MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

July 25, 2014

I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, July 25, 2014. Members present were Chairman Barry Stumbo; Thomas Glover; Janice Meyer; Joan Whitman; and James Griggs; Absent were: Kathryn Moore and Larry Forester. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones & Mike Sanner, Department of Law. Staff members in attendance were: Barbara Rackers, Jimmy Emmons, and Stephanie Cunningham.

II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the April 25, 2014, 2014 meeting would be considered at this time.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (Moore, Forester, and Whitman absent) to approve the minutes of the April 25, 2014 meeting, with the change on page 15 in regards to Ms. Meyer's agreement to a statement made by Mr. Glover, rather than Mr. Griggs.

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

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. Postponement or Withdrawal of any Scheduled Business Item - The 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. **A-2014-50: CORNETT INTEGRATED MARKETING SOLUTIONS** – an administrative appeal for a projecting sign for a use/office that does not have an entrance to the outside in a Downtown Business (B-2) zone, at 249 East Main Street (Council District 1).

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

a. The requested projecting sign is for a business that does not have a separate and direct entrance to the outside of the building, and therefore does not meet the provisional qualifications of Article 17-7(h)(1)(f) for this type of signage.
b. Approval of this request would negate the provisional prerequisite to allow this type of sign.
c. Much discussion and thought by a variety of community members was involved in the 2009 decision to once again allow projecting signs in the downtown area after a 40-year prohibition. The provisional qualifications were in response to the sign clutter that existed in the downtown area nearly 50 years ago.
d. Other sign options that are allowable under Article 17 of the Zoning Ordinance are available to the applicant and property owner at this location without the need for a variance or administrative review.

Representation – Ms. Emmy Hartley was present representing the appellant; she requested a one-month postponement to further review the staff report they had received and to discuss other options internally with her firm.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Moore, and Forester absent) to **postpone A-2014-50: CORNETT INTEGRATED MARKETING SOLUTIONS** for 30-days until the August 22, 2014 meeting.

b. **C-2014-21: SOLAR ECLIPSE, LLC** - appeals for an amended conditional use permit to construct and operate a kindergarten/nursery school/child care center in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive (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; and, in fact, will have a positive effect by promoting shared access to Harrodsburg Road, increasing the landscape buffer along existing residential properties and continuing to provide for regional stormwater maintenance.
b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:
1. The property shall be developed in accordance with the submitted site plan and application, or as amended by the Planning Commission on a final development plan.
2. All permits, including but not limited to a Zoning Compliance Permit, Building Permit, and Paving Permit, shall be obtained by the applicant from the Divisions of Planning and Building Inspection prior to construction.
3. The parking lot shall at all times be maintained to the meet the minimum requirements for landscaping and lighting in the Zoning Ordinance.
4. Any parking lot lighting employed shall be of a shoebox (or similar) style, so that light is directed downward and away from adjoining residential properties.
5. A detailed landscape plan that provides an equal level of protection, as proposed on the site plan, shall be submitted to and approved by the Division of Building Inspection before the issuance of a Zoning Compliance Permit for the subject property.
6. The Planning Commission shall review and approve a final development plan for the subject property prior to construction of the proposed use.
7. There shall not be direct vehicular access to Palomar Trace Drive from the subject property.

Representation – Mr. Dick Murphy was present representing the appellant. He said that, the previous month they had agreed that if things hadn't been worked out prior to this meeting; they would request another one-month postponement.

Mr. Chapman Hopkins, standing in for Mr. Bruce Simpson; said that they agreed that this case should be postponed.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (Moore, and Forester absent) to **postpone C-2014-21: SOLAR ECLIPSE, LLC** for 30-days until the August 22, 2014 meeting.

c. **C-2014-35: KEENELAND ASSOCIATION** - appeals for a conditional use permit to expand operations, including the building of a new structure and accessory parking, in the Agricultural Rural (A-R) zone, at 3801-4081 Versailles Road (Council District 12).

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 Keeneland has successfully operated at this location for nearly 80 years. Furthermore, adequate and efficiently designed parking will be available on site. The proposed event center will be approximately ¼ mile from the nearest property owner, and Keeneland's 440+ acres can easily accommodate the proposed addition to their facility without disturbing any surrounding property owner.
b. All public facilities, including sanitary sewers and roadways, are adequate and available to serve the proposed racetrack and this addition of the "Events Center".

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, if necessary, during the normal permitting process, subject to the review and approval of the Divisions of 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.

Representation – Mr. Chapman Hopkins was present representing the appellant, and requested a postponement of this case until the September 2014 meeting.

Board Questions – Mr. Griggs asked what the need for the postponement was. Mr. Hopkins said that there were a few things that need further examination, especially in light of the Breeder's Cup being announced; there are a few more "moving parts," and they want to make sure that everything is in complete working order before it is presented. Mr. Griggs asked if they were still tweaking the building design. Mr. Hopkins said he wasn't sure if it was specifically to the building design, but that is all he has been told.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Moore, and Forester absent) to **postpone C-2014-35: KEENELAND ASSOCIATION** for 60-days until the September 26, 2014 meeting.

Note – At this time, prior to sounding the agenda, the Chair welcomed Ms. Joan Whitman to the Board of Adjustment.

d. 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. Emmons announced that in the case of **A-2014-44: ROSA PLAGE**, the staff received notification, via email, to withdraw this application.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs, and carried unanimously (Moore, and Forester absent) to acknowledge the **withdraw of A-2014-44: ROSA PLAGE.**

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

B. **Transcript or Witnesses** - The 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.

There were none.

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

1. **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.

Staff Comment - Mr. Emmons noted that applicant failed to show up at the last month's hearing, and that he didn't expect him to be present at this hearing. The staff has had three phone conversations with the applicant, in which he stated that he wished to withdraw his application because he had lost the space; however, the staff has failed to receive that information in any written form (via email or otherwise). He said the reason staff had recommended postponement for this was that staff was looking for additional information in order to be able to better analyze this use. Mr. Emmons said that the staff is now recommending disapproval of this application; noting the following:

1) That the applicant has not provided information regarding the number and scale of competitions; and
2) The staff would suggest adding a third finding that the applicant has failed to represent himself at either the June 27, 2014 or the July 25, 2014 hearing.

Board Questions – Mr. Glover asked what the consequences were for disapproval of the application. Mr. Emmons said that disapproval of this application means that a similar application could not be filed on this property for one year from the date of disapproval.

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover, and carried unanimously (Moore, and Forester absent) to **disapprove C-2014-43: ERIC MOBERLY -** an appeal 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, based on the staff's recommendation and their three reasons- two as noted in the staff report, and the third as just stated by Mr. Emmons.

E. **Administrative Review**

1. **A-2014-49: CRAMER COTTAGE** – an administrative appeal to change one non-conforming use (barbershop) to another (re-purposed home goods store) in a Two Family Residential (R-2) zone, at 1023 Cramer Avenue (aka 215 Owsley Avenue) (Council District 5).

