

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 27, 2014

- I. **ATTENDANCE** – The meeting was called to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 27, 2014. Members present were Acting Chair Thomas Glover, Larry Forester; Janice Meyer; and James Griggs: Absent were: Barry Stumbo, 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 Saltee, Jimmy Emmons (arrived at 2:30 pm), and Tammye McMullen.

- II. **APPROVAL OF MINUTES** – At the end of the meeting, the Acting Chair announced that the minutes of the May 30, 2014 meeting would be considered.

Action – A motion was made by Acting Chair Glover, seconded by Ms. Meyer, and carried unanimously (Stumbo, Moore and White absent) to approve the minutes of the May 30, 2014 meeting, with changes to language contained on page 8 regarding V-2014-23.

Swearing of Witnesses – Prior to sounding the agenda, the Vice-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 Vice-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 Vice-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-2014-21: SOLAR ECLIPSE, LLC** - appeals for a conditional use permit to construct a parking area accessory to an adjacent P-1 zone in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive (Council District 10).

The Staff Recommends: Postponement, for the following reason

1. Additional information concerning the preliminary grading plans and potential extent of retaining walls is necessary to assess the impact that this proposed conditional use will have on adjoining properties.

Representation – Mr. Dick Murphy was present representing the appellant. Mr. Murphy stated they would like to request a postponement of this request for one month.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Stumbo, Moore, and White absent) to **postpone C-2014-21: SOLAR ECLIPSE, LLC** - appeals for a conditional use permit to construct a parking area accessory to an adjacent P-1 zone in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive **until the July 25, 2014 meeting**.

- b. **C-2014-10: LEXINGTON FRIENDS MEETING** – a request to amend an existing conditional use permit to allow child care for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Ave. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as an institutional/church use has occupied this property for approximately 60 years, and the Lexington Friends Meeting has successfully operated at this location since 200. The expansion of the use to allow a day care center during the week is a logical and efficient use of the established facilities, and is common at many churches throughout this community. Furthermore, adequate parking will be available on site, and the church intends to significantly increase the amount of green space behind the church.
- b. All necessary public facilities and services are available and adequate for the proposed expansion.

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

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications to the drop-off area and parking lot design during the normal permitting process, subject to the review and approval of the Divisions of Planning, Building Inspection, Traffic Engineering, and Engineering.
2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
3. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
4. The applicant shall maintain and/or replace the parking lot perimeter landscaping and buffering, including but not limited to; the vegetative buffers along the street frontages and the fencing where adjoining the neighboring residential properties. Landscaping and buffering shall meet the requirements of Article 18, except where specifically varied by the Board of Adjustment in cases CV-90-129 & CV-94-51.

Representation – Ms. Chris Westover, attorney, was present representing the appellant. Ms. Westover stated they would like to request an indefinite postponement of their request, as they are still “ironing out” some issues.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Stumbo, Moore, and White absent; Forester abstained) to **postpone indefinitely C-2014-10: LEXINGTON FRIENDS MEETING** – a request to amend an existing conditional use permit to allow child care for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Ave.

- c. **C-2014-42: VETERAN'S LOUNGE** – appeals for a conditional use permit to open a cocktail lounge in a Neighborhood Business (B-1) zone, at 1485 Leestown Road (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, as this site is sufficiently buffered by other commercial uses from the nearest residential uses, and parking in front of this cocktail lounge will be available during the proposed hours of its operation.
- 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 cocktail lounge shall be operated in accordance with the submitted application and site plan, recognizing the hours of operation (until 2:00 am), except on Sundays (until 9:00 pm).
2. Live entertainment and/or dancing may not be provided unless a revised conditional use is approved by the Board of Adjustment.
3. All necessary permits for renovation shall be obtained by the applicant from the Divisions of Planning and Building Inspection, including but not limited to a Zoning Compliance Permit and Certificate of Occupancy, prior to the operation of the requested bar/lounge.
4. This conditional use shall operate at all times in accordance with state and local ABC laws and regulations.

Representation – Mr. Coleman Bush, 324 Pelican Lane, was present on behalf of the Meadowthorpe Neighborhood Association. He requested that this case be postponed until after the next neighborhood association meeting on July 8, to allow them an opportunity to hear about and discuss the applicant's request.

The applicants, James and Seneca Hudson, said they would like their case to be heard at this meeting, due to deadlines that must be met in order to obtain the licenses needed to operate the lounge. They also had a contingency lease that had been contracted, which had already been in existence, and that they had been paying for two months.

Mr. Glover asked if there was opposition to the case because several audience members expressed opposition. Mr. Glover suggested that they determine later in the hearing whether or not it should be postponed. He asked that the opposition and the applicants discuss the issues outside the Chambers to see if there might be some resolution prior to the Board actually hearing the case.

2. No Discussion Items - The Vice-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 Vice-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-2014-48: BILL & AMY COLEMAN** - appeal for variance to reduce the required side yard from 3 feet to 0 feet in order to install a fence in a Planned Neighborhood Residential (R-3) zone, at 1080 Kavanaugh Lane (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 if designed appropriately to accommodate storm water drainage and emergency access. The applicants propose to have a gate, thereby not creating an obstruction in the side yard of this property, and the fence 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 basement door 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 yard, especially by emergency responders if absolutely necessary.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance. The requested variance is a logical request due to the unique circumstances of this lot. Conversely, the allowable fence permit that the applicants could pursue outside of the minimum required side yard would be contrary to the intent of the Zoning Ordinance by creating an obstruction in the provided side yard.
- c. The fact that this structure does have an atypical basement door in the side yard, rather than opening to the rear yard, made possible by an unusually steep slope (topography) on this lot, constitutes special circumstances for this lot that do not generally apply to most other homes in this subdivision or in the nearby neighborhood.
- d. Strict application of the Zoning Ordinance would require the fence to be moved entirely to the rear of the home or be so close to the basement door that the door would not function properly. This would cut off the rear yard from the basement door which is located on the side of the house, constituting an unnecessary hardship to the appellants.
- e. The requested variance is not a willful violation of the Zoning Ordinance. The applicant learned of the need for a variance to build their requested fence as a normal part of the fence permit process, long after permits for site grading and home construction were issued.

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

- 1. The property shall be developed in accordance with the submitted site plan and application.
- 2. A fence permit shall be obtained by the applicant from the Division of Building Inspection, noting specifically that Division of Engineering acceptance of a design that does not impede the storm water drainage is required as a condition of this variance.
- 3. A gate shall be installed for the side yard fence.
- 4. Upon completion of the fence construction, the applicants shall document to the Division of Engineering (and copy the Division of Planning) that the fence was constructed per the design approved by the Division of Engineering.

5. It is the owners' responsibility to maintain the fence free and clear of debris that would otherwise be detrimental to the flow of water through the drainage easement.

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

Citizen Comments – There were none.

Action – A motion was made by Ms. Meyer, seconded by Mr. Forester, and carried unanimously (Stumbo, Moore, and White absent) to **approve V-2014-48: BILL & AMY COLEMAN** - appeal for a variance to reduce the required side yard from 3 feet to 0 feet in order to install a fence in a Planned Neighborhood Residential (R-3) zone, at 1080 Kavanaugh Lane, as recommended by the staff, and subject to the five conditions recommended by the staff.

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

1. **C-2014-36: SOUTH ELKHORN CHRISTIAN** - appeals for a conditional use permit to operate a child care facility in conjunction with a church in an Agricultural Urban (A-U) zone, at 4343 Harrodsburg Rd. (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, as the proposed child care facility is a logical addition to the church uses on the subject property. The existing play area and parking are adequate to serve this use without requiring any physical change to the property.
- b. All necessary public facilities and services are adequate for the proposed use as no new buildings or parking are required for this use.

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

1. The child care facility shall be operated in accordance with the submitted application and a revised site plan to show the existing outdoor play area, with the hours of operation limited to 8:00 am to 4:00pm, Monday through Friday.
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 operation as a licensed child care facility.
3. All pole lighting to be installed in off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from adjoining residential properties.
4. All existing tree lines and fencing along the church / child care facility property boundaries shall be preserved and maintained to the greatest extent possible.

Representation – Ms. Kimberly Skidmore was present representing the applicant, and she indicated that they had reviewed the recommended conditions and agreed to abide by them.

*Note – Mr. Sallee noted that one communication was placed in the file of this case; however, it was placed in the wrong file. Mr. Sallee apologized for the miscommunication.

Citizen Comments – There were none.

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester, and carried unanimously (Stumbo, Moore, and White absent) to **approve C-2014-36: SOUTH ELKHORN CHRISTIAN** - appeal for a conditional use permit to operate a child care facility in conjunction with a church in an Agricultural Urban (A-U) zone, at 4343 Harrodsburg Rd., based on the staff's recommendation of approval, and subject to the four recommended conditions.

2. **C-2014-38: TINA MOORE** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, at 722 Biskoff Court (Council District 1).

The Staff Recommends Approval: for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street (and on-street) parking is available for this use, and a large fenced outdoor play area already exists, which exceeds the minimum requirement of 300 square feet (25 feet per child).

- 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. Child care shall be provided in accordance with the submitted application and site plan, with care provided from 7:30 am to 6:00 pm, Monday through Friday.
2. All necessary permits, including issuance of a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Division(s) of Planning and Building Inspection prior to beginning child care for more than six (6) children at this location.
3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
4. This conditional use shall become null and void should the applicant no longer reside at this location.

Mr. Sallee noted at this time, that this is the item for which staff received one communication. Again, Mr. Sallee apologized for the confusion.

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

At this time, Acting Chair Glover asked staff to present Mr. Moore with a copy of the letter that was received by staff.

Board Questions – Ms. Meyer asked Mr. Moore if his fence was in good shape and secure. Mr. Moore responded affirmatively.

Mr. Griggs said that in the staff report, they said that they found adequate parking on the street, and that they took into consideration the needs of garbage trucks and fire trucks; and that staff had not completely eliminated the on-street parking for neighbors and guests. Mr. Griggs noted that the letter the Board received was in disagreement with Mr. Moore's findings. Mr. Sallee said yes and that it would probably be a good idea to show the staff's photos, since the staff was influenced by the amount of off-street parking on the property. In addition, the day that staff visited, they saw very little on-street parking in use. He then presented the photos on the overhead and said the photos would confirm what staff saw in the field (2 photos of the site and 2 of the street).

