

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

January 30, 2015

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, January 30, 2015. Members present were Chairman, Barry Stumbo; Kathryn Moore; James Griggs; Janice Meyer; Joan Whitman; Larry Forester and Thomas Glover. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; Tracy Jones and Andrea Brown, Department of Law. Staff members in attendance were: Barbara Rackers, Jimmy Emmons, and Tammye McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the December 12, 2014 meeting would be considered at this time.

Action – A motion was made by Ms. Meyer, seconded by Mr. Forester, and carried unanimously to **approve** the minutes of the December 12, 2014 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

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 to several in the audience.

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

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

Staff Comments – Mr. Emmons said that he believed that there was at least one postponement from the audience and was unaware if there were any more.

- a. **A-2015-6: SIGNTRONIX** - an administrative appeal of the issuance of a Notice of Violation concerning signage in a Wholesale and Warehouse Business (B-4) zone, at 875 South Broadway (Council District 11).

Representation – Mr. Seth McNeal, representing the applicant, said that he would like to request a postponement for this application due to that fact that he has a lawyer who is working on this case; it seemed unclear as to the way the code is written, and this allows him to have a little more time to work on some things.

Staff Comments – Mr. Emmons stated that this particular case was a result of a Zoning Enforcement action, and he believed that Mr. Marx wished to say something about the request for postponement.

Mr. Marx said that this appeal relates to a notice of violation that was issued on December 4, 2014. He said that Zoning Enforcement has several Zoning Enforcement cases that are on hold, pending the results of this appeal. If the Board chose to postpone the case, Zoning Enforcement would be okay with that; but he would be much more comfortable, given what is at stake with other cases, to go ahead and hear this appeal.

Chairman Stumbo asked the Board if they had any questions of the applicant or Mr. Marx.

Mr. Griggs asked if there were other similar cases to this that depend on this outcome. Mr. Marx responded affirmatively.

Chairman Stumbo then asked if the Board needed to vote on whether or not to postpone this appeal. Mr. Emmons responded affirmatively.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 6-1 (Meyer opposed) to **postpone A-2015-6: SIGNTRONIX** for 30 days, to the February 27, 2014 meeting.

- b. **V-2015-5: BIG BLUE RENTALS, LLC.** – appeals for a variance to reduce the required front setback from 20 feet to 5 feet in order to install parking and drive aisles in a Planned Neighborhood Residential (R-3) zone, at 178 Leader Avenue (Council District 3).

Representation – Ms. Abbie Jones, engineer for the appellant, said that her client would like to request a 30 day postponement since the comments from staff have necessitated a need for re-design of the parking lot project, and they are still working with staff on. She said they needed a little more time to come up with a new design.

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester and carried unanimously to **postpone V-**

2015-5: BIG BLUE RENTALS, LLC for 30 days to the February 27, 2014 meeting.

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

- B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2015-7: DB HOMES, LLC** - appeals for a variance to reduce the required side yard from 25 feet to 22 feet to construct a new residence in an Agricultural Rural (A-R) zone, at 3821 Winchester Road (Council District 12).

The Staff Recommends: Approval of the requested variance, for the following reasons:

- a. Granting the requested variance 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. The owners of the subject property foresee the need for a family member to utilize a wheelchair; therefore, a single-story floor plan without steps will be very advantageous for them and will provide handicap accommodation.
- c. The size and frontage of the lot do not conform to the requirements of the A-R zone; and this status is a unique circumstance about the applicant's property, when compared to the majority of properties located in the A-R zone.
- d. The size and frontage of the lot are the result of the original platting, prior to the enactment of the current Zoning Ordinance requirements, and are not the result of any action taken by the applicant.
- e. Strict application of the Zoning Ordinance would deprive the applicant of the reasonable use of the property by disallowing the construction of a residence adequate for their changing mobility and health care needs.

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

1. All necessary permits and/or approvals shall be obtained from the Division of Building Inspection and the Fayette County Health Department, in the event a septic system is required for the new dwelling.
2. The proposed residence shall be constructed in accordance with the submitted application and site plan.

Representation – Mr. Drew Brester, with DB Homes, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Citizen Comment – There were no citizens present to discuss this proposal.

Action – A motion was made by Ms. Moore, seconded by Ms. Whitman and carried unanimously to **approve V-2015-7: DB HOMES, LLC** – an appeal for a variance to reduce the required side yard from 25 feet to 22 feet to construct a new residence in an Agricultural Rural (A-R) zone, at 3821 Winchester Road, for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

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

1. **CV-2014-75: REMNANT COMMUNITY CHURCH** – appeals for a conditional use permit to establish a church; and a variance to eliminate the perimeter landscaping requirement in a Wholesale and Warehouse Business (B-4) zone, at 1125 Commercial Drive (Council District 5).

The Staff Recommends: Approval of the Conditional Use, for the following reasons:

- a. Granting the requested conditional use for a church should not adversely affect the subject or surrounding properties. Parking will be adequately addressed, both on site and through the use of parking agreements with nearby property owners. The expected hours of operation of this church will likely be during the hours that most of the adjacent businesses are closed.
- b. All necessary public facilities and services are available and adequate for the proposed church.

The Staff Recommends: Approval of the landscape variance, for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare. It will not alter the character of the vicinity or cause a nuisance to the public, since most other properties in this area have a similar lack of landscaping.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since the required landscape areas are minor in scope and would likely be very difficult to install and maintain. The fact that the adjacent properties have installed service and loading areas directly adjacent to the subject property (which means that installation of the required landscaping may impede their operations) is a unique circumstance to this property.
- c. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant (and potentially the neighboring properties), as this would be the only property on the north side of Commercial Drive that has installed the required perimeter landscaping, which would likely hinder vehicular circulation.
- d. The requested variance is not the result of a willful violation of the Zoning Ordinance, as the subject property was originally developed prior to the adoption of the current Zoning Ordinance, particularly Article 18-2(c), which now requires that landscaping of parking areas be brought into compliance with a change of use.
- e. The variance is not a result of the applicant's actions, as the building and parking areas have existed in their current state for decades.

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 Planning and Building Inspection, prior to use of the property as a church.
3. An executed parking agreement (in conjunction with the on-site parking) will be submitted that will meet the minimum required number of parking spaces (18 at this time) prior to the issuance of a Zoning Compliance Permit.

Representation – Mr. Josh Brown, representing the appellant, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Citizen Comment – There were no citizens present to discuss this proposal.

