

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

March 28, 2014

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, March 28, 2014. Members present were Chair Barry Stumbo, Janice Meyer, Thomas Glover; James Griggs. Absent were: Noel White 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: Bill Sallee, Jimmy Emmons, and Tammye McMullen.
 - II. **APPROVAL OF MINUTES** - The Chair announced there were no minutes to be considered at this time.

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.
 - 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.
 - a. **C-2014-15: TIM HUBER/RAMSEY DEVELOPMENT** - appeal for a conditional use permit to establish an assisted living center for seniors in a Planned Neighborhood Residential (R-3) zone, at 2930 Spurr Road (a portion of) (Council District 2).

The Staff Recommends: Postponement, for the following reasons:
 1. Article 7-6(a)(2) requires the Board to find that all public facilities and services are, or will soon be, adequate to serve the proposed use. At this time, serious questions still exist as to the timing and design of the infrastructure. Allowing a one-month postponement will give the applicant ample opportunity to address these issues and will allow the Planning Commission time to review the corresponding plans that have been filed for their review.
 2. Article 7-6(a)(3) requires the extension or continuation of existing and proposed collector streets and, where possible, provide for the continuation of local streets. The applicant's proposed site plan does not provide for the continuation of either Magnolia Springs Drive or Cielo Vista Road in conjunction with this facility. A one-month postponement will give the applicant an opportunity to address the continuation of this road and will allow the Planning Commission time to review the corresponding plans that have been filed for their review.
- Representation – Jim Baker was present representing the appellant.
- Board question – Mr. Griggs asked stated that the generator location appeared to be between the facility and the residential area, and asked is it required to run every day or every week for a half hour to keep it reliable; or could it be moved further away from the residential area. Mr. Baker asked if Mr. Griggs was referring to a generator for power services. Mr. Griggs asked wasn't there an emergency generator in the area. Mr. Baker then stated not that he knew of. Mr. Griggs then said that the Board has had other applications with similar facilities that had emergency power backup, and they ran the emergency generators on a weekly basis. Mr. Baker said that all the utilities are "to the site", including a stubbed in street. Mr. Griggs stated that as long as there is not a loud generator next to a residential backyard, then it is a non-issue.
- Action - A motion was made by Ms. Meyer, seconded by Mr. Glover; and carried unanimously (White and Moore absent) to **postpone C-2014-15: TIM HUBER/RAMSEY DEVELOPMENT** - appeal for a conditional use permit to establish an assisted living center for seniors in a Planned Neighborhood Residential (R-3) zone, at 2930 Spurr Road (a portion of) (Council District 2) to the April 25, 2014 meeting.

- b. **V-2014-19: PETER TATE** - appeals for variances to reduce: 1) the required side yard from 18 inches to 6 inches; and 2) the required rear yard from 20 feet to 8 feet, in order to build an addition on the rear of a detached accessory structure (garage) in a High Density Apartment (R-4)/Historic Overlay (H-1) zone, within the defined Infill & Redevelopment Area, at 101 Hampton Ct. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested variances should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. It will not negatively affect the character of the surrounding neighborhood because the addition will likely be unnoticeable from anyone's property except the applicant's. The Board of Architectural Review has approved the design of the addition and remodel, which ensures that it has met the guidelines for Historic Preservation.
2. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. Adding a single post to hold a new roof at the same 0.5-foot setback as the existing structure is a functional necessity; and granting the requested variance from 20 feet to 8 feet will not be an unreasonable circumvention of the Zoning Ordinance because functionally, Ross Avenue is similar to an alley on the applicant's side of the street. Additionally, the garage will not be visible to the street because of the existing privacy fence.
3. The existing location of the historic garage, the existing privacy fence on Ross Avenue, and the fact that Ross Avenue partially functions as an alley are all unique circumstances that justify the requested variances.
4. Strict application of the Zoning Ordinance would require that the roof be completely redesigned, which may result in a less aesthetically pleasing and awkward building; and would likely result in any addition to the garage being prohibited. The applicant has already invested much in the design and approvals for this addition through the Board of Architectural Review, which approved the proposed addition on 2/13/2014.
5. The requested variance is not a willful violation of the Zoning Ordinance, but rather a design response to the unique circumstances of this property, and a natural outcome of the standard permitting review process.

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

- a. The property shall be developed in accordance with submitted site plan and application, allowing minor modifications, if required, by the Divisions of Historic Preservation; Engineering; Traffic Engineering; or Building Inspection as a part of the normal permitting procedures.
- b. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the garage expansion, prior to construction.

Staff Comment – Mr. Emmons stated that staff received a request from Mr. Tate; he is out of the country, and did not have anyone present to represent him during this meeting. He went on to say that Mr. Tate did send the Board of Adjustment an email request stating that he had read the staff report and understood the conditions, and agreed to abide, and respectively request approval of the Board. He also said that Mr. Tate said in his email that if there was any opposition or if the Board just felt uncomfortable approving it in his absence, then he would request, in the alternative, a one-month postponement.

Chairman Stumbo stated that he does not personally like to approve something without the applicant present; Ms. Meyer agreed.

Action - A motion was made by Mr. Glover, seconded by Mr. Griggs; and carried unanimously (White and Moore absent) to **postpone V-2014-19: PETER TATE** - appeals for variances to reduce: 1) the required side yard from 18 inches to 6 inches; and 2) the required rear yard from 20 feet to 8 feet, in order to build an addition on the rear of a detached accessory structure (garage) in a High Density Apartment (R-4)/Historic Overlay (H-1) zone, within the defined Infill & Redevelopment Area, at 101 Hampton Ct. (Council District 1) to the April 25, 2014 meeting.

Note – While Chairman Stumbo was sounding the agenda, Mr. Emmons said that staff did not see the applicant or the representative for Mitchell Construction Management. He stated that the staff is recommending postponement of the item, and went on to say that it could wait until it would normally come up on the agenda, and give the applicant some time to get to the hearing in the case they are running late for some reason.

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.

- 1. **V-2014-16: BARBARA B. PICKETT** - appeals for a variance to reduce the required side yard from 3 feet to 0 in order to allow an existing fence to remain in a Planned Neighborhood Residential (R-3) zone, at 109 Pleasant Ridge Way (Council District 6).

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

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare issue. The installed fence does have a gate, thereby not creating an obstruction in the side yard of this property, and is only partially located in the side yard of the house. It is in the most logical and least intrusive location as possible to connect the side porch to the rear yard of this lot. It will not cause an obstruction to the neighboring property owner, nor will it prevent the use of their side or rear yards, especially by emergency responders if absolutely necessary.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. At the time this particular house was built on this lot, without a typical rear access door and only a side porch door, the Zoning Ordinance did not restrict fences in the side yard as it does today.
- c. The fact that this structure does not have a typical rear door, but rather a side porch door for general access constitutes a special circumstance for this small lot that does not generally apply to most other homes in this subdivision.
- d. Strict application of the Zoning Ordinance would require the fence to be moved entirely to the rear of the home. Functionally, this would cut off the rear yard from the rear door which; in this case, is located on the side of the house. The only alternative for this family to reach the rear yard would be through a bedroom of the house, which is not practical, nor is it logical.
- e. The requested variance is not a willful violation of the Zoning Ordinance. The lessee who built the fence was unaware that a fencing permit was needed. The owner cannot obtain the necessary permit to allow the existing fence to remain without the variance.

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

- 1. The property shall remain as developed in accordance with submitted site plan and application.
- 2. A fence permit shall be obtained by the applicant from the Division of Building Inspection within 60 days of approval by the Board.

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

Citizen Comment- There were no citizens present wishing to speak to this request.

