

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

February 27, 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; and Tracy Jones, Department of Law. Staff members in attendance were: Bill Saltee, Jimmy Emmons, and Tammy McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the January 30, 2015 meeting would be considered at this time.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman, and carried unanimously to **approve** the minutes of the January 30, 2015 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.

- a. **C-2015-9: DMK DEVELOPMENT GROUP, LLC** – appeals for a conditional use permit to construct an assisted living facility in an Agricultural Urban (A-U) zone, at 4210 Nicholasville Road (Council District 4).

Representation – Mr. Mark McIntosh, with HDR Engineering, representing the applicant, said that he would like to request a one-month postponement for this application (March 27<sup>th</sup>).

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer and carried unanimously to **postpone C-2015-9: DMK DEVELOPMENT GROUP, LLC** for 30 days, to the March 27, 2014 meeting.

Staff Comment – During the sounding of the agenda, Mr. Emmons said that for case **C-2015-15: LEWIS AND CARY DAVIS**, he would have additional information about the application. The staff is not changing the recommendation of approval, but will have more information to provide to the Board.

Also, during the sounding of the agenda, there was no one present for case **C-2015-18: LEXINGTON UNIVERSAL ACADEMY**. Mr. Emmons said that he had been in contact with their architect and contact person, Mr. Jack Stewart, who indicated that they would be at this hearing today. He requested that Chairman Stumbo come back to this case later on in the hearing.

Chairman Stumbo called the case **C-2015-11: IGLESIA EVANGELICA CHRISTIANA ESPIRITUAL**, and there was no one present for this. Chairman Stumbo said that this case would be called again later in the hearing.

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-2015-13: MELVILLE PARK, LLC** – appeals for a fence height variance from 4 feet to 6 feet in the front and side street side yards in a Planned Neighborhood Residential (R-3) zone, at 527 Willy Street (Council District 1).

The Staff Recommends: **Disapproval of the height variance for the fence in the front yard (along Willy Street)**, for the following reasons:

- a. There are no unique or special circumstances to the subject property that would justify the requested height variance for the fence in the front yard.
- b. Approval of this variance would be out of character with the majority of properties in the general vicinity, which do have front yard fences that are compliant with the current 4' fence height restriction found in Article 15 of the Zoning Ordinance.

The Staff Recommends: **Approval of the height variance in the side street side yard (along Smith Street)**, for the following reasons:

- a. Approval of the variance will not have an adverse impact on the public health, safety or welfare; furthermore, it will not be out of character with other corner properties in the general vicinity, which commonly have 6' fences in their side street side yards.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance because a 5' fence would have been permitted and a 1' variance is a reasonable allowance to retain the existing fence.
- c. The pre-existing 5' tall chain link fence is a unique circumstance that does not apply to most other properties in this neighborhood, or in the R-3 zone.
- d. If not granted, the appellant will have to remove 2' of fence height or re-align the fence to be at least 3' behind the right-of-way.
- e. The applicant was unaware of the need to obtain a fence permit, nor was he aware of the height restrictions for fences when he built the fence as a part of the overall renovations of the subject property.

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

1. The applicant shall obtain a fence permit for the existing fence from the Division of Building Inspection within 30 days of Board action.
2. The fence in the front yard (along Willy Street) shall be removed or otherwise modified to meet the maximum 4' fence height limit, within three months of the Board's action.

Representation – Mr. John Withers, the applicant's representative, he lives at the other end of town, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Board Question – Ms. Moore asked Mr. Withers if he was agreeing with the Board's disapproval of the height variance in the front yard, and the approval of the height variance along the side street with no objections. Mr. Withers responded that they would reduce the height of the fence that runs between the two houses in the front if they could keep the height in the back.

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

Action – A motion was made by Ms. Moore, seconded by Mr. Glover and carried unanimously to **disapprove V-2015-13: MELVILLE PARK, LLC** – an appeal for a fence height variance from 4 feet to 6 feet in the front yard and to approve the side street side yard variances in a Planned Neighborhood Residential (R-3) zone, at 527 Willy Street, for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

2. **V-2015-14: HUGH & KIM BLOOMFIELD** - appeal for variances to: 1) increase the maximum number of parking spaces from 2 to 8 for a single-family residential use; and 2) to decrease the required setback for a detached accessory structure from 18" to 0", in order to align the new garage with an existing historic garage in a Two Family Residential (R-2) zone, at 436 W. Third Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties; will not

cause a health, safety or welfare problem; nor will it alter the character of the general vicinity. The garage will be totally to the rear of the property, between two properties that have large, vacant rear yards.

- b. Granting the requested setback variances will not be an unreasonable circumvention of the Zoning Ordinance, because the parking maximums and setback requirements were written with a more typical and much smaller lot in mind.
- c. The extremely large size and unusual shape of the lot, with an existing non-conforming accessory structure that the Board of Architectural Review has required to be in the same alignment as the new garage, are both unique circumstances that justify the requested variances.
- d. Strict application of the Zoning Ordinance would require that the applicant either abandon the additional parking, or add a second dwelling unit to their home in order to build up to 6 parking spaces. If the variance were not granted, in order for the new garage to meet the BOAR's requirement to align with the historic structure, the garage would not have enough depth to be a functional garage for the applicants' purposes.
- e. The requested variance is not a willful violation of the Zoning Ordinance; rather, it is a design response to the unique circumstances of this property that were determined during the design phase and review of the proposed garage and home renovation.

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, as amended.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the garage prior to construction.
3. Should any further changes to the garage be desired or necessary, BOAR approval will be required.

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

Staff Report – Mr. Emmons said that during the drafting of the staff report, it was the staff's understanding that the 8 parking spaces that were requested on the subject property would be 3 in the historic garage, 3 in the new garage, and 2 outdoor spaces; the staff had come to learn recently that the existing historic garage (which he presented on the overhead projector at this time) does accommodate 4 parking spaces, and the proposed garage would accommodate 4 parking spaces; and the additional 2 parking spaces outdoors, would make it a total of 10 spaces on the applicant's site plan. He said that the request was for 8.

Mr. Emmons said that the staff still recommended approval of 8 parking spaces, whether those parking spaces are in a garage or not. He said also, in speaking with the Division of Historic Preservation, when the Board of Architectural Review approved the new proposed garage, they also did so with a recommendation that the amount of paving on the property be lessened. In light of this new information, the staff would recommend at this point, that if the application were to go forward today, to remove the paved area at the rear of the lot, (shown in pink on the overhead projector). Mr. Emmons said that he believed the logic of the staff report is still valid, recommending approval for 8 parking spaces on the subject property. He said there is also a technical notice issue of approving 10 spaces at today's hearing, when notices were sent out for an increase to 8 parking spaces. Mr. Emmons said that there is a simple wording change that can be done to remove the area indicated on the overhead projector; removing the outdoor parking; and, if acceptable to the applicant, it would not prevent him from applying in the future to increase it later. It would, however, be more in line with what Historic Preservation has previously approved, and would allow this application to go forward at today's hearing.

Board Questions/Comments – Chairman Stumbo asked if the staff had added an extra recommendation to the approval of the application, to which Mr. Emmons said that they had not. He said that all that needed to be done, to keep the wording simple, is for the first condition of approval to say that the property shall be developed in accordance with the submitted application and site plan, put "as amended" at the end. It should be put in the record, for the area shown at today's hearing that the outdoor parking spaces are to be removed.

Chairman Stumbo asked Mr. Bloomfield if he agreed with the staff's recommendation. Mr. Bloomfield replied that he did and that he could just come back to the Board later and apply for the other two spaces.

Ms. Moore told Mr. Bloomfield, to be clear, that the Board is not saying that he would definitely at this point get the two extra parking spaces if he were to apply later. Mr. Bloomfield confirmed that he understood.