Action – A motion was made by Ms. Meyer, seconded by Mr. Forester and carried unanimously to **approve CV-2014-75: REMNANT COMMUNITY CHURCH** – an appeal for a conditional use permit to establish a church; and a variance to eliminate the perimeter landscaping requirement in a Wholesale and Warehouse Business (B-4) zone, at 1125 Commercial Drive, as recommended by the staff and subject to the three conditions outlined by the staff.

2. **C-2015-3: SIKH ASSOCIATION OF BLUEGRASS, INC.** – appeals for a conditional use permit to occupy the property for religious use purposes in Single Family Residential (R-1B) and Agricultural Rural (A-R) zones, at 257-259 Swigert Avenue (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Churches, Sunday schools and places of religious assembly are permitted as conditional uses in the Agricultural Rural (A-R) zone and the Single Family Residential (R-1B) zone with Board of Adjustment approval.
- b. Granting the requested conditional use permit should not adversely affect the subject property or surrounding properties, since the existing facilities will be used. It will not affect the on-site parking, which currently complies with the requirements of Article 16 & Article 18 of the Zoning Ordinance. No new structures are proposed that would affect storm water drainage on the property, and other facilities are available and adequate.

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

1. That this religious assembly use be operated in accordance with the submitted application and site plan.
2. That all necessary permits, including but not limited to a Zoning Compliance Permit and Certificate of Occupancy, be obtained from the Divisions of Planning and Building Inspection prior to occupancy and use of the facilities.
3. That the existing septic system be approved by the Fayette County Health Department for its adequacy to serve the proposed use; and that any maintenance or upgrades, as recommended by the Health Department, be made as needed.
4. That there be no parking on Swigert Avenue. Should additional parking be necessary, an amended conditional use permit may be requested by the applicant to expand the available on-site parking.

5. That any outdoor lighting be directed away from adjoining properties.
6. That signage comply with Article 17 of the Zoning Ordinance.
7. That should appellant cease to occupy the subject property, the conditional use permit shall become null and void.

Representation – Mr. John Rompf, on behalf of the appellant was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comment – There were no citizens present to discuss this proposal.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs and carried unanimously to **approve C-2015-3: SIKH ASSOCIATION OF BLUEGRASS, INC.** – an appeal for a conditional use permit to occupy the property for religious use purposes in Single Family Residential (R-1B) and Agricultural Rural (A-R) zones, at 257-259 Swigert Avenue, for the reasons recommended by the staff and subject to the seven conditions recommended by the staff.

4. **C-2015-4: TURNING POINT CHURCH** - appeals for a conditional use permit to expand an existing use church use in a Light Industrial (I-1) zone, at 133 Trade Street (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the request to expand the existing conditional use permit will not adversely affect the subject or surrounding properties. No new construction will be required, and there is little likelihood of church activities disturbing the surrounding commercial and warehouse uses. Adequate off-street parking is available at convenient locations on the property.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The church shall operate according to the submitted application and site plan. If further expansion is needed or desired, it will require Board of Adjustment approval.
2. Church services and other regularly scheduled activities shall be held at times that do not overlap with the times that the other occupants of the building are operating their respective businesses.

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

Citizen Comment – There were no citizens present to discuss this proposal.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously to **approve C-2015-4: TURNING POINT CHURCH** – an appeal for a conditional use permit to expand an existing use church use in a Light Industrial (I-1) zone, at 133 Trade Street, for the reasons stated by staff and subject to the two conditions listed.

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

1. **C-2015-2: MAHMOUD SHALASH/ISLAMIC CENTER OF LEXINGTON** – appeals for a conditional use permit to construct a place of worship, in an Agricultural Urban (A-U) zone, at 1240 Armstrong Mill Road (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use for a religious assembly use should not adversely affect the subject or surrounding properties. Parking should be adequate for the proposed use, with provisions to provide additional parking, if necessary, and plenty of room exists for storm water drainage improvements to be built. Existing trees and landscape buffers can be maintained, and much more than ½ of this site will be maintained in open space.
- b. All necessary public facilities and services are available and adequate for the proposed church.

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

1. The property shall be developed and operated in accordance with the submitted application and site plan, except where changes are required by the Board.
2. All necessary permits, including but not limited to a Zoning Compliance Permit, Grading Permits and Building Permits, shall be obtained by the applicant from the Divisions of Planning and Engineering prior to any construction on the property.
3. A Certificate of Occupancy shall be obtained by the applicant from the Division of Building Inspection prior to occupancy of any of the structures.
4. The site plan shall be modified to eliminate a connection to Merman Drive and relocate access to a point near the existing driveway, with the final design of the turn lane and access improvements to Armstrong Mill Road

- to be approved by the Division of Traffic Engineering, as necessary.
5. All lighting shall be shielded, utilizing a shoebox or similar design, such that the light is directed away from any adjoining property line.
 6. Storm water management facilities shall be designed in accordance with the Engineering Manuals, with a minimum of an additional 10% capacity, subject to approval or acceptance by the Division of Engineering.
 7. The parking areas shall be installed and maintained per Article 16 of the Zoning Ordinance.
 8. Landscaping shall conform, at a minimum, to the requirements of Article 18 of the Zoning Ordinance.
 9. Perimeter trees (within 15 feet of the property boundary) shall be protected and maintained, unless recommended for removal by the Urban Forester due to safety or other concerns. If a perimeter tree is removed for any reason, it shall be replaced with a comparable tree, as outlined in Article 26-5(e)(2).
 10. All signage for this use shall comply with Article 17 of the Zoning Ordinance.

Representation – Mr. Chris McCoy, McCoy Architects, was present on behalf of the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Chair Comment – Chairman Stumbo stated that, due to the volume of supporters and opposers, he asked that there be a limit for the staff, the applicant, and Traffic Engineering, to a 15-minute presentation; and 5 minutes for each speaker. However, the Board did not want to deny anyone wanting to speak on this matter. He said he would ask anyone to stand down if there is any repetition of comments.

Chairman Stumbo stated that this application is not about religious beliefs. Religious beliefs are irrelevant; and if any comment to that effect is mentioned, those persons would be asked to step down; he wanted to stick with the merits of the case.

Staff Report – Mr. Emmons noted that additional copies of the staff report for this case were on the table in the rear of the Council Chamber if anyone in the audience was interested. He also said the staff had prepared a handout with four options for this case, if approved, that he would be referring to throughout his presentation. Mr. Emmons also presented several exhibits that he said he would be going over, as well as his staff report. He said that several letters had been received by the staff: one in support and eleven in opposition.

Mr. Emmons then presented a PowerPoint presentation for this case, highlighting the following:

1. Site plan options - option A was the originally filed site plan; however, on September 26, 2014, the applicant filed a revised site plan that mirrors the recommendations in staff option D.
2. Zoning
3. Contours
4. Site photos
5. Combined site plan with aerial photo
6. Storm water - applicant is proposing a detention basin. The staff has recommended, and the applicant has agreed, to provide an additional 10% storm water capacity over what their site produces.