Action - A motion was made by Mr. Griggs, seconded by Mr. Glover; and carried unanimously (White and Moore absent) to **approve V-2014-16: BARBARA B. PICKETT** - appeal for a variance to reduce the required side yard from 3 feet to 0 in order to allow an existing fence to remain in a Planned Neighborhood Residential (R-3) zone, at 109 Pleasant Ridge Way (Council District 6), based on the staff's

recommendation of approval and subject to the two conditions.

2. **V-2014-17: SALAS ENTERPRISES CORP.** - appeals for a variance to reduce the required setback along Lansdowne Drive from 25 feet to 20 feet in order to construct an enclosed patio in a Planned Shopping Center (B-6P) zone, at 3501 Lansdowne Dr. (Council District 4).

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

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not cause a health, safety or welfare problem. It will not be out of character with the existing neighborhood, as the enclosure of the existing patio will not be a substantial difference in the current development of the property, thereby making the addition largely unnoticeable.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance. Granting the request will actually be consistent with the modern interpretation of the setback in this zone for new shopping centers.
- c. The combination of the history of this shopping center and the change in interpretation of the Zoning Ordinance in favor of infill & redevelopment create a unique situation for the subject property, and this proposed patio enclosure.
- d. Strict application of the Zoning Ordinance would require the applicant to re-design the enclosed patio area, or only enclose a portion of it in order to comply with the currently approved 25 - foot setback or forego the plans to enclose the patio altogether.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather a natural result of the normal review process of the pending final development plan under Planning Commission review.

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

1. The property shall be developed in accordance with submitted site plan and application or as amended by the Planning Commission on a final development plan.
2. All necessary permits shall be obtained by the applicant, including but not limited to; a building permit for the patio enclosure, prior to construction.
3. That the action of the Board of Adjustment be referenced on the final development plan for the shopping center.

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

Citizen Comment: There were no citizens present wishing to speak to this request.

Action - A motion was made by Ms. Meyer, seconded by Mr. Griggs; and carried unanimously (White and Moore absent) to **approve V-2014-17: SALAS ENTERPRISES CORP** - appeal for a variance to reduce the required setback along Lansdowne Drive from 25 feet to 20 feet in order to construct an enclosed patio in a Planned Shopping Center (B-6P) zone, at 3501 Lansdowne Dr. (Council District 4), for the reasons recommended by staff and subject to the three conditions outlined by staff.

3. **V-2014-18: MITCHELL CONSTRUCTION MANAGEMENT** - appeals for a variance to reduce the required side yard from 17.5 feet to 10.5 feet in order to expand a detached garage in a High Density Apartment (R-4) zone, within the defined Infill & Redevelopment Area, at 125 E. 4th St. (Council District 1).

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

- a. Based on the submitted materials, the applicant wishes to expand the height of the accessory structure, which necessitates an additional (side yard) variance. That aspect of the proposed construction was not known at the time the application materials were given to the applicant. It was not made a part of this application and has therefore not been properly noticed for the March 28, 2014 hearing.
- b. A postponement will allow the applicant time to either modify the plans to expand the garage or to amend this variance application and re-notify the required property owners.

Note – At this time, Chairman Stumbo stated that Mitchell Construction is on the agenda and they were still not represented; therefore, he called for a motion to postpone for 30-days.

Action - A motion was made by Mr. Griggs, seconded by Ms. Meyer; and carried unanimously (White and Moore absent) to **postpone V-2014-18: MITCHELL CONSTRUCTION MANAGEMENT** - appeals for a variance to reduce the required side yard from 17.5 feet to 10.5 feet in order to expand a detached garage

in a High Density Apartment (R-4) zone, within the defined Infill & Redevelopment Area, at 125 E. 4th St. (Council District 1) to the April 25, 2014 meeting.

D. **Conditional Use Appeals**
(Sounded Items)

1. **C-2014-13: EIGHTH POLE INN, LLC** – applicant wishes to continue operation of a previously approved conditional use for a bed & breakfast under new ownership in the Agricultural Rural (A-R) zone, at 3463 Rosalie Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Bed & breakfast facilities are permitted as a conditional use in the A-R zone, and this particular site has been used as such use for nearly 20 years, without complaint. The applicant now wishes to simply change ownership and continue the operation of this successful business. Furthermore, there have been no adverse impacts on the neighborhood as a result of this use; and allowing the change in ownership will ensure that this facility will continue to be able to provide patrons with a personal, pleasant, easily accessible alternative for lodging.
- b. All public facilities are available and in operation for the continued use as a bed & breakfast.

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

1. That the bed and breakfast be operated in accordance with the submitted application and site plan; i.e., that it be limited to the rooms as depicted on the site plan and attachment submitted with this application, as well as those conditions imposed at the time the original conditional use(C-96-104) was approved. This includes compliance with the stipulations of Article 1-11 of the Zoning Ordinance.
2. That a Zoning Compliance Permit and Certificate of Occupancy be obtained from the Divisions of Planning and Building Inspection.
3. That the septic system be reviewed and approved for this use, as necessary, by the Fayette County Board of Health.
4. That the applicant continue to provide the existing on-site parking, and that any enlargement of the parking area is to be reviewed and approved by the Board of Adjustment on an amended site plan.
5. That any signage for the bed & breakfast be in accordance with Article 17 of the Zoning Ordinance, that it be limited to two (2) square feet in size, and that it not be internally illuminated.
6. That the bed & breakfast be in compliance with all applicable State and local laws, including those of the Health Department and that the residence continue to meet all fire and building codes.

Representation – Mr. Tom Marks, attorney, was present representing appellant.

Citizen Comment- There were no citizens present wishing to speak to this request.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously (White and Moore absent) to **approve C-2014-13: EIGHTH POLE INN, LLC** - to continue operation of a previously approved conditional use for a bed & breakfast under new ownership in the Agricultural Rural (A-R) zone, at 3463 Rosalie Road (Council District 12), for the reasons cited by staff and subject to the six conditions.

2. **C-2014-12: FOTIOS MORAITIS** - appeals for a conditional use permit to establish a pawn shop (including vehicles) in a Highway Service Business (B-3) zone, at 1536 (aka 1538) N. Limestone (Council District 1).

The Staff Recommends: Disapproval, for the following reasons:

- a. It is unclear that the available parking area will be adequate to suit the needs of the proposed use of a pawn shop. This lot is shared by two businesses: an auto repair shop and the car sales lot with the proposed addition of the pawn shop. It is only possible to park 3 vehicles in front of the portion of the building that would be used for the pawn shop and potentially 3 more in front of the auto repair shop. Furthermore, those parking spaces are designed such that a vehicle exiting the site will need to back onto the public right-of-way, which would be a safety hazard.
- b. The Central Sector Small Area Plan, which was adopted by the Planning Commission, recommends that this area of North Limestone be enhanced, and specifically calls for this corridor to be a “Major Gateway” into the neighborhoods that comprise the Central Sector (Sub areas D & E).
- c. Recent redevelopments on either side of the subject property have enhanced the streetscape by adding new sidewalks, street trees, and other infrastructure improvements. Additionally, the CVS redevelopment on the northern boundary modified their site layout to increase the landscape buffer area adjacent to the North Limestone right-of-way and planted additional landscape materials. The Waller Property on the southern property boundary agreed to increase the landscaping and proposed

architectural design standards for those buildings that front on North Limestone. The proposed redevelopment of this site will do little to enhance the corridor as recommended by the Central Sector Small Area Plan unless additional landscaping and other street improvements are made.