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 V-2015-14: HUGH & KIM BLOOMFIELD** – an appeal for variances to: 1) increase the maximum number of parking spaces from 2 to 8 for a single-family residential use; and 2) to decrease the required setback for a detached accessory structure from 18" to 0", in order to align the new garage with an existing historic garage in a Two Family Residential (R-2) zone, at

436 W. Third Street, for the reasons recommended by the staff and subject to the three conditions recommended by the staff, with the first condition being amended to say: "as amended "after the words" site plan at the end of the first condition.

**\*Note** – At this time, Chairman Stumbo called case **V-2015-15: LEWIS & CARY DAVIS**. Mr. Dick Murphy advised the Board that, in all fairness to the other applicants, he wouldn't mind presenting his case later in the hearing due to the fact that he had a lengthy presentation. Chairman Stumbo then moved to the next case.

3. **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).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties. The layout of the parking lot will be reviewed by LFUCG agencies to ensure the health, safety and welfare of the apartment occupants and that there will be no harm to the adjacent properties. Furthermore, the proposed parking lot expansion will be landscaped in accordance with the requirements of Article 18 of the Zoning Ordinance, similar to those for multi-family dwellings in the existing neighborhood.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, as the parking lot expansion will permit the site to comply with the alternative parking requirement of Article 8-12(n) (for 0.9 spaces/bedroom) for this efficiency apartment building.
- c. The relocation of the existing storm water basin underground, and the inability for a lot of this width to obtain a second "curb cut" are special circumstances that do not generally apply to other R-3 zoned properties. It is the intent of the Infill & Redevelopment regulations to allow reasonable accommodations for more efficient development in order to promote development that is compatible with existing neighborhoods.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship on the appellant. This would have the effect of further limiting the available parking for the subject property, and it would be hard to recoup the investment in this property improvement.
- e. The requested variances are not the result of any willful violation of the Zoning Ordinance; but, rather, are consistent with the design of residential parking lots in this vicinity near the University of Kentucky's campus.

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, allowing modifications, if required, by the Divisions of Engineering, Traffic Engineering, Solid Waste and Fire & Emergency Services. These divisions must approve this revised site plan prior to the issuance of any Zoning Compliance Permit.
2. A Zoning Compliance Permit and a Building Permit shall be obtained by the applicant prior to construction.
3. The variance shall be only for the purpose of providing pavement between the building line and the landscape buffer adjacent to the public sidewalk. No portion of the multi-family building on this lot shall be located closer than 20' to the right-of-way of Leader Avenue.

Representation – Mr. Matt Jones, owner of the property, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Opposition – Ms. Amy Clark, who lives at 628 Kastle Road, said that she spoke with Mr. Jones in the hallway prior to the hearing and he had said that he was not the Big Blue Rentals to which she referred. She said that apparently Big Blue is a familiar name of student rentals in their neighborhood, and Mr. Jones is telling her that he is a different company.

Ms. Clark said that she did agree that the hospital is likely, sooner rather than later, to want to acquire the subject property; however, she wanted to say that the yard of a residential property can't just be paved and rented out for public parking. She opined that residential parking could not be rented out for pay; it is an accessory use for people who reside in the dwellings.

Ms. Clark then presented an image on the overhead projector that was a part of the applicant's application, and pointed out the red bracket on the bottom, stating that the applicant says "our current desire is to rent out parking spaces because UK does not have enough parking spaces for itself." Ms. Clark further discussed the application, noting that there is a provision for parking as a conditional use if one wants to lease out several of parking spaces, but it would have to be a neighboring P-1 or B-1 use, and would have to be in an adjacent zone (actually abutting).

Ms. Clark said that she would like to ask that the Board not grant a variance that would enable circumvention or violation of the Zoning Ordinance, and enable a party with the express intent of parking who does not live at the residence on that lot. She said that she would like to see this as something for Zoning Enforcement to really address, noting that she is aware that it is difficult to address.

Ms. Clark said that she lives in the larger UK area, and that the paving of lots for parking, both for the residents and their friends, as well as for paid parking is pernicious; there are stormwater problems and they are losing greens pace, and they do not want to lose any more square footage of grass that may eventually be “gobbled up” by UK anyway. Ms. Clark said that her concern is for their quality of life as residents in the area.

Staff Comments – Mr. Emmons said that he would agree that in the subject zone one cannot rent out parking spaces individually and he believed that it was overlooked in the staff report (it was assumed that the requested additional parking spaces were for the apartments). Mr. Emmons said that there should be clarification because a paid parking lot is not allowed in the subject zone. Mr. Emmons said that the staff’s recommendation of approval on the variance was in the mindset that the parking would be accessory to the apartment complex that is there.

Ms. Clark added that she believes that there was actually a property at the corner of Woodland and Euclid that has a sign that offers paid parking, and it is a multi-family residence. She opined that it is a problem, and would appreciate anything that the Board of Adjustment could do to address it.

Applicant’s Comments – Mr. Jones said that the parking is mainly for paid parking, but also for the residents as well. He said that he has had people from all around the area contacting him for parking due to the fact that parking is so limited; from faculty members, students, residents, etc. He said that he knew that eventually UK would come within 5-10 years and ask him to leave, but right now they were trying to do things the right way with respect to stormwater, and make sure it is done the right way - getting people in and making sure the job is done correctly.

Mr. Jones said he understood where Ms. Clark was coming from with the paid parking, but was unsure how one would police that issue. He said that there are people all around doing the same thing.

Board Questions/Comments — Chairman Stumbo, for clarification, asked if some of the parking spaces were going to be for rent to the public, if this is not allowed. Mr. Sallee responded affirmatively and went on to say that based on what the staff has heard at today’s hearing, certainly there is not an issue in renting some of the parking spaces to residents of the apartments. Mr. Sallee said that the issue is that the ordinance does not allow the rentals for people who are not living at the subject property. He said, given the discussion at today’s hearing, he would suggest continuing this case to the next meeting to allow the staff to meet with the applicant and see how much parking is for residents and how much is anticipated for non-residents. Chairman Stumbo said that sounded like a good idea because he did not feel comfortable moving on with this case. He asked Mr. Jones if he would be comfortable continuing the case for 30 days, to which Mr. Jones responded that he would.

Mr. Griggs said that he would like to suggest that some of the problems that are not worked out (even still after a month’s postponement from the last hearing), with regard to Engineering, Traffic Engineering, Solid Waste, and Fire; he doesn’t like approving a development plan that has all these unknowns remaining. He said that with all this time that he didn’t think that the Board should be “rubber stamping” these things and putting the burden on the other groups. Mr. Griggs said that all this should be worked out and then approve a final plan.

Mr. Griggs asked, in the statement by the staff, when they mentioned that they needed to know how many would be rented out by the residents and how many by non-residents, if that should be based on the zoning - zero for non-residents. Mr. Sallee said that would be right- the ordinance would allow zero.

Ms. Whitman asked Mr. Jones how many apartments he had at the subject location. Mr. Jones responded that he had 22 apartments.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously to **continue V-2015-5: BIG BLUE RENTALS, LLC.** – an appeal 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 to the March 27, 2015 meeting.

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

1. **C-2015-10: TRANSYLVANIA UNIVERSITY** – appeals for a conditional use permit to amend a previously approved site plan in a High Density Apartment/Historic District Overlay (R-2/H-1) zone, at 331, 333, 345 N. Broadway & 456 W. Fourth Street (Council District 1).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site can accommodate the proposed dormitories as vital accessory uses to the University. Parking is available

and adequate and has not proven to be a problem to the immediate neighborhood in the past, as the University owns and manages about 4 times the required parking on their campus. The University will enhance the existing screening from the surrounding neighborhood by providing a 6' tall privacy fence adjacent to their residential neighbors, while retaining the existing trees that are within the shared property line(s).