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

a. The requested use for the retail sale of home goods will not be an increase in scope from the previous use of a barber shop, nor should it negatively alter the character of the surrounding properties. Both uses are principal permitted uses in the Neighborhood Business (B-1) zone. The new use will have similar hours of operation as the previous use and should have no more impact on the surrounding neighborhood than the previous use(s).
b. The proposed retail sales will require less off-street parking than the former use (barber shop), which is another indication that it will not result in an increase in the intensity of the use at this site.

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 Divisions of Building Inspection or Traffic Engineering during the normal permitting process.
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. There shall be no structural changes to the building made in a way that increases the floor area of the non-conforming uses.
4. The commercial parking lot located off of Cramer Avenue shall be re-striped to the approval of Traffic Engineering, prior to the issuance of a final Zoning Compliance Permit for the subject property

<u>Note</u> – Mr. Emmons announced that the staff had received one letter on this case, and presented it to the Board.

<u>Representation</u> – Mr. Dick Murphy was present representing the appellant, and he indicated that they had reviewed the recommended conditions and agreed to abide by them. He also said that he wanted to enter into the record, a petition signed by over 200 people in the Kenwick neighborhood, who are in support of this application.

<u>Discussion</u> -– Chair Stumbo said that, in reading the letter of opposition; it appears that the biggest concern seems to be the layout of the facility/house, and the pedestrians and children that ride through the neighborhood. The letter also stated that this is a hazardous area because it is also a major intersection for bus traffic that transports kids to and from Ashland school.

Mr. Murphy said that the layout of the property is not changing. He said that staff has asked them to stripe this in accordance with the Division of Traffic Engineering requirements, which they have agreed to; there are actually stripes on the pavement. Mr. Murphy entered a photograph of this for the record. The before and current photos of the use were displayed on the overhead projector. Photo number 1 (taken about a year ago) displayed a sign that said "Dave's Barbershop". Visible was the access arrangement that was there. The barber was there for 30 years and had a lot of traffic in and out (a lot being walk-in traffic because it was a community barbershop) – people would come every day and just socialize due to it being a community shop. He repeated that the layout of the interior space is not changing. On picture number 2, it shows where a lot of work had been done to improve the appearance of the building. On the photo it showed where the parking lot lines were faint, but they will be re-striping them in accordance with Traffic Engineering's request.

Mr. Murphy also said that he wanted to point out that Mr. and Mrs. Cramer live in the house that faces Owsley Avenue; they are on site. He said that Ms. Cramer has inherited this property, and it has been in her family for at least 40 years. For the last 30 years, it had been used as a barbershop; prior to that, for 20 years, it was a laundromat, which had a lot of traffic in and out; and prior to that, it was a locally famous restaurant and "watering hole" for the neighborhood for many years. It has also been a confectionary store. Mr. Murphy said they found records in the Urban County Government's directory, going back to the 1930s; and they believe that portion of the building is about 80-90 years old; there is no evidence at all that it has ever been used for residential use. Mr. Murphy said that one can tell that it is a commercial structure. They have researched it and found that it has been used commercially, continually since the 1930s.

Mr. Murphy stated that they will not be changing the parking layout. He said, as pointed out by staff, a store of this nature requires less parking then a barbershop does, and that is because, in general, parking is related to how much traffic there is coming in and out; therefore, they are required to provide about half the parking that a barbershop would. He said that the proposed use will have very low traffic, and it is designed for this use; it is designed for people in the area so that they can walk there.

He also said that he wanted to point out one thing about the staff report – it talked about the hours of operation. He said that the hours of operation are not a condition of the Board's approval; but they wanted to state for the record, that they do want to have the option of being open 7 days a week from 8:00 AM to 7:00 PM. That does not necessarily mean that they will be open those hours, but they wanted the option for what is best for the community.

In conclusion, Mr. Murphy said that this proposed use is going toward having "walkable" uses in the neighborhood, which supports the Comprehensive Plan. This community has been doing that for the last 20 years. Mr. Murphy noted that he was going to submit some excerpts of the Comprehensive Plan for the record recording.

The Chair asked if there were any questions from the Board or staff.

<u>Staff Comment</u> - Mr. Emmons stated that the staff did not set specific times hours of operation, but it was documented as to what the applicants were requesting as a part of their application. He said that for the record, the staff doesn't see any issue with them being open on Sundays, noting that it is good to go ahead

and get that on this hearing's record. The staff has no objection to that, and there should be no material difference in the staff's recommendations regarding Sunday operation of this use.

Discussion - Mr. Glover asked if being open on Sunday would be a condition of the use. Mr. Emmons said that the staff did not put the proposed hours of operation as a specific condition, as it would be covered under the general recommendation of #1- that it would be in accordance with the submitted site plan and application. He said that when the staff had mentioned the hours of operation, they were simply reporting what the applicant had told them at the time of the application; staff was not trying to dictate the hours of operation of this use.

Mr. Murphy said that they just wanted to note that; because it was discussed in the staff report, and they had thought about it a little more, they wanted to be able to have that ability to be open 7 days a week. They wanted to mention this on the record for any possible future questions.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously (Moore, and Forester absent) to **approve A-2014-49: CRAMER COTTAGE** – an administrative appeal to change one non-conforming use (barbershop) to another (re-purposed home goods store) in a Two Family Residential (R-2) zone, at 1023 Cramer Avenue (aka 215 Owsley Avenue), for the reasons recommended by staff and subject to the four conditions listed.

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

1. **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** - a 6-month review of a conditional use permit granted by the Board for a bar/nightclub with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 815 Euclid Avenue (Council District 3).

In October of 2012, the Board approved a conditional use permit to operate a night club with live entertainment and dancing. One of the conditions for approval was a 6-month review of the use (after issuance of a Certificate of Occupancy), in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions. The conditions to be reviewed are as follows:

a. That no more than 275 patrons be allowed on the subject property at a time, as permitted by the fire code.
b. That the hours of operation be from 8:30 pm until 2:30 am, Wednesday through Saturday.
c. That any private parties (no more than 275 persons) be held from 8:30 pm until 2:30 am, Monday and Tuesday.
d. That no business activity, private or public, be conducted on Sunday.
e. That some type of food items and a menu be provided on the premises.
f. That off-site parking is provided for the employees by lease agreement approved by the UCG Law Department; and that the Planning Staff is apprised of the location.
g. That the nightclub with live entertainment and dancing be established in accordance with the submitted application and site plan.
h. A Zoning Compliance Permit and a new Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy as a nightclub with live entertainment and dancing.
i. Outdoor live entertainment and/or outdoor speakers shall be prohibited, and the doors to the nightclub shall remain closed during the times when live entertainment is offered.
j. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.
k. The use shall be reviewed by the Board 6 months after approval.