- d. Disapproving the requested pawn shop will not deprive the applicant of a reasonable use of the land because there are a number of businesses that would be allowed to operate at this location, one of which is the sale of automobiles. The applicant has already been issued a Zoning Compliance Permit and Certificate of Occupancy for this use.

Representation – Mr. Fotios Moraitis was present. Mr. Moraitis said that he brought his wife and property owner (Gordon Patterson). He went on to say that there was a misunderstanding as to the way he presented himself at the Planning office; when he first went, he had received so much paper work and regulations and he got a little desperate and realized he was overwhelmed. He stated that he then looked into getting a used car dealer place in the area, and he felt that is where the confusion started. He then said that there will only be two shops in the building; which one is an already car repair shop and a pawn shop; there will be no used car dealership there. He said that when the Planning staff had visited, it was a little messy because the place had been vacant for three months; there were a couple cars there from the former owners that had been moved; and the mechanic shop was messy because of the parking situation, but is something that can be solved and he had brought the property owner to explain it; and he said that he had also brought a written statement from the Vice-President of Goodwill; which is right next to his business, stating that they will provide him with parking if it was needed for his customers. He concluded, by saying that he also brought a statement stating that he was not planning nor want a used car lot at this location.

Staff Report – Mr. Emmons said that the request was for a pawn shop in a B-3 zone, (as he presented the site plan on the overhead); which is a conditional use. He went on to say that it was a very small property that has a single building oriented toward North Limestone; it's just inside New Circle Rd.; directly behind the fairly recent CVS pharmacy, that is located on the corner; and on the other side of the property (gray block) is a newly developing property; the Waller Property B-4, that is currently under construction; it has some of the units leased and some are under construction.

Mr. Emmons went on to say that when the staff was reviewing this request we had to first look to see what was there; it is a single building, but has two uses in it. (Referring to the site plan on the overhead), Mr. Emmons pointed out that the orange highlighted part was the applicant's proposed suite where they are proposing the pawn show, and in the blue is an existing car repair shop. He went on to say that the previous use of the subject suite, was a car related facility; then he elaborated saying that the previous use was Big Guys Audio that installed car stereos etc.; so it was still a car repair use, but not a typical mechanic.

He then stated that there is an informal parking area out in front of the building that is not stripped, but could potentially hold five or six cars directly in front of the building; there is a curb cut that has an entrance into and onto North Limestone; and there is also an informal parking area to the rear of the property.

As Mr. Emmons demonstrated more photos of the property and surrounding area on the overhead, he specifically pointed out where cars were parking directly in front of the building. Mr. Emmons went on to say that staff's great concern is that the front parking area is delineated; and every time staff has gone by, there have been numerous cars parked there creating a jumbled and potentially un-safe parking area.

The next photo he presented, Mr. Emmons stated that he was standing at the edge of the right-of-way, and he pointed out the small median that delineates where the two entrances from North Limestone to where it is located.

Mr. Emmons then presented and discussed the newly developing Waller properties with the B-4 uses, and the new sidewalk which has recently been built as part of that new development. He then presented another photo on the overhead, indicating that the view was looking back toward New Circle Road (standing on the median and the new CVS; as you the new sidewalk as it runs through). Then he discussed the improvement to the sidewalks, landscaping, & architecture made by the properties to the north and south of the subject property.

Mr. Emmons said that there were more than the technicalities involved, but also the property is a part of the Central Sector small area plan; and staff did go into detail on that in the staff report. He went on to say that the Central Sector small area plan is essentially a plan for redevelopment for the Central Sector,

and this is a part of it.

As he pointed out the areas D and E on the photo on the overhead, the plan has some specific recommendations for the corridor. He stated that it is a plan to revitalize the Central Sector; it's a plan that calls for additional streetscape improvements; increasing the pedestrian activity; increasing the landscaping; and putting in street trees.

Mr. Emmons went on to say that for the CVS property that was being viewed, they shifted their development in order to provide a much larger landscape buffer along the corridor; a much larger landscape buffer than what is required; and they actually put in more landscaping than is required by the Zoning Ordinance. He then said that the most important part was that they left open the possibility for a gateway entrance into it. He then said that the Waller property; which is on the other side of the property; in addition to putting in the sidewalks, they also had architectural standards on their buildings which they agreed to, through the Planning Commission on the development plan. He went on to say that the properties on either side have moved towards the revitalization goals; and the Small Area Plan calls for this to be an area gateway into the North Limestone neighborhood area.

As Mr. Emmons displayed several more pictures, he stated those photos were looking directly across the street (at the Goodwill store,) as well as the Goo-Goo Car Wash. The next picture he displayed was looking toward New Circle Road, at the edge of the Goo-Goo Car Wash property, and a new building that was used for an automobile dealership at the corner of New Circle Road. He then displayed photos of the parking area to the rear of the subject site. He pointed out on the photo that the building that was sticking out, was the applicant's portion of the suite, and then stated that the parking area in the rear is a combination of gravel, old pavement and broken up pavement; and there are no delineated parking spaces. He went on to say that as the staff was looking at the amount of space that was available; if cars were to be parked around the edge of edge, the staff estimates that there could be approximately 15 cars that could park in the rear of the subject site. Mr. Emmons noted that while the staff was there, they noticed that there were some cars that were double parked, double stacked in front of each other and assumed that they were cars that were already there or awaiting repairs or being worked on.

Mr. Emmons then displayed photos from the applicant's parking lot; looking at the CVS, toward New Circle Road; the next photo was looking toward the back of the shopping center that faces New Circle Road. He then showed photos again of the back parking order to give a greater view. He then showed photos of the inside of the subject property and stated that Mr. Moraitis then explained that his proposed pawn shop would have the front area to welcome as customers who come in the door, and the rest of his units would be closed and storage of the goods he was doing as part of his business.

In conclusion of the staff report; Mr. Emmons' stated that whenever the staff looked at the pawn shop, they looked at potential reasons to approve the conditional use and potential reasons to disapprove; the disapproval was the stronger of the two positions. He said that the proposed use did nothing to revitalize the area or help create that gateway entrance that is recommended in the Small Area Plan. He went on to say that there were questions as to whether or not the existing parking lot out front is safe, and whether it would be adequate to serve the purposed use. He then went on to conclude that of the staff's opinion, if the pawn shop were approved, it would involve a change of use; going from an auto repair shop (Big Guy's Audio) to the retail sale and pawning of items. The Zoning Ordinance would require (the parking lot has a higher parking generator than the previous use) with that change of use that the landscaping for the pawn shop parking lot and the rear parking lot, be brought up to current standards. He said that he did not believe that it was part of the applicant's proposal to do that. If the applicant wished to postpone a month, they could also request the landscape variances at the same time that they are asking for the conditional use; however, Mr. Emmons said that he could not say whether or not the staff would be supportive if the request was made because of the Small Area Plan's recommendations for the gateway treatment of the area.

Mr. Emmons then said that the staff is recommending disapproval for the four reasons that are listed on the agenda and in the staff report. He then addressed the applicant's comments regarding the use of the property for auto sales. He stated that the staff has issued a zoning compliance permit for the auto sales at that subject location; and an auto sales establishment does not require any additional parking than the auto repair, because both uses are listed in the same classification in the Zoning Ordinance. He then said that whether the applicant chooses to do that business or not, the staff had determined that it was an allowable use at the subject location and they have issued a Zoning Compliance Permit. Mr. Emmons then stated if there were any further questions, he would answer them to the best of his knowledge.