- b. The additional dormitory rooms are necessary to the University, as nearly 75% of their total student population lives on campus. Granting the approval will help Transylvania University to achieve the goal for enrollment that is envisioned in their strategic plan. Additionally, providing the basement space will allow for a higher level of amenities that can be offered to the student population.
- c. All necessary public facilities and services are available and adequate for the proposed use, including police and fire protection.

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. This will be subject to the review and approval of the Divisions of Historic Preservation, Planning, Building Inspection, Traffic Engineering, and Engineering, as necessary. It is understood that Board approval is required for (but not limited to) any additional buildings or an increase in the total gross floor area.
2. All applicable permits, including Building Permits to meet the ingress and egress needs for the basement space to the current Kentucky Building Codes, Fence Permit(s), Zoning Compliance Permits, and Certificates of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
3. The applicant is allowed up to three years to exercise this conditional use permit, with the ability to phase construction for the expected build-out to occur over a period of time for an additional five years.
4. The 6' solid wood privacy fence shall be installed in its entirety where adjacent to residential properties with the first phase of development. Repair and/or replacement of the fence will be re-assessed with each phase of development.
5. Any construction on the property at 331 N. Broadway will be subject to review & approval by the Board of Architectural Review.

Representation – Ms. Chris Westover, attorney for the appellant, was present. She indicated that they had reviewed the recommended conditions and agreed to abide by them. Ms. Westover said that prior to the hearing, she spoke with a neighbor who was in opposition, and believed that they have addressed her concerns. Chairman Stumbo asked the opposer if she was satisfied, and she responded that she believed so.

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

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried unanimously to **approve C-2015-10: TRANSYLVANIA UNIVERSITY** – an appeal for a conditional use permit to amend a previously approved site plan in a High Density Apartment/Historic District Overlay (R-4/H-1) zone, at 331, 333, 345 N. Broadway & 456 W. Fourth Street, for the reasons recommended by the staff and subject to the five conditions outlined by the staff.

Discussion – At this time, Chairman Stumbo said that there were a couple of applicants (**C-2015-18: LEXINGTON UNIVERSAL ACADEMY** and **C-2015-11: IGLESIA EVANGELICA CHRISTIANA ESPIRITUAL**) who did not respond at the sounding of the agenda, and he would like to see if they have arrived. There was no response. Chairman Stumbo asked if the staff could contact them to see if they planned to be in attendance at this hearing. Mr. Sallee said that the staff would try to contact them.

Mr. Grover Hilbert went to the podium and stated that he was the father of the owner of the property proposed to become the Iglesia Evangelica Christiana Espiritual at 3696 Hurricane Hall Road; he had been in communication with the church, and it is their desire to purchase the property based on the outcome of today's hearing. He said that he expected them to be at today's hearing; he has called the real estate agent, and the agent is trying to track down the applicant. He said that his daughter is an architect and was currently at a bid opening. Chairman Stumbo responded that the Board would give them a few more minutes. They would hear the other cases; and if they didn't show up, the Board would ask Mr. Hilbert to ask for a postponement for this case for 30 days.

2. **C-2015-11: IGLESIA EVANGELICA CHRISTIANA ESPIRITUAL** – appeals for a conditional use permit to construct a church in the Agricultural Rural (A-R) zone, at 3696 Hurricane Hall 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. Adjoining or nearby land uses are of an agricultural nature, and are not likely to be disturbed by typical church activities. Since there is an existing residential dwelling on the property, a septic system is already in place, and there is sufficient room on site (following the Health Department's reassessment of the existing septic field), to permit increased capacity of the proposed system.

- b. All public facilities are existing and adequate to support the proposed use of this property for a church.

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

1. The church shall be established in accordance with the submitted application and site plan.
2. All necessary permits and approvals, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of the proposed use.
3. The existing barn and garage, in their present condition, shall not be utilized for human occupancy.
4. Should a future expansion of the church at this location be desired, approval by the Board of Adjustment will be required.

Representation – Mr. Luis Castanon, who lives at 1348 Stephen Foster Drive, 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. Meyer and carried unanimously to **approve C-2015-11: IGLESIA EVANGELICA CHRISTIANA ESPIRITUAL** – an appeal for a conditional use permit to construct a church in the Agricultural Rural (A-R) zone, at 3696 Hurricane Hall Road, for the reasons recommended by the staff and subject to the four conditions recommended by the staff.

3. **C-2015-8: LEXINGTON UNIVERSAL ACADEMY** – appeals for a conditional use permit to expand the school building (gymnasium) in an Agricultural Urban (A-U) zone, at 4580 Nicholasville Road (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. The addition of a gymnasium and cafeteria to the existing school should not adversely affect the subject or surrounding properties. The applicant had been approved in 2007 by the Board for a temporary modular classroom building near the rear of the property that was not installed. The new addition will be located in the area where the modular classroom was to be located.
- 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. That the property be developed according to the submitted application and site plan.
2. That prior to construction and occupancy, all necessary permits be obtained from the Division of Engineering (grading), the Division of Building Inspection (construction) and the Division of Planning (zoning compliance).
3. That there be no loss of parking spaces as a result of the proposed addition.

Representation - Mr. Jack Stewart, architect, was present. He indicated that he was unaware of the time of this hearing and requested to have his case heard. Chairman Stumbo noted that this case had been postponed earlier in this hearing and asked the staff what would be the procedure in situation such as this. Ms. Jones said that if the Board was inclined, there would need to be a motion to rescind the postponement in order for the case to be heard at this time. Otherwise, the postponement would stand.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried unanimously to **rescind the prior action of postponement of C-2015-8: LEXINGTON UNIVERSAL ACADEMY.**

Mr. Stewart 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. Forester, seconded by Mr. Glover and carried unanimously to **approve C-2015-8: LEXINGTON UNIVERSAL ACADEMY** – an appeal for a conditional use permit to expand the school building (gymnasium) in an Agricultural Urban (A-U) zone, at 4580 Nicholasville Road, based on the staff's recommendations and the three conditions.

#### E. **Variance Appeals**

(Discussion items)

1. **V-2015-15: LEWIS & CARY DAVIS** – a request to amend conditions required from a previous BOA case (V-2014-23) to allow a garage and off-street parking within the defined Infill & Redevelopment Area in a High Density Apartment (R-4) zone, at 139 Bruce Street (Council District 1).

The Staff Recommends: Approval of a modification to the previously approved variance, regarding the third condition, for the following reasons:

- a. The applicant has stated that there is a need for on-site parking as a reasonable accommodation under the Americans with Disabilities Act and the Federal Fair Housing Act.
- b. A modification to the required third condition, allowing an option to design on-site parking that will not interfere with public safety, is a reasonable accommodation from the strict requirements from the previous approval by the Board.

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

1. The property shall be developed in accordance with the submitted application and ~~a modified site plan that removes the proposed garage.~~
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.
3. ~~There shall be no driveway, garage, or other off street parking space proposed on the subject property, unless such parking area is designed to be in an unenclosed space with the architecture of the building being designed in such a way that it does not interfere with the sight triangles of parked vehicles.~~

\*Note – At this time, Mr. Griggs recused himself from this case.

Mr. Emmons distributed additional information to the Board at this time.

Representation – Mr. Dick Murphy, attorney for the appellant, was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Staff Comment – Mr. Emmons said that the subject property was previously approved for several dimensional variances, because this is a very small infill lot. At that time, the staff could not find any way that a proposed garage at that time would be able to meet the sight distance requirements. The staff recommended, and the Board approved, the requested variances with a condition that there would be no parking on the subject property. Mr. Emmons said the current applicants have come back to the Board as the new owners of the subject property. They are proposing an architectural solution to the parking on the subject property- a garage with glass that does not inhibit the sight triangle.