In January of 2014, the Board approved the 6-month review to continue operation with expanded hours for a night club with live entertainment and dancing. The Board determined that an additional 6-month review was needed, in order to determine if surrounding property owners had experienced any adverse impacts from the use, as well as to determine compliance with the imposed conditions.

Representation – Mr. Gerald Mack, current owner/operatory of the bar, was present.

The Chair said that he would like to hear the staff's report first seeing that this application is for a 6-month review; and due to the high volume of opposition and/or supporters, he asked that staff, applicant, and opposition limit their reports to 5 minutes each. He also said that anyone in the audience; who is for or opposed to this application, would have a 3 minute limit. The Chair stated that the Board only wants to hear new and not repeated information.

Staff Report – Mr. Emmons said that the property at 815 & 817 Euclid Avenue was approved for nightclub and a cocktail lounge. He noted that the staff had handed out three pieces of paper to the Board: the current Land Use Restriction Form; minutes from the January 31, 2014 meeting; and an abbreviated time line of this application.

Mr. Emmons said that he would like to put the "facts on the table. He said the last use, before the Board of Adjustment was involved, was in 1985 for the Chevy Chase Cinemas; that was a principal permitted use in the B-1 zone. Mr. Emmons said that there are building permits for this property dating back to 1948, but the "story" begins with the Board of Adjustment in 1985 with Midtown Investments, which was approved for a restaurant with live entertainment and dancing, including a cocktail lounge and a nightclub, and the Board approved that with a single condition.

In August of 1991, the Board revoked that conditional use for Midtown Investments. Mr. Emmons said that, 2 months later, JD's of Lexington and Robert G. Bachelor were approved for a nightclub/cocktail lounge, offering live entertainment and dancing; so what was lost was the restaurant portion of that use. At that time, in 1991, the Board approved that use, subject to 6 conditions, one of those being a one-year review. He noted that in 1992, 1993, and 1995 that conditional use was reviewed. He said in 1995 the Board determined that reviews every 2 years were unnecessary.

Mr. Emmons stated that, from 1995-2012, there have been several different businesses and several name changes, but the use remained consistent as a nightclub/cocktail lounge with live entertainment, with the six conditions originally approved.

In October 2012, Sims Entertainment Group requested an amendment to that conditional use in order to extend the hours of operation; the Board did approve that with a six-month review, and they expanded the number of conditions to 11. Mr. Emmons said the next step was in January 2014; the six-month review from the time they opened came up and two additional conditions were added, which is why the current Certificate of Land Use Restriction contains the 13 conditions of approval, one of those being that there would be a review at this hearing of those conditions for approval.

Mr. Emmons said that he wanted to lay out that timeline for the Board, in order to get a perspective regarding the uses on this property and explain what this hearing was about (a review of the use) the last time this was before the Board. This review is a direct result of the 2012 application in order to expand the hours of operation, which was directly related to the 1991 case, when the use was approved.

Mr. Emmons said that, after today's hearing, should the Board wish to approve this use and leave the 13 conditions alone, the Board could do that; should the Board wish to modify any of the 13 conditions, or add conditions (as was done in January), that could be done as well. He said that staff has been made aware that there are several neighbors who have been asking that this use be revoked, and the staff would like to point out that today's hearing is not about revoking the use. The staff is of the opinion that the Board does not have the authority to revoke the use at this hearing; but after the Board hears the case at this hearing, should they decide to set a revocation hearing, the staff would ask that the Board set that at least 2 months in the future in order to have time to begin the proper paperwork and notification letters.

Board Questions – Mr. Griggs asked Mr. Emmons if the staff had any evidence that they are not in compliance with the 13 conditions, and especially the one that indicates that there shouldn't be noise or other emissions that are a disturbance to the neighborhood. Mr. Emmons said that as of this hearing, there have not been any official zoning complaints; however, there have been many calls about people's behavior in this area. Mr. Marx said that there haven't been any complaints filed with the Zoning Enforcement office; however, they have been made aware of concerns expressed to at least two of the Council members, who will probably be speaking during the hearing.

Mr. Griggs asked how the Board should interpret the discussion that happened six months ago regarding whether the disturbances to the neighborhood; that occurred inside and in front of this bar, are in conflict with the condition that says there shouldn't be any. Mr. Emmons stated that that would be a good question to ask during the hearing, and evaluating the testimony, in the opinion of both the applicant and the opposition.

Mr. Emmons also said, for the record; that he believed some of the neighbors distributed some information to the Board at the start of to the hearing. He also distributed information that the staff received just before this hearing.

Representation – Mr. Gerald Mack said that Sims Entertainment is the company, from whom he bought the club, and they are in the transition process now; so the review was set before he actually took over the club. He said that he has been the new owner for the last 3 months; he came in knowing that the neighborhood wasn't too fond of "night life" being there, but he acted on the fact that it had been a nightclub for 30 years, which put him in a mind frame that there must be some way to get along with the neighborhood. Mr. Mack said that he willing to work with the neighborhood so that they could all have good relationship. He said that he had not had the opportunity yet to meet with the neighborhood to address their concerns. However, he has been proactive somewhat already in hiring a cleaning service (the day he took over); and they come every Sunday morning to clean up the area, because the previous owner had advised him that that was one of the main concerns with the neighborhood. Mr. Mack said that he would have no problem with the cleaning service coming on Friday, Saturday, and Sunday if this is a continued concern.

Mr. Mack said that he is also being proactive regarding the fact that the crime rate is up. He said that he has hired off-duty security and detail police presence to keep down on the loitering and people hanging out after of the club closes.

The Chair said that there are a number of people who have signed a petition to limit Mr. Mack's hours of operation to 1:00 AM; right now it is 2:30 AM. He said that, as stated by Mr. Emmons; the Board has a number of options to choose from as far as the decision of this application. He asked if Mr. Mack would be willing to change his hours of operations. Mr. Mack said that he would be opposed to that because 70% of his income is made after midnight; he opens his doors to the public at 10:00 PM; from 10-11, he would be lucky to have 5 people, because most people do not show up until around 1:00 a.m.

Opposition – Ms. Sally Warfield, Legislative Aide for Diane Lawless (Council member of 3rd District), said that she was at the Board's hearing 6 months ago, and was in opposition then. She said that the condition that allows the establishment to be open until 2:30 a.m. should be kicked back to 1:00 a.m., to limit the admission and to limit the disturbances to the neighborhood. They negotiated to "hold that" for 6 months, pending some informal agreements that they would help pick up the trash; they would keep a tighter lid on things; and that they would restrict entrance to the bar to persons 21 and older.