Discussion - Mr. Glover stated that Mr. Emmons didn't say much about the interior of the building that Mr. Moraitis was proposing using as a pawn shop; it sounded like he didn't have any particular objections to what the interior of the building looked like or complied with the use or anything. Mr. Emmons stated no; he (Mr. Moraitis) is proposing a very small customer area and a very large storage area; the amount of storage of goods and the amount of customer space was not necessarily a concern to the Planning staff in this case.

Mr. Glover then said that the way he understood the presentation and the reasons for disapproval was that there was nothing about the subject property that has changed, and that's basically why the staff is recommending disapproval; because his neighbors have all improved their property and he hasn't. Mr. Emmons apologized if that is what he brought across in his presentation. However, the change of use of the pawn shop would kick in the additional landscaping requirements, but ultimately when it came down to it, the staff did not feel that the subject property was a proper location for a pawn shop, given the parking.

Ms. Meyer then asked if there were serious parking issues. Mr. Emmons said that there are technical issues regarding the parking; and the required landscaping. Ms. Meyer then asked if there was any way to illuminate the front parking area, or whether it was grandfathered in because of its age. Mr. Emmons replied that it is grandfathered, and he believed that it would be difficult to get rid of that front parking area without a major proposed redevelopment of the site.

Citizen Comment - Mr. Gordon Patterson, owner of the property at 1536 North Limestone, stated that the building is about 70 years old; it's a little too close to the street, but the landscaping in a gateway area is supposed to happen over a long period of time, and the building does have a lot of use to it and it is not disrepair and it is not ready to be torn down. He said that they cannot help it that it doesn't fit the landscape of the other buildings, but any landscaping in front of the building or change of curbs would totally eliminate all parking. He went on to say that if that were required, they would probably have to tear the building down. He also said that he was for making the city beautiful, but it would have to be done over a period of time in conjunction with the property being able to be redeveloped.

At this time, Mr. Griggs stated and asked of staff that it wasn't really mentioned of a specific amount of parking required for the two uses combined, and if it is a small customer service in the pawn shop, and the existing auto repair shop next door, and there are 15 spaces in the back and 2 or 3 in the front; would that be enough parking with the change of use. Mr. Emmons said that it might be enough parking to meet the minimum required number of parking spaces in the Zoning Ordinance; however, the staff did not feel that the minimum required parking for this case would be adequate because of what has been observed by staff on the property with a lot of extra cars from the existing auto mechanic shops next door; they are taking up more than their minimum required parking for the site. Mr. Griggs stated that auto repair shops do that and when parking lots are not delineated then arrivals would be clueless as to where to put their cars. He went on to say that if parking lots were improved with spots that were delineated, and there were enough them, and since the landlord can control the tenants to some degree; he asked could staff see a solution to this other than just saying no. Mr. Emmons then said it may be possible if there were a revised site plan where staff could look at the parking layout, the landscaping required by the ordinance; in doing all those things, getting into specifics of how much of the square footage they would be using for the customer space, storage space; those types of details might make it possible to look at it, but really the things that staff would be looking for would be physical changes to the property; to delineate the parking, to make it safer for pedestrians and vehicles combined.

Ms. Meyer then said she wanted to comment that on the application, one of the items that he (Mr. Moraitis) was listed as pawning as an autos, so she questioned as to where was he going to park the autos. Mr. Griggs responded to Ms. Meyer by saying that Mr. Moraitis testified that he wasn't going to be selling automobiles at the location.

Mr. Patterson returned to the podium and said that he did have an agreement with each tenant that, especially the mechanic shop; they are not supposed to leave automobiles on the lot for than 30-days. He stated that the lady at the Goodwill store has offered parking for the people that work there; so they are not going to cause a parking problem. He then said that he wasn't an expert on how much room it takes to park a car, but the lot in the back of the subject property is pretty big and he has purchased an extra 25 feet from the CVS owners a year ago, and it has made the parking increase in the back. He then said that the landscaping is out of the question as far as the landscaping the way the CVS and the Waller people have done it because it would take up the whole area in the front.

Ms. Meyer then asked if it would be reasonable to postpone and allow the staff and applicant talk a little

more and see if something can be worked out as far as the parking; and maybe redo the application and take out the autos and make it more clear on what Mr. Moraitis planned to do.

Applicant Presentation – Mr. Moraitis said that his intentions for the pawn shop is not going to be like a “Kroger”, in and out. He went on to say that if he got one or two customers a day that is a lot. He said that he specializes his stuff to certain things; it is not going to be a pawn shop with many things. He stated that when he did his paperwork, he noted that he would not be doing things such as guns; he would be dealing with motorcycles and small stuff.

He then went on to speak on the parking. He said for some time, Mr. Patterson was unavailable, the property was empty, and everybody was just parking anywhere. He noted that on one of the photos presented, there was a car parked in it that should not have been there. He stated that is what makes the people have to back up and go face out to Limestone, not causing a hazard. He also said that there have been numerous businesses before in this area where they were selling a lot of stuff and there was a lot of traffic there and there were never any complaints. He went on to say that the other business, “Big Guys Repair Shop” was selling a lot of items in and out of the business. He said that his customer area is 16 x 17 foot, and the reason for that is because he specialized on really small items; he does not expect 10-30 people to come into his business at a time.

Action - A motion was made by Mr. Glover, seconded by Ms. Meyer; and carried unanimously (White and Moore absent) to **continue C-2014-12: FOTIOS MORAITIS** - appeals for a conditional use permit to establish a pawn shop (including vehicles) in a Highway Service Business (B-3) zone, at 1536 (aka 1538) N. Limestone (Council District 1) to the April 25, 2014 meeting.

F. **Conditional Use Appeals**
(Discussion Items)

1. **C-2014-14: BILL MEADE** - appeals for a conditional use permit to operate an outdoor recreational facility (a botanical garden) in the Agricultural Rural (A-R) zone, at 9086 Old Richmond Road (Council District 12).

The Staff Recommends: Postponement, for the following reasons:

- a. There is a pending Zoning Ordinance Text Amendment designed to provide greater clarity in the regulation of all outdoor recreational activities, in the A-R zone and all others. The staff strongly prefers that the current application for a Conditional Use Permit postpone until the ZOTA has been fully considered by the Commission, and ultimately, by the Urban County Council.
- b. The staff can not report to the Board that all necessary facilities are available and adequate to serve the requested conditional use permit. In particular, the majority of off-street parking proposed to serve this use is located more than ¼ mile south of the proposed zoological garden, requiring patrons to cross a federal highway, and climb a 65' slope to reach the facility. There appears to be space available on the subject property for more vehicular parking than is proposed by the appellant.

Representation – Mr. Bill Meade was present, along with Ms. Chris Westover, attorney.

Staff Report - At this time, Mr. Sallee presented the Board with the e-mail communications that staff received on the subject application. He mentioned that a couple of the letters were in support of the application and one was in agreement with the staff's recommendation of postponement.

Mr. Sallee presented a presentation on the overhead as he stated that the subject property has an address of 9086 Old Richmond Road; it is in the southeast corner of Fayette County. He then said as depicted on the map, the property is just over 12 acres in size; yet is described to the staff as being at the corner of River Road and Old Richmond Road. He noted that River Road bisects the subject property and it does have frontage of the north side of Old Richmond Road; which is also known as US 25 & 421. Mr. Sallee said that that roadway crosses the Kentucky River, just north of Interstate 75 and the Clay's Ferry Bridge. As Mr. Sallee pointed out on the display the subject property, he noted that property is on the north west side, River Road, extends north from a sharp curve on US 25 & 421, just before crossing the bridge into Madison County.

He then described the zoning of the area as he stated that most of the property is zoned Agricultural Rural zone (A-R), and a very small portion of its frontage, along Old Richmond Road, is in a Highway Service Business zone (B-3), as are the properties across Old Richmond Road from this location.