Mr. Emmons said that the staff questioned the functionality of this solution; the only architectural solution that the staff could see that would not be a glass garage would be an open parking area.

Representation Comments – Mr. Murphy distributed a couple of handouts to the Board, and provided a presentation on the overhead projector. He said that Mr. and Mrs. Davis, Mr. John Dehart, (the applicants' architect), and Mr. Chas Hite, (professional planner) were with him at today's hearing. Mr. Murphy discussed a previous application that was before the Board in April 2014, and said that as he and his clients read the minutes, there was a lot of discussion in regard to whether or not there should be a garage; and reading the minutes, the problem was with the walls and the visibility. He said that the applicants felt that through creative design they could tackle that problem in a way that did not present a safety hazard to the people in the area. That is why they had contacted Mr. Dehart, who has created a design that is both functional and safe and meets everyone's objectives. Mr. Murphy said that the issue is whether the area would be open or if it would have glass walls around it, which would allow visibility.

Mr. Murphy said that Mr. and Mrs. Davis bought this property in August of 2014 because they wanted to live downtown. Mrs. Davis works downtown at Gratz Park, and is familiar with the downtown area. He said that there are positives and negatives of living downtown. Some positives are being near the Civic Center and Victorian Square; some negatives are lack of grocery stores, and general retail; and people still need to have a car to get to those places. Mr. Murphy discussed more the pros and cons of living in the downtown area.

Mr. Murphy said that in his letters that were distributed to the Board, there is a letter that speaks of Ms. Davis' medical condition. He said that the letter is from her doctor, and it details the arthritis in her legs, ankles, feet, and hands, which makes it difficult for her to walk long distances. He said that Ms. Davis asked him to make the petition without that information because she did not want to have special treatment. He said that he told her, as her lawyer, that under the Fair Housing Act, she has the right to request reasonable accommodation of local regulations so that she can enjoy a to under the same degree as a person without her condition.

Mr. Murphy presented a Google map and several photos of the subject property on the overhead projector. Mr. Glover asked if the garage in one of the photos was part of the subject property, or if it is the neighbor's garage. Mr. Murphy responded that the applicants' property line is about a couple of feet away. He said that there is a house on the other side that the garage belongs to.

When presenting the photo of a fence (to the south of the subject property), Mr. Murphy said that the fence was permitted in 2011 by Building Inspection, and they have no objection to that; however, the applicants' proposal to the

Board has much better visibility.

Mr. Murphy discussed the Fair Housing Amendments Act. He said that Ms. Davis was hesitant to raise this issue; however, he thought it was relevant for this issue considering that Ms. Davis is unable to walk long distances and has trouble carrying things. He said that when one has a disability and an issue with mobility, he/she may tend to get concerned with the time that it takes to get in and out of a car. Mr. Murphy said that Ms. Davis does have a disability that is recognized in the Fairing Housing Amendments Acts, and noted that it says: "Local governments do have a responsibility to make reasonable accommodations to ordinances to accommodate people with disabilities so that they can enjoy their homes just as any other citizen can." He said that this would not cause an impact on the City because normally parking is required; its population intensity would not be increased by this; there would be no burden imposed on the municipality because most houses do have off-street parking; and they believe that this accommodation is very reasonable for Ms. Davis because of the lack of impact on others or upon the City in doing it.

Mr. Murphy discussed on the following points:

1. The "walkers" at Harrison school
2. The Comprehensive Plan
3. Need for infill
4. The need to encourage people to live downtown
5. Accessibility
6. Other locations that have walls on both sides of the building with garages

Mr. Murphy presented a photo on the overhead projector of the entrance at BB & T Bank. He pointed out the walls on both sides of the bank's garage, and indicated that there were no glass walls or any openings for visibility, with very high traffic. He also presented photos of the main exit at Kincaid Towers and the Federal Government building garage, and said that the proposed application has a much better egress situation than either of the ones he presented. He said he was not pointing these areas out because they were bad situations, because they are not; when downtown, downtown is designed that way. Mr. Murphy said that with the applicants' proposed plan, they would have a situation that would have visibility when backing out, using glass walls to be able to see down the sidewalk. They have a very wide sidewalk, very low pedestrian use - even with an elementary school right up the street, and a very low traffic street; and he opined that it was a very safe situation.

Board Questions/Comments – Ms. Meyer asked Mr. Murphy for clarification of the diagram, and what kind of width he was describing. Mr. Murphy responded that a typical parking space in a parking lot is 18' X 9'; the proposed garage has 25 feet of depth and a 16-foot garage door, which is the typical width of a double garage door.

Ms. Meyer said that the staff had recommended an open and unenclosed parking area, and essentially a carport with a house on stilts, and asked if Mr. Murphy could talk about their opposition to and lack of desire to consider that; or if it has been considered by the applicant. Mr. Murphy responded that he had talked to them about that. Part of this concern is their familiarity with downtown; and as he mentioned prior, Ms. Davis has a brother who lives a block away who has had to resort to leaving his car doors unlocked in an unenclosed area; that is the same thing, which presents no deterrent for people who want to get into one's car for no reason. He said Ms. Davis works at a house on Gratz Park. She is also familiar with situations where there are unenclosed/open parking areas and having people who find more secluded areas to sleep in or relieve themselves in the open area. She has encountered that one numerous occasions at her work location; it is not appealing and does not contribute to one's sense of security in their surroundings, which is what's driving this.

Chairman Stumbo asked staff why they were opposed to the glass enclosure. Mr. Emmons responded that the staff is concerned about the long-term, once it is built. The staff could see that there would be too many possible ways it could be obstructed by the actions of future owners. He said that the staff had two very high standards when looking at this application: the sight triangle and the safety of the pedestrians on the sidewalk, and the reasonable accommodation for parking under the Fair Housing Act. With regarding the long-term feasibility of the glass garage, staff came up with an alternative solution of an open and unenclosed carport area. Mr. Emmons said, no matter what, the staff did recognize that the corner of the structure would likely have to have a single post holding up the structure, whether it is in a glass garage or an open and unenclosed area; the staff did not see that as a major obstruction in the sight triangle. He said that the staff recommendation was their attempt to balance both of those very high goals of safety and reasonable accommodation. Mr. Emmons said that staff is not arguing with the applicant that their proposal is not an innovative solution- it definitely is; they are also not arguing about the sight triangles that the applicant provided. He further noted that appeared prior to a building permit, Traffic Engineering would need to sign off on the exact nature of the sight triangles.

Mr. Emmons said that should the Board choose to go with the applicant's recommendation, he has presented in his justification the conditions that they wished to have; however, if the Board chooses to go with the staff recommendation,

that is listed in the staff report and the agenda.

Ms. Moore asked if it would be possible to just add a handicap parking space across the street with the ADA accommodation. She said that she knew that wouldn't address the safety concerns, but it was her understanding that in the past people have gotten designated parking spaces by their house. Ms. Kaucher said that one can apply for a handicap parking space adjacent to their home, and it is usually granted; but it would require a doctor's note. However, the handicap space would not be for the exclusive use of the applicant.

Ms. Meyer asked if there had been other thoughts as to how to secure the property, and have an open garage. Mr. Murphy responded that the other discussion was having a chain link fence around it, which would secure it, but he wasn't sure if that is what would be wanted in downtown (architecturally). They feel that a chain link fence would detract from the neighborhood. Mr. Murphy said, as far as the handicap parking space, he would think that there would be 2 to 3 other people who would qualify for a handicap parking space and would be eligible to use that parking space.

Mr. Murphy said, in speaking with Ms. Davis, they discussed the impact that it would be on the City if, for example, with an open carport, what would happen if she finds someone and calls the police. The police would come and take the person away, which happens fairly often, and that is a call to the City not the Division of Planning. He said that if there was a condition they maintain an unobstructed view, perhaps that could result in a condition that would go with the house, and an inspector would have to drive by every once in a while to ensure that the residents were complying with it.