Mr. Forester asked Mr. Moore if he was going to have up to 12 kids, if that meant he wasn't going to need as many staff; and if there was a certain number of kids that he would have to have; to compare to teacher ratio. Mr. Moore said that there has to be one caregiver to every eight children, but they are going to be licensed for up to 12, so there will be 2 people (his wife and himself, and one back-up).

Acting Chair Glover asked Mr. Moore if he was regulated by the state. Mr. Moore answered affirmatively.

Citizen Comments – There were none.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Stumbo, Moore, and White absent) to **approve C-2014-38: TINA MOORE** -- appeal for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1D) zone, at 722 Biskoff Ct., per the recommendations by the staff for approval, and subject to the four conditions outlined by the staff.

3. **C-2014-41: FIRST BRACKTOWN, INC. (BRACKTOWN ACADEMY)** – appeals for a conditional use permit to increase the allowable number of children at the child care facility from 199 to 225 in a Single Family Residential (R-1C) zone, at 3016 Bracktown Road (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit to expand the existing child care enrollment should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter the existing relationship of the subject property and surrounding residential properties.
- b. Adequately designed facilities exist for both the church and the child care operations. Sufficient parking, pedestrian features, landscaping, stormwater management, and infrastructure are all in place.
- c. The requested increase in child care enrollment is 13%, which is a relatively small increase.

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

1. The child care center shall accommodate no more than 225 children enrolled, operating daily Monday through Friday between the hours of 6:00 AM and 7:00 PM.

2. All necessary permits, including issuance of a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection.
3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.

Representation – Ms. Beth Morton, director of the academy, was present; and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

Citizen Comments – There were none.

Action – A motion was made by Mr. Forester, seconded by Ms. Meyer, and carried unanimously (Stumbo, Moore, and White absent) to **approve C-2014-41: FIRST BRACKTOWN, INC. (BRACKTOWN ACADEMY)** – appeal for a conditional use permit to increase the allowable number of children at the child care facility from 199 to 225 in a Single Family Residential (R-1C) zone, at 3016 Bracktown Road, per the staff recommendation and approvals, and the three conditions.

4. **C-2014-43: ERIC MOBERLY** – appeals for a conditional use permit for an athletic facility (Martial Arts Instruction), in a Light Industrial (I-1) zone, at 2416 (aka 2420) Palumbo Drive (Council District 7).

The Staff Recommends: Postponement, for the following reasons:

- a. Information regarding the number and scale of competitions has not yet been submitted by the applicant; therefore, the required parking and impact on the subject and surrounding properties can not be fully determined at this time.
- b. The front parking area does not meet the vehicular use area screening requirements of Article 18, and additional landscaping is warranted (and required to the rear of the property) as a condition of this use. None has been proposed as part of this application.

Due to lack of representation, Acting Chair Glover called for a motion to postpone for one month.

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester, and carried unanimously (Stumbo, Moore, and White absent) to **postpone C-2014-43: ERIC MOBERLY** until the July 25, 2014 meeting.

Note: At this time, Mr. Sallee said that the objector present earlier for the next case had been satisfied, and the appellant was prepared to proceed.

5. **C-2014-45: L'ESCALADE FITNESS, INC.** – appeals for conditional use permits to: 1) extend the regulations of the B-1 zone up to 50 feet into the R-1C portion of the property, and 2) construct and occupy an indoor recreational facility in a Wholesale and Warehouse Business (B-4) zone, at 916 North Broadway (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as adequate landscape buffers will be maintained; and the building was purposely designed to take advantage of the sunlight, without casting a burdensome shadow on the surrounding residential properties. The applicant will attempt to preserve all of the mature existing perimeter trees, and will be required to upgrade the landscaping per the minimum requirement of the Zoning Ordinance in any area that is lacking. Available parking on site should meet the anticipated need, even during the largest regional competitions.
- b. All necessary public facilities and services are available and adequate for the proposed use of the property.

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

1. The conditional use shall take place in accordance with the submitted application and site plan.
2. All necessary permits, including but not limited to a Zoning Compliance Permit, Building Permit, and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to construction and operation of the new facility.
3. Parking areas and access shall be paved, with spaces delineated, and landscaped/screened as required by Articles 16 and 18 of the Zoning Ordinance.
4. All new pole lighting for off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from all adjoining residential properties, including the adjacent mobile home park.
5. The final layout of the new off-street parking area and access to North Broadway shall be subject to review and approval by the Division of Traffic Engineering.

6. A storm water management plan shall be implemented in accordance with the adopted Engineering manuals, subject to acceptance by the Division of Engineering.
7. All existing tree lines along the adjacent residential, mobile home and church property boundaries shall be preserved and maintained to the greatest extent possible. If necessary, these boundaries will be further landscaped and shall be maintained to meet at least the minimum required landscaping in Article 18-3(a)(1)(3) of the Zoning Ordinance.
8. Use of the property for outdoor events (including but not limited to competitions) shall be limited to a maximum of 6 events per year and no more than 10 off-street parking spaces may be utilized for this purpose.
9. This use shall be subject to a one-year review by the Board of Adjustment after the issuance of a Certificate of Occupancy has been obtained. Mailed notice to adjacent property owners shall be made at least 21 days prior to the Board's meeting and shall be the responsibility of the applicant.

Representation – Ms. Deborah Balisky, attorney representing the appellant; stated that Chris and Nicole Shotwell, applicants, were present as well. She indicated that she had reviewed the recommended conditions and agreed to abide by them, with the exception of a small revision of condition #9.

Mr. Sallee advised that these were distributed on a separate sheet that was handed out to the Board members, and were presented on the overheard for review. Mr. Sallee said that the change to condition #9 is to indicate that, rather than reviewing the entire conditional use since so much of it is indoor based, that the one-year review would only apply to the outdoor aspects of this use:

9. This use of the property for outdoor events shall be subject to a one-year review by the Board of Adjustment after the issuance of a Certificate of Occupancy has been obtained. Mailed notice to adjacent property owners shall be made at least 21 days prior to the Board's meeting and shall be the responsibility of the applicant.

Mr. Sallee said that the staff report spent one or two paragraphs addressing the unusual nature of that part of this use. The staff believes that it is most likely that the outdoor activities might have the most potential for an adverse impact. This condition had been clarified with the applicant over the past week since the report was issued.

Acting Chair Glover asked if that was all this application was about. Mr. Sallee responded that this application does propose a sizeable new building for this use. It would be for an indoor facility primarily; but they do anticipate occasionally hosting local, and even regional, competitions. During those competitions, they would devote a small portion of their off-street parking lot to additional climbing apparatus that would be located outdoors. The staff is recommending a condition that they remove no more than 10 parking spaces during those competitions, so that they would still comply with the Zoning Ordinance minimum parking by keeping the other remaining parking spaces available on the site.

Acting Chair Glover stated that he understood that they had worked out something with the opposition. Ms. Balisky said that they had one person (Mr. Griffin) that was in opposition earlier; and after speaking with him, he had withdrawn his objection. Acting Chair Glover asked if there were any questions for the applicant or staff. There were none.

Citizen Comments – There were none.

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester, to **approve C-2014-45: L'ESCALADE FITNESS, INC.** – an appeal for conditional use permits to: 1) extend the regulations of the B-1 zone up to 50 feet into the R-1C portion of the property, and 2) construct and occupy an indoor recreational facility in a Wholesale and Warehouse Business (B-4) zone, at 916 North Broadway, based on the staff's recommendation of approval; and based on the nine conditions, making note that the ninth condition is revised to a one-year review of the outdoor property events.

Discussion – As the motion was being made, Mr. Sallee distributed to the Board one email of support, and two letters of opposition. He apologized for not handing out these communications earlier in the hearing.

Acting Chair Glover said that since there was a motion pending, it still allowed the Board to ask questions. He then asked if the letters raised any questions from the Board.

Ms. Meyer asked if the applicants had seen the letters. Ms. Balisky replied affirmatively; and to give a little bit of background, she said there was a neighborhood meeting held the past Monday. She said that her client has been in conversations with representatives of the neighborhood since they decided to move forward. She also said that when the neighborhood meeting took place on Monday, the individual did not

appear at that meeting to voice an opinion, and she believed that they were also not at this hearing. She said that she didn't believe that there has been an opportunity really to explain their proposal. She believed there were some misunderstandings about what the zoning currently is; what it currently allows; and the fact that this proposed facility - while they are seeking a conditional use permit - is significantly less intense than what could locate in a B-4 zone. She thought that there just wasn't a clear understanding as to what the B-4 zoning allows. She said that the way the building is designed, with the lower height of the 20 feet adjacent to the neighbors, keeping the higher, smaller portion as far away from the adjoining neighbors as possible, it was designed to minimize the impact.

Ms. Balisky said that she didn't believe that the individual understood that the tree rows are going to be maintained. There is a pretty thick fence row there that is going to remain as a buffer; and in addition to that, there is going to be a double row of *Viburnum* planted along the property line; as well as along the mobile home park that is zoned B-4, which doesn't technically require such a buffer.

Ms. Balisky said that in looking through the objections, she thought that if they had the opportunity to explain some of that, maybe it would have alleviated some of those concerns.

Ms. Meyer asked if Ms. Balisky was stating that along the north (which is the residential zone) and the mobile home park, if the applicants are going to have a nice green tree line. Ms. Balisky said that there is already a really thick, existing fence row with some really tall trees and underbrush that no one can see through during the summer; and, in addition, there will be a new double row of planted hedge. She then said that all of the landscaping requirements would be met along both property lines.

Ms. Meyer asked if they would consider putting in conifers or something that would be green all year. Ms. Balisky agreed that they would do so.

Ms. Meyer then asked if there would be any other greenspace provided, or if they are filling up the entire space with parking. Ms. Balisky requested for the site plan to be displayed on the overhead, as she explained that it was going to be a change. She said that the site is currently undeveloped; and yes, it will be a big change. She said that their plan is meeting the landscaping requirements. There is an area along the frontage that will remain as greenspace. Ms. Balisky said there are interior landscape areas that are being provided, as well as a big buffer around the building. She then pointed out on the overhead the different areas of greenspace as she stated that it would be fairly well developed, but all in accordance with the regulations. Where the landscaping is going will have the biggest impact that can be provided, and the trees are going to be preserved. She opined that the biggest thing that can be done is keeping the existing fence row trees and landscaping.