As Mr. Sallee presented his next photo on the overhead, he explained that River Road is about the boundary of the flood plain from the Kentucky River, and that is an elevation just under 600 feet above sea level, and the property extends about 50 feet above that point to its peak elevation. He went on to say that the northernmost portion of the property is in a clearing with a number of structures; including a dwelling, a barn, a pavilion, and several other structures, and the photo depicted a small clearing in the trees at that location.

Mr. Sallee then presented a photo of the view of the flood plain map confirming the flood elevation; and that elevation is within just a few feet of River Road.

Mr. Sallee presented a photo of the subject property (as the most complete picture of the large subject property that the staff could find), as he said this map looking from the east to the west (from Madison County). He demonstrated the subject property with the shore line along the river and extends up from the river to the clearing that he had previously described. Mr. Sallee pointed out that the steeper slope of the property is heavily treed. He went on to say that River Road parallels the river and serves three or four other properties in addition to the subject property. He then pointed out the dedicated driveway off the road goes up the hill to the improvements on the property.

Mr. Sallee then presented a closer view of the barn, the pavilion, and the dwelling that exists on the property (in the clearing area). He then displayed a ground-level view of the commercial area directly across Old Richmond from this property. The staff spent two paragraphs in the staff report describing the physical conditions of the location; much of the parking that was proposed for the conditional use - that being for a botanical garden on the subject property - is proposed to cross the road in association with the restaurant. He went on to say that the parking is physically located in one of two parking areas. In the initial application, it was indicated that golf carts or ATVs would shuttle patrons of the facility from the restaurant's parking areas up the hill and to the site. He stated that staff found out from Traffic Engineering that possibly mini-vans or passenger vans are now being considered for the shuttle service instead of the previously listed golf carts. Mr. Sallee noted that the use of the smaller golf carts on a federal highway at such a sharp turn were of great concern of the staff from a general safety standpoint.

Mr. Sallee then presented several different area views of the parking associated with the restaurant.

He then said that staff has recommended postponement of the request. He said that the closest point of the parking to the proposed use is almost a quarter of a mile in distance; there are a few parking spaces proposed on the subject property, and one issue that was raised was whether or not it would be possible to have additional parking provided on the subject property itself, rather than such a heavy reliance of the parking across the federal highway. He went on to say that the staff's general concern was if patrons or visitors grow weary of a wait for a shuttle service, they may take off on foot and actually would walk across the highway to get to their vehicles to leave the area.

Mr. Sallee also stated that there is also a text amendment that is being considered by the Planning Commission for general, outdoor, recreational uses in the Agricultural and other zones. He went on to say that the staff had a strong preference that many applications for those uses, such as this, should be delayed until the text amendment process can go through. He said that staff recommended postponement for two reasons: 1) because the text amendment is being processed and reviewed by the Planning Commission and has not been completed in review; 2) the parking issue.

He then said that the staff is cognizant that the petitioner may not agree to the staff's postponement, recommendation, and the staff had presented the Board with an exhibit prior to the hearing with alternate findings to consider - either to approve or disapprove the request. He continued to say that, should the Board be inclined to approve the request, the staff had drafted findings and 8 possible conditions for their consideration as well. Mr. Sallee said that the disapproval portion of the presented document has the same two identical findings in the agenda and the staff report (for postponement) with just a couple of wording tweaks.

Mr. Sallee said that prior to the hearing, staff did converse with Ms. Jones with the Law Department, and she would recommend that finding A under the disapproval recommendations, not be adopted by the Board should they be inclined to disapprove the request.

Board Questions – Mr. Glover stated to that he was curious about the text amendment that is proposed; how would that clarify the regulation of outdoor recreational activities; and how would it affect this application. Mr. Sallee replied; that as to how it would clarify outdoor recreational activities; there are a number of definitions that are part of the text amendment proposal. He said that he was not sure if

there were any specific changes proposed to botanical gardens or zoological gardens, which the applicant is proposing; however there may be other changes that may result from the text amendment, either dealing with parking or mandatory conditions for these types of uses.

Mr. Glover then asked what the time table for the text amendments was. Mr. Sallee said that the Planning Commission has been reviewing the ZOTA since October of last year and there will be at least one more review at the April work session. There has been no public hearing scheduled on that ZOTA, and; the earliest that could happen could be May or maybe even later in the summer.

Mr. Glover asked if it was the staff opinion that if the text amendment was approved, would it affect this application in some way. Mr. Sallee said that he didn't believe this use had a new term proposed for it. As he read through the text, he read the following: for a definition of a Zoological garden: "A park like area in which live animals are kept in cages or large enclosures for public exhibition."

Mr. Griggs then asked was this application for a zoological garden or a botanical garden. Mr. Sallee said that the conditional use listed in the ordinance is for a zoological garden; which includes both plants and animals, but also stated their application involved plants only.

Mr. Griggs then stated that it seemed like the most intense uses would be the weddings, receptions, and class reunions; they would be permitted under this conditional use in the A-R zone. Mr. Sallee said these uses are not independent of another conditional use. Mr. Griggs then asked if the applicant met the requirements of the Zoning Ordinance to have the receptions and class reunions. Mr. Sallee said that there is really no requirement in the ordinance for those. Mr. Griggs then asked if they may be permitted as an accessory use to a botanical garden. Mr. Sallee replied affirmatively.

Mr. Griggs then asked if these uses were part of the ZOTA text amendment. Mr. Sallee replied that they were not in a definitive manner, but they are part of why the ZOTA has been drafted and reviewed.

Mr. Glover then asked if the Board granted this appeal before the text amendment passed, and it was determined that the use doesn't comply with the text amendment as adopted, what happens to the conditional use. Mr. Sallee said that if the Board adopts the conditional use ahead of the text amendment, that action would prevail. Mr. Glover stated that this applicant would basically be "grandfathered in". Mr. Sallee said that in the event that the Ordinance became more strict and further regulated these aspects of the use; then they were indeed.

Applicant Comments – Ms. Chris Westover, attorney, stated she was representing the applicant and stated that she believed that this project was so right for the particular spot. She went on to say that they planned to walk the Board through what the proposed use was going to be, why it was appropriate and why it should be approved.

At this time, Ms. Westover presented the Board with several packets of information in regards to the proposal of what Mr. Meade wants to do.

Mr. Meade approached the podium at this time and displayed on the overhead, a DVD illustration of what he was proposing for the botanical garden.

Ms. Westover returned to the podium and stated that along with letters of support with her, she had Mr. John Carloftus, who is an internationally renowned landscape designer; who finds that this project is an unusually, beautiful, and photogenic site; and feels it would have wonderful use to have a botanical garden opened up on a limited basis.

At this time, Ms. Westover spoke on the different letters of support, and the Zoning Ordinance text amendments, as she presented the Board and staff with packets of information supporting her statements.

Board Questions - Ms. Meyer stated that Ms. Westover spoke of limited uses; however, she noted that she saw weddings, class reunions; and then asked if they were limiting their size. Mr. Meade stated that he did want it limited. He said that in speaking of the number of people; he addressed his son's wedding reception that had 150 people and that they parked cars all on his property. He stated that they used the property across the street as "back-up." Ms. Meyer then asked if they going to charge. Mr. Meade replied affirmatively. Ms. Meyer then stated that then this use becomes commercial a use. Mr. Meade replied that it becomes a destination they are selling, as they are not preparing food, there would be no retail sales; but only a rent payment for use of the property.