Chairman Stumbo asked about a beeper on the garage door. Mr. Murphy responded that they could do that, if the Board felt the need. Chairman Stumbo then asked what about some type of convex mirror- that could be a condition if the Board decided to approve this request.

Chairman Stumbo said that he felt it would be much safer to have a glass enclosure than it would be to have an open area; it would also look much better than a house on stilts or an open air carport. Mr. Murphy said that, as Chairman Stumbo was discussing the convex mirror, the applicants were indicating their agreement that the mirror would work.

Ms. Whitman said that she agreed with Chairman Stumbo almost word for word. She said that she thought about the aesthetics, and it would look much nicer than the open space. Ms. Whitman said that she also thought that the open space is very conducive to and attractive for people who need a home. She suggested that there could be a deed restriction that could take care of some of the other concerns in regard to this.

Mr. Glover asked if there was anything that could be done to make the subject lot bigger; this lot does not meet the minimum requirement. He said he just had a concern as to how small the lot is for new construction. Mr. Glover said that he guessed that, in order to accommodate this, it would need to be built higher (at least 3 stories). Mr. Emmons responded that the staff did not go over much of the history of the property with this application and staff report. He said that this is a small lot- about 60 feet wide and about 30 feet deep. He said that it is obvious that at one time it the back yard of the lot on the corner. Mr. Emmons said it is a legal non-conforming lot; it was created before the Zoning Ordinance said it could not be created. Mr. Emmons said that it was the extremely small size and the existing use of the property that led the staff to recommend approval of the original variances for the property. There was a duplex on this property that was built nearly from property line to property line. It did not have any parking. Mr. Emmons said that when the applicant changed from a duplex to a single-family use, that was a change in use, which kicked in the setback requirements.

Mr. Glover said that his concern was backing out onto Bruce Street (which was before the Board prior to this hearing in regard to this property). He said that is not the major concern, and he agreed that it is a creative design, and he did not have strong objections to it.

Ms. Meyer asked if the Board could put a condition that requires a deed restriction. Ms. Jones responded that the Board should not venture into private deed restrictions. Mr. Murphy replied that they would put a deed restriction on the property whether it was made a condition or not.

Chairman Stumbo asked Ms. Jones if the findings proposed by the applicants for approval were acceptable, to which Ms. Jones replied that they were. Chairman Stumbo said that they would add a condition to add the convex mirror and a beeper with the door. Mr. Glover asked for clarification as to whether the idea of using a convex mirror and a beeper are to solve a problem with backing out of the garage. Chairman Stumbo replied this was correct. Mr. Glover said that if the sight triangle is satisfied, then this has been done. He suggested that the convex mirror and beeper should be left to the property owners' discretion.

Mr. Glover said that the first condition mentions a modified site plan, and asked which modification that is. Mr. Emmons responded that the modified site plan that was submitted by the applicant had the glass garage, and the staff was

recommending the open and unenclosed space. At this time, there was some discussion in regard to the language of the conditions. At the end of the discussion, Mr. Glover clarified that the language for the conditions would be to delete condition #3; and in condition #1, the words "a modified" would be deleted, as well as "that removes the proposed garage".

Action – A motion was made by Mr. Glover, seconded by Mr. Forester and carried 5-1 (Moore opposed; Griggs recused) to **approve V-2015-15: LEWIS & CARY DAVIS** – a request to amend conditions required from a previous BOA case (V-2014-23) to allow a garage and off-street parking within the defined Infill & Redevelopment Area in a High Density Apartment (R-4) zone, at 139 Bruce Street, for the reasons recommended by the staff and as articulated by Mr. Murphy in this hearing, and subject to the two conditions that were shown on the overhead projector.

Board Comments - At this time, Chairman Stumbo called for case **C-2015-8: LEXINGTON UNIVERSAL ACADEMY**. Mr. Sallee responded that he called the contact person for this applicant, and spoke with one of his co-workers, who said that he was not aware of Mr. Stewart's whereabouts or whether he would be in attendance at the meeting. Mr. Sallee said, to his understanding, that the co-worker was going to try to contact Mr. Stewart and explain that the Board was waiting to consider this application. Chairman Stumbo asked for a motion to postpone this application for 30 days.

Action – A motion was made by Ms. Meyer, seconded by Mr. Forester and carried unanimously to **postpone C-2015-8: LEXINGTON UNIVERSAL ACADEMY** for 30 days, to the March 27, 2014 meeting.

\*Note – Due to the late arrival of the case **C-2015-11: IGLESIA EVANGELICA CHRISTIANA ESPIRITUAL**, it was heard at this time.

#### F. **Conditional Uses**

None Remaining

#### G. **Administrative Reviews**

1. **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).

The Staff Recommends: Disapproval, for the following reasons:

- a. The illumination of the subject sign is not kept constant and it has sequential lighting. As such, it is correctly considered as a "flashing or blinking" sign, per the definition found in Article 17-3(d)(4) of the Zoning Ordinance. Flashing or blinking signs are prohibited by Article 17-5(c), the only exception being for permitted informational signs. The subject sign, which contains advertising for a business activity, does not satisfy the definition of an "informational sign," per Article 17-3(b)(12) of the Zoning Ordinance.
- b. Article 17-7 of the Zoning Ordinance, which identifies the different types of signs permitted by zone, states that "Any sign not specifically permitted shall be deemed as prohibited." Article 17-7(g) does not list an electronic message display system as a permitted type of signage in the Wholesale and Warehouse Business (B-4) zone. Accordingly, it is correct to consider an electronic message display system in the B-4 zone as a prohibited type of signage. The appellant has acknowledged that the subject sign is an electronic message display system, per the definition found in Article 17-3(d)(5) of the Zoning Ordinance.
- c. While it is correct that window signs are exempt from the need to obtain a permit, per Article 17-4(c) of the Zoning Ordinance, it clearly states (in that same section of the ordinance) that exempt signs are "...subject to applicable restrictions contained within this Article." Therefore, it is important to install signage in accordance with the full scope of the relevant restrictions, and not based only on selected passages, since such installations involve important business decisions.

Representation – Mr. Seth McNeal, appellant (Signtronix), was present.

Staff Report – Mr. Marx said that this appeal was in regard to a notice of violation that was issued for placement of an electronic sign in a window at Bryant's Rent-All building at 875 North Broadway. Mr. Marx said that it was the B-4 zoning of the property that was the critical issue at hand. Mr. Marx then presented an official zoning map for this area.

Mr. Marx said that the subject property is very close to the intersection of Red Mile Road and South Broadway; all of the property is located in a B-4 zone. He said that the staff considers the sign that has been installed at this location to be both a flashing/ blinking sign, as well as an electronic message display system sign, both of which are defined in Article 17 of the Zoning Ordinance. Mr. Marx then displayed a video clip of the sign that had been installed.

Mr. Marx displayed the Zoning Ordinance definitions of the signs on the overhead projector and discussed the definition of the two terms listed in the Zoning Ordinance, both included in Article 17(the sign ordinance).

Mr. Marx gave a case and scenario example to the Board, to help them to understand the critical part of the use of electronic signs. He also highlighted some key points in the Zoning Ordinance as to why this particular use is not permitted.

In closing, Mr. Marx cautioned the Board that this is a very important appeal –it is not just an appeal about this relatively small sign or this one window; this is an appeal about how this particular sign is going to be regulated throughout Lexington-Fayette County. He asked the Board to please be cautious about being persuaded that somehow Article 17 is constructed with some kind of a flaw because it doesn't specifically refer to electronic signs in the section where window signs are allowed in a B-4 zone. He said that at the end of this hearing, if the Board is inclined to have sympathy for the appellant, or if the Board is inclined to believe that it is just too restrictive, those things are not the important parts of this appeal; however, if those things are important to the Board, the right avenue to change the law is a text amendment to Article 17.

