as there is space available to install a solid fence along the property line.

Representation – Mr. Timothy Morris, partner with Green Development, was present representing the appellant.

Staff Comment – At this time, Mr. Emmons presented aerial photographs on the overhead. He stated that the subject property, at 2429 Members Way, is a professional office park area, located off of Harrodsburg Road; the applicant has requested a landscape variance. He then stated that the landscape variance would apply to a single property line, which was the rear property line. Mr. Emmons pointed out on the 2013 aerial photo, the building that was under construction, the parking lot, and the retention area where the landscape variance is requested. He said that; in this particular case, it is a request for a partial variance. He stated that the applicant is not asking to get rid of all the landscaping. He also stated that typically from a P-1 Zone to a residential lot, there are two options: 1) They could provide a 15-foot wide buffer, that had a tree every 40 feet and a double row hedge fence, or earth mound that was up to 6 feet tall. He said that the 15-foot landscape buffer area can be reduced to a 5-foot landscape buffer area if a 6-foot tall privacy fence or wall is put in; however, the trees are still required. He stated that; in this instance, the applicant is before the Board to request that the trees be allowed without the fence. Mr. Emmons stated that; because of the construction of the detention basin, the applicant only left the minimum 5-foot landscape buffer area; so there is only room to put the fence and the trees at this point. He stated that there is not room to put in the wider landscape buffer area with the trees and the shrubs.

Mr. Emmons stated that the applicant has said that the reason for this request is that before they put in the landscaping and the fencing, they went to the adjacent property owners who share property lines with this lot; and those property owners have submitted a letter to the Board stating that they would like to have the landscaping (just the trees), but they do not want the fence.

Mr. Glover asked Mr. Emmons for confirmation to his statement as to what the adjacent owners wanted. Mr. Emmons stated that the adjacent residential owners asked for just the trees and not the fence. Mr. Glover then asked if this means they are supporting this application. Mr. Emmons replied affirmatively.

Mr. Emmons stated that the staff does find that it is a unique circumstance that the property owners who would supposedly be protected by the landscaping, didn't want it. However, the staff could not find any special circumstances of any other kind or of a physical nature; there is nothing about this property that is any different than any other commercial property next to any residential property. He also stated that the landscape buffer area was there; there's room to put it in, and to be able to meet the required landscaping of the Ordinance. Mr. Emmons noted that these property owners right now might not want the required fence; but as they move out, and new people move in, somebody in the future may question the absence of required fence.

At this time, Mr. Emmons referred to the aerial photos and stated that; shown on the edge of the parking lot are the retention basin and the backs of the adjacent owners' properties; and where they want to continue the trees. (Mr. Emmons then presented pictures of the back yards of the properties and a picture of the completed office building on the subject property, and referred back to the submitted site plan). He stated that this did go to the Landscape Review Committee, and was discussed for approximately 30 minutes. He said that they looked at it from several different angles. He stated that in the end, the Landscape Review Committee decided to recommend disapproval because there were no special circumstances to this property. He then said that the Committee did recommend that if the Board were to grant the variance, more trees than one tree every 40 feet; as the Zoning Ordinance requires would be appropriate. The applicant is proposing to plant white pines, and the Committee recommended those white pines be placed on-center every 15-20 feet (double the amount of trees that would be required).

Mr. Emmons said that, as the staff could not find that the requested variance results from any physical, unique

characteristics to the subject property, and that the strict application of the Zoning Ordinance would not deprive the applicant of a reasonable use of the property, the staff did recommend disapproval of this request.

Board Comments – Mr. Griggs stated that this professional development would probably be operated between 9 and 5; but if a different group occupied the building and was operating after dark, this landscape buffer is also supposed to protect the backs of these houses from the headlights of automobiles.

Mr. Glover asked staff if the reason for the request is that there is not enough room for both the landscaping requirements and the retention basin requirement. Mr. Emmons stated that there is adequate space to put it in; but because there is less space, their options are less. They have to put in the fence and the trees in order to meet the landscaping requirements, but they don't have the option to put in more trees and hedges.

At this time, Ms. Meyer requested to see the picture where the retention is shown, and asked staff to show her where the fence and trees would be. Mr. Emmons stated that, on this property, the drawn line is the edge of the retention basin. He stated that the fence would be primarily on the residential side of the trees, and said that all of that would fit on the applicant's property.