Mr. Griggs then asked staff if there was a special event where there could be 150 people, and if there is a number of parking spaces that is required for that number of people. Mr. Sallee replied that there was not in the Zoning Ordinance. Mr. Griggs then asked if the staff would say that there should be a parking space for every 2 people, for instance, Mr. Sallee stated that most uses in the Ordinance are broadly based on a 1:5 (common) ratio. Mr. Griggs also asked if there were going to be many special events and if a large number of parking spaces were required, would it have to be graveled, paved, or delineated. He also asked if they would be in a flood plane. Mr. Sallee responded affirmatively. Mr. Griggs asked if there was a plan to gravel about 75 or more parking spaces. Ms. Westover replied briefly on their views proposed of the parking, stating that the RLMP encouraged their proposal. Mr. Griggs then expressed his concerns about the parking and waiting when an event is going on at the Rip Tide restaurant as far as people having to wait while the passenger van/shuttles are transporting guests to the site.

At this time, Mr. John Carmen stated that his office had met with Traffic Engineering and had addressed and discussed some of the parking issues and some of these concerns. He said that there is an availability of 100 + temporary parking spaces, utilizing the ratios staff had mentioned, that would be more than adequate for attendees at a reception or reunion, held onsite.

Mr. Carmen spoke briefly about the traffic safety concern and advised that with the posted speed limit in the curve; drivers would less likely be traveling at a high rate of speed.

Mr. Meade then returned to the podium and stated that he not only has parking in front of his property, but also has an acre behind the barn available for parking.

Ms. Meyer asked Mr. Meade if he would have specific hours of operation; and would there be evening weddings or reunions held. Mr. Meade replied affirmatively, but within reason; however, he does not have complete "game plan" laid out because he was uncertain as to what the Board was going to approve his request or not.

Board Comments – Chairman Stumbo stated that he had a some concerns; 1) he was a little perplexed at the applicant not agreeing to a postponement to work out some of the issues that the staff was asking about. He said that although the Board doesn't always agree with the staff, but the Board also wants to make sure that staff has their issues addressed. He went on to say that he cannot support the conditional use permit to operate an outdoor recreational facility, primarily for a couple of reasons; 1) Mr. Meade does not have a business plan; there was nothing specific discussed at the hearing; the types of uses; the size of use; and the safety issue. He said that he recommended either continuing the hearing in order to work out some of the details.

Mr. Meade then said that they just wanted to be heard today, and said that he had no problem with a continuance. He also said that their biggest problem with the ZOTA issue that has been going on since 1999, and that it could be until 2019. Chairman Stumbo stated that that was understood and the Board does not know what that time table may be, but, they cannot base a decision on that.

Ms. Meyer then stated that she agreed with Chairman Stumbo that the Board would need to know what "the plan" is; what is it that the applicant wanted to do; what would be the hours of operations; would there be limitations and that; the more information the Board has, the better. Mr. Griggs then stated that in the staff report, it is listed that "other similar, small workshops" are proposed, and said that it was so open ended, they don't know what to think of it.

Mr. Glover stated that he had also had some concerns. He said that he wasn't for sure what the specific concerns were of staff; he wasn't sure if staff had the opportunity to formulate any specifics. He went on to say that he wasn't persuaded that if waiting for the ZOTA to pass was a good reason. He also said that he wasn't opposed to a postponement or continuation of the case.

Ms. Westover said that they were agreeable to continue the case to the following month in order to give them time to work with the staff, and address the specific issues that the Board had mentioned today.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously (White and Moore absent) to **continue C-2014-14: BILL MEADE** - appeal for a conditional use permit to operate an outdoor recreational facility (a botanical garden) in the Agricultural Rural (A-R) zone, at 9086 Old Richmond Road (Council District 12).

E. **Administrative Review**

1. **A-2014-11: ERIC DEJONGE (DBA NET BIZ, LLC)** - an administrative appeal to establish an internet café (including sweepstakes, which is regulated as an adult oriented business) as part of a convenience retail store in a Highway Service Business (B-3) zone at 1555 E. New Circle Rd., Ste. 178 (Council District 7).

The Staff Recommends: **Disapproval** of the Administrative Review, upholding the Division of Planning's interpretation of the Zoning Ordinance, for the following reason:

- a. An internet café that has sweepstakes as an integral component of its business is an entertainment use that offers participation only to adults. Thus, it is most similar to other adult oriented uses allowed in the Zoning Ordinance, and should be regulated as such.
- b. Article 8-20(b) of the Zoning Ordinance states that "other uses substantially similar to those listed herein shall also be deemed permitted." Because the use is restricted to adult participation and involves machines (including computers), it is more logically regulated as an adult arcade than a retail store, or any other use listed in this section.
- c. Should this appeal be denied, the appellant may file an application to the Planning Commission to amend the Zoning regulations in a fashion they see fit. This is a process not afforded by most Planning Commissions in Kentucky. Alternatively, a conditional use permit may be requested of the Board of Adjustment.

Representation – Ms. Chris Westover, attorney, was present representing appellant.

Staff Report – Mr. Emmons began by stating that staff, prior to this case, had distributed to the Board, a news article from "Daily News" that had an article about the similar issues that would likely come up during this hearing. He also stated that the staff had submitted a copy (for the record) of the Zoning Ordinance in its entirety; primarily because he planned to go over a few sections of the Zoning Ordinance, but also because the Zoning Ordinance does work together as an entire document and the provisions work together.

Mr. Emmons stated that at the time of the writing of the report, that this use was not anywhere in Lexington; and it's not a use that is listed in the Zoning Ordinance. He went on to say that when staff was requested for a Zoning Compliance Permit for this type of a use, the staff had to look at the Zoning Ordinance to figure out where it would fit in; If a use is not specifically listed, the first step would be is to look at what use in the Zoning Ordinance it would be most similar to; and in this instance, the staff has determined that the proposed sweepstakes internet café would be most similar to an adult entertainment use - in particular, an adult arcade.

He then spoke on several applications that have been received as to where the applicant had submitted a request for a zoning compliance permit for a convenience store; which included an internet café with sweepstakes as a major portion of their business model. He went on to say that in looking at this application, the site plan that was submitted with it was store and had rows and bays of computer terminals; staff was unaware of this type of use in Lexington, but was aware of this use moving across the nation and were aware of the zoning issues that had occurred recently in Bowling Green. Mr. Emmons spoke briefly about that as the city of Bowling Green began zoning enforcement action against the a similar use; determining that the use they were actually doing was not the use that they had been permitted for, which was as a "retail store."

Mr. Emmons stated that when the staff began looking at a typical sweepstakes internet café use and determined that how it would work, it would be that a person would come in and buy internet time on a computer, or buy other commodities (i.e.: drinks, snacks, etc.) and they would automatically get the opportunity to play on the sweepstakes games; and the games are modeled off of casino type of games. He said that the stated purpose for the games is entertainment and to attract customers.

He said that as staff was continuing their research on this, they found that this use required one to be over 18 years old to participate. This is significant.

Mr. Emmons said as staff were looking for the most similar (use as to what is used in the Zoning Ordinance since an "internet" sweepstakes café is not a listed use), and found that an adult arcade also required for one to be an adult to participate; and they both involve some sort of machine. Where they diverge is when the adult arcade definition talks primarily about sexual oriented materials; whereas the use for a sweepstakes is primarily all about the sweepstakes game.

He then presented several example photos on the overhead of sweepstakes internet cafés that he had researched on the internet, and then gave a briefing on the similar comparison of the different types of sweepstakes internet cafes, internet cafes, and retail stores.