Mr. Brian Hill, with CMW, said that there were some neighbors at this hearing that were in support of this plan; however, one of the concerns was about the dumpster location. The location that is showing on the site plan (on the overhead) has been moved to another location. He indicated that they have a new plan that can be shown that actually relocates the dumpster. He said that he just wanted the people to know that they did honor their request for its relocation.

Mr. Glover then asked where the dumpster was going to be located. Mr. Hill pointed to an area on the site plan and said that they have also reconfigured part of the parking lot away from the neighborhood.

Mr. Hill then said that, as Ms. Balisky was saying earlier, they also have building elevations as well; though they did try to be extremely sensitive to the neighbors. He indicated on the overhead the side of the building with the 20-foot height that she referred to, noting that it then slopes up. The high wall is about 140 feet back. He then pointed out that the height of the building was as far away from the neighborhood and neighbors as possible. He then pointed out the new dumpster location and said that it is actually a turn-around zone, so there would be no parking adjoining the neighborhood; and they have also pulled the curb back off the property line a little further than it had been before.

Mr. Hill said that, from a technical standpoint, one of the changes on the drawing was an entrance in (per Traffic Engineering), and then two exits (a left turn and a right turn), so there is a modification proposed to the entrance drive. He said the plan; as a whole, is the same; but there were some minor changes made in an attempt to satisfy Traffic Engineering and the neighbors.

Mr. Griggs then asked him to indicate the area where the mobile home park is located. Mr. Hill then showed it next to their plan. He said that the only doors other than those on the front of the building are two emergency egress doors in the back of the building, based on fire codes; but; otherwise, there are no doors or windows proposed. There are no windows on the ground floor; but there are some windows on the high

bay on the north side to allow some natural lighting in the rock climbing area. He said that there is not an obtrusion into the neighborhood or vice versa in terms of doors or windows and noise.

Mr. Griggs then asked about condition #7 that stated: "existing tree lines shall be preserved and maintained to the greatest extent possible. These boundaries shall be further landscaped and maintained to at least the minimum required landscaping in the Article." He then asked if it was correct that there was no landscaping required between the applicant's property and the trailer park. Ms. Balisky stated that that was correct. She also said that it is not required by the regulations, because it is zoned B-4 as well; but they are agreeing that it would be provided. However, they need to note for the record that it is specified in the conditions.

Mr. Griggs said that he thought that there should be a change made in the condition so that it protects that back property line. Ms. Balisky agreed with Mr. Griggs.

Ms. Meyer opined that there should be specifications for evergreens along both sides. Ms. Balisky again agreed with Ms. Meyer and said that they would abide by that.

Mr. Sallee, at this time, read the revised version of condition #7. Ms. Balisky reviewed it, and responded that what should be said is that the requirements should be as if it were adjacent to a residential zone, in order to meet that minimum requirement. Mr. Sallee said that that change could be made, and displayed it on the overhead as follows:

7. All existing tree lines along the adjacent residential, mobile home and church property boundaries shall be preserved and maintained to the greatest extent possible. ~~If necessary, These~~ boundaries will be further landscaped with evergreens and shall be maintained to meet at least the minimum required landscaping along both property lines, as noted in Article 18-3(a)(1)(3) of the Zoning Ordinance, as if it were adjacent to a residential zone.

Ms. Balisky then noted that, to her knowledge, they had not heard from the owner of the mobile home park property, either in opposition, support, or otherwise.

Acting Chair Glover asked if the applicant had read, understood, and agreed to abide by the changes that were made to the conditions. Ms. Balisky said that they agreed. Acting Chair Glover then asked if there were any other questions from the Board. There were none.

Acting Chair Glover stated that there would need to be an amended motion to the previous motion.

Action – An amended motion was made by Mr. Griggs to approve the use and amend the conditions as they were just discussed, to include a one-year review of the outdoor property events.

Mr. Forester noted his agreement to the amended motion. The motion carried unanimously (Stumbo, Moore and White absent).

5. **C-2014-47: TRANSYLVANIA UNIVERSITY** – appeals for a conditional use permit to construct additional parking accessory to the school for academic instruction in a High Density Apartment (R-4) zone, at 424-442 & 425-451 Bourbon Avenue & 457 West Fourth Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. These off-street parking areas will enable the University to provide additional parking for their students, thereby decreasing the demand for on-street parking in the surrounding neighborhood(s).
- b. All utilities and other public facilities either adequately exist or will be extended and/or upgraded to serve the requested use for parking lots.

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

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications to meet the detailed approvals by the Divisions of Engineering or Traffic Engineering, if necessary, during the normal permitting process. A copy of the approved layout will be submitted to the Division of Planning if there are any changes.
2. All necessary permits, including any demolition and grading permits must be obtained from the Division of Building Inspection.
3. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Division of Planning and the Division of Building Inspection upon completion of the parking lots and prior to use.

Lighting shall be designed and constructed such that it is directed away from any surrounding residential uses

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

Citizen Comments – There were none.

Action – A motion was made by Ms. Meyer, seconded by Mr. Forester, and carried unanimously (Stumbo, Moore, and White absent) to **approve C-2014-47: TRANSYLVANIA UNIVERSITY** – an appeal for a conditional use permit to construct additional parking accessory to the school for academic instruction in a High Density Apartment (R-4) zone, at 424-442 & 425-451 Bourbon Avenue & 457 West Fourth Street, for reasons recommended by the staff and subject to the four conditions outlined by the staff.

6. **C-2014-46: CHAPEL HILL PRESBYTERIAN CHURCH** – appeals for a conditional use permit to establish a school for academic instruction, accessory to the existing church in a Single Family Residential (R-1C) zone, at 3534 Tate's Creek Road (Council Districts 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use for a school for academic instruction should not adversely affect the subject or surrounding properties, as a church use has occupied this property for approximately 25 years. The expansion of the use to allow a school during the week is a logical and efficient use of the established facilities, and is common at many churches throughout this community.
- b. All necessary public facilities and services are available and adequate for the proposed school.

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

1. The property shall be developed in accordance with the approved site plan and application.
2. All applicable permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning, prior to use of the property as a school.
3. Enrollment in this school shall be limited to no more than 50 students.

Representation – Mr. William Robins, treasurer of Chapel Hill Presbyterian Church, was present representing the appellant, along with Ms. Carrie Trapp. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

At this time, it was said that the opposition and the appellant had resolved their issues. Mr. Kurt Graham said that the opposition was primarily a traffic jam concern. He said that traffic tends to get pretty heavy on Tate's Creek Road, and that their preference was for Chapel Hill to have their traffic enter and exit from off Armstrong Mill Road; as opposed to Tate's Creek. Mr. Robins said that they did not have a problem with that. Mr. Griggs said that he would like to see what Traffic Engineering thought about the plan that they were imposing. Mr. Robins said that they were only going to direct the children to enter and exit off of Armstrong Mill Road; rather than to use Tate's Creek; it is actually safer for the kids.

Mr. Griggs then asked if they were implying that they were not going to change the development plan, but to only make friendly suggestions to the parents to how to drop off their children. Mr. Robins said, which Ms. Trapp confirmed that was the case.

Mr. Griggs asked if language needed to be added to the conditions. Mr. Sallee said that should be deferred to Traffic Engineering as to whether or not they would like to see it as a specific condition. He said with the discussion, he thought it would be part of the record. He said he wasn't sure if Traffic Engineering would want a revision to the three conditions. Ms. Kaucher said that she did not.

Citizen Comments – There were none.

Action – A motion was made by Mr. Forester, seconded by Mr. Griggs, and carried unanimously (Stumbo, Moore, and White absent) to **approve C-2014-46: CHAPEL HILL PRESBYTERIAN CHURCH** – an appeal for a conditional use permit to establish a school for academic instruction, accessory to the existing church in a Single Family Residential (R-1C) zone, at 3534 Tate's Creek Road, per the staff recommendation and the three recommended conditions.

E. **Conditional Use Appeals**
(Discussion)

1. **C-2014-40: JANE AND RALPH RANSOM** - appeal for a conditional use permit to provide family child care for up to 12 children in a Planned Neighborhood Residential (R-3) zone, at 3416 Sanibel Drive (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street parking is available for the use, and on-street parking is also available. A large fenced outdoor play area will be provided. The increase in the number of children is partially due to the fact that some of the parents are expecting babies, which should help to mitigate any potential increase in traffic.
- 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. Child care shall be provided in accordance with the submitted application and site plan, with child care provided 7:00 am to 5:30 pm Monday through Friday.
2. All necessary permits, including issuance of a Zoning Compliance Permit, a fence permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to beginning to provide child care for up to twelve (12) children at this location.
3. The facility shall at all times operate in compliance with regulations of the Kentucky Cabinet for Health and Family Services.
4. This conditional use shall become null and void should the applicant no longer reside at this location.

At this time, Mr. Saltee noted that staff had distributed a revised site plan to each Board member from the applicant. He said that staff had received a number of written communications, both in support of and in opposition to the appeal, and then circulated the information to the Board members.

Acting Chair Glover said that he would allow the opposition to speak first, and asked that they each limit their comments to three minutes

Representation – Mr. and Mrs. Ralph Ransom, appellants, were present. They indicated that they had reviewed the recommended conditions and agreed to abide by them.

Opposition – Edmond Fenton, 3412 Sanibel Drive, said that he lives right next door to the Ransoms. He said that; as shown in his letter that was presented to the Board, he has a list of concerns; besides the street traffic, the parking issue, and the extra activity, he is really concerned about property value. He said if he was to try and sell his house, he wondered if someone would want to live next door to a 12-child daycare center; so he thinks it would directly affect his property. He said he was also worried about his increased liability exposure. Mr. Fenton said that with the six kids that the Ransoms already have, from time to time, the kids have come over onto his property and parents walk through his yard; and if someone gets hurt, besides suing the business, he would get sued as well. He said with it being a residential neighborhood, he doesn't understand why he should be exposed to this type of liability.