Mr. Glover then asked staff if this means the double row hedge would be too wide, and if it would encroach on the requirement for the retention basin. Mr. Emmons replied affirmatively, and said that, in order to have the double row hedge; there needs to be at least a 15-foot landscape buffer; but that 15-foot landscape buffer can be reduced to 5 feet with the fence. Mr. Emmons also stated that when this retention basin was designed, it was designed knowing they were going to reduce it to the 5' and put up the fence and the landscaping.

Ms. Moore asked staff if the neighbors are going to see the fence or the trees. Mr. Emmons stated that they would see the fence with the trees coming up behind the fence.

Mr. Glover asked staff if it was correct, that the neighbors do not like the idea of a fence; they would prefer bushes and trees. He then stated that the purpose of a buffer zone is to separate the residential side from the building. Mr. Emmons said that the Zoning Ordinance requires the screening from the commercial property to the residential property. He stated that in this case, if the zone to zone screening were to put in place according to the Zoning Ordinance, there would not be any additional landscaping required for the vehicular use area. He said that that was one potential concern that if the fence was not there, then the vehicular use area/parking lot screening would not be there, so then there would be that potential of highlights shining into the backs of people's property.

Mr. Glover asked if the size of the retention basin is fixed. Mr. Emmons stated that at this point, he believed it was.

Ms. Meyer asked, if they don't have the expense of having to put in a fence, if more mature trees can be put in closer together, and maybe a different type of tree to make it thicker. That would take care of the headlights, and would satisfy the request of the property owners. Mr. Emmons stated that he would like to clarify that the Landscape Review Committee did recommend disapproval of this request and that the required landscaping be installed, although they thought that if the Board did approve the variance, then it would be appropriate to have trees thicker.

Mr. Glover then asked staff if the Landscape Review Committee was not finished with this, to which Mr. Emmons replied that they are. He stated that they recommended disapproval of the variance request, which would mean installing the fence and the trees per the Zoning Ordinance requirements. Mr. Glover then asked if there was no option to the fence idea if it were disapproved. Mr. Emmons stated that if the requested variance is approved, the Landscape Review Committee recommended that the Board also consider increased density of trees in order to mitigate the lack of a fence. Chairman Stumbo then stated that what he thinks what Mr. Glover is asking is that if the Board goes with the staff's recommendation of disapproval, they have to build a fence, and also the trees would have to be 40 feet apart. Mr. Emmons said yes.

At this time, Chairman Stumbo called the applicant to the podium.

Applicant Comment - Mr. Tim Morris, Chief Financial Officer of CMTA, also a partner in Green Development, requested to have the photo of the building placed back on the overheard. Mr. Morris stated that they have been in Lexington since 1967; they are a mechanical and electrical engineering firm; and they engineered the building in question. He said that Lexington is going to be proud of this building once they get the final results in; it is going to be the only LEED platinum building in the city. He stated that it is fully geothermal, and they have put a lot of thought into what the aesthetics be; in doing so, they wanted their parking structure and the outside of the building to do the same.

Mr. Morris stated that when they began to look at the landscape ordinance, and what they were going to be able to do around the site, they began to meet with the neighbors who back up to the area in question. He said that the neighbors do not have a fence in their back yard; one neighbor (Mr. Emery) will be left with a fence going along the rear of their yard with no adjoining fence anywhere else. Mr. Morris stated that there is no fence all the way down parts of the street. He stated that's why, like the pine trees that are already there, they thought they could put some type of dense pine trees there to make it aesthetically pleasing to both the neighbors and the community. They want to build something everyone could be proud of, both now and how it would look in five, ten or fifteen years. He said that they are not against putting as many trees as they are required to do.

He stated that the parking lot has an eight-foot retention wall, and that a neighbor had stated that they like the wall there. Mr. Morris stated that if they are told that they have to put a fence there, they are prepared to build a six-foot privacy fence there. He then said that when a person is on the property and looks at that, it is not going to look good; because there is going to be a fence from "point A to point B" with nothing around it.

At this time Chairman Stumbo if the Board or staff had any questions for Mr. Morris.

Board Comments – Mr. Glover asked Mr. Morris how good of an engineer he could be if he didn't see this coming. He stated that most people that build things do not have to come before the Board after building a brand new building, asking for a variance, because they look at these things in advance and figure it all out before-hand.

Mr. Griggs told Mr. Glover that they did have it all figured out; Mr. Morris is just doing this because the neighbors are requesting that there be no fence. Mr. Morris said that they knew what the rules were and were prepared to do it.