Ms. Warfield said that one of the things that she presented at the last hearing was a police report where there were 15 responses to 815 Euclid Avenue. She said that she wanted to note that Mr. Griggs stated; in the last part of condition #10, it says that the emissions from this bar would not create a nuisance to the surrounding neighborhood. That doesn't just need to mean sound; it could mean everything that is going on outside their door. It might be in 6 months that the Board reviews this; and if there is same kind of police report that is in front of the Board during this hearing, it may mean they are not meeting their conditions and the conditional use could be lost. Ms. Warfield then said that, she is now coming with a new police report from the most recent 6 months. She said that it has gone from 15 instances to 25 instances; so it has increased by 75% in the time that the informal agreement was made.

Ms. Warfield stated that she did respect the fact that Mr. Mack has recently taken possession/ownership of this company from Sims Entertainment; however, she had a case report from the Kentucky Department of Alcohol Beverage Control, who responded to 815 Euclid Avenue, where it said the person in charge of the premises was Gerald Mack, manager. In the description of the disorder, it said that it was a disorderly premises and that they were allowing customers under 21 years of age on the premises. She said that both of these things were in direct violation of two of their conditional use permit agreements. She said based on that, she would like to request the following: 1) their hours of operation be pushed back to 1:00 a.m.; and 2) to schedule a revocation hearing of the conditional use permit for the premises.

Board Question – Chair Stumbo stated that Ms. Warfield is asking that the bar hours be pushed back to 1:00 a.m.; but had the applicant agreed to do that, it would not really be a consideration, because she is now asking for revocation hearing. He asked if this was correct. Ms. Warfield replied that they are requesting both because; as staff said, the revocation hearing could take up to 2 months; and from what she had seen on social media, Mr. Mack planned on having another event on Friday similar to one they had a few Fridays prior, when shots were fired in the Domino's parking lot. A police officer was struck at that time by a fleeing SUV, and the person who was in the SUV was known to have been at 815 Euclid Avenue.

Opposition – Ms. Melissa Sedlaczek, Commander of Central Sector of the Police Department (where the club is located) she said that they had officers meet with Mr. Mack in April to try and sort through some of the issues that they had seen going on; but what has happened in the meantime is that the incidents have become more frequent. She also said that officers have responded to incidents inside the club (an assault with a bottle); incidents right outside at the front door; incidents that have spilled into the street, and then onto other business properties during this time. She said that the way it is causing the police department issues is that it is a matter of resources. They have to put several officers down there when they get the loud disorderly conduct calls and the large crowds, and officers are being pulled from other places to go to one business. Ms. Sedlaczek said that Central Sector contains all of downtown, has numerous clubs in this area, and this is the only location that is causing these consistent issues.

Ms. Sedlaczek said that Mr. Mack has not hired off-duty officers to assist his club because it is against police policy; the condo association across the street has had to hire off-duty officers because of incidents and trespassing that has been going in the parking garage across the street from the club.

Board Questions – Mr. Glover asked Ms. Sedlaczek if there was something about this club, from her police perspective, that makes it different from any other club that is in her sector. Ms. Sedlaczek said that she didn't know if there was anything different about this club; it has been a bar in the past; there are other bars in the Central Sector that have events, and she cannot really say why events at this location turn disorderly. She said she didn't know if it is the event itself, but there should be no difference between this club or any other club; and their preference is to not have to respond to the large crowds and incidents at this location or any location. So far, though, this specific location has been the one to take their resources this summer.

Mr. Glover asked if Ms. Sedlaczek was saying that this club was taking their resources disproportionately to the resources that they would assign to similar clubs. Ms. Sedlaczek said absolutely- they don't assign resources to other business just for private security; they just respond to calls for service; but because of the nature of these calls; where the crowds have been so large; and disorderly incidents have broken out while officers are even on the premises, the officers have had to stay at this location to try and disperse crowds.

Mr. Glover asked, in her opinion, if she would say this club is a nuisance. Ms. Sedlaczek responded affirmatively.

Ms. Warfield said that her office's position is to say that this just isn't a place for a nightclub; this isn't a place for something to stay open until 2:30 a.m. and then have large events.

Applicant Rebuttal – Mr. Mack said that they had mentioned that this was the only location that they were having trouble. He said that this was not true. Mr. Mack said that there was a shooting inside of a club down the street on Euclid Avenue- a club that doesn't search or communicate with the police the way he does; a club that doesn't hire outside security, outside police detail, as he does. He said that this happened at the "T Bar;" and when the shooting happened, they ran over to Art Bar.

Mr. Mack then said that the off-duty detail police was an idea of his that he took to Mr. Caller, who owns a lot of the property in Chevy Chase; it is true that he hires the off-duty officer; but Mr. Mack goes to Mr. Caller with regard to the police presence; being that Mr. Caller has police presence to stop people from parking in his parking garage, and it benefits Mr. Mack to have police presence to cut down on loitering.

Mr. Mack said that the last shooting at Domino's is all speculation. He said that he had 17 security men on staff that night: 12 on the inside and a security company that secures the parking lots outside. He said at 2:30, when he cuts the lights on in the club, his security is instructed to go outside and surround the building and make sure everyone is leaving. Mr. Mack said that neither he nor his staff recalls a shooting happening at Domino's (it is still going through the courts). He said that he is aware that a place named Off the Hookah had a shooting that night that didn't make the news, and it was an 18 and up event.

With regard to the underage people being let into his club, Mr. Mack said the particular underage guy that was let in had used a fake identification card. He said that he has a stack of fake ids; his security keeps them. He said there are several occasions when people try to use fake ids to get in; and when they cannot get in, they tend to linger around; but that is what his police detail is there for to help him with that.

Mr. Mack said that; to his understanding, the police department has been granted permission to drive around when off duty in their cruisers, just to increase the police presence in the city.

Board Questions – Chair Stumbo asked Mr. Mack to clarify the 17 security people that he currently has- that none of them are off-duty police officers. Mr. Mack responded affirmatively.

Mr. Griggs asked if Mr. Mack thought he has been a success at controlling the club. Mr. Mack said that it is a little too early to tell; but to date the club has 0 citations from ABC or Lexington PD. He opined that it has been a success and thinks there has been a misunderstanding with people seeing police on site, thinking that there were problems each time, and that wasn't the case.

Support Comments – Ms. Courtney Campbell, 2009 New Orleans Drive, said that since the acquisition by Mr. Mack, crime on the Lexington Police Department's site has not been directly related to the club hours. She said that crimes seem to not be directly related to the crowds from the subject establishment. Alleged shootings in the area have not been directly related to the applicant's business, and many have been committed by people under the age of 21, who are not allowed in Mr. Mack's establishment.

Ms. Campbell said that she is part of a band that performs at this establishment and agreed with Mr. Mack when he stated that putting a limit on hours for this club would affect the owner and the performers.

Board Questions – Ms. Meyer asked Ms. Campbell what time the entertainment begins. Ms. Campbell said that the entertainment typically starts between 11:00 p.m. and midnight. Ms. Meyer then asked if it could start earlier. Ms. Campbell said that it could, but then they wouldn't have a crowd. Ms. Meyer asked if this was an assumption, or if they have tried it earlier at this location. Ms. Campbell said that they have tried it earlier, with no success.