Mr. Fenton said they (The Ransoms) have 6 kids now, and with an additional 6 kids, it would increase the traffic and he would rather not have that in the neighborhood.

Mr. Griggs asked Mr. Fenton what type of fence is currently between the properties. Mr. Fenton said there is a 6-foot fence that has an offset, so at an angle one can see through it. He said if a child is running along and gets their hand caught in the fence, he would be liable as well. Mr. Griggs asked who owned the fence. Mr. Fenton said that he guessed that they both did. He said that the Ransoms put the fence up with the previous owners (they moved there 20+ years ago) and he has been there 13 years.

Justin Gray, president of the Brighton East Homeowner's Association, said that one of their concerns is the daycare being in close proximity to housing, liability issues, traffic and safety, and property values (the HOA Board is trying to maintain and keep the property values up). He said that the area is residential; not a business area; and he opined that if the Ransoms wanted to do a 12-child daycare; that they should take it off site.

He said that they are about to potentially expand to the Fairways at Andover, and take on 100 new homes (a total of 220); and they do not want to set a precedent with the chance of growing and allowing in-home businesses such as a daycare. Mr. Gray said there is other business, but there are no daycares.

Mr. Griggs asked Mr. Gray if he thought there should be any 12-child daycare centers in any residential area, anywhere in the city. Mr. Gray said personally he didn't think there should be; that would be up to the other neighborhoods and the immediate neighbors.

Ms. Donna Florence, who lives at 3420 Sanibel Drive, said that she lives right next door to the Ransoms and that it has been difficult. She said they have been neighbors for almost 20 years. Ms. Florence said that she went to Mr. Ransom prior to receiving the notification, to express her concerns. She stated that she is a nurse who works nights and sleeps during the day; noise is an issue. She then said that the Ransoms have a number of dogs (smaller dogs) who bark at everything. She opined that it would be physically difficult to take care of 6 children, and then expand that to 12 and maintain what they need to as a property owner, as well as the responsibility they have to maintain the environment within in their own space.

Ms. Florence said that traffic is also an issue. She said it is also the parking; the parents run late and pull in, and jump out; they cut across yards; they park across the street in the mornings. She said that a lot of people are sometimes confused as to who is involved because cars will be everywhere. She said in the process of in and out, it is traffic in the morning, going out; traffic in the afternoon, coming in.

Ms. Florence said that Sanibel Drive is the thoroughfare for the neighborhood. She said that as it has been mentioned, they are growing, to possibly double in size; they are currently trying to go through Council about getting stop signs and how to regulate the flow of it. She said that a concern is the liability of things being broken and appropriately being taken care of, due to the amount of traffic going in and out.

Ms. Florence mentioned that she was wondering where the workers (employees) park. She believed the Ransoms had made most of the provisions and changes shown in the site plan; they have a fence in the front, so all of the playground equipment that was in front of their home, has been moved to the back, which is a more appropriate space for the kids.

Ms. Florence said that there have been a couple of occasions where her mail delivery was impacted due to people parking in front of her mailbox.

She said that in an earlier conversation with the Ransoms, they had mentioned that they were in the process of moving their business offsite, into a business type setting. She said that she understood that the parents were having more children, giving the current children siblings, but that is a 9-month process. She said she would like for them to respect the concerns of the neighborhood, realizing that it is a neighborhood not a business area.

Mr. Griggs asked Ms. Florence if there were any conditions that the Board could put on the use that might make it workable (e.g., time limits). Ms. Florence said she has been a nurse for almost 30 years, and it is not her sleep purposes that make the difference; it is that the conditional use is going to grow into a significant business. She said that she thought that it would set a precedent for growth and expansion. Ms. Ransom can't do more than 12 children but that could be 12 different families; which could impact traffic tremendously, which is their concern.

Mr. Griggs asked if the mail issue had been resolved. Ms. Florence said yes, it happened once, and the person moved their car immediately after. She said that they no longer block her mailbox. They have now moved their cars to in front of her neighbor's property, which doesn't impact his mail, but it is right in front of his property.

Mr. Griggs then asked if Ms. Florence was speaking of the cars that are there temporarily while parents drop off their children. Ms. Florence responded that it was the employees' cars. Mr. Griggs asked if there was more than one. Ms. Florence said that usually two cars are there continually (she wasn't sure how Ms. Ransom had her employees scheduled). Mr. Griggs stated that the Board would see if Ms. Ransom could have the cars parked somewhere on site. Ms. Florence then said that they (The Ransoms) have made their provisions and now are able to park one car in the garage and two on the driveway.

Ms. Joan Teves, who lives at 3416 Captiva Court, said that she was at the Board meeting out of concern for her neighbors. She is not on an adjacent property, but walks her dog past the property frequently, and has noticed several things. Ms. Teves said that she wanted to address a couple of the conditions that staff had recommended for approval, one being that this should not adversely affect the subject or surrounding properties. She said that one thing she has noticed that it does affect, with just the 6 children, is the noise level. There is also increased trash (overflowing and not in proper place), and there are traffic and safety

issues.

Ms. Teves said that she felt that their homes were their sanctuaries and everyone deserves to have peace and quiet. She said that this was not what people were expecting when they bought their homes in this neighborhood. She felt that the childcare brings down the property values; and when people go to sell their homes, they are going to have a hard time about it.

Board Question – Mr. Griggs asked staff, with respect to Ms. Teves' comments, and staff's recommendation of approval based on this permit not adversely affecting the neighborhood, if it was the staff's argument that it is society's responsibility to spread out the care of children throughout the community. He asked staff how they explain that the conditional uses shouldn't have an adverse effect, and yet there is a lot of testimony that there is an adverse effect. Mr. Sallee said that is germane to this hearings as to why the larger family childcare uses are conditional uses rather than accessory. He said there had been a few, but a rare number of complaints over the years for the accessory use that is in the Zoning Ordinance, where a resident family may care for up to 6 children (including their own) on a single property. The main issues as to why this is a conditional use are: 1) There is an interest in having the facilities permitted and sanctioned by the Commonwealth of Kentucky, and 12 is generally the limit for a number of years in a residential home setting; and 2) When you have that many children, there are additional people coming to the home to provide the care, and then it gets into the uncertainties of on-street and off-street parking. Mr. Sallee said the Board then not only has to hear from the staff, but the people who come to the hearing describing whether or not there will be an impact from the proposed use. Mr. Sallee said, as to having them throughout the community, the Board knows that these types of applications are almost every month (certainly 20-30 a year); so there is a desire to not only have them all over town, but there is also an interest in market forces that are driving those applications as well.

Acting Chair Glover asked staff if there is an upper limit to the number of children, if it is subject to application, or if it a geographical limit because of the size of the lots and homes and backyards. Mr. Sallee said that is a point because some townhouses and apartments have less physical area to provide the outdoor component to family childcare; however, in standard residential subdivisions, that usually is not the case unless there are easements or other facilities that happen to be in the backyard that could limit the outdoor portion of that on the property.

Opposition Rebuttal – Mr. Gray said that Ms. Ransom currently has 5 families and then a 6th will be added, so there is going to be minor additional traffic from that one family; but who is to say that; if given approval to add additional children, that this could ultimately turn into 12 kids from 12 different families (which would double); with that, this is more of an open-ended approval, because the six families could easily become twelve, which would change the dynamics of the situation and its effect on the neighborhood.

Mr. Fenton stated that he wanted to point out a few issues with the parking as well. He said that the street parking went from in front of the Ransoms' house to in front of his house. He stated that there were a couple of occasions when parents were in a rush to drop off their kids and parked, half way blocking his driveway, to run in. He also said that sometimes the kids playing in the backyard can get noisy. Mr. Fenton wanted to express these concerns of traffic, parking, and noise.

Representation – Jane Allison and Ralph Nicholas Ransom, who live at 3416 Sanibel Drive, were present. Ms. Ransom stated that she knew that parking/traffic was one of the biggest concerns, as well as it being an in-home business. She said that they currently have five families that drop off and pick up children. She said that most of her drop-offs are around 7:00 a.m. and the pick-ups are between 2:30 p.m. and 4:00 p.m. noting that these hours are not during the "prime" hours. She said that from time to time she does have a few "stragglers," but nothing that throws off anything.

Ms. Ransom said that they have worked on the parking. They have a two-car driveway and a two-car garage, which they are currently using for vehicle, and they also have three spots in front of the house that can be used. She said that she has at least one employee with her there at all times.

At this time, Mr. Ransom displayed an aerial photo on the overhead and oriented the Board their site plan.

Ms. Ransom said that she has never seen any cars hitting the curb or anything. She said that she made an instruction sheet and a map for the parents that come to the daycare in order to make traffic flow easier.

Ms. Ransom then spoke about the letter from Mr. Hall that was presented to the Board, noting that she had not received it prior to the meeting. She said that a lot of people in the neighborhood park on both sides of the street, causing it to be one lane. Ms. Ransom noted that the night prior to this meeting, there were

approximately 10-12 cars parked on the street. She didn't see a problem, but she doesn't want to be reprimanded for doing the same. She then said that the mailbox incident happened once. It was a new staff member who had not been instructed on where to park; the mailman had already made his run, and she parked there.

Ms. Ransom concluded, noting that if the application does not get approved, she would not have any choice but to kick some of the kids out of the childcare or to not take a sibling.

Mr. Ransom stated that they did not know they had to actually come in front of Zoning; they were just trying to get a permit to keep the kids in case the State wanted to come in and check on them; this is for the welfare of the kids.

Board Questions – Mr. Griggs asked the Ransoms if they were considering finding commercial space to do the childcare (according to a citizen statement that was made). Ms. Ransom said that they have a wait list that has nine children on it; and she is not opposed to finding a commercial store front. However, right now they are happy with what they have; but they are not opposed to doing that if it becomes too much a nuisance to the neighbors.

Mr. Griggs questioned the number of animals that the Ransoms have and whether there is a barking problem. Ms. Ransom replied that they have three; they had five, and the two that were the barking problem are gone.