Mr. Glover then asked if this was because there was a limited space between that retaining wall and the edge of the property. Mr. Morris said that; either way, they had a problem because they couldn't put a fence up with double trees and a double row hedge, because the double row hedges were going to be coming down into the retention basin. He stated that there isn't enough room between their property line and where the retention basin slopes down to accomplish that.

Mr. Glover then asked if the trees had to be on the other side of the retention basin, or if they could be on the retaining wall side. Mr. Emmons stated that in order to meet the Zoning Ordinance; it could be; but he did not know if there would be enough room next to the wall to put in the trees without interfering with the operation of the retention basin.

Mr. Morris stated that they did a lot of site work on this piece of land; Members Heritage owned it before, and they were in South Creek Park prior to this. He stated that when they bought the land from Members Heritage, they put almost \$150,000 in site improvements in the plan; and that included the retention basin and other things they had to comply with.

Mr. Glover then asked about whether there would be any precedent if the Board approved the application. Mr. Emmons stated that; in this case, this r business only shares a property line with two residential properties. (At this time, Mr. Emmons put the notice map that shows the property boundaries on the overhead). Mr. Emmons stated that the subject property is in the center of the circle. The two properties, 220 and 224 New Market Way, share a property boundary with the subject property, and 224 shares about 80% of their property line.

Mr. Emmons stated that; as the applicant had mentioned, he believed that one of the concerns that the residential property owner had (especially at 224), is that if the fence went up, most of his back yard would be fenced in, but not all of it. It was his belief that if the Board wanted to find it as a unique circumstance, (i.e., that it only shares a property boundary with two property owners, and both property owners have requested the variance), that is something that is unique in this situation; but the staff could not find anything physically unique about this property.

Chairman Stumbo said that; as he is looking at this and listening to the applicant, if he was one of the property owners and did not want an 8-foot fence in his backyard, he can sympathize. He said that he was leaning toward granting the appeal because he thinks there are some special circumstances, noting that there are two property owners who are involved. He said that it appears that the applicant and homeowners have been working together pretty well, and they are willing to plant trees that are 10-15 feet apart, and are willing to cooperate with the Board. The Landscape Review Committee disapproved this; but they also left a little bit of

a door open by saying that if the Board did want to grant the variance, they recommended that the number of trees be doubled and might even increase that number, and Mr. Morris is willing to do that. Chairman Stumbo said that he was inclined to grant this variance with a condition.

Mr. Glover stated that the concern of staff (as he understood it), was not for the current owners of both properties that are principally concerned; but for the future owners, if somebody from either side of this buffer zone were to sell to somebody else, who might object to some future use of the property. Mr. Emmons replied affirmatively.

Ms. White then asked Mr. Morris if this building was a 9-5, 5 days a week business. Mr. Morris replied affirmatively. Ms. White then said that headlights should not be an issue.

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 to approve **V-2013-69: GREEN DEVELOPMENT, LLC** - an appeal for a variance to eliminate a portion of the required zone-to-zone screening in a Professional Office (P-1) zone, at 2429 Members Way (Council District 10), for the following reasons:

1. Granting the variance will not adversely affect the public health safety or welfare;
2. Will not alter the essential character of the general vicinity;
3. Will not cause a hazard or a nuisance to the public;
4. The requested variance arises from special conditions relating to the retention basin and the neighbors' requests to eliminate the fence, with the following condition:
 1. Trees shall be placed every 15 linear feet, and shall be dense evergreen trees.

Chairman Stumbo then asked Mr. Morris if he agreed to abide by the condition. Mr. Morris said yes.

E. **Administrative Reviews** - None

IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time.

- A. **2014 Meeting and Filing Schedule** - As part of its Bylaw-related duties, each year the Board of Adjustment adopts the Official Meeting and Filing Schedule for the following year. The Meeting and Filing Schedule for 2014, in draft form, was presented to the Board for review and/or discussion prior to its official adoption.

Action – A motion was made by Ms. White, seconded by Mr. Griggs, and carried unanimously to adopt the 2014 Meeting and Filing Schedule, as presented.

- B. The Department of Law requested that the Board convene to a closed session in order to discuss a matter of pending litigation.

At this time, Mr. Glover moved that, pursuant to KRS 64.810-1C, the Board go into a closed session for the purpose of discussing pending litigation, which was seconded by Ms. Meyer.

The Chair declared a closed session at 2:48 p.m. He reconvened the meeting in open session at 3:29 p.m.

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

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be December 13, 2013.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously to adjourn the meeting.

VII. **ADJOURNMENT** – Since there was no further business, the Chair declared the meeting adjourned at 3:30 pm.