Mr. Emmons said that the use that is being proposed for the over 9-acre site is an appropriate use. This use would be about 33,000 square - feet total, with about a 14,000 square-foot footprint. He said that the religious uses would be on the first floor of the 14,000 square – feet, with a gymnasium on the second floor; and the third floor would be a mezzanine walking track around the top of the gymnasium. This site could adequately handle that and the stormwater; the trees that are on the site can be preserved.

Mr. Emmons said that how the traffic would be handled became the number one issue with the staff in reviewing this application. He said that, in this particular instance, the staff found that there were multiple options, which he presented.

Mr. Emmons then discussed the tree on the property that was mentioned in the staff report. The original site plan would have destroyed the tree. He said that the Urban Forester had come out to take a look at it and determined that the tree was a 300+ year old Burr Oak; it is very healthy; it has a good life span, and he recommended that it be protected. Mr. Emmons said, with the recommendation of the Urban Forester, that the staff is recommending option D – “Burr Oak Revision” in order to save the tree.

At this time, Ms. Kaucher said that from Traffic Engineering’s standpoint, they differ with Planning staff on the access; there is a concern with the spacing of that access point to the adjacent signal at Appian Way, as well as the minimum sight distance at that location. Ms. Kaucher opined that the site could function as the applicant has applied for it; however, Traffic Engineering would prefer that traffic access come from the local street instead of the minor arterial, which is Armstrong Mill. Ms Kaucher said that Traffic Engineering also favors connecting streets. The two streets, Accord Drive and Merman Drive, are local streets: and they would support

connection of those streets. She said that with the proposed site plans, that would be prevented; so Traffic Engineering's option would be to eliminate the Armstrong Mill access, and then to connect the local streets and the applicant's site plan shows access to one of those local streets. Then they would feed onto the collector Appian Way, and out to the signal at Armstrong Mill Road.

Board Questions – Mr. Griggs said that there appeared to be a lot of right-of-way on Armstrong Mill Road, and asked what the "forecast" was for widening that street. Ms. Kaucher responded that she believed that it is not anywhere in the near future. She said that Mr. Emmons and she have discussed that, and Mr. Emmons had said that he had seen it on a six-year plan, but that she didn't think that it would be any time in the near future. Mr. Griggs then asked if having the church at the proposed location would change the priority of widening the road. Ms. Kaucher said that she didn't believe so. Mr. Griggs asked what sets the priority for widening the road if it is not additional traffic. Ms. Kaucher said that Traffic Engineering looks at it on a collision basis; and usually when the funds are allocated, Traffic Engineering will prioritize the roadways. Since it is currently not on a list, she did not see it being in the near future. Mr. Griggs asked if she was saying that it is not based on traffic count, but on collisions. Ms. Kaucher said that she was saying that it was based on both; but if it is currently not on the radar for improvement, then it is not going to be in the near future.

Mr. Glover said that he agreed with part of what Traffic Engineering said, but asked why staff is recommending not having traffic access from Merman Drive. Mr. Emmons responded that, as the staff looked at the subject property, they believed that it would create an unnecessary cut-through through the property; a cut-through of the neighborhoods and going through the private development of the church parking lot. He said that it is not often that the Division of Planning recommends that streets not be connected; but in this situation, after looking at all the options, option D, with the "Burr Oak Revision" provided the best level of balance. Mr. Glover then asked how many cars would be allotted for in the parking area. Mr. Emmons responded that there are about 200 parking spaces, with the ability to add 140 more if the need should arise.

Mr. Glover then said, on the other side of Armstrong Mill Road, there is a road called Caulder Road, and asked if that road ran through Armstrong Mill Road or just T'd into it. Mr. Emmons said that he believed it T's into Armstrong Mill Road. At this time there was some discussion on the traffic that would be coming and going and what road improvements would be required.

Mr. Emmons said that he wanted to state for the record that the Divisions of Planning and Traffic Engineering are not at odds; they just came to different recommendations. Traffic Engineering's recommendations would be best summed up in options B and C, and the Division of Planning's recommendation is in option D; however, any of the three options would be viable options if the Board wished to approve this request; each one has its own benefits and consequences.

Ms. Moore asked if Traffic Engineering was concerned about safety if the Board was to go with option D. Ms. Kaucher replied that is why Traffic Engineering chose options B and C, because the safety concern is the sight distance. She said that if they went with option D, she believed that in the right-of-way of Armstrong Mill Road there are brush and trees that would definitely have to be removed to open up those sight lines and improve it. Ms. Moore then asked if the brush is on the proposed property, where they would be able to remove it. Ms. Kaucher said that it is on the adjacent property, but is questionable if it is in the right-of-way or on the adjacent property.

Opposition – Mr. Mark Jeffers, who lives at 1564 Thames Drive, is an officer with the River Park Neighborhood Association. He provided gave a PowerPoint presentation on the overhead projector with regard to the entrance on Armstrong Mill and Accord Drive. Mr. Jeffers said that Mr. Emmons did not address the fact that the applicant does intend to expand; to build a second larger building in front of the first building, which is where he believed that the additional potential 140 parking spaces comes into play.

Mr. Jeffers said that the line of sight is an issue. He said that a recent study was done on January 24th and 25th, and they found that most of the traffic on Armstrong Mill Road does not observe the speed limit. Mr. Jeffers went into some discussion of the different blind spots and traffic issues that this proposed use could bring.

Mr. Jeffers said that their other big concern is drainage and runoff. He said there is a major drainage problem at the basin of the backside of Tatesbrooke Drive and the lower side of Millcreek Elementary. He said when there is a big rain; it is a like drainage from a football field running through that area. It is an existing problem that has not been resolved. They have spoken with several different agencies and no one seems to have tried to resolve this issue. He said that they have even had Councilman Meyer stand on the back porch and observe, so he knows that it exists.

Ms. Kausha Miller, who lives at 1251 Merman Drive, said she was speaking for the River Park Neighborhood Association. She said that for the record, the neighborhood association did not receive option B of this proposal where they were connecting Merman Drive to Accord Drive. She said they only received option D (before the Burr Oak revision). Ms. Miller said that when they are making their arguments, they are not supporting any proposal; they are opposing all of them. She said that they do not want Merman Drive connected; they do not want the access to Armstrong Mill Road; they do not want the facility on any of the proposals.