Mr. Emmons then went on to say that “where” this use is requested, wasn’t the issue at this hearing, but it was the staff’s interpretation that their requested use is a use for adults, and should be categorized and regulated as such. He also said that at the time the staff report had been written, the staff wasn’t aware of any other business of such in Lexington, until a week prior to the meeting when one was discovered in the Eastland Shopping Center.

He stated in the end, staff recommends disapproval of this appeal for three reasons: 1) an internet café that has a sweepstakes as an integral part of their business plan is an entertainment use that offers participation to adults; therefore, it is most similar to an adult entertainment use in the Zoning Ordinance and should be regulated as such; 2) the Zoning Ordinance does give the Division of Planning the authority to interpret uses that are similar; and 3) should the Board of Adjustment deny the applicant’s appeal, it does not mean they cannot apply for one of the uses in one of the areas as a conditional use. Furthermore, if the appellant does not like the interpretation of the Zoning Ordinance, they would also have the opportunity to file their own Zoning Ordinance text amendment and go through that process to define the Zoning Ordinance for this use in the way they thought was a better than the way it has been determined by the Division of Planning.

Board Questions – Mr. Glover stated that the main branch of the Public Library has computers that anyone that has a library card could go in, and use and they also block adult sites much like the applicant is proposing, and then asked staff what was the difference. Mr. Emmons stated that the library is not offering a sweepstakes promotion as the integral part of their business.

Mr. Glover then asked for explanation of what exactly a “sweepstakes” is. Mr. Emmons said that he believed each one was slightly different, which is the reason why the staff relied on talking about the typical model of this type of business. He went on to say that staff was unclear as to whether this use was a legal use in Kentucky or not; assuming that it was and not listed in the Zoning Ordinance, the staff’s tasks would be to determine was there a use that is most similar to that so a determination can be made. He went on to say if it is a legally allowable use and it is not listed anywhere in the Zoning Ordinance, then one could make the interpretation that it is just simply prohibited in this town from a zoning perspective.

Mr. Sallee then added to further address Mr. Glover’s questions; the main difference in the library example is that the admission and participation is not prohibited to adults only.

Mr. Griggs then asked; with the business model of a sweepstakes internet café, that’s free, how do they generate income. Mr. Emmons said that is a question that would need to be asked of the applicant. Mr. Griggs also asked if the sweepstakes was using a particular software, site, or particular international cooperation for which the applicant is basically a franchise. Mr. Emmons said he did not know that answer. Mr. Griggs asked the staff about other internet cafés and their uses, and what if anything was being done about them. Mr. Emmons was unsure.

Appellant Presentation – Ms. Chris Westover, attorney passed out several handouts and exhibits. She said that also with her were Mr. Barry Oakley and Eric DeJonge; the operator’s/tenants of this business. Ms. Westover said that she wanted to explain why she felt it was an “error” to call this application an “adult use.” She said that they originally requested a Certificate of Zoning Compliance in order to operate a retail store and have components such as a computer, fax, and copy machine - basically a business center use - within the premises. She said one thing she wanted to point out was that Net Biz did engage from the start, conversation with the staff about what they wanted to do; and they were trying to do the right thing. She said that they believed very strongly that this was the kind of use that is permissible within a B-3 zone at this location, as are many other kinds of retail use.

Ms. Westover then passed out the proposed floor plan and its layout. She said that it is a two part document; one is an outline of what they are selling in the retail store, which is basically a convenient store, where one can buy snacks, pop, etc.; and then the second shows the layout of the store.

Ms. Westover then said that it is a garden variety type of convenient store. Ms. Westover said that as their floor plan shows that the hatched out area is the retail portion and the side where the computers would be. She said that children are not prohibited from coming into the premises; there is no sign that says minors under the age of 18 are not allowed in.

Ms. Westover said that the purpose of this use is to offer a service to people who may not have the ability to have a computer or a smart phone. She said that the sweepstakes game is a separate part of this use. Ms. Westover said that there are some people out there who do not have access to computers at home, work, or on their phones; and this serves a legitimate function to offer a computer that does this. However, the games portion is not even on the internet; as it's a closed software system. She said in order to play the games one has to buy internet time (which they can find out more information at the cash register); they never "have to" play the game, as what they are selling is internet time. The sweepstakes is something entirely different; there is no consideration, no money, no risk, or gambling.

Ms. Westover said staff was talking about "adult uses". She said that the reason there is a definition for adult arcade at all, was the result of a crisis that erupted in the mid 1990's. At this time, she then passed out handouts on this subject. She said that she thought it was critically important to get into this part so that the Board could understand what the intent of the Urban County Council to enact the current adult arcade regulations. She briefly discussed a bust that had occurred for of a number of book stores along Winchester Road, and some other places; that there was a health crisis of some of the things that were going on there, which spurred the Health Department, the Urban County Planning Commission, and the police to take some sort of action to cut down on what they perceived was a public health, and public safety emergency in effect.

Ms. Westover then passed out various newspaper articles; a resolution from the Urban County Council that was enacted in December in response to the problem that was seen in Lexington. She said that this resolution said to Planning Commission that there was a need for a text amendment to better regulate uses. She also said that the uses that were being looked at were sexually orientated businesses, and all specified anatomical body parts; as that's what they were regulating. She then said that on the next page of the presented documentation, was the Ordinance that was finally enacted, as well as the staff report. She said that it was within this package of text amendments, that the term "adult arcade" came into existence in the Zoning Ordinance. Ms. Westover then passed out handouts on the definition of an adult arcade, which at this time she reviewed with the Board.

Questions - Mr. Griggs asked Ms. Westover if she could give other examples. Ms. Westover then said there are many places where there are electronic machines (i.e.: hotel business center, the library, etc.); that children are allowed to enter, but there are certain uses that they cannot do, once inside. Ms. Westover then passed out handouts of examples of such places.

She said that she felt it was very arbitrary for this business to be singled out by saying that, because children are unable to play the sweepstakes, that it is an adult oriented business. She said that if you look at the history and the intention of the adult arcade legislation as it relates to sex; the Net Biz business is different, as, it would have a firewall that blocks all adult type uses, so it doesn't meet that second clause in what defines an adult arcade. (Art. 1-11).

Ms. Westover then went on to discuss what a sweepstakes was. She said that the sweepstakes is similar to any other sweepstakes, such as McDonalds, Retail Store (to get the bottle top), Home Depot, Cracker Barrel, and others. It is not gambling. She then passed out some examples of different sweepstakes from different places. She pointed out that one has to be a certain age to enter these sweepstakes. She then said that it is pretty standard for a sweepstakes of that nature, that the participation by children is limited; and this proposal is no different than the potato chip makers, McDonald, soda pop makers, and anyone else that does this. Then at this time, Ms. Westover passed out the sweepstake rules that Net Biz uses; they use a certain kind of software, and then she asked Mr. DeJonge to come to the podium to explain this information.

Mr. Eric DeJonge, applicant, explained that the sweepstake component of his internet business is a promotion only; people will not be coming in to buy sweepstakes chances or just time at the games. He said the only thing customers would be purchasing is internet time. He went on to say that in order to get customers to buy more of his products and internet time, his company has partnered with a software, engineer company, and they give a "closed" system that is a finite pool of winnings. He said in the closed system, what keeps it from being gambling is with a finite pool of entries, once it's gone it's gone.

Mr. DeJonge went on to say that the people who would come in and want to purchase internet time, would be able to do a number of activities (i.e. surf the web).