Support Comments – Mr. Al Grasch, 302 W. High Street, on behalf of Sims Entertainment, wanted to confirm that the ownership of the club was transferred to an experienced gentleman several months ago (since the last appearance in January), who they believed could operate the bar properly and address the problems that had occurred in the past.

Board Questions – Mr. Griggs asked if they had had conversations with Mr. Mack about the tenuous situation that Sims Entertainment was in concerning their conditional use permit. Mr. Grasch responded that he wasn't personally involved; but to his understanding, the principals of Sims Entertainment did review the situation with Mr. Mack and made him aware of the state of the conditional use permit, and its 13 conditions. Mr. Griggs asked if Mr. Mack was made aware of the serious neighborhood problems. Mr. Grasch said that he was unable to comment to the specifics of the conversation because he was not involved.

Support Comments – Mr. Cheyenne Towery said that he is the property cleaner for both of Mr. Mack's establishments. He said that he keeps the areas as clean as possible.

Opposition Comments – Mr. Bennett Bayer, 106 West Vine Street, on behalf of Caller Properties and Equity Management, said that he would like to state for the record that the Callers do not think that the situation has improved; and in fact, they believe that the situation in the neighborhood has deteriorated since the club has opened under new management.

Mr. Bayer said that the circumstances around hiring the police to control access to the garage across the street was directly a result of problems associated with late night crowds, and that seems to be most of the problem. He said in the past, there may have been some problems; but they believed the later hours, a different group, and a different time, are different problems.

Mr. Bayer read the Zoning Ordinance referencing the conditions of a conditional use- that it should not have an adverse influence on the subject property or its surrounding neighborhood. He then said that they believe that there has been an adverse effect with the neighborhood and neighbors.

He said as far as the cleaning up; most of the property surrounding this area is owned by the Callers, and they are suffering quite a bit from trash and debris that is being left behind.

Mr. Bayer concluded, noting that Caller Properties is in favor of any restrictions that are placed upon this conditional use permit that would be allowable; but they will also be seeking revocation of this use because it does not seem that the club is operating in conformity with the needs of the neighborhood.

Mr. Bob Sessum, 101 South Hanover (Hanover Towers), is President of Ashland Neighborhood Association, which joins the Chevy Chase business district. He said that they are opposed to continuing the process; they ask for the hours of operation to be moved back; and they ask that a revocation be done in the future. Mr. Sessum said that they have experienced trouble in the neighborhood from this establishment, and they have not had any other troubles before with prior uses.

Mr. Sessum said that the situation is continually deteriorating; and with the shootings that have occurred, he is concerned about someone being killed or seriously injured.

Ms. Jessica Gies, on behalf of Council Member Farmer, said that they are in full support of setting the hours back to 1:00 a.m., at least temporarily; and then in the long term, a revocation hearing.

Ms. Gies presented a bag with a bottle of Hennessey, fliers, and trash that was handed to her from a Donut Days employee. She said that Council Member Farmer owns a business in this block of Euclid Avenue, has found bloody cloths, and has had to have the sidewalk pressure washed. She asked that the Board take that into consideration. She said that this is an ongoing problem for both the 3rd and the 5th council districts.

Ms. Janie Fergus, 308 South Hanover Avenue (four houses up from East High Street), said that the neighbors are impacted by the current situation. She said that she was also opposed to the extension of the hours, and things have consistently gone downhill since the change. She was asking that the hours be pushed back and then eventually that the nightclub be removed.

Ms. Fergus presented some photos of before and after the nightclub to the Board. She said that she had become more concerned about the noise and the trash; her husband woke up one night with women yelling and fighting in their front yard. She also said that they have had a gentleman urinating in their front yard. Ms. Fergus said that this use is not conducive to a residential area; it is very disturbing. Ms. Fergus then explained the photos that had been distributed.

Mr. Peter Eckavert, President of the Chevy Chase Plaza Condo Association, was present with Mr. Foster Ockerman. He said that they are opposed to the 2:30 a.m. operating hours, and requested that the club's hours be pushed back to 1:00 a.m.; it is in the interest of public safety - the bar is out of control.

Mr. Eckavert distributed to the Board a petition requesting limitation of hours, and also a separate petition requesting a revocation hearing.

Mr. Eckavert said that he has lived in the Chevy Chase Plaza for 20 years. His balcony faces the bar; and on many occasions has witnessed shouting, shots fired, and tires peeling off. He said that the bar is irresponsible; they leave trash in the area. He also said that Lieutenant Faulkner of the Lexington Police Department, who is on call on third shift, responded to him with a text concerning a shooting. Mr. Eckavert then read that the text was sent to him, which went as follows:

> *"I responded to the "shots fired" call. We identified the shooter, who fired shots near the officer and almost struck him with his car, and we are obtaining warrants for Wanton Endangerment. The entire neighborhood was out of control last night with 100s of disorderly bar patrons leaving and loitering in the parking lot near Mr. Caller's buildings. Subjects were fighting, loudly using profanity, littering, driving recklessly in the area with loud music, and I saw several urinating near buildings and on the street. We did cite two for Criminal Trespass in the bar, and we arrested two more for Alcohol Intoxication and Disorderly Conduct. One was another 20- year- old EKU football player."*

Mr. Eckavert said that the point is, is that this bar is out of control. He said that one thing he would like to ask of the Board, is in condition #4, where it states: "That no business activity, private or public, would be conducted on Sunday". He said that, if that could be enforced and the bar would shut down at midnight on Saturday; that would go a long way in solving the problem. It was his opinion that anything after midnight constituted being open on Sunday, which is contrary to that condition.

He then said that he is speaking on behalf of all the residents in Chevy Chase. Mr. Eckavert said that, before Mr. Mack took over on February 15th, the bar wasn't a good thing; but it wasn't nearly as bad. He said that they had a fire in the building because the DJ from the Art Bar fell asleep in his car. His car caught fire, which could have caused some serious injury, without immediate action of the fire department.

Mr. Lee Thomas, President of Historic South Hill Neighborhood Association, and a member of the UK Task Force for student Health and Safety, was present. He said that he felt sorry for Mr. Mack from the point of view that his success as a nightclub operator has created a nuisance for the neighborhood. He said that Mr. Mack's success brings in crowds, and he cannot control what's inside his walls. This has increased police presence as well as caused disruption in the neighborhood. Mr. Thomas opined that it is a bad fit for the neighborhood. He concluded by saying that he supports the opposition.

Mr. John Sensenic, owner of John's Run/Walk Shop at 317 Ashland Avenue, was present. He said that the parking lot that is used during the operation of the club, is between Domino's and his store at 314 S.