Ms. Miller said that the other issue she wanted to review was going back to the Urban County Government 2013 Comprehensive Plan; Theme A of the Comprehensive Plan talks specifically about growing successful neighborhoods; expanding housing; supporting infill as a strategic component of growth; providing well designed neighborhoods and communities as a basis for strategic growth. She said that this proposal does not do any of those.

Ms. Miller said that the subject property is one of the last infill areas in the neighborhood. She said the neighborhood has been around for a long time; it has older homes; it is one of the last areas where they actually have an opportunity to put something in that would help revitalize and stabilize the neighborhood. Ms. Miller then listed a few things that could work for the subject property, such as: Veterans' residences (a nationwide need); a community farmer's market/community garden – that would help access the food issues that they have in the neighborhood; and even affordable single-family residences would be beneficial. All of these would be revenue positive, would produce less vehicular traffic, would have less impact on drainage issues, and all would be a better fit for the neighborhood.

Ms. Miller said that the neighborhood has one and two-story residences; most of them have a square-foot footprint of about a thousand feet. They are older homes and they are a low to mid-income residential area; it is a very dense neighborhood. She said that they have the entire Bates Creek school hub in the area, plus the Millcreek Elementary School that surrounds the entire infill property. She said that there is a one-story veterinary clinic and a one-story childcare center. There is a two-lane road at Armstrong Mill Road (with no plans of expanding in the near future); and Appian Way is a two-lane road. Ms. Miller said with a proposal such as this, she would have expected to see it in places with major thoroughfares, major arterials that could handle the traffic load - areas that already have large structures surrounding them would be perfect. She said this request is being proposed on a minor arterial in an already existing neighborhood.

Ms. Miller concluded with more discussion on the Comprehensive Plan, noting that this proposal is not a fit for the neighborhood.

Mr. Charles Payne, who lives at 1528 Bal Harbor Court, and is president of the River Park Neighborhood Association, said that he wanted to speak a little bit about the historical data. He said that this neighborhood goes all the way back to the 1960s when Mr. Gregg first built in the neighborhood. He said historically, based on the information that the Division of Planning has published; it has always been the intention of Zoning and Planning that the neighborhood be developed as a residential community. He said that he could not find anywhere within the last 50 years of data that he was able to bring to light, anything that would indicate the proposed use of scale or magnitude for that area. Mr. Payne then presented a petition to the Board with 279 signatures, and then he read the petition aloud.

Mr. Miller then said that, in the 2007 Comprehensive Plan, Zoning's recommendation was that the subject area be developed as residential, to stay consistent with the surrounding developments. He then said that if a decision has to be made on this proposal, their recommendation would be for the Board to deny the appeal for a conditional use for this specific purpose, and for any other purpose that falls under a conditional use based on their petition.

Representation – Mr. McCoy said that they did not have a lot of people at this hearing in support for a couple of reasons: 1) they do not want to be repetitive to what others have already mentioned; and 2) the meeting time for the Mosque is Fridays at 1:30; so a lot of people could not be at the hearing at this time due to religious purposes. He said that he wanted to allow those in support to speak first, and then he would return to the podium and go over some points.

Supporter Comments – Mr. Jamie Schrader, with Schrader Commercial Properties, said that they are the listing agent who has been marketing the subject property since October 2013. He said that he wanted to speak their efforts to market the property and the types of interest that were expressed in the property. He said whenever they market property that is suitable for development purposes; one of the key issues is what the highest and best use for the property is. Mr. Schrader said that even if someone has a particular use in mind, if there is not a ready, willing and able buyer that wants to employ the property for that use, there is no market for that. The second thing they want to look at is, if the use is appropriate. He said when they started marketing the property no one called him and expressed any interest in buying the property to use for a single-family home in this

particular area. He said that they initially contacted the Fayette County Public Schools to see if they would be interested in expanding or adding a new school there; they had no interest in the property for their purposes. He said that the idea of a retail use there would probably be (in his opinion) more problematic from a traffic standpoint and worse for the surrounding neighbors than the proposed use, and also problematic related to the Comprehensive Plan that was previously discussed during this hearing. Mr. Schrader said that there have been no calls from a farmer's market that has expressed an interest in buying the property; so the market has determined that the use for this property is primarily for a worship center. He said that they did have some people that expressed a possible interest, but not enough to make an offer and follow through with it, for some type of medium density residential or townhouse units.

Mr. Schrader then discussed the general area from Bates Creek Road to Armstrong Mill Road. He said that there is a precedent for what is being proposed; starting on Bates Creek Road, there are two worship centers on the corner of Bates Creek and Armstrong Mill Road; Fox and Hound Condominiums in is between there; there is a worship center at Greentree and Armstrong Mill Road; and then a worship center at Armstrong Mill Road and Man O'War.

Mr. Schrader said that they would be happy to sell the property for any number of uses if it was economically viable and someone called them and said that is why they wanted to use the property.

Mr. Tim Gregg, who lives at 1240 Armstrong Mill Road, said that his family has lived in the neighborhood for 60 years. Mr. Gregg said that his parents bought 20 acres there in 1953. Mr. Gregg's father, over about 50 years, planted all the ornamental trees on that property. He stated that his parents watched over the years as all the surrounding farms were picked off by developers and turned into streets and houses. His parents turned down many opportunities to sell their property because they wanted to live there, as it was, until they day they died; and they did. He also stated that his parents said many times over the years that the best use of their property would be a school or a church. Mr. Gregg said that he moved back into his parents' home about 5 years ago and started looking for buyers- preferably buyers who would not just fill it up with more streets and more houses. He said now there is a buyer who has a plan for minimal use impact, acres of greenspace, and saves his dad's trees. Mr. Gregg said he thought this was a good plan and hoped that the Board would vote to approve this use.

Representation – Mr. McCoy said that this facility is really needed for the Muslim community, in particular, who live near by. They have been looking for a long time for property that would fill their need. He said there are a couple of other Mosques in town; they are run by different organizations, but all of them are at capacity, or need more capacity. Mr. McCoy said that the one thing that does not exist in this town for the Muslim community is a recreational facility. He also said that this project stems for the need of more prayer space, and the recreational facility gives them a place to have dinners, and banquets, play basketball, and to exercise.

Mr. McCoy said that the building would have a target capacity of 300 people, but that it would not look like what was presented on the photo on the overhead. The majority of the building would be located on the ground level, and the bulk of the ground level would be a multi-purpose banquet hall. Mr. McCoy discussed the structure of the proposed building, noting that it will be built on a slope, and only two stories would be visible from Armstrong Mill Road, which would generally be the height of any gymnasium. He said that there are no plans to build a large building in the front; however, it is being preserved in the event that a larger facility is needed in the future. Mr. McCoy said that they do want to preserve the house on Armstrong Mill Road; it is a perfectly good house and has a very nice garage; they can accommodate their use on the interior of the property.