Board Questions/Comments – Mr. Glover said that this is complicated, and asked if he was to understand that there are no flashing or blinking signs allowed in any zone. Mr. Marx responded affirmatively. Mr. Glover then asked if there are electronic message signs permitted in a B-3 zone, only if it is in an indoor or outdoor stadium. Mr. Marx responded that was correct. Mr. Glover said that it seems like that would be micromanaging the sign ordinance. Mr. Marx said that there is a lot of history there with the B-3 zone, and he believed that the provision was put in the ordinance specifically for the Lexington's Legends ball park. Mr. Sallee said that Lexington Legends was the applicant for that provision in the B-3 zone, and it was approved. Mr. Glover then asked what signs are permitted in the B-4 zone. Mr. Marx said that there are all types of signs that are allowed (i.e., wall signs, window signs, free standing signs). Mr. Glover noted that electronic messaging signs are permitted, which Mr. Marx confirmed.

Applicant Comments – Mr. Seth McNeal, district manager for the Signtronix Company, said that the company he works for manufactures and sells the signs. Mr. McNeal said that he sold the sign to Bryant's Rent-All. Mr. McNeal distributed several handouts to the Board, and noted that the first page was the first Notice of Violation for the subject sign.

Mr. McNeal said that the subject sign is being defined as a both a flashing and blinking sign, and as an electronic message display sign. He said in the original Notice of Violation, it said "remove electronic sign from window," but then what was marked as to why it needed to be removed was that it was flashing or blinking; it contradicted itself in the original violation. Mr. McNeal said that his customer was told to remove the sign within a week or receive a \$75 fine.

Mr. McNeal said that the subject sign is not a flashing or blinking sign. He said that type of sign is prohibited in all zones (as he pointed out on the overhead projector for reference to Article 17 that was displayed). Mr. McNeal spoke with regard to Article 17 and what is and is not allowed in different zones, as well as the difference between flashing and blinking signs in relation to what his customer had displayed. He said the second confusing issue regarding the definition is in the business owner's perspective, which he felt was a very important perspective. Mr. McNeal said that the confusion is in the definition section, and he read from Article 17-3(c): (Sign Types by Mean of Mounting or Erecting"), item 13 is "Window sign: A sign which is painted on or applied to, or attached to the interior window or located within 3 feet of the interior of the window, and which can be seen through the exterior structure. Merchandise located in a window display should not be part of the window sign." Mr. McNeal then discussed Article 17-3(d): Sign Types by Design Features. He discussed several pages of the Article in regard to the zones.

Mr. McNeal said that he agreed with Mr. Marx in regard to his statement about it being important to read through the entire sign ordinance. Mr. McNeal said that is what is job is, as he did about 3 years ago. He then referenced Article 17-7(g) (as he highlighted on the handouts): "Window signs shall be permitted, limited to no more than 25% of the total window area." He said that to say a business owner could not hang an electronic message display system sign would also lead one to believe that they could not hang a directly or indirectly illuminated sign, or any type of sign. Mr. McNeal said that Barney Miller's (a half block from the Government Center) has 2 LED TVs facing the street, which is no different than what their sign is. He said that every "open" sign in the city (100s of businesses) should be enforced as well.

Mr. McNeal noted that, from their perspective, they were not trying to do anything illegal. He said that they sell signs just as big as the Rupp Arena sign and Nicholasville Road billboards, etc. Mr. McNeal said that he did not come into Lexington and start putting those signs up everywhere; they followed the code; and as long as it doesn't cover more than 25% of the window, a window sign is exempt.

Mr. McNeal presented information on the overhead projector and discussed on signs that are exempt from permit requirements, and provided different examples: a change of copy on a billboard, attraction board, marquee, informational sign, or electronic message display system. He said that the language regarding window signs can be found across the country, and they have abided whatever the rules are for each state.

He said that the small business owners of Lexington are able to look at the ordinance, and they believe these signs are allowed. Mr. McNeal said, with their company alone, business owners have spent over a million dollars on these types of signs in Lexington because of the way the ordinance reads.

Mr. McNeal said that he believed that the Board had the business owner's best interest at heart. He said that one of the reasons Mr. Bryant would like to use their window sign (they have an old marquee in front of their building) is that they would like to say "happy birthday" to their customers - something Mr. Bryant's father started in 1953 when he started the company. Mr. McNeal said that other business owners have told him that they have seen a 60-70% increase in their walk-in traffic because of this type of sign, and he didn't think it would be fair if he had to go to each of them and tell them that it had to be moved 36 inches back from the window.

Mr. McNeal said that he had a meeting with Mr. Marx at the beginning of January, hoping to be able to sit down and resolve it. He said during that meeting Mr. Marx had admitted to him that he felt the ordinance was confusing and unclear regarding this specific type of sign in a window. He said that at the end of the meeting, he met with Mr. Emmons, as he was trying to get some clarification on the Board's appeal process. He asked him what the difference was between Article 766(d): Administrative Review and the 76-(e): All Other Appeals, which Mr. Emmons explained.

Board Questions/Comments – Mr. Griggs asked if Mr. Bryant ordered the sign through Signtronix's website or if Mr. McNeal ordered the sign with confidence and knowledge of the zoning codes that it was a legal sign and sold it to Mr. Bryant. Mr. McNeal responded that it is not that simple- a customer cannot just order a sign from the website; he (Mr. McNeal) receives an email of the order for him to review prior to ordering. He said that he has sold many signs to business owners all over Lexington.

Mr. Griggs noted that Mr. McNeal said that he has sold many of these signs in Lexington, and asked if Bryant's Rent-All was the first Notice of Violation (that he has been aware of). Mr. McNeal said yes. Mr. Griggs asked if Mr. McNeal had ever gotten permits for any of the other signs. Mr. McNeal said that this was the first Notice of Violation he has seen over the past 3-4 years that he has sold these signs in Lexington. Mr. McNeal said there are almost 100 businesses, with their company alone, in Lexington that has these signs; there are other companies as well- not only selling, but distributing these signs.

Citizen Comment – Mr. Tim McNeal, father of Seth McNeal, and the regional manager for the Kentucky Triple Crowns, was present. He said that he was at today's hearing on behalf of Bryant's Rent-All, but also on behalf of small business owners. Mr. McNeal discussed on the history of Bryant's Rent-All and how it came to be. He also spoke about his father's dream of freedom and the ability of his parents to become small business owners.

Mr. McNeal quoted language from the staff report in regard to the appeal process and the justification offered as part of the appeal, noting that the staff had said that the justification was somewhat unclear. He said that he believed that something needs to be clear; it is very important if it is clear and well defined. He said that they would like to present four reasons to the Board why the Code of Ordinance is unclear and difficult for a business owner to understand as it pertains to electronic message displays in windows in town.

Mr. McNeal said that in Article 17-5(c), it says: "Prohibited Signs in All Zones", emphasizing that it states "all zones." He said that Mr. Marx said that there are some exceptions, but it was his opinion there are several exceptions, noting the exceptions for Civic center, arenas, hotels with conference centers, among other. He said also in 17-5(i), allows an electronic message center, flashing and blinking signs to be 200 square feet; which is a 10 X 20 flashing and blinking sign that is being allowed. He said that his whole point is that the Ordinance is not clear. Mr. McNeal said that his son has worked very hard in this industry, and he is very proud of him. He said that they do look at the codes, and want to be within all the sign codes in any city.