Ashland. Mr. Sensenic agreed with Mr. Lee's sentiments regarding Mr. Mack, noting that it seems that he is unable to control the situation, and that it has gotten much worse.

Mr. Sensenic said that he has been there 30+ years; and things have gotten rowdy on Saturday nights with drinking and some people getting a little out of control; but the subject nightclub has gotten much worse. He said that his staff at the women's shoe store has to clean up condoms and other trash from the parking lot; the cleanup crew for the subject property is not working out. He also said that he lives on McDowell Road; the rowdiness doesn't get quite that far, but one can hear it.

Ms. Amy Clark, who lives at 628 Kastle Road, provided a handout to the Board. Ms. Clark said that she was at the hearing in October of 2012, as well as the hearing in January 2014, and requested that a revocation hearing be set as soon as possible. She said this has been an ongoing problem, and many neighbors have said that it has gotten much worse.

Ms. Clark displayed an aerial photo on the overhead projector, and stated that this use has a 100' distance requirement from residential zones and it is 200 feet from a residential zone; but the condo building across the street has residential uses closer than 100'. Ms. Clark agreed with a revocation hearing, noting that it is important to have testimony on each issue. She opined that the conditions are not restrictive enough to provide control.

Applicant Rebuttal – Mr. Mack said opined that the trash situation is very "fixable". He said that, in looking at the pictures of the trash, some trash items are not products sold by Art bar. Mr. Mack said that it seemed that he had bought himself into an unfair deal; however, he is willing to do whatever he needs to do to get along with the neighborhood. Mr. Mack said that if it didn't work out, he would be willing to look elsewhere, but it would take time for him do so.

Mr. Mack said that the opposition's definition of "worse" is that they are talking about a club that was doing zero business. He said the difference between him taking over, and what it was previously, would seem drastic because it "went from 0-60" pretty fast.

Mr. Mack then spoke on the "major problems" with other clubs in the area, including violence and trash. He said that is being punished for trying to work out problems with owner of Caller Properties.

Mr. Mack said that; at the very least, he would like his own 6-month review since he's only been in ownership for 3 months. Regarding the fire in the garage, he said that he was not the owner at that time, nor were they even in negotiation at that time.

Citizen Rebuttal – Mr. Eckavert returned to the podium and stated that he has been a resident for 20 years in this neighborhood, and nothing like this club has been in the last 3 or 4 months even approaches what it is like right now. He requested that the operation hours be pushed back to 1:00 a.m. and not be given a 6-month review.

Mr. Mack, in rebuttal, said that these problems are not new; it is just now someone is in place who is willing to handle them and to get things under control. He said that he is trying to do that.

Board Questions – Mr. Glover commented that, in listening to all of the testimony on both sides; it appears that the neighborhood is concerned about the operation of the club in the past few months that Mr. Mack has owned it. He said that the Board is sympathetic to the neighborhood's concerns, and it is unfortunate that the success of the bar has been a problem for the neighborhood.

At this time, Mr. Emmons stated that an additional email in opposition was received by staff; just minutes before this hearing. He then distributed it to the Board for their review.

Note: Chair Stumbo declared a brief recess at 3:18 p.m. The meeting reconvened at 3:26 p.m., with the same members in attendance.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried unanimously (Moore, and Forester absent), **C-2012-70: SIMS ENTERTAINMENT GROUP, LLC** – based on the evidence that has been heard at the hearing today: 1) to change the hours of operation of 8:30 p.m. until 2:30 a.m., Wednesday through Saturday; to 8:30 p.m. until 1:00 a.m., Wednesday through Saturday; in condition #2; to change the hours of operation for private parties (no more than 275 persons) to be held from 8:30 p.m. until 1:00 a.m., Monday and Tuesday; 3) that a revocation hearing be scheduled for the September Board of Adjustment meeting, with the proper notice being issued; and 4) that another 6-month review be scheduled from the date of today's hearing in the event this conditional use permit is not revoked in September 2014.

Applicant Questions – Mr. Mack asked if there was any way of appealing this motion. Mr. Emmons said that, with any action that the Board takes, any applicant has the right within 30 days, to file an appeal with Circuit Court, which Ms. Jones (Law Department) confirmed.

Mr. Mack then asked if, when the appeal is made, if he operates under the judgment of the Board's decision at this hearing by closing at 1:00 a.m., or if he operates until 2:30 a.m. while the appeal is going on. Ms. Jones said that it depends on what he appeals; if the entire ruling of today is appealed; then it would not apply to the 1:00 a.m. timeframe, unless action was taken to enforce it during the course of the appeal.

Mr. Mack then asked if this judgment was effective immediately, because he had events coming up that weekend. He wanted to know if the time needed to be changed, or if he could still operate how he had been promoting it. Chairman Stumbo asked Ms. Jones if the vote was effective immediately. Ms. Jones responded affirmatively. Mr. Glover stated that Mr. Mack is to close at 1:00 a.m. until the appeal has gone through, and that an attorney could advise Mr. Mack about that.

2. **C-2014-52: LA CUEVA BAR & GRILL, LLC** - appeals for a conditional use permit to establish a restaurant, bar & grill with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 1765 Alexandria Drive (Council District 11).

The Staff Recommends: Disapproval, for the following reasons:

a. Granting the requested conditional use permit would have significant potential to adversely impact established properties, some residential, located as close as 30 feet from the rear wall of the building in which the proposed live entertainment and dancing would take place.
b. The proposed late hours of operation, combined with the changing character of the existing use from a restaurant to a night club both during the week, and on weekends, has a significant potential to be a disruption to the neighborhood, and therefore, is inappropriate at this location.

Representation – Ms. Angela Marquez Roses and Mr. Fernando Quiroz were present.

Staff Report – Mr. Emmons noted that he had received a letter of opposition on the day prior to this hearing, and distributed it to the Board.

Mr. Emmons began his presentation that this question isn't about whether or not a restaurant is allowed in the requested area; it is the live entertainment and dancing that is the conditional use. He said this particular site has been requested to have live entertainment and dancing at least four times in the past; the staff report does provide a history of that. He said that there were two Board of Adjustment applications in 2003 (not necessarily for this unit but next door), and both cases were recommended for disapproval by staff. They were withdrawn by the applicant before the Board had a chance to act on either one of them. In 2007, an applicant asked for live entertainment and dancing in this suite. It was recommended for disapproval and was disapproved by the Board; and in 2013 (most recent application), there was a request for live entertainment and dancing. The staff once again recommended disapproval, and that case was withdrawn before the Board had a chance to act on it.

Mr. Emmons said part of the reason that staff has consistently recommended disapproval for this property is how closely the property is situated to the residential neighbors located off of Traveller Road. The back of the building of this shopping center is 30 feet to the rear yards of the neighboring residential properties.