He said since they have applied, they met with the Neighborhood Association on January 13, 2014. A couple of things came up, such as cross traffic and the preservation of mature trees; and they have adjusted their plan accordingly to help accommodate that. He said they have not had any follow-up correspondence from the neighborhood, but they have reached out to them a couple of times to make sure they have seen the plans.

Mr. McCoy then discussed when traffic would occur. He said that services are always on Friday at 1:30 (1:15 at the earliest). He said the services are usually done by 2:00 (2:15 to be safe), and usually everyone is gone by 2:30. Mr. McCoy said that there is anticipated usage on the weekends; it is a community center (basketball games, banquets, weddings, dinners, etc.). He said the most traffic that would be is during weekly congregational prayer, when people arrive en masse (during work hours and before the kids get out of school). He said there is one time of year for about a month, that there is increased use in the evenings for a religious festival, even during that time the building will likely not be at capacity; however, it may be.

Mr. McCoy said that they do not agree with option B because it bisects the property. He then discussed the different options and their alternatives of entry and exit from the property. Mr. McCoy also spoke on the

detention basin and answered questions, one of which was if they planned to have a cemetery, which he said they did not.

Mr. McCoy then spoke on the sidewalk options for the property. He said that they would prefer for the sidewalk to run along Armstrong Mill Road rather than across the middle of their property, but Armstrong Mill is not improved. There are no sidewalks now, and they would be supportive of that. Therefore, they accept the Division of Planning's recommendation to have sidewalks to connect Merman Drive if that is important for the city planning. It is not their choice, but they certainly see the need and are trying to be responsive to that.

Board Questions and Comments – Ms. Meyer said that in the discussion with the people in the neighborhood, she asked if the applicant had talked about the neighbors' possible use of the facility- i.e., to take advantage of the walking track that might be there. Mr. McCoy said that their conversations with the neighborhood had been mostly one-way. They were at the neighborhood association meeting, and they presented the plan and took some questions; but that did not come up in the course of those questions. He said that they are receptive to that; the proposed facility's model is like any other religious facility, and anyone is welcome to come to the facility to exercise. He said it would be tailored to suit the applicant's needs; the intent is to be an open community center.

Ms. Meyer then asked if Mr. McCoy had any conceptual drawings that people could see how it would look on the property. Mr. McCoy said that they did not have anything to present, but gave a description as to how it would look.

Mr. Glover then asked if the applicant was in agreement with the site plan (option D) that is under consideration. Mr. McCoy responded that they were; however, as mentioned, this was their first time seeing option D, where the staff had drawn the red lines to where it goes through the garage. He said that they went out and field measured the tree (where the staff used the Urban Forester); but their intention is the same, which is to save the tree. He said that the real question was whether to shift the garage or not; they would like to preserve the garage if they could- but it is not a deal breaker. They would like to keep the house and the garage the way they are, but they absolutely want to avoid the tree.

Opposition Rebuttal – Ms. Diana Rast, president of the Gainesway Neighborhood Association, said that they have collaborated with regard to River Park with the Small Area Plan and with this particular issue, and they would like to lend their support to River Park in terms of the application. She said they agree with the River Park neighborhood that this is not a good fit for the neighborhood, and they beg the Board's favorable consideration.

Ms. Miller returned to the podium and stated that she would like to address the issue of the time of services, where the applicant had stated that services should end by 2:15; and, in theory, most people should be off the property by 2:30. They have concerns about vehicles and safety, with the two elementary schools that adjoin the subject property, and the fact that the schools let out at 2:35.

She then noted that the concept of 33 homes came from the fact that the average square-foot footprint of a residential house is 1,000 square feet; and this is a 14,000 square-foot footprint, in a 33,000 square-foot structure. That is where the numbers came from when they were talking about possible infill. They were talking about single-family residential, not medium density residences as a preference, and no one in living in the neighborhood or living in the community has any profit or money at stake with the proposal.

Board Questions and Comments - Mr. Griggs asked if the speed limit was 45 on Armstrong Mill Road. Ms. Kaucher said that the speed limit is actually 35. Mr. Griggs commented that the sight distance wouldn't be as bad at 35 as it would be at 45, with which Ms. Kaucher agreed. Mr. Griggs then asked about the sight obstructions with the brush. He asked if there is enough room for them to put a right turn lane in the right-of-way that exists. It was his opinion that if the City would cut back the brush to the right-of-way line, and there is enough room for a turn lane, there would be plenty of room to see all the way down that road. Mr. Griggs said that he didn't see how brush on the property would affect sight distances. Ms. Kaucher responded that the turn lane would be the signalized intersection at Appian Way, and the brush that she referred to was on the opposite side of the proposed entrance. At this time, there was more discussion on the right-of-way and the brush (plant material).

Mr. Griggs then said that he wasn't quite sure how the detention basin worked, and asked if one could have so much water that it becomes functionless. Mr. Saylor replied that it depends on how the basin is designed and explained how detention basins are designed and how they work.

Mr. Glover said that he wanted to echo some of the concerns of others who have spoken at this hearing with

regard to the road. He asked how Armstrong Mill is classified to which, Ms. Kaucher replied that it is classified as a minor arterial road. Mr. Glover opined that it is misclassified. He said that he thought it was a major arterial, and it is long overdue for improvements- both in width (horizontally) and vertically (with regard to hills/vertical curves). Mr. Glover said that he would like to recommend that Traffic Engineering take a good look at Armstrong Mill Road- put it in their sights and their future plan because it is an area in need of modern planning.

Citizen Comment – Mr. Brian Schlepke, a resident of the area for 23 years, said that when this all started, he contacted the Division of Traffic Engineering and got the Kentucky Transportation Cabinet figures from a 2012 study, which was based on a total of over 3 million cars. He said that they asked and had a traffic study done on January 29, 2015, and would like it submitted for the record.

Action – A motion was made by Mr. Glover, Mr. Griggs agreed and seconded the motion, which carried 6-1 (Meyer opposed) to **approve C-2015-2: MAHMOUD SHALASH/ISLAMIC CENTER OF LEXINGTON** – an appeal for a conditional use permit to construct a place of worship, in an Agricultural Urban (A-U) zone, at 1240 Armstrong Mill Road, for the reasons cited by the staff and the applicant and subject to the ten conditions listed in the staff report. Mr. Glover said that the cite plan that the Board is approving is not D; it is the modification of D (with the Burr Oak Revision) that is under consideration.

Note: Chairman Stumbo declared a brief recess at 3:20 p.m. The meeting reconvened at 3:29 p.m. with the same members in attendance.