Mr. McNeal's second point was that for many years electronic message displays/window signs have been used in small businesses and have been allowed in Lexington in salons, barber shops, etc. He asked if he is coming in to Lexington to sell these signs, and he sees them allowed (having been allowed for over an decade), and sees that window signs are exempt; then does he need to try and decipher a very difficult code to understand that they are not allowed, and to understand why they are allowed in other places around town-it seems very confusing.

Mr. McNeal's third point was that in the code itself, it seems to say that it is unclear. Article 17-3 says: "The following definitions, unique to this Article are listed below, the terms to be defined having been grouped together in specific aspects of sign control to which they pertain in order to provide a clear understanding in the regulations contained later in this Article." Mr. McNeal said that this states that the signs are going to be separated into different categories so that a clear understanding how the City is regulating things can be provided. He said that is what his son brought up; that one description is based on how it is mounted; and the other is under how it is designed. He said that there are other types in which categories fall into signs as well for example, types of signs based on how they are mounted and types

of design features. Mr. McNeal said that it categorizes electronic message display systems. He said, as a side note, it needs to be updated. Mr. McNeal said that electronic message centers are not controlled by central computers or by videos anymore, and he thought the sign ordinance was written back in 1987. He said if one were to press the law on this, it wouldn't even fit what these signs are because they do not work as it has been written.

Mr. McNeal's last point was that a business owner in Lexington could go to Lowes, Costco or Sam's, and purchase an electronic message display for their windows that flash and blink. He said that he knew that wasn't a very strong reason, but it is an interesting point.

In conclusion, Mr. McNeal said that their four reasons of recommendation are as follows:

1. That even though they said that electronic messaging centers are not allowed; they are allowed in some places
2. For many years, it has not (to his knowledge) been enforced in Lexington
3. The code itself seems to omit a lack of clarity
4. Electronic message signs can be sold in Lexington

Mr. McNeal thanked the Board for listening to him, and said that if this is allowed, he wanted to thank the Board in advance on behalf of hundreds of business owners.

Board Questions/Comments - Mr. Glover said it appeared that the sign ordinance has been the subject of selective legislation. He said that it may be that the applicant's company and customers may be the victim of this selective legislation. Mr. Glover said that it is not selective enforcement that he was referring to, but the selective legislation. Mr. Glover said that there are different signs around town, such as the side of Rupp Arena, and he didn't think that was fair for discrimination to be made against their company/business while similar things are happening a few blocks away. Mr. Glover said that he had some sympathy for this appeal, and that Mr. McNeal's argument was well taken. He advised him to seek some other form of relief if the Board did not approve his appeal.

At this time, Mr. McNeal (appellant) returned to the podium and he said that he was not looking for sympathy, but for logic. He said that there are two clear definitions: sign types by means of mounting; and sign types by design features. He said to confuse those two and say that they are the same thing- that a window sign cannot be an illuminated sign or any have other design features, including an electronic message center, doesn't make logical or legal since. Ms. Moore replied that the way she would read the ordinance is that a window sign can be of these various forms, but if it is of one of those forms, it is not permitted (i.e., that if it is a particular type of sign, it is not permitted). There was some further discussion in regard to the verbiage of the ordinance in reference to signs.

Ms. Whitman asked if the applicant was aware of this, why they didn't contact the Division of Planning to discuss this before they started to install the signs. Mr. McNeal responded that it does not say it is not prohibited- it says flashing and blinking signs and the subject sign is an electronic message sign, which is not prohibited. Chairman Stumbo said that he thought that was up to the individual's interpretation. He said that he agreed with Mr. Glover that there are a lot of things that are unclear with regard to this; there is a lot of ambiguity regarding the Ordinance.

Mr. Forester asked, before proceeding any further, if the video of the sign could be presented again. In response to a question from Mr. Glover, Mr. McNeal explained that their signs provide at least 30 or 40 functions, after which he provided some history of sign usage in Lexington.

Mr. Griggs asked, with the signs being \$4,000 to \$5,000 or more, and seeing how complicated the ordinance is, if Mr. McNeal checked to see what the company was zoned before he sold them the signs. He also asked why he didn't call Building Inspection to see if a permit was needed. Mr. Griggs said that if none of this was done prior to Mr. McNeal selling the signs to the company, then he believed that Mr. McNeal did not do his due diligence. Mr. McNeal responded that every business zone says window signs are allowed as long as they do not cover more than 25% of the window. He said that he has done his due diligence; however, it is just a "blanket" regarding language. Mr. Griggs said that as Mr. Marx explained the logic to the Board, and it was not hard to follow; it leads you from one thing to the next, until finally some red flags should have been raised. At this time, there was further discussion in regard to the Zoning Ordinance sign regulations and process to be followed.

Mr. McNeal said that his point was that since these rules haven't been enforced across the city in regard to the subject electronic message sign, that he felt it was discrimination, what he believed were citing other similar signs. Mr. Griggs said that this was not an excuse; it is just the history. Mr. McNeal said that it was not an excuse; it is saying that is why they are there- because the code allows it.

After further comments regarding the language in the Ordinance, Mr. Griggs said that one of the reasons this could pose an issue is because if every business decided to do this, it could be a big distraction and could possibly cause the city's aesthetic to go down. Mr. McNeal said that they had a study done by several universities, and it was never about

that. He said, to answer the question, it did say that the sign is specifically permitted; it said that a window sign is allowed as long as it does not cover more than 25% of the window.

Staff Rebuttal – Mr. Marx said that the Notice of Violation that was originally issued did not fully address the two components of the problem discussed at this hearing- this being a flashing and blinking sign and an electronic message display sign. He said that the Notice of Violation was amended by a letter that was included in the Board's packet prior to this hearing. Mr. Marx said that it was very clear with the appellant that both issues were on the table; there was no contradiction in the original Notice of Violation.

Mr. Marx presented the copy of Article 17-4(c) on the overhead projector and discussed the changing of copy of the electronic message displays, stating that changing the copy on an electric message display sign does not need a permit assumes that the sign in question is legal. To assume that installation of the sign is included as not needing a permit is not reasonable or logical. It is merely addressing changing of copy on a legally constructed sign. Mr. Marx said that a really important point is that if one accepts the notion that this is unclear for window signs, based on the "logic" that has been presented, it's not just window signs. The same argument could be made for wall signs and free standing signs. Mr. Marx said that if all of this were based solely on "logic," then there would be signs put up all over the city.

Mr. Marx said, in regard to the meeting that took place with Mr. McNeal about the Notice of Violation, he did not recall ever saying that it was unclear or confusing. He said he may have said something along the lines of, it's not perfect, and could be better; and that is true. He said the reality is that the sign companies look for loopholes in the Zoning Ordinance, and those were the words Mr. McNeal used when they met- that they "look for loopholes."

Mr. Marx said that it is a little odd that these signs that have started to pop up over the last couple of years (or maybe a little longer) and have increased rapidly over the last year or so; but, oddly, they are not seen on the walls, or as free standing signs- that it seemed to be confined more less to windows. He said it seemed a little odd because the other ones require a permit, and when one has to get a permit, they have to interact with staff and they get the answer that they are prohibited.

Mr. Marx discussed Mr. Glover's earlier question in reference to the large signs in other areas. He said it seemed to be hard to understand as to why they are allowed in one area and prohibited in another. Mr. Marx said that it is just the reality of how the Zoning Ordinance is constructed, and whether it seems fair or unfair, that's the way it's constructed. It is the B-2B (Lexington Center Business) zone that allows the large electronic sign, but only according to specific criteria listed for that zone in Article 17.

He said there has been some talk about why, after all these years, staff is just now enforcing this. Mr. Marx said the staff has just noticed an increase in these signs; and as he said, it is odd how they are mostly appearing in the window areas. Again, it is possible that it is because the sign companies could see that as possible loophole. Mr. Marx said that it was mentioned that these signs are all over the place, but there are areas that do not have these signs at all.