Questions - Mr. Griggs asked staff if there was a division of Lexington City Government or part of state government that they are aware of that would regulate these machines. In other words, if the Board voted to approve the application, could a condition be placed on it that they would have to get approval of their

business plan from another division of the government that would oversee the legalities of it. Mr. Sallee said that he thought that would be difficult since this was an administrative appeal and not a conditional use permit application; the Board can condition those types of applications, but as an administrative appeal, he wasn't sure if it could be a condition for a location. Mr. Griggs said he wasn't saying to condition a location, but rather, a review of the legality of it.

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

Note: Chairman Stumbo declared a brief recess at 3:56 p.m. The meeting reconvened at 4:01 p.m. with the same members in attendance.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (White and Moore absent) to **approve A-2014-11: ERIC DEJONGE (DBA NET BIZ, LLC)** - administrative appeal to establish an internet café (including sweepstakes,) as part of a convenience retail store in a Highway Service Business (B-3) zone at 1555 E. New Circle Rd., Ste. 178 (Council District 7), based on the following finding:

- a) This is an allowable use in a B-3 zone and is not an adult entertainment business. As evidence at the hearing indicates it is more like a library or a specialized retail establishment with a sweepstakes opportunity to promote its retail sale of internet time on computers, which will not be used for adult entertainment or gambling.

2. **A-2014-20: WALKER PROPERTIES** – an administrative appeal of Building Inspection's revocation of a sign permit in the Agricultural Rural (A-R) zone, at 3898 Haley Rd. (Council District 12).

Representation – Mr. Chad Walker, appellant, was present.

Staff Comment – Mr. Emmons stated that Building Inspection staff would not be able to be present for this appeal, and they were going to stand by their written documentation that was submitted and mailed to the Board last week. He also said that after Mr. Walker's presentation, the Planning staff will have comments regarding this case.

Applicant Presentation – Mr. Walker stated that his appeal was to contest what he felt was an unjustified revocation of his sign permit. He said that they received a sign permit and the permit was revoked for the reason of the sign being in a State right-of-way. He went on to say that his brother owns an agritainment business at the corner of Haley Road and I-64; for which they were granted a conditional use permit in 2013. The business brings in tourism money, tax dollars, and provides non-skilled employment. Mr. Walker said that they erected a sign but did not get a permit when they put it up, and the sign was up for about seven months. He said that they received a formal Notice of Violation from the Zoning Enforcement Department (dated February 12, 2014). He went on to say that they have been in front of the Board several times before for conditional use permits and zone changes, but this was the first time for the sign permit. He said on February 18, 2014, Mr. Walker spoke with Nancy Marinaro in Building Inspection who approved their sign as already erected; he then went to Planning department and spoke with Mr. Phelps and Mr. Marx; and it was to his understanding that since they had a permit, that the zoning violation "went away". Mr. Walker then said that on March 4, 2014, they were told that the sign permit was revoked and the reason being was: "it was determined that the sign has been placed in the right-of-way; therefore, the permit has been voided." He then said he called the Kentucky State Transportation Department/Department of Highways-District 7 (and spoke with Mr. Mike DeStone), who stated that the setback on Haley Road was 40 feet. He received an email from him confirming that the sign was not in the right-of-way. He said that he took the information back to Building Inspection and spoke with Mr. Fred Stokley, who confirmed that he did not get out to measure, but "assumed" that it was in the right-of-way because it was in front of existing fence. Mr. Walker said he then spoke with Ms. Marinaro who basically repeated that the sign permit had been revoked.

Questions - Mr. Griggs asked Mr. Walker to talk about whether it was the right kind of sign and what is on the sign because there is an issue about it being not a an identification sign, but rather, a business sign. Mr. Walker said it can be discussed; however, the "reason" for the appeal was because the sign permit had been revoked. He went on to say that irrelevant to the Boards determination; they took the sign permit request to Building Inspection and they signed off on it, and then 15 days later, it was revoked.

Mr. Griggs then asked the staff that if this is an administrative appeal about the "reason" the sign is being revoked. It seemed to him that the actual reason has changed mid way; that it is not about where it is

located at now, but whether it is a prohibited type of sign. He asked if this could be discussed. Ms. Jones stated that she was a little confused, for she is reading one thing and hearing another, and thought it would be best to hear the staff's presentation at this point.

Mr. Sallee stated that Mr. Walker was correct; the sign was revoked for location issues. The staff though, once they learned of the sign, did look at the different types of signs, and was also wondering if it was a business sign or an identification sign, under the Ordinance. At this time, Mr. Sallee presented the definitions for both the business and identification sign on the overheard.

While he was doing so, Mr. Griggs asked when the Board gave Mr. Walker the original conditional use permit to operate the recreational facility, was paint ball a part of that, and if it was specifically listed as a use that was allowed. Mr. Emmons said that he did not remember paint ball being specifically allowed; however, there was a zoning investigation of the use, and whenever the staff looked into it, they found that the operation that was going on, was in compliance with all of the conditions that the Board originally placed on it.

Mr. Griggs then stated that he thought this was for a seasonal type of use. He asked if this use was now going on throughout the whole year. Mr. Walker said that it is still a seasonal, focusing on the fall. Mr. Griggs asked what time of the year the paint ball going on. Mr. Walker said during October only. Mr. Griggs also asked if this sign advertised year round, but the paint ball would only be going on for one month. Mr. Walker replied affirmatively.

Mr. Griggs asked staff if they could present a copy of the conditional use permit that was approved prior; Mr. Emmons stated he did not bring that file to this hearing.

Ms. Meyer then stated she noted on the February 12, 2014 letter from Mr. Phelps, that there is a paragraph that talks about the existing free-standing sign does not meet the definition of an identification sign; it says the only type of business sign permitted in an A-R zone is for the advertisement of agricultural products grown and raised on the premises; which is clearly not the case in this situation. Mr. Walker said that they didn't actually get a hearing on that, but they did speak with both Mr. Phelps and Mr. Marx who both said the issue about the type of sign had been satisfied with the issuance of the Building Inspection sign permit.

Mr. Marx at this time stated that the appeal was about the voiding of the permit; and he authorized Mr. Phelps to issue the notification because at that time, in their minds, it was clear that it wasn't the right type of sign. Building Inspection had a different view on it; and they issued a permit. He said that the voiding of the permit was done in error and this is about whether it should be reissued or not.

Mr. Glover then asked what is the Board being asked to do at this hearing. Mr. Marx said his take was to determine whether or not the voiding of the permit was done in error and if so, to authorize the reissue of the permit.

Ms. Jones asked if there was anything from Building Inspection in regards to the revocation of the permit. Mr. Marx presented it to her as well as Mr. Walker read the letter to the Board. Ms. Jones stated that the decision that needed to be made was whether or not the N.O.V. letter was done in error and whether or not to reissue the permit.

Citizen Comment – There were no citizens present wishing to comment on this appeal.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs, and carried unanimously (White and Moore absent) to **approve A-2014-20: WALKER PROPERTIES** – an administrative appeal authorizing the division of Building Inspection's to reinstate the previous sign permit in the Agricultural Rural (A-R) zone, at 3898 Haley Rd. (Council District 12).

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

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (White and Moore absent) to go into closed session for the purpose of discussing a matter of pending litigation.

The Chairman declared a closed session at 4:50 p.m. and reconvened the meeting in open session at 4:58 p.m.

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

None were presented.

Mr. Sallee stated to the Board that there was a little confusion at the beginning of the agenda in regards to the minutes for approval; the February minutes were sent out and are ready for the Board's consideration and action; the January minutes have not yet been sent. The Board members stated that they did not receive these minutes. It was determined that the February minutes will be placed on the next meeting agenda for April 25, 2014 for consideration.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be April 25, 2014.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 5:00 p.m.

Barry Stumbo, Chair

James Griggs, Secretary