Ms. Meyer made the comment that there was a prior case similar to this with no opposition, and it becomes a little more difficult when there is opposition. She opined that it is the Ransoms' responsibility to try and work it out with the neighbors; and she would encourage them to take the daycare out of the neighborhood. Ms. Ransom said that, again, they are not opposed to doing that; but they cannot do that by the time they need the siblings to be there. Ms. Meyer then asked; if this were approved and the Board put a conditional time frame on it (like 6 months), if they thought they could move it within that time. Ms. Ransom said maybe a year would be possible. Mr. Forester also agreed with a year since commercial properties generally run on a year's lease. Ms. Ransom again said that a year would be better for them and that they have been looking for a place.

Acting Chair Glover asked staff if they review conditional uses periodically anyway. Mr. Sallee answered that there is a requirement for a one-year review by the staff (Mr. Marx and the Zoning Enforcement staff). Mr. Glover asked if it was just part of the conditions because it applies to everyone. Mr. Sallee responded affirmatively. Mr. Sallee then deferred the rest of the response to Mr. Marx.

Mr. Marx said that childcare facilities are ones that Zoning Enforcement does take a close look at, at least once a year; and more often if they get complaints.

Ms. Meyer said that she was of favor in putting a one-year review condition on this application; and after one year, the applicant would have to reapply for a conditional use permit if they have not found somewhere else to have their daycare. Ms. Ransom said that she was okay with this.

Mr. Glover said that this would call for some different language in what is being done at this hearing. Mr. Sallee said that the staff would change condition #4 to read as follows:

4. This conditional use shall become null and void on July 1, 2015.

Mr. Glover then asked if there were any other questions by the Board.

Citizen Comment – Mr. Gray said that he was assuming the letters of support were from customers and not potentially neighbors, and would ask the Board to take that into consideration. Ms. Ransom said that there were homeowners who also provided letters of support.

Ms. Florence then said that she did not believe that the question of the turn-about was the issue at hand. She also stated that her family did have a birthday party for her daughter the night prior, and there were 7 cars parked outside and she was not aware there was an issue, but apologized if it caused a problem.

Acting Chair Glover asked if there were any other questions. There were none, and he called for a motion.

Action – A motion was made by Ms. Meyer, seconded by Mr. Forester, and carried unanimously (Stumbo, Moore, and White absent) to **approve C-2014-40: JANE AND RALPH RANSOM** – an appeal for a

conditional use permit to provide family child care for up to 12 children in a Planned Neighborhood Residential (R-3) zone, at 3416 Sanibel Drive, as recommended by staff and subject to the four conditions outlined by staff, with the amendment that this conditional use shall become null and void on July 1, 2015.

Note: Acting Chair Glover declared a brief recess at 3:17 p.m. The meeting reconvened at 3:24 p.m. with the same members in attendance.

2. **C-2014-42: VETERAN'S LOUNGE** – appeals for a conditional use permit to open a lounge/bar in a Neighborhood Business (B-1) zone, at 1485 Leestown Road (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, as this site is sufficiently buffered by other commercial uses from the nearest residential uses, and parking in front of this cocktail lounge will be available during the proposed hours of its operation.
- 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 cocktail lounge shall be operated in accordance with the submitted application and site plan, recognizing the hours of operation (until 2:00 am), except on Sundays (until 9:00 pm).
2. Live entertainment and/or dancing may not be provided unless a revised conditional use is approved by the Board of Adjustment.
3. All necessary permits for renovation shall be obtained by the applicant from the Divisions of Planning and Building Inspection, including but not limited to a Zoning Compliance Permit and Certificate of Occupancy, prior to the operation of the requested bar/lounge.
4. This conditional use shall operate at all times in accordance with state and local ABC laws and regulations.

Representation – James and Seneca Hudson, appellants, indicated that they had reviewed the recommended conditions and agreed to abide by them.

Acting Chair Glover said at this time, the Board would hear from any opposition prior to hearing from the applicant.

Opposition – Mr. Donald Leach, was present on behalf of American Legion Post (341 Legion Post). He said that they have 350 members, and are 2 doors down from the proposed use. He said that their biggest concern is going to be the parking issues that will come up during the operation of the lounge. There are times currently that they have difficulty finding enough parking spaces in their area to get people in. He said that most of their customers are senior citizens, disabled, and veterans. It is very difficult already when there is a parking space, and it is 100 yards from the building, and they have to try to get to the building to get in. Mr. Leach said they also had other potential issues when they spoke with the Hudsons, but those issues can be worked out. Mr. Leach said that currently there is only one handicap parking space in front of the American Legion.

Mr. Griggs asked Mr. Leach if he owned his building. Mr. Leach said yes. Mr. Griggs then asked if they own the parking as well. Mr. Leach replied that they do not. The parking is public in front of the Legion on both sides. He said that they have a small parking area behind the building; with six spaces; that is part of the Legion property. Mr. Griggs then stated he was wondering if more handicap parking spaces could be designated. Mr. Leach stated that they have tried to get more handicap spaces, but to no avail thus far. Mr. Griggs then asked Mr. Leach if they had an entrance at the back of the building where the six spaces are. Mr. Leach responded affirmatively. Mr. Griggs suggested that all six spaces could be converted to handicap parking spaces. Mr. Leach agreed this could happen, but there are 5 steps in the back that could be difficult for some. Mr. Leach stated that he is asking for a postponement at this time until they can get some resolution on the handicap parking spaces in the front of the building.

Mr. Coleman Bush, who lives at 324 Pelican Lane, said that he wasn't necessarily speaking in opposition, but for postponement. He said that he was asked by the President and Vice-President of their neighborhood association to seek postponement so that they could discuss this with the neighbors. He said the notice went out on June 6th, but their newsletter goes out at the 1st of each month; they didn't have the proper amount of time to notify all of their members about this. So they were asking to give all of the neighbors the opportunity; if they wanted to be heard; to be heard.

Mr. Griggs asked Mr. Bush if he had any sympathy for the situation, and Mr. Bush said that he did. Mr.

Bush said that they have spoken with the Hudsons, and they are good people; they expect them to be wonderful neighbors, but he couldn't speak on behalf of all the other residents, as to how they may feel about it. Mr. Griggs then asked if Mr. Bush might have an understanding of what may be on the neighborhood's mind-that he could speak to those issues if the Board decided to proceed with the hearing today. Mr. Bush said that he knew that the parking was a concern. He also opined that it takes a while for people to digest actually what was happening.

Mr. Mark Stell, who lives at 2721 Ella Rae Ct., was present on behalf of with Thoroughbred Restaurant. He said that they could have a working relationship, but parking is going to be a major issue. He said that in the case review, Thoroughbred Restaurant is not even mentioned; and their busiest days are Thursday, Friday, and Saturday. They are open the same hours Veteran's Lounge is going to be open; and there is also another business (a painting contractor) that has two to three times the vehicles that the Video Lab has. He said that it might be possible to get more handicap parking, but asked if there was something that could be done to force the other businesses to move their vehicles onto their property. Sometimes vehicles are left there for days, which compound the parking issues.

Mr. Glover said that he would have to defer that question to Traffic Engineering; it is not a question that could be answered by the Board. Ms. Kaucher said that there is on-street parking with regulations that vehicles cannot sit there over 24 hours; since the parking lot in question is a public parking lot (in the public right-of-way), it is something that Traffic Engineering could look into, but she did not know for sure; she would assume that the rules would be the same. She said that it is also something that the business owners could contact the Police Department about, because they are the ones who enforce it.

Mr. Stell asked how he can find out how many parking spaces the business is allotted. Ms. Kaucher said this has come up in Traffic Engineering before, regarding this parking lot; it is a public parking lot; therefore, she did not believe that the spaces are assigned per business. Mr. Stell said; in reading the case review, it has a formula for the number of parking spaces allotted to each business. Ms. Kaucher said that would be how many would be provided, but not necessarily assigned. Mr. Stell said that was what he was getting at; for the number of vehicles that are parked, he believed they had to be over for the size the business. Mr. Glover said that this was outside of the parameters of this case. Mr. Stell said that the parking was the number one concern with everyone.

Mr. Forester asked about the proposed business hours of Veteran's Lounge, and how much parking was going to be needed between the other locations. Mr. Stell said that the Thoroughbred Restaurant's busiest time is Tuesday through Saturday from 6:30 p.m. – 10:30 or 11:00 p.m.; sometimes as late as 2:00 a.m., quite often on the weekends, quite often on Saturdays; and they will have 30-50 people in the establishment.

Mr. Griggs then asked that; since staff recommended approval on this application, how they determined there was adequate parking for the new use. Mr. Emmons said that the staff looked at the parking in quite a bit of detail; in fact, the majority of the staff report is devoted to analyzing the parking. He said that; as Ms. Kaucher had mentioned, there is a difference between assigned parking and provided parking. Mr. Emmons said that the parking lot that goes with all of the businesses is actually in the public right-of-way. He said there is no other situation like this one in Fayette County - it is a unique situation. Mr. Emmons presented an aerial display on the overhead projector, gave a brief history on the Planning Division's "take-over" from Building Inspection, and gave an explanation as to how the staff determined the adequate parking spaces.

Mr. Glover asked Mr. Emmons; when he said that he counted the general areas, if this included behind the buildings as well. Mr. Emmons said that he focused on the area that is in the public right-of-way; he did not account for the areas that are on the private property off of Antique Drive to the rear, except for the applicant's property. The applicant does have the ability; with the width of their lot- to provide three off-street parking spaces off of Antique Drive; however, there is enough physical room that, if they were to make a deal with the next property owner, they would be able to get more parking spaces on the private property.

Mr. Sallee said, to add to the displayed photo being shown, he was checking the date. The photo was taken on a Monday in February of last year (2013) about 12:30 p.m., and the parking lot was fairly full. He said that the staff also had some more recent photos taken more during the evening hours. He pointed out a fleet of vans that appear to be competing for spaces in the general area.

Acting Chair Glover asked if there were any others in opposition, and if there were any further questions.

Applicant Rebuttal – Ms. Hudson said that, in speaking with the opposition prior to the meeting, they did not have any issue meeting with anyone in the neighborhood or shopping center. She said that she felt that the appropriate time allotment of notification for any of the opposition was when they mailed the letters out regarding this case; therefore, Ms. Hudson did not agree with a postponement.

Mr. Hudson said that as far parking, they tried to accommodate the other businesses, by opening and closing when most of the other businesses were closed.