E. Administrative Reviews

1. **A-2015-1: OLYMPIC CONSTRUCTION, LLC.** – an administrative appeal to change two legal non-conforming uses (grocery and auto repair) to two new non-conforming uses (animal adoption/rescue and a truck terminal) in the Agricultural Rural (A-R) zone, at 7957 Old Richmond Road (Council District 12).

The Staff Recommends: Disapproval, for the following reasons:

1. Although there is a record of a grocery store and a “garage” as having been legal non-conforming uses on this property, it is questionable whether these non-conforming uses were discontinued and/or abandoned since 2004. As such, the legal non-conforming use of this property may have been lost, and the basis for this appeal would become null & void. The applicant has not provided enough information to determine the history of use of the property such that there are valid legal non-conforming uses that meet the criteria of Articles 4-3(c) and 4-3(e) of the Zoning Ordinance.
2. Even if a clear history of legal non-conforming uses that meets the above requirement is established, the proposed use of a truck terminal on the subject property is inappropriate for the following reasons:
 - a. The proposed truck terminal involves an expansion of the scope of operation on the subject property. In particular, the paved and gravel parking areas, which were once considered accessory (i.e., ancillary) to the grocery store, have become the land area primarily involved with the new use of the truck terminal.
 - b. The truck terminal use is integrally related to the use of the illegal junk yard on the subject property, which the applicant has been required to cease. Furthermore, the junk yard use has not been requested and is not a part of this appeal.
 - c. Because of a noted sinkhole on the subject property, a truck terminal use (especially for the loading and unloading of damaged vehicles) is an inappropriate use of the property because it could introduce a direct conduit for possible groundwater contamination from vehicle fluids.
3. Although of less concern than the truck terminal request, not enough information has been provided to approve the animal rescue mission. There is not a clear history of legal non-conforming uses on the property over the past decade; and based on the few facts that we have, the rescue mission may be more similar to a “commercial kennel” as defined in the Zoning Ordinance, which is first permitted in a more intense zone than a retail grocery would be.

Board Comment – At this time, Mr. Forester announced that he would need to recuse himself from this case due to a conflict of interest. Chairman Stumbo noted that the Board has been asked to fill out and sign a conflict of interest form for the record when a member needs to recuse himself/herself from a case.

Staff Report - Mr. Emmons began his staff report with some photos of the subject property, presented on the overhead, and explained that there are a number of uses on this property. He pointed out the white building, which was the previous grocery store building- and the one being used by the animal rescue operation; behind that is the garage area, which was being used to store cars; and he also pointed out a house on the subject property. Mr. Emmons said that when he was taking the photos, there were no trucks parked on the property; however, in the aerial photos, he pointed out that there were trucks parked there, pulling vehicles onto the subject property. He said that it is the trucks and tractor trailers with all of the cars coming onto the property

that actually qualifies the current use as a truck terminal use, according to the definition in the Zoning Ordinance. Mr. Emmons said that the vast majority of the subject property either has old pavement or gravel; and said that this property did not have a defined entrance.

Mr. Emmons said that when creating the staff report, the staff looked into the history of the existing uses, and they found that the grocery store use of the property was well documented. He said the first city directory available to staff in the city library was from 1959; at that point there was a grocery store on the subject property. He said that also found that there was a grocery store consistently on this property from 1949 until 2004 (city directory), and that is the last time that staff found any reference to the grocery store use. He then said that in the Building Inspection's records, staff found that in 1996 the Division of Building Inspection had issued an equivalent to a Zoning Compliance letter allowing a "garage use" on the subject property for the repair of cars. There was no particular indication as to whether or not they were going to allow major or minor automobile repair. Mr. Emmons explained what was or was not allowed with the auto repair shop on the subject property.

Mr. Emmons said from 2004 until the present, the staff had a very hard time finding any written documentation for any uses on the subject property. Therefore, there was a lack of information that might allow staff to make any assessments regarding use of the property; however, it is staff's understanding that it is the truck terminal use that has been going on for approximately 3 years on the subject property. He said there is still a time gap from 2004 to 2012 that he could not determine the status of the legal non-conforming use of the subject property.

He said that as staff looked into it further, there were questions about the animal rescue mission itself; there is a distinction between commercial kennel and an animal rescue adoption. He said a lot of the distinction would be whether it was a non-profit adoption agency or if they are commercially selling dogs. Mr. Emmons said that the Zoning Ordinance would allow a rescue mission in a less intense zone than the commercial kennel, and that piece of information is missing from this application. He said that staff has contacted the Humane Society, and that the applicant has applied for a commercial kennel license; but that doesn't mean that the applicant's operation is not a non-profit adoption agency.

Mr. Emmons said that, as the staff was reviewing this application, the first level of review was whether they lost the legal non-conforming use status on the subject property; in the A-R zone, the two principal permitted uses are single-family homes and agriculture. Parking; truck terminals, junk yards, commercial kennels, animal rescue operations, grocery stores etc., are not permitted in the A-R zone. He said in order to say yes to this application, the first step is to establish that history, and the chain of legal non-conforming uses from which the Board would be able to make a decision as to whether it is appropriate to change one non-conforming use to another (i.e., the proposed uses).

Mr. Emmons said that the lack of information was very important to this review, and staff could not establish the validity of the non-conforming use on this property. He said that it has tempered every part of the review. Regardless of the validity, he said that staff looked at the appropriateness of the request to change from a grocery store and a garage to an animal rescue operation and a truck terminal. He said that, with regard to the truck terminal, it was a resounding no. He said that even if the applicant could establish that chain of uses, the staff would still recommend disapproval of the truck terminal on the subject property because that is more intense than either of the other uses that had been there previously.

Mr. Emmons said that when staff was performing their routine environmental review of this application and going through the review checklist, they found that the GIS information showed a large sinkhole on the subject property. He said that the sinkhole, according to the mapped information, is roughly located between the garage and the grocery store. He said that the contours on the map do not have a closed contour around the sink hole; and when he was on the property himself he did not see any "telltale" signs of a sinkhole; however, it is at least enough to be of some concern. Mr. Emmons explained disadvantages of the proposed use and the potential for ground water contaminated because of the sinkhole.

Mr. Emmons said, with regard to the truck terminal, the purpose is bringing in the trucks and the cars to store the damaged vehicles on the subject property. He said that the subject property, through a separate action, has been cited for a Zoning Enforcement violation (for a junk yard), and they have been ordered to cease that operation. Mr. Emmons said that if the junk yard use is tied to the truck terminal use, there's not a motivation to continue on with the truck terminal use in this operation; or if the Board was to approve the truck terminal use, it may draw a fuzzier line between the junk yard and truck terminal use.