Mr. Emmons then presented an aerial photograph on the overhead that showed the shopping center. He then provided of the staff's perspective on this conditional use request. He noted that there have been two changes to the regulations since the previous cases came forward. The first is that for live entertainment and dancing, the length of time has been increased for the hours that alcohol can be sold at establishments; and the second is that the Zoning Ordinance no longer requires a variance to the distance from a residential zone as it did in the past.

Mr. Emmons also said that that staff does not believe that the physical condition of the property has changed since prior cases; therefore, staff is still recommending disapproval since live entertainment could become a nuisance to adjacent properties.

Board Questions – Mr. Glover asked, if the Board disapproved the application, where the applicant would go in the city to open such a use. Mr. Emmons responded that for a restaurant - not a nightclub -, but a restaurant with live entertainment and dancing, if the location is more than a 100 feet away from a residential zone, they are allowed as an accessory use and principal permitted use in a B-1 zone. He stated that live entertainment and dancing is allowed in the B-3 zone as a principal permitted use.

Representation – Ms. Roses stated that if they are approved, they will install 5" of additional soundproofing in the building; along with extra steel and drywall. She said that they do serve food there and would be serving until after the bar closes. Ms. Roses said that they will hire security and ensure that customers do not use the rear door of the building unless it is an emergency. She advised the Board that between the subject property and the residential back yards, there is a wooden and wire fence that separates the properties.

Ms. Roses said that they were planning to open a Mexican restaurant with a bar and grill. She said that they are aware of other locations with live music and dancing until 2:30 a.m., that are less than 30 feet from the residential area, but she was unsure of the zone. She said that all they are asking for is a chance to prove that they can make it work. She said if they are approved, she suggested that they have a 6-month review to see how things are going.

Opposition – Mr. Richard Domek, who lives at 1725 Traveller Road, was present. He presented the Board with a petition signed by residents in the area opposing this request. He said that the residents are concerned about noise and disruptive conduct, especially disturbance to elderly residents. Mr. Domek requested that this be disapproved.

Board Questions – Mr. Glover asked, if the applicant was to soundproof the building, if this would satisfy the neighbors' concern about the sound problem. Mr. Domek replied that noise is just one factor that the neighbors are concerned about, and that he wasn't really sure if soundproofing would be sufficient. He said they were also concerned about the possibility of other negative behavior in the area due to the late hours of operation and the alcohol sales.

Mr. Griggs asked if the neighbors were able to hear noise from Camelot West. Mr. Domek responded that sometimes they can. He then said that they have also had persons climbing or crossing gates from the shopping center area at night.

Opposition – Ms. Peggy Henson, 11th District Council Member, said that she wanted to support the recommendation of staff. She then said that this process was in put in place for a reason; and this is an area that is family-oriented; and residents already have to deal with Camelot West, which is pre-existing. Ms. Henson said she, along with the residents; do not want any additional establishments with live entertainment and alcohol in the shopping area. She said she, too, would like to request disapproval.

Board Comment – Ms. Meyer wanted it to go on record that it might be a good idea for Council to revisit hours of operation for bars. Ms. Henson said that she will discuss with the Council and will enlist the help of the police department.

Opposition – Ms. Susan Griffin lives behind the shopping center (30 feet from the subject property). She noted that she is about 35-40 feet from Camelot West. Ms. Griffin said that she is awakened at all hours of the night by people in the alley (presumably from the Camelot establishment). She said that she has tried to talk to the managers at Camelot via phone; it stops for a day or two, and then starts again, and she actually had to call the police department. She said they will send a police cruiser through the alley for a while and then it stops.

Ms. Griffin said that she is also advocating for her elderly neighbors, who are in their 80s. She said that Mr. Domek was correct when he said that there are people crossing fences and cutting through yards during the night. She said they are very concerned about allowing another bar in the area; the neighborhood is deteriorating. Ms. Griffin said she would be glad to see a restaurant occupying empty storefronts; however, the concern is that residents with children will not want to move into an area with a lot of crime.

Applicant Rebuttal – Ms. Roses said that she understood the opposition's concerns. She said that she can assure that they will take security seriously; the rear doors will not be opened. She said they are willing to put extra money into soundproofing in order to help prevent disturbances. Ms. Roses said they will abide by all of the conditions placed by the Board; if approved.

Board Questions – Mr. Griggs asked the staff if, in a B-1 zone, they are allowed, by right, to open up a restaurant/bar and grill. Mr. Emmons responded affirmatively. Mr. Griggs then asked if they could open up a restaurant without live entertainment and dancing, with alcohol sales, until 2:30 a.m. Mr. Emmons again responded affirmatively.

Chairman Stumbo made the statement that the Board of Adjustment has ruled consistently on applications at this location, and cannot see how they could approve one at this point; given the staff's recommendation and the neighbors' concerns, he cannot personally support this. He then stated that if there were no other questions, he would entertain a motion.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Moore, and Forester absent) to **disapprove C-2014-52: LA CUEVA BAR & GRILL, LLC** - appeal for a conditional use permit to establish a restaurant, bar & grill with live entertainment and dancing in a Neighborhood Business (B-1) zone, at 1765 Alexandria Drive, based on the staff's recommendations.

G. **Administrative Review**

1. **A-2014-51: ANTONIO BOHORQUEZ-PEREZ** – an administrative appeal of the Division of Planning's interpretation that: 1) the requested use (providing space for private parties) is considered a banquet facility; or 2) if determined that it is a banquet facility, that it should be allowed in a Highway Service Business (B-3) zone, at 1816 Oxford Circle (Council District 11).

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

a. A banquet facility is a defined use that is not listed as a principal, accessory, or conditional use in the Highway Service Business (B-3) zone; therefore, it is not a permitted use in that zone. Furthermore, banquet facilities are listed as a permissible principal use in the Neighborhood Business (B-1) zone, thereby negating the "other uses substantially similar to those listed herein" language of Article 8-20(b).
b. The proposed use, rental of space for private parties, meets the definition of a "banquet facility" as defined in Article 1-11 of the Zoning Ordinance.
c. Other options are available to the applicant to gain approval of the proposed banquet facility, one of which is to obtain zone change for this property to a B-1 zone; and the other is to propose an amendment to the B-3 zone to list a banquet facility as a permissible use in the zone.

Representation – Mr. Antonio Bohorquez was present.

Staff Report – Mr. Emmons reported that this administrative appeal is of the Division of Planning's interpretation of the Zoning Ordinance, and it is a two-part appeal. The first part of the appeal is that; when the applicant came in to request a Zoning Compliance Permit, he described a use of where he would have space that was available to rent to private parties, which the staff interpreted as a banquet facility. The second part of this appeal is that staff determined that the banquet facility as a listed use, in the Zoning Ordinance is not one that is permitted in the B-3 zone. Mr. Griggs stated that on the staff report received by the Board, it says the subject property is zoned B-1. Mr. Emmons said that the subject property is zoned B-3. Mr. Griggs asked if the staff report was incorrect. Mr. Emmons stated that his staff report says B-3; and that he would confirm that it is zoned B-3. He noted that the shopping center itself does have some B-1 zoning, but the subject building is "the hole in the donut" and is zone B-3 within the shopping center. Mr. Emmons apologized for the error in the staff report, which was a reflection of the zoning for the remainder of the shopping center, rather than the "hole" as he had described it.