Board Questions – Ms. Meyer asked if she recalled the Hudsons stating that they could come up with an agreement with their neighbors as far as the parking behind their establishment. Mr. Hudson said that they have 3-4 parking spaces available in the back; however, the neighbor has several grills back there, and they park back there as well. Ms. Hudson said that there are spaces available for both facilities. She said, at the suggestion of Division of Planning, they were to go to each business to get their hours of operation. There are three businesses that are closed (empty) in the shopping center, and most of them are open no later than 8:00 p.m. Mondays and Wednesdays, and they (Veteran's Lounge) wouldn't even be open on those days. She said that the neighboring business had posted on their door that they close at 10:30 p.m.; they were unaware that they were open until 2:00 a.m. as they had stated. She said that they were going by what was posted on the door.

Mr. Glover asked if there were any further questions or comments from the Board or staff.

Ms. Meyer asked if the Board could revisit this case in a year to evaluate how it is going; or if the Board allows the automatic annual review to take care of that. Acting Chair Glover asked the Board what their opinion was on this, and if they thought this case could be conditioned with a one-year review.

Mr. Forester said that the Board really couldn't address this from the parking standpoint; since it is public parking; but the applicants are veterans too. It doesn't sound like the people are opposed, they just feel like there are not enough parking spaces.

Mr. Glover said that his major concern is not for the parking, as he has driven through this area many times (not necessarily during the hours that the Hudsons plan to be in operation); but he has noticed that there appears to be plenty of parking in this area in the evening hours.

Ms. Hudson said that, as mentioned, there is only one handicap parking space. She asked, how they can as neighbors, help them get this moving. Ms. Kaucher said that this is something that is handled by Traffic Engineering and is something that they can a look at. Mr. Glover said that; as the Board cannot condition anything regarding the parking (handicap spaces), this would be something that the applicant and neighbors would have to take up amongst themselves and with the city.

Mr. Griggs said he was assuming that, because of all the testimony, this case was not going to be postponed; the hearing has been done. He asked, if there was a motion, if it would be to approve or disapprove. Acting Chair Glover said that because everyone was there, the notice was provided and people were able to testify in opposition, and the Board did get a chance to hear from the neighborhood association's representative, that was his opinion as well. He said that he understood they would like to have more time, but he didn't feel it would be fair for the applicants to postpone this case on the chance that there could be more people to come and speak in opposition.

Mr. Glover asked if there were any further questions or comments from the Board or staff.

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester, and carried unanimously (Stumbo, Moore, and White absent) to **approve C-2014-42: VETERAN'S LOUNGE** – an appeal for a conditional use permit to open a lounge/bar in a Neighborhood Business (B-1) zone, at 1485 Leestown Road, based on the staff's recommendation of approval and subject to the four condition.

F. Administrative Review

1. **A-2014-44: ROSA PLAGE** – an administrative appeal to change one non-conforming use (upholstery shop) to another (beauty salon) in a High Density Apartment (R-4)/Historic District Overlay (H-1) zone, at 617 West Short Street (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. The requested use of a beauty salon will not be an increase in scope, from the previous use, nor should it negatively alter the character of the surrounding properties. A small beauty salon, as

proposed, is first allowed in the Professional Office (P-1) zone, which is a less intense zoning category than that required for the previous non-conforming use of an upholstery shop - first allowed in the Wholesale and Warehouse Business (B-4) zone.

- b. The proposed salon will have the same amount of off-street parking as the former use, which is another indication that the proposed use will not result in an increase in the intensity of the use at this site.
- c. All of the changes to the site have been approved by the Board of Architectural Review; and there are no changes that would constitute a structural change to the building that could otherwise be construed as an expansion of the non-conforming use.

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

- 1. The property shall be developed in accordance with the submitted application and site plan, subject to any revisions required by the Board of Architectural Review.
- 2. All necessary permits, including, but not limited to a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to commencing the proposed use.
- 3. Any and all exterior work on the subject property shall proceed in a manner that complies with requirements of the Division of Historic Preservation and the Board of Architectural Review.

Mr. Sallee said that the staff had handed out a letter in support and a letter of opposition in reference to this case.

Representation – Rosa Plage, appellant indicated that she had reviewed the recommended conditions and agreed to abide by them.

Acting Chair Glover announced that the Board would hear the opposition prior to the applicant.

Opposition – Mr. Bill Johnston, who lives at 645 West Short Street and is President of the Historic Western Suburb Neighborhood Association, read a letter to the Board in regards to the opposition to this case. He opined that there was a significant error in the diagram that was presented to the Board by the applicant, that stated that the lot is 41+ feet wide; but in fact it is 31+ feet wide, which makes the lot actually 10 feet more narrow than the diagram shows it to be. Mr. Johnston spoke on the parking and backing out issues that this would bring to the neighborhood.

Ms. Meg Smith, who lives at 624 West Short Street (across from applicant's property), said that as a resident for the past 9½ years, and living directly across from the property in question, she feels she has a clear assessment of the actual intensity of the previous commercial occupant (Bluegrass Upholstery). She said that she feels the demands for the proposed beauty shop would be a lot more intense such as property, traffic, and safety issues.

Ms. Smith said that when they purchased their home in 2005, a historic home that had been a duplex, and was used as a multi-family property, they had purchased their home based on their love for the front porch; but mostly on the fact that it was a residential neighborhood where most of the neighbors had invested in their homes to return West Short Street to the single-family residential neighborhood it was intended to be. She said the one exception to their neighborhood has always been the property at 615 and 617; the out of place, commercial attachment easily jumps out.

Ms. Lucy Putt, who lives at 621 West Main Street, is a member of the Historic Western Suburb neighborhood. Ms. Putt said she has lived in the neighborhood for 10 years, and in those years has seen great change in the neighborhood and the surrounding areas. Ms. Putt said they feel that having a beauty salon in the middle of a residential neighborhood would be a detriment to the neighborhood. As Ms. Putt referred to the display on the overhead, she said that to look at the intent of Article 4.2, it is not to encourage the survival of these nonconforming uses; not to enlarge the scope; but it is also not to allow uses that are not permitted in the same zone.

Ms. Putt noted that, under Article 4-3(c); when a nonconforming use is discontinued or abandoned for a year or more, the nonconforming use may not resumed. She then said that the upholstery shop has been vacant for more than a year, nothing that it is time for the nonconforming use to end so that the neighborhood could go back to being completely residential in nature. In conclusion, she referred to the intensity and scope and how it would be much greater with a beauty salon than that of the upholstery shop. Ms. Putt opined that this would negatively affect the character of the surrounding property.

Mark Naylor at; 4030 Tates Creek Road, said he owns the property at 609 West Short Street. Mr. Naylor

handed out information to the Board. He advised that he has lived in the neighborhood since 1981, and has also lived with the upholstery shop for all the years it was in operation. In referring to the aerial photo, Mr. Naylor said that there was plenty of parking and there was no trouble getting in and out of this area. Mr. Naylor presented on the overhead a scaled drawing indicating that; based on the 30'9" foot width of asphalt, there is room for 3 parking stalls; the fourth stall would bump into the structure shown above on the diagram, not taking into account that a handicap accessible space would be required; so really, it was probably down to 2 stalls. Mr. Naylor concurred with the fact that this proposed use would cause traffic, parking, and safety issues.

Mr. Glover asked Mr. Naylor why he showed diagonal spots on his diagram. Mr. Naylor said that is what was shown on the application, which was not drawn to scale, so was not accurate. He said that his drawing was done to scale and shows that the applicant's proposed parking layout will not work.

Mr. Naylor then made mention of a project on East Third Street, where the people were trying to build a parking lot that would cause them to back into an alley, and it was denied. He said he couldn't imagine Traffic Engineering approving the proposed use at this hearing to allow backing out onto a collector street, when they wouldn't allow backing out onto an alley.

In response to a question from Mr. Glover regarding the need to back onto Short Street, Mr. Naylor explained that because Short Street runs from left to right (according to the graphic), one would have to pull into the stalls in an awkward manner; the width of the drive aisle (according to City requirements) is only 14 feet; the average car needs at least 35 feet (curb to curb) to turn around. Mr. Griggs said at the least, they should have angled it against Mr. Naylor's building.

Board Questions – At this time, Acting Chair Glover said that before any other opposition testifies, he would like to hear from Traffic Engineering about the parking issue on this spot. Ms. Kaucher said that she had spoken with the Planning staff and said that at this point, cars would have to back out onto Short Street. She said that Traffic Engineering would not approve this design for a new, proposed parking lot; but this is an existing situation, and this is how it was evaluated.

Opposition – Mr. Michael Andrew Wilson, who lives at 612 West Short Street, a resident for 34 years, said that the first 4 years he lived with his great-aunt, and the other 29 years he has been the sole owner; the property has been in his family's possession for 112 years.

Mr. Wilson opined that this proposed use would have an adverse effect in many ways. He said that it was his hope that the Board would deny this approval.

He said that the Bluegrass Upholstery was in business at this location from 1960 until 2013. It was a slow paced operation that saw less than 6 customers daily. They did not have to park off the property, but they would either deliver or pick up furniture items, and the work was done on site in the absence of the customers. Mr. Wilson spoke on the parking problem on that end of the block.

Mr. Wilson expressed his concerns for safety, with regard to backing out of the parking lot onto the street. Another one of his concerns was whether or not this proposed use could set a precedent for others who may want to render services as such.

Mr. Naylor returned to the podium and said that this was not an existing parking lot; it was cut down by about 70%. He said that he opined that when one changes the flow of the parking lot, when it requires new striping, there is new ingress and egress, everything has changed - he said that one could even say that the non-conforming structure has been changed by removing the parking. He said he could understand an existing condition argument, but everything about the front of the property has changed (the parking).

At this time, Ms. Elloree Findley, who lives at 623 West Short Street, immediately west of the subject address, she said that she wanted to address the question of traffic and parking regarding this appeal. Ms. Findley said that the upper staircase of her home is enclosed by glass on the north and east sides. She said every time she walked up or down the stairs, she looked directly into what was parking lot next door, and viewed the parked cars and traffic. Ms. Findley said that she rarely saw a customer's car. Ms. Findley said that she was one of the rare walk-in customers of the Bluegrass Upholstery and became acquainted with their operation, and by personal observation; she observed that, prior to the departure of Bluegrass Upholstery in June 2013, with the possible exception of one customer car per day, the lot was mainly used by the employees of the upholstery shop. She then referred to the photo on the overhead projector as she gave a description as to how customers would enter and exit the shop - the option no longer exists for the proposed beauty shop tenants, customers, and employees. Before the upholstery shop was removed,

someone from Bluegrass Upholstery would drive to the customer's location in the company van to collect items to be upholstered; therefore, customer visits were not always necessary. She said that the items were delivered at a loading door at the rear of the building.