Mr. Emmons then discussed the animal rescue mission use. He said that the most important thing is to establish the history of the use, and to also find out whether it is a non-profit animal rescue mission or a commercial kennel. The difference between the two uses is an important element in determining the intensity

of the proposed use.

In conclusion, Mr. Emmons said that the staff is recommending disapproval for the reasons listed on the staff report and the explanation that he presented at this hearing.

Applicant Comments - Mr. Victor Kunitsa, who lives at 216 Brome Drive, Nicholasville, Kentucky, is the owner of Olympic Construction, LLC. He said that there was some misleading and untrue information that was stated in the staff report. Mr. Kunitsa said that he had with him (at this hearing) witnesses and people who have lived on or by the property for 50 or more years (all the way back to the 40s and 50s).

Mr. Kunitsa said that he purchased the property in 2005, and it was a business (a grocery store) at that time. In 2006, he did not renew the lease with the person running the business because he had purchased the property for his own use. He then said that the subject property had been used for a repair garage for quite some time. He also said that, with regard to the rescue mission, there is never any traffic coming through. The rescue mission persons never come to the establishment; the woman only takes care of the dogs at that location. Mr. Kunitsa said that, with regard to the trucks, there are three trucks (truck haulers); they travel all over and only pick up cars from the auction. They may park the trucks there for three or four days, as they rest at home, and then go back and pick up the trucks to deliver the cars to their destinations.

Mr. Kunitsa said that he has never had a junk yard at the subject property. He said that he has five kids, and he bought the cars for his kids and fixed them up. He said if it is illegal to have the cars there, he would move them out. He then said that there is no sinkhole on the property. Mr. Kunitsa said that he didn't know where all the staff's information was coming from.

Board Questions – Chairman Stumbo asked Mr. Kunitsa what the current scope of use of the property is: He said that obviously a grocery store hadn't been around since 2004 (Mr. Kunitsa had said it was 2006). The Chair said that obviously there hasn't been a clear history of legal non-conforming uses on the property for at least 9 years. Mr. Kunitsa said, with regard to the garage, it has always been there. He said when he moved in there, it was located there. Mr. Stumbo asked if the garage was being used for retail purposes. Mr. Kunitsa said no. Mr. Stumbo then asked what it has been used for, if not for retail. Mr. Kunitsa responded that it was what he was explaining about the truck haulers' use; there is no business going on at the location. He then explained why he did not renew the lease with the persons who ran the grocery store and why he decided to change it to a rescue mission instead.

Ms. Meyer asked what the garage is used for. Mr. Kunitsa said that the drivers use it sometimes when they come in with the trucks- maybe check the oil on the truck, do some light work on the vehicle (i.e., change lights, change brakes, etc.). The Chair asked if he was talking about the car haulers' vehicles. Mr. Kunitsa responded affirmatively.

Mr. Glover said that it sounded like Mr. Kunitsa was describing a parking lot, transition period, or a truck terminal. He said that it sounds like what Mr. Kunitsa described that he wanted to do, is what the staff had found in the ordinance. Mr. Emmons confirmed this.

Mr. Kunitsa noted that there are usually no more than 3 trucks there at a time, and the longest that they may be parked there is for approximately 2 weeks, maybe during the holidays or something.

Supporter Comment – Mr. James England, who lives at 8001 Old Richmond Road, said that he lives just to the right of the subject property. Mr. England said that his parents bought the property in 1959. He said in 1959, his family moved into their residence, and the subject property was a "large booming" truck stop and used car lot. He said the building to the left of it was a restaurant (separate property). Mr. England said the small building on the property was used for gas pumps and diesel fuel pumps. He said that the garage was built in the early 1960s for work that was done on the trucks and whatever came in there. Mr. England, with regard to the sinkhole, he has never seen one there.

Mr. England said that now the trucks come in; sometimes they will unload them, and sometimes they will shift them around, leave cars sitting for a day or two, load them back up, and then they are gone. The same vehicles do not stay there more than 2 days at the most.

He said, with regard to the dog kennel, he has not had a problem with them. Mr. England said he may hear them when he is outside; but when he is inside, he does not hear them. He said they are no problem, and he has no complaints. Mr. England said that he has met the applicant a few times, but does not know him personally. He has also met the people who lease out the building for the animal rescue mission, and said that they are good people and neighbors.

Board Questions – Ms. Moore asked Mr. England to confirm that he said he knew the subject property was used as a truck stop in the 1950s and 1960s. She asked if it has been used consistently for trucks for all these years. Mr. England said that the staff said it was a grocery store in 1959, but there was no grocery store in 1959; the grocery store came in the 1980s. Prior to the grocery store, it was used as a truck stop, and then a man put an oil company in there. Then in the 1980s, it was a grocery store until the applicant purchased it. Ms. Moore then asked if, when it was a grocery store, if it was a truck stop as well. Mr. England said that some of the truckers would pull in and eat lunch there. He said it has been used for trucks for as long as he could remember.

Mr. Griggs then asked when the grocery store closed. Mr. Kunitsa responded that it closed in 2006. Mr. Griggs then asked what was going on there in 2007 and 2008. Mr. England said that basically nothing was going at that time. Mr. Griggs asked if the truck stop, or the building that Mr. England had called the shop, was used continuously. Mr. England replied that even when it was a grocery store, the person who owned it would rent the part out to other people such as Tates Creek Paving, and they would work on their trucks and paving equipment. Mr. Griggs asked when they were doing that. Mr. England said it was in the early 1990s. Mr. Griggs asked when they stopped that activity, and Mr. England responded that it was when it was purchased by the applicant in 2006. He said that the garage was never used commercially for people to just stop in and have work done.

Mr. Griggs asked Mr. England if he was the landlord for all of the mentioned uses. Mr. England responded that he was not, but had worked there as a teenager.

Supporter Comments (cont) – Ms. Lisa Ahlgrin, who lives at 7959 Old Richmond Road, said that she runs the animal shelter. She said that they do have a kennel license, and they were inspected in June 2014. Ms. Ahlgrin said that they are not an adoption center; they hold the animals that have some place to go (adoption or other rescue) to help with the overcrowding of Kentucky shelters. Ms. Ahlgrin said they are not open to the public where people can come in and adopt; most of their animals are held because the other shelters are out of space. She said they currently only have 5 dogs that are waiting to be picked up.

Board Questions – Chairman Stumbo asked if Ms. Ahlgrin had a contract with the Humane Society, or where are the dogs placed. Ms. Ahlgrin said that they do send the animals to different rescue centers once they are ready to be transported; some have to be a certain age before they can be transported.