Mr. Emmons said that the staff has determined that the proposed use (a place to rent for parties), qualifies as a banquet facility, based on its definition in the Zoning Ordinance; also a banquet facility is not a principal permitted use, an accessory use, or a conditional use, in the B-3 zone. A banquet facility, as a defined term, is allowed in a B-1 zone, which then carries forward to a B-6P zone. Mr. Emmons noted that, as a part of the applicant's appeal, as with all parts of the Zoning Ordinance, under the uses that are listed, it states: "other uses substantially similar to those listed herein shall be deemed as permitted." Mr. Emmons then gave a brief history on how the definition of a banquet facility came to be in the Zoning Ordinance.

Mr. Emmons said that the staff is recommending disapproval of this use because: 1) regarding the first part of the administrative appeal, the staff sees no way that the proposed use does not qualify under the definition of a banquet facility; and 2) regarding the second part of the appeal, when it comes down to the other uses that are similar, the staff didn't feel that they could approve this use because when a use is specifically defined, and it specifically says what zones allow that use, it takes away the ability to make the judgment call of it being "substantially similar" to the other uses.

Board Questions – Mr. Griggs stated that the property is surrounded by B-1 zoning, which means that this hearing is basically talking about the technicalities of the Zoning Ordinance. He asked staff if, in their opinion, that it wouldn't cause any harm to have this facility operating at this location. Mr. Emmons said that at this location, if the property was zoned B-1, it would be a principal permitted use; however, as an interpretation of the Zoning Ordinance, any decision made today would be applied consistently in the future with other applications. Mr. Griggs asked if it would be a bad precedent. Mr. Emmons responded that it could be, but that would be up to the Board to decide.

Mr. Glover stated that he could not tell from the listing at the top of the staff report where other B-1 uses were located. Mr. Emmons then displayed the notice map on the overhead projector. Mr. Glover then said that the reason he was questioning this was because he looked at 8-20 and 8-16 in the Zoning Ordinance when looking at the application, and he didn't know why there was a difference between B-1 and B-3. Mr. Emmons responded that a B-3 zone is usually along arterials, more buffered from residences. He said that a B-1 zone usually is more central to neighborhoods. Mr. Glover said that his concern is that court could determine the decision to be arbitrary, and could therefore be legally unsupportable.

Mr. Glover then asked why part of the shopping center is zoned B-3. Mr. Emmons replied that an auto sales facility was proposed at some point in the past which was not allowed in B-1. Mr. Glover asked if a better course of action would be a zone change. Mr. Emmons responded that that could be one avenue available to the applicant and the property owner, but they would lose some allowable uses if it went back to B-1.

Representation – Mr. John Campbell, property owner and president of the business group that owns the building (Cardinal Valley owners, the Association), reported that the language of the Ordinance is confusing. He said that they are trying to avoid situations such as the other two cases in this hearing. He said that he could rent to a nightclub, but did not want the headaches associated with that. Mr. Campbell advised that the applicant just wants the facility to hold birthday parties, etc., and said that the Board could place any type of conditions on the property, review it in 6-months - there will be no problems associated with the use. He said that the tenants have been renting from him for about 2 years, as well as renting their residence and a storage area from him as well, and they are excellent tenants. Mr. Campbell said that the applicant would occupy an empty storefront; they have no opposition, and it would benefit the community.

Board Questions – Mr. Glover stated that he was sympathetic to Mr. Campbell's point of view, but did not want to make a decision in violation of the Zoning Ordinance. He said that he wasn't sure if the application could be changed to fit the Ordinance, or if another application should be made.

Mr. Griggs then stated that he didn't want to be involved in something that is precedent-setting that has bad effects across the community. He wondered if it were possible to change the definition of the facility to fit the zoning regulations. Mr. Campbell said that the half of the building that they want to use for the parties is vacant most of the time. They would only have parties on weekends, and not every weekend, at that. He said they could use it mainly for storage for the retail business in the other half of the building.

Mr. Griggs then suggested that this application could possibly be continued to work out more details. Chairman Stumbo asked, if this application were denied, if they would have to wait a year before they could appeal again. Mr. Emmons responded that if the Board of Adjustment wanted to continue this for 30 days, they could. If the Board of Adjustment decided that the use is substantially similar to a permitted use, they could do that as well.

Mr. Campbell asked if they could ask for a continuance, and the applicant could possibly come up with a different plan. Mr. Emmons replied that staff would be willing to work with the applicant. He said that they do not want to create a future zoning enforcement problem. Mr. Glover said that, after consulting with legal counsel, it was his opinion that this particular location, being surrounded by B-1 zoned properties, makes it unique. He then said that he believed that the Board could approve this application, based on the unique circumstance of the property.

Ms. Meyer asked, if the applicant was to redo his business plan, if he could/would withdraw this appeal and file a new application. In response, Mr. Emmons said that it would be more appropriate to continue the hearing, then withdraw, if necessary; prior to the next hearing. Mr. Campbell called Council Member Peggy Henson to the podium at this time. Ms. Henson said that the property was formerly a car dealership, which may explain the uniqueness. She noted that this area is in the process of going through a Small Area Plan, and they will be considering/looking at land uses; so some of this may be cleared up. Ms. Henson opined that this is an appropriate use for the proposed request, but it is unfortunate that it is zoned B-3. At this time, Mr. Marx said that he thought the context of the B-1 text amendment is important; that text amendment was focused on the B-1 zone, and there was no comprehensive review to determine which zones should have banquet facilities. He then said he wouldn't call it an oversight, but that the B-3 zone was not considered.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously (Moore, and Forester absent) to **disapprove** **A-2014-51: ANTONIO BOHORQUEZ-PEREZ** – the first portion of the applicant's appeal, that the proposed use does not meet the definition of a banquet facility; agreeing with the staff recommendation for disapproval; adopting finding "B" only from the staff report and agenda; and to **approve** the second portion of the applicant's appeal, finding: 1) that a banquet facility is substantially similar to other principal permitted uses in the B-3 zone at this location, which is a piece of property surrounded by B-1 properties; primarily a restaurant, with live entertainment, nightclub/cocktail lounge, which is found in Article 8-20 (B-3); and hereby authorize the Division of Planning to issue a Zoning Compliance Permit for the use of a banquet facility in the B-3 zone at this location, and this location being the one surrounded by the B-1 properties.

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

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

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be August 22, 2014.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 4:29 p.m.

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Barry Stumbo, Chair

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James Griggs, Secretary