Ms. Findley said that the employee head count for the upholstery shop usually did not exceed 4 or 5, and was frequently less depending on the volume of work in process. Ms. Findley said that she wanted to note on the photograph the number of cars for the proposed use in the parking lot; therefore, she believed that the number of parking and cars would greatly exceed that of an upholstery shop.

Ms. Findley then said that she had a letter from, Ms. Missy Johnston and Mr. Jim Gleason who were unable to attend this hearing. She then read the letter of opposition as follows:

"To the Board of Adjustment:

My husband, Jim Gleason and I, are opposed to the beauty shop proposed to occupy the former Bluegrass Upholstery building at 617 West Short Street.

Like our neighbors, we are concerned about additional traffic near the corner of Jefferson and Short. Particularly, the cars having to back out of the parking lot that the beauty shop wants to create.

Since the owners of the property recently decreased the size of the parking lot by more than 50%, there is no other way out of the lot; backing out is the only option.

We believe this will create a traffic hazard near the above mentioned corner. In addition, parking on Short is barely sufficient for the residents, much less for the additional beauty shop workers and attendees.

We strongly feel that adding this business to our block of Short Street will endanger pedestrians, of which there are many, and motorists alike. It will not be an asset to our neighborhood, it will be detriment.

We are both in complete agreement with our neighbors who are presenting their view points to you today.

Thanks for your consideration.

Missy Johnston and Jim Gleason, 633 West Short Street."

Acting Chair Glover said that, before hearing from the applicant, he would like to hear from staff regarding the parking issue; because there seemed to be some factual dispute.

Staff Comments – Mr. Emmons said that there were two items that were questioned about the staff report, which were: 1) Article 16-2(a), which does say that you are supposed to design your parking lot so that vehicles do not back out onto the street. He said that the staff does not dispute that. The term "existing parking lot" was used for the subject property; but this actually is not just an existing parking lot, but remnant of an existing parking lot. (He presented an aerial photo on the overhead projector of the property in 2013). He said; as shown, it can be seen that there was an extensive parking lot on the subject property.

Mr. Emmons then showed a recent photo of the property noting that they increased the yard for the subject property by removing a portion of the parking. What is remaining is a remnant of that parking lot – a non-conforming parking lot that took over the entire front yard of the area that has been made smaller. He reiterated that what is there is not a new parking lot; it is what is left of the large non-conforming parking lot.

He said that the staff agrees that if there were a new parking lot being proposed for the subject property, approving a parking lot that backs out onto the street would not be allowed by Article 16-2(a); however, the existing remnant parking lot that is there is what is being dealt with at this hearing. Mr. Emmons said that the staff did state in the staff report that the parking lot is atypical; but considering the amount of yard that was restored from the larger non-conforming parking lot, plus the fact that this property is also in a historic zone, and that the Board of Architectural Review approved all of that yard to be reclaimed, the staff felt this was an acceptable parking lot. Mr. Emmons said that it was mentioned in the staff report that they would not be able to get as much parking as they were proposing. He said that the staff did not get out with a tape measure as some of the neighbors had, and agreed that it will be

tight. He did believe that it is within the Board's authority at this hearing, should they choose to approve this, to approve the parking lot as it exists today because it is a remnant of a non-conforming parking lot.

Mr. Emmons said, with regard to the second issue, to address the number of parking spaces, there was a lot of talk about which one would require more parking. In looking at changing one non-conforming use to another, the staff doesn't particularly look at the relative success of the business because a successful, very busy upholstery shop, could very well have more customers coming and going on a daily basis than an unsuccessful salon. Mr. Emmons said that, rather than looking at the success of the business, the staff looks at the types of things they can measure; for example, the required parking for the upholstery shop, which is a minimum of 5 parking spaces. He said that when one looks at the proposed salon and the number of chairs, the math works out; i.e., that it would also require 5 parking spaces.

Mr. Emmons said that one other thing that was mentioned was the length of time that the upholstery shop had been there. The Zoning Ordinance says that if it has been discontinued and abandoned for more than a year, then the non-conformity is lost. He said that he did not know if it has been discontinued more than a year, but the abandonment standard implies intent. He said even if the upholstery use has been discontinued for more than a year, the non-conforming use has not been abandoned, as the property owners have been working on the space and trying to get it ready for the next tenant (whoever that tenant may be).

Board Questions – Mr. Griggs asked if it would change staff's recommendation for approval if, when doing the accurate measuring of this parking, found that there were only 4 parking spaces. Mr. Emmons said not really...when changing one non-conforming use to another; the Board actually has a lot of flexibility and authority to approve those uses. He said he didn't know if that would have made a material change in the staff's recommendation. It would have been considered, and the staff would have made the Board aware of it, but it may or may not have affected the staff's recommendation.

Mr. Griggs referenced Mr. Emmons calling this a "remnant parking lot." He said that it has gone from a safe, generous parking lot to a dangerous, small parking lot, maybe even with not enough spaces for the intended use, by the actions of the owner. He asked how that can be ignored. Mr. Emmons said that he didn't believe that staff was ignoring it, but that they are recognizing the overall loss of the non-conforming parking area and the fact that the Board of Architectural Review approved the amount of yard that is there now. Mr. Emmons said that the logical place that they chose to leave parking was where the business and residential uses go between each other. (He referenced the photo as to where the fence is - even with the common wall between the two uses). He said that in order to get about 10 more feet where the sidewalk is that comes up to the front porch, the fence and parking lot would have needed to be essentially where the sidewalk is.

Mr. Glover said that he took it that the Division of Historic Preservation and the Board of Architectural Review do (BOAR) not have anything to say about the parking area. Mr. Emmons replied that they don't have much to say about it. He said whenever he spoke with the Division of Historic Preservation, their focus was on the residential; whereas the Board is being asked to look at the non-conforming commercial use of the property. The BOAR's focus was on restoring the yard and residential portions of the property; however, this single property has all of those different uses on it.

Mr. Glover asked, if the Board did not approve this application, what use the non-conforming property could be put to. Mr. Emmons said the only absolute answer is another upholstery shop.

At this time, the Mr. Glover asked to hear from the applicant.

Applicant Report – Ms. Rosa Plage said she is looking to open a hair salon at the subject address. Ms. Plage described the intensity of the salon. She said currently she has a mobile salon and is doing on site styling. Ms. Plage said the reason she wants to open a salon is because she needs a space for coloring and haircuts; so she is not even using half of the space that is available.

Ms. Plage said that there are only going to be two employees starting out, to include herself, which will decrease parking. She noted that the owner had said they could park in her driveway also; leaving more space for the customers. She said in 6 months they would be adding another employee; so that would be another parking space needed; and she doesn't necessarily need a handicap parking space. Ms. Plage said that if expansion is needed, a new location would be in order; she doesn't look to grow that much. All she needs is the salon area; and if she needed a spa or such that required more space, she would be opening a second location. Ms. Plage said it is going to be a lot smaller than she thinks what is intended.

Mr. Don Sebastian, representing the owners of the property who would be leasing it for this proposed use, said that when Mr. and Mrs. Cox purchased the property, they set out to improve it. It has been a blighted property for a number of years. He said that the house has been uninhabited and they have spent several thousand dollars improving the property.

Mr. Sebastian said that, as far as appropriateness of a business of this type in this location, that one house over, at 601 West Short Street, there is a building there used as an office that is within a B-1 zone - just one property separates the two. He said that with the type of neighborhood that this is, one does see businesses, there is a lot of activity going on and a lot of investment, and he opined that this is the type of business that one would want.

He said that there have been quite a few people inquiring about this property over the past several months for various types of uses, but the owners did not want those types of business in the neighborhood or next door to them because they share a common wall between their residence and the subject property.

Board Questions – Mr. Griggs asked if they had interacted with the neighborhood association throughout this process; and if they have tried to come to some common ground with the neighborhood association. Mr. Sebastian said that Mr. Johnston had contacted him several months ago to inform him what could and could not be done with the property, and said that Mr. Johnston told him that if they found somebody they were considering that he (Mr. Johnston) would call a neighborhood association meeting to see if they approved of the use; but it if it was not an upholstery shop, that was all they could do with it. Mr. Sebastian expressed his skepticism regarding that, and said it would be nearly impossible to find an upholstery business to locate there.

Ms. Lisa Cox, owner of subject property, said that she had no idea that there would be this much opposition. She said that she did not understand why backing out of the parking lot was a new issue. She said that everyone has to back out to turn around.

Ms. Cox then read a statement that she had written, and it went as follows:

Thank you for taking the time. I'd like to address our neighbors, who have not been acting very neighborly. We did not know about any of the neighbors' opposition until just a few days ago. We found out their opposition after the fact. They had petitions and meetings regarding the rental of our property at 615 Short. Not once have we been approached by them to attend these meetings or to further explain what we were hoping to do with the property. We would have welcomed any questions and taken the chance to work this out before it got this far.

We purchased this property known as 615 & 617 West Short, approximately 3 years ago. 617 is a 150- year- old home that had been uninhabited for 10 years. We have spent a huge amount of time and money restoring this house; this includes installing a yard and trees where there was only an asphalt parking lot. The property at 615 was originally built legally in the 1950's, and used as a family run business. It is built solidly with cinderblock walls and huge beams recycled from a distillery in Frankfort. It would cost a fortune to remove this building and we would be crazy to tear down income-producing property.

Historically, most homes on Short also included family run businesses, and legally this building has a worthwhile history in its own right.