Ms. Moore asked if the animals were sold or given away. Ms. Ahlgrin said that if they are adopted, there is an adoption fee; but none of them are sold to rescues. She noted that they hold some of them until they reach the appropriate age to be transported, and send them to the appropriate rescue, so they do not charge for them.

Mr. Griggs asked how they get compensated for their expenses and time. Ms. Ahlgrin said that they are just volunteers helping with the animals; it is "Mandy's Mission", and "Mandy's Mission" is a non-profit organization.

Ms. Whitman asked about the license that Ms. Ahlgrin said that she had. Ms. Ahlgrin said that they are inspected by Lexington Animal Control once a year, as well as the Health Department and the Building Inspector. Ms. Whitman then asked if they actually have a license and who issues it. Ms. Ahlgrin said that it isn't actually a license, it is a permit issued by Animal Control.

Ms. Meyer asked Ms. Ahlgrin how long she had been doing the volunteer work. Ms. Ahlgrin said they have been in the subject building for 4 years, but they have been doing the work for 10 years.

Staff Comment – Mr. Emmons announced that, while he was looking through the file for this case, he found one letter of opposition that was mistaken for a returned notification letter and apologized for not distributing this at the beginning of the hearing. Mr. Emmons then distributed the letter to the Board members.

Opposition – Mr. Charles Martin, who lives at 7416 Grimes Mill Road, said that he does not abut the property. He is a neighbor (a few hundred yards behind the property), and he has been there since 1976. Mr. Martin said that he is representing the neighbors (two sets of neighbors who were unable to attend the hearing).

At this time, Mr. Martin presented some photos on the overhead projector. The first photo he presented was a neighboring property. The current property owner has lived there since 2003 (maybe 2005). He sent in a letter of opposition, and was going to send in an affidavit, stating that he has been there since that time and mentioned, that there has been no activity in the grocery store- it has not been a grocery store; it has not been a garage; it has not been a gas station; there has not been a sign out front showing that it has been opened as a garage.

Mr. Martin said that Mr. John Hedlock has been living in the area of the subject property since 2002, and has spent a lot of time and money on his residence and a garage in the back. He also said that there has been no grocery store there, and was sorry that it was gone because he used to eat there all the time.

Mr. Martin said that the whole area is transitioning from what was a business (when US 25 was a nice highway), back to a more rural and residential area. There have been a half dozen nice homes that have been built there in the last 10 years or so. He said all of the property is in the A-R zone; there is no business zoning there; and there has never been. The only real business there was the grocery store, and the Hilltop is long gone (since 2007 or 2008). Mr. Martin said if there was a legal non-conforming use there, it is no longer. Mr. Martin said that according to Article 4, one cannot resume a non-conforming use once it has been abandoned.

He then said that the second area of concern is that the requests are individually and collectively not permitted requests. Mr. Martin went into some discussion of what is and is not permitted in the zone for the subject property.

Mr. Martin said that his home does not have city water; it comes from springs, and his concern is that it may have an adverse influence from fuels, battery leakage, antifreeze, etc. - not just in surface runoff, but also in groundwater contamination, particularly because of the sinkhole being in the center of the whole operation.

Board Questions – Ms. Moore then asked Mr. Martin to clarify if he was disagreeing with someone who had mentioned that there has been a continuous truck terminal use. Mr. Martin responded affirmatively. Ms. Moore asked if this was based on the fact that Mr. Martin has owned and lived in this area. Mr. Martin said that he has been in the area since 1976, and he had been in the grocery dozens of times. He said that there have been things going on there off and on over the years, but it has not been a licensed, tax paying, credited, business that has been there long enough or on a regular enough basis to say it has been a continuous business.

Opposition Comments (cont.) – Ms. Mary Diane Hanna, who lives at 6398 Old Richmond Road, provided some items to be submitted for the official record. Ms. Hanna said has lived in the area since 1955, with the exception of 8 years. She said the subject land was originally agricultural land; it was granted a conditional use as Dyke's Grocery and then it became Hilltop Grocery. She knew that because they used to vote at these groceries. Ms. Hanna said that one cannot transfer one type of conditional use to another, especially a non-conforming use; and the proposed use would be considered a non-conforming use. She then said that the last annual report of operations on this property was 2007; the dissolution by the State was in 2008 (she presented a copy of this); it reverts back to agricultural use with no operation under the conditional use permit; and it has not been operated with that conditional use permit for six or so years. Ms. Hanna said it has not been registered with the Kentucky Secretary of State with this address since 2007. She said that prohibited uses in the A-R zone, along with many others, (as noted in the Zoning Ordinance), are major or minor auto/truck repair; storage on the land; junk yards; commercial kennels; and truck terminals. Ms. Hanna said that she was entering into the official record: the PVA record of 7959 Old Richmond Road; the Zoning Ordinance on non-conforming uses for structures and lots; the Secretary of State records; the history of the conditional uses of the property; and a letter from the Old Richmond Road Neighborhood Association to the staff, opposing this request in early January (around January 7, 2014).

Applicant Rebuttal – Mr. Kunitsa said that he did not have a great deal in owning the property; he has been losing money throughout the last ten years. He said that whoever opposes this, can buy it from him. He said that the pictures on the overhead show that this is not agricultural property; and when he bought it, it was not. Mr. Kunitsa said that he had nothing further to add.

Supporter Comment (cont.) – Mr. England returned to the podium and said that legally, he was sure it was zoned agricultural; it has not been agricultural since 1959. He said it has been a truck stop, a grocery store, and many other things- none of it agricultural.

Opposition Comment (cont.) – Ms. Hanna returned to the podium and said that, to clarify, it is a conditional use on an agricultural property. The conditional use was for a grocery store; and when that no longer exists, it reverts back to the agricultural use.

Board Question – Chairman Stumbo asked if the appeal is denied and the Board supports the staff's recommendation, what the next steps would be. Mr. Marx said that staff would work with the applicant to come up with a reasonable timeline for phasing out the activities.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer and carried 6-0 (Forester recused) to **disapprove A-2015-1: OLYMPIC CONSTRUCTION, LLC** – an administrative appeal to change two legal non-

conforming uses (grocery and auto repair) to two new non-conforming uses (animal adoption/rescue and a truck terminal) in the Agricultural Rural (A-R) zone, at 7957 Old Richmond Road, based on the staff's recommendation of disapproval.

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

There were none

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

There were none

- VI. **NEXT MEETING DATE** - The Chair announced that the next Board's meeting date would be February 27, 2015.

- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 4:22 p.m.

Barry Stumbo, Chair

James Griggs, Secretary