At the time of purchase, it was rented to Bluegrass Upholstery; they had been in business at that location for at least 50 years. These tenants were dirty and disrespectful, but they were allowed to do business as usual until late 2013 when they finally moved to a more suitable location. (She noted that she would like to be more specific...they did move out at the end of June. They did not finish cleaning until the middle of July). So the year thing is just a moot point. We spent three months cleaning up the mess that was left behind, painting and repairing as needed. When we bought the property, we always knew of its use as non-conforming. We were always told by the Planning Department that whatever business went in next would be required to be smaller spaced, traffic, and overall less impact on the neighborhood. With this in mind, we started looking for new tenants, and we were contacted by dozens of candidates. A lot of them not meeting the criteria already set in place, and many, many more not meeting our own personal criteria; after all, 615 Short is attached to our house by a common wall and we are the ones most affected by any business renting the space.

Finally, we were approached by Rosa and her plan to open a small, upscale hair salon, consisting first of two chairs, and then possibly increasing to four. This was something very low impact, and

we believe beneficial to the neighborhood and the city. There was once a salon at the corner of Short and Jefferson that is no longer in existence, and it seems as if every neighborhood in Lexington has its own local salon. She has already had plans drawn up to adapt and re-use this space. The BGT itself supports adaptive reuse and even gives out awards for adaptive reuse of historic property. The traffic impact is minimal as opposed to the upholstery shop's constant traffic and daily deliveries; not to mention parking for 8 employees and 2 of the business owners.

We have been assured also that there is adequate off-street parking to support staff and customers. There is argument about what would go in next if the salon chooses to move; again this is covered by the limitations of a non-conforming use. The only business that can go in would be even smaller and have less impact than a salon (and again, we would have to be able to live with it, as we have no intentions in moving from our home). We believe we have met every guideline set by the Planning Department and ask that you please grant the reuse of the space so it can once again be a source of revenue for the city and state, and let Rosa continue with her ambition to be a successful small business owner."

After reading her statement, Ms. Cox said that, after meeting with the opposition in the hallway, they could not come to an agreement.

Board Questions – Ms. Meyer asked if eliminating the handicap parking spot was allowed. Ms. Kaucher responded that it was not- there would need to be a minimum of one handicap accessible space. Ms. Cox said that they are willing to work with how it is configured. She said that her husband measured it, and he came up with quite a bit more square footage than the neighbors did.

Ms. Meyer said another concern that she had was the way that the parking is configured now, and how it is angled. It has been stated that there were bumpers up against the house at 609 W. Short. Ms. Cox replied that there were actually no bumpers against the house (609), they were actually up against their building, up against the business, and then down lining the street. There was nothing keeping people from bumping their house, and it could be seen where vehicles had bumped it in the past.

Ms. Meyer said that now that it is a smaller parking lot, she would think that the fact that it could happen is more likely now than it was when it had a western ingress and an eastern egress; she thought it was an accident waiting to happen. Ms. Cox replied that they all have to back out to get out. She said they could have less parking in the lot, and more in their driveway. Ms. Cox then asked if there was anything that says that the business parking has to be right in front of the business, and if they can donate some of their space for that. Ms. Kaucher said that there are requirements on the distance that the provided parking has to be to the business. Ms. Cox said that it would be within 20 feet. Mr. Glover asked if staff could answer this question.

Mr. Emmons said that it is all one property; because of the fence and the yard. It looks like two lots, but it is all one property. He said one potential compromise might be that the employees of the salon could park further in the back, on the residential portion of the property. Since the owners have redone the property, he has not gone back to see what the back of the property looks like; the last time he was there was before it was improved. Ms. Cox said that they haven't changed anything. Mr. Saltee said that, to answer the other question, the general distance limitation on business parking is 300 feet, in most instances, and occasionally 700 feet. Acting Chair Glover asked if there was parking behind the residence. Ms. Cox responded affirmatively.

Mr. Glover then asked if there were any other questions for the applicant.

Citizen Comments – Ms. Jane Cox, who lives at 2173 Saltee Drive, a realtor in Lexington for 42 years, said that the Coxes (her son and daughter-in-law) were running a very good business. She also talked about all the work that they had put into their place after it had sat vacant for many years. Ms. Cox also mentioned that there were many other businesses up and down the street; and to say that there are none, she just didn't understand. Ms. Cox thanked the Board for listening to each of them.

Mr. Chris Hoff, friend of the Coxes for 20+ years, said that the Coxes had moved to California and came back to Lexington and started their own business. He was approached by them to help remodel their house. He said that he visits them at least 10-15 times a week; and when he visits, he pulls over to the upholstery side (driving a mid-size car). He pulls in, pulls right up to the fence, and pulls right out again without any problems. He said he does not have to back into the street. Mr. Hoff said that his car is 12 feet long, and he only needs 24 feet to double it, and an extra 9 to back up; he has never hit the building or had any problem with it. He said he wasn't sure if 6 parking spaces could be put in there; but he could see a

handicap strung one way and 4 down, people pulling straight in against the fence, and it not being a problem with the parking.

Ms. Meyer asked if Mr. Hoff has ever parked there with other cars. Mr. Hoff said that he has. He said that he has a friend who is staying there who has a big moving van in the middle of it all at one point. He said that was able to pull in behind him and was still able to get out without hitting anything. He said that some of the photos look far away and make it look really small, and some of the photos make it look bigger than it is. He said it is a big parking lot, and one does have to be careful in it; but there is no reason to hit the building or anything else.

Mr. David Eades, who lives at 539 West Second Street (Avalon House), said that he came to the hearing so that he could meet with the neighborhood association now that he was a resident. He said that he is a designer, engineer, and developer who had just recently done some work on his residence on Second Street. Mr. Eades said that he had no interest in this application, other than to sit in the hearing to achieve what he came for. Mr. Eades then said that he walks his dog everyday down West Short Street and is familiar with the subject property, as he had some work done at the upholstery shop when he moved here. He said that he didn't see a problem with parking there; he didn't think it existed. Mr. Eades said that he has pulled in and backed out and did not have to back out onto Second Street.

Acting Chair Glover asked if there were any further questions.

Board Questions – Ms. Meyer opined that as far as the use goes; this is less intensive than it could be. She asked why the applicant wants four chairs and if she would consider fewer chairs so that she would have less parking needs. Ms. Meyer also questioned the hours of operation and days of the week Ms. Plage intends to be open. Mr. Glover said that he had some of the same concerns, and some concerns about the size of the business in this very small space, as well as the parking in question.

Ms. Plage said that she was proposing to do Monday through Saturday, 9:00 AM to 5:00 PM. Since it is an upscale salon, her average "tickets" are a little higher; so she doesn't actually have to as many people coming into the salon; as opposed to a bigger salon that would need more clientele. She said that she wouldn't mind lowering the amount of chairs, but she thought it was nice to have that extra space in case there are two people in at the same time.

Ms. Meyer then said that she had testified that Ms. Plage was looking to increase to a third person, so she is intensifying the use and the need for the parking, which Ms. Plage confirmed. Ms. Meyer said that she would suggest that this be conditioned with two chairs.

Mr. Glover then asked Ms. Plage what she anticipated the traffic would be in the shop. Ms. Plage responded that she wanted a very intimate salon, which is why she was attracted to that area. She said that the distributing company that would be her supplier noticed that most of their beauty salons were in neighborhoods and there wasn't a lot of traffic, and the salons were very small. Ms. Plage said that if she wanted a bigger salon; she would go to a shopping center; she wants to be more private. She said, on average, she sees about 5 people a day. She could say the same for the other owner; and if they added another stylist, she would be an apprentice for a least a year and wouldn't be bringing in a lot of clientele. She then said that parking would be something that they would need, and that the owners had said that they could use their driveway as well.

Ms. Meyer then asked what services Ms. Plage anticipated in reference to the possibility of it being turned into a tanning salon. Ms. Plage said her intention is to do color and haircuts, and that is it. She said that if she decided to grow her business to be a spa, she would move to another location or a second location.

Mr. Griggs said that for him, it is about the parking and the danger of backing out onto Short Street - especially when there was a really safe, generous parking lot there before. He opined that this problem was created and didn't agree to approve a parking lot that creates a dangerous spot on a busy street.

Mr. Glover said that he was also a little concerned about the parking dimensions, but he opined that staff acknowledges that the distance is less than what was showing on the diagrams; and he didn't think that the size of a beauty salon versus an upholstery shop would enhance the traffic or enhance the use of the space. Mr. Griggs said that it seemed impossible to pull in at an angle with 31 feet and 9 inches; and with a solid brick building on the other side, at an angle, one would lose several feet just before getting perpendicular to the wall. There wouldn't be a way to do it if there were other cars parked in the parking lot in the angled spaces. Ms. Cox said it does not have to be configured at an angle; it can be straight in, if needed. The fence could be taken down so there is room for concrete bumpers to be put there.

Ms. Meyer said that she was still concerned about the parking. She said that she wished there was some kind of visual that would help with this. Ms. Meyer also restated her belief that there should be fewer than four chairs.

Mr. Glover asked, because of what is considered an error on the dimensions that staff was working with and the testimony that was heard, if this matter could be continued until more information is gathered. Mr. Sallee said that this could be continued in order to allow staff to go with a tape measure and get an accurate measurement.

Ms. Jones said that she would like to add that, since parking is the big issue, and the hearing is going to be continued to discuss things further (noting that this is an unusual situation since it is one lot, same owners); but the people living in the house have talked about using the lot and their parking. That may be discussed; and, additionally, in the past the Board has had instances where people have had parking agreements with other people to satisfy the requirements. So it is not out of the question if that is going to be done anyway. Mr. Glover agreed that there may be other solutions then just these associated with the parking lot dimensions, and suggested that they be explored. Mr. Sallee said that staff would be glad to work with Traffic Engineering and possibly also Historic Preservation in that regard.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Stumbo, Moore, and White absent) to **continue A-2014-44: ROSA PLAGE** – until the July 25, 2014 hearing.

- IV. **BOARD ITEMS** - The Acting Chair announced that any items a Board member wished to present would be heard at this time. None were presented.
- V. **STAFF ITEMS** - The Acting Chair announced that any items a Staff member wished to present would be heard at this time. None were presented.
- VI. **NEXT MEETING DATE** - The Acting Chair announced that the next meeting date would be July 25, 2014.
- VII. **ADJOURNMENT** - Since there was no further business, the Acting Chair declared the meeting adjourned at 5:44 p.m.

Thomas Glover, Acting Chair

James Griggs, Secretary