Board Questions/Comments - Mr. Griggs asked if the "open" signs are the kind that can be bought at Sam's Club, and if they are legal, because this type of sign is all over the place. Mr. Marx said they are all over the place, but he did not think they were legal. There are some exceptions to be aware of; those are relatively small and many are visible from the streets, but on the first page of the ordinance (Article 17), it says "if you can't see the sign from the public street, it is exempt." Mr. Marx said that those types of signs are completely exempt from permitting and all, and there are a fair number of them.

Mr. Sallee addressed Mr. Griggs' question as well, and said that while many of those signs can be bought at the big-box stores also they have a switch on the back that enables them to be turned on without flashing or blinking.

Ms. Moore said that she was convinced about this sign being an electronic message display system; but if it is actually a flashing/blinking sign as well, it seemed to her that it was no different than the signs one would see at a baseball stadium or convention center. She asked if those were violating the Ordinance as well. Mr. Marx said that he did not have an answer for that, and fortunately, that issue has not come up yet. Mr. Marx said in some cases there is specific language in the Ordinance of exactly what the sign can do, citing the sign at the Legend Ballpark. Ms. Moore asked, if the Board agreed with the first reference (flashing/blinking sign), again referencing the sign at the ballpark if that meant the staff could go the Lexington Legends and tell them they should change their sign. Mr. Marx responded that if it came to that, yes the staff could do that.

Mr. Glover said that he wanted to make a point when speaking about the Lexington Center Business zone and that the Ordinance "is what it is," the Board is constituted for the purpose of giving relief to the unfair application of Zoning Ordinances, and so this is not a "Board of Law;" it is a Board of equity, in a sense. He asked if Mr. Marx was saying that the Board does or does not have authority to grant approval of the application, or if instead, the staff is trying to

persuade the Board that they shouldn't. Mr. Marx responded that the Board does have the authority to approve the application; however, they would have to make specific findings that this type of sign is specifically allowed in the B-4 zone. He said that he didn't know how the Board could get to that point, but that would be the legal challenge that they would be faced with.

Ms. Moore asked if the Board did or did not have the authority to grant a variance for the sign. Mr. Marx responded that, he didn't believe that the Board could approve a variance, absent the finding of what he had just said about the sign being specifically allowed in the B-4 zone.

At this time, the video of the sign for this case was presented again on the overhead project or, per the request of Chairman Stumbo, for the Board to get a better understanding of the case after hearing everyone's testimony.

Chairman Stumbo said that this case presented a very confusing issue. He said that he definitely could see the plight of the situation and there are a lot of things that could be improved upon. He said the one thing that he did get, was that there was no specific finding to grant approval of this request.

Mr. Forester asked, if this application was disapproved, how it would affect the other business owners with these types of signs in the city. Mr. Marx responded that once word gets out about the decision that has been made, it would probably decrease, depending on the specifics of the finding.

Ms. Meyer commented that she felt that it is incumbent upon the business owners to know what the regulations are.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer and carried 5-2 (Forester and Glover opposed) to **disapprove 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, based on the staff's three reasons for disapproval.

Chair Comment – Chairman Stumbo noted that the Board's decisions are final; therefore, they would have to appeal to the Circuit Court. He said that, as the Board proceeds with these difficult issues that are very complex, there are things that the business owner can do; however, there are also things that probably need to be addressed in regard to the sign ordinance.

Appellant Comment – Mr. McNeal said that he wanted to note that the signs are not going to come down; they are going to be relocated 36 inches back from the window. He said that he was not going to refund the company for this, because the way the ordinance reads, anything that is not within 36 inches from the window is not a sign.

*Note: Chairman Stumbo declared a brief recess at 4:10 p.m. The meeting reconvened at 4:16 p.m. with the same members in attendance*

2. **A-2015-12: BAYOU BLUEGRASS CATERING, LLC** - an administrative appeal of the denial of a permit to allow a catering service in a Highway Business (B-3) zone, at 861 South Broadway (Council District 1).

Representation – Mr. Andre' Regard, attorney for appellant; and Mr. Matt Falcone, property owner, were present. Mr. Regard indicated that they had reviewed the recommended conditions and agreed to abide by them.

Staff Report – Mr. Emmons noted that he distributed three handouts to the Board: 1) the applicant's packet; 2) staff exhibits; and 3) previous staff report from 2006 for Ms. Judith Bakehorn, an appeal that had some bearing on today's hearing.

Mr. Emmons said that the appeal is based on the Division of Planning's denial of a permit for a catering service located at 861 South Broadway, a property that is located in a Highway Business zone (B-3). He said that where the property is located is not, in essence, what today's appeal is about; but the use that was being proposed. Mr. Emmons said that the Division of Planning determined that the proposed use was not a permitted use in a B-3 zone, and denied the application. He then discussed to the definitions in the Zoning Ordinances as they apply to the appeal.

Mr. Emmons said, as this applicant came to the Division of Planning with his proposed use and explained the proposed use, staff came to the conclusion that this request was for a catering business, which is not allowed in a B-3 zone.

Mr. Emmons explained the staff's exhibits in regard to the appropriate zones. He said that the B-1 (Neighborhood Business zone) is the first zone that allows restaurants and brew pubs; it also allows banquet facilities. The B-3 (Highway Service Business) zone is the zone where the subject property is located; restaurants and commissaries are allowed; banquet facilities are not allowed, and neither is catering as a principal use. The I-1 (Light Industrial) zone is the first zone in which catering is allowed as principal permitted use; it is also allowed in the P-2 (Office Industry and

Research Park (zone; the E-D (Economic Development) zone, which is also an Industrial related zone, also allows catering as a principal permitted use.

Mr. Emmons noted that the last page of the staff's exhibit was the official letter that the applicant received when denied the Zoning Compliance permit and contained the logic as to why the staff was denying the permit and spoke about the staff's explanation to the applicant regarding their proposed use. He said that the staff offered the applicant options: 1) they could have a restaurant; 2) they could file for a text amendment if they felt there should be changes to the Zoning Ordinance; or 3) they could appeal the decision.

Mr. Emmons said that in 2014, there was a case similar to this: a use that was proposed as a banquet facility in a B-3 zone. In that situation, the applicant had made the case that their use was substantially similar to other uses that were allowed in the B-3 zone. The Board did approve that case, but some of the specific language that was put into the findings for approval states that that property in a B-3 zone was surrounded by B-1 zoning, which does allow a banquet facility. He said that for this proposed use, those same circumstances do not apply to this case, so the staff did not feel that they could use that interpretation.

Board Questions/Comments – Mr. Glover noted Mr. Emmons' statement that when the application was denied, the staff had properly applied the Zoning Ordinance; but in every decision made by the staff that comes before the Board for an appeal, the staff has properly applied the Zoning Ordinance. He said that was, therefore, not a unique argument for this particular application. Mr. Glover said that the Board was there to grant relief from an unfair application of zoning in certain cases, if the case warrants relief.

Mr. Glover then addressed the statement of Mr. Emmons that catering is not included in the allowed uses of the B-1 or the B-3 zone; but it is included in the two industrial zones. He asked was staff's logical argument that the inclusion of catering is specifically in a zone because it is mentioned, means that it is excluded in another zone where it is not mentioned. Mr. Emmons responded that that was the case, because where the principal permitted uses are first allowed is in the industrial zones. At this time, there was some further discussion in regard to what was defined as "catering", and what was allowed in which zones. Mr. Emmons said that catering is not a defined use in the Zoning Ordinance, according to Article 1-11. It does not have a specific definition in the Zoning Ordinance. In response to a question from Mr. Glover, Mr. Emmons explained the difference between "catering" and "commissary" and why each is allowed in its respective zone.

Representation Comments – Mr. Regard said that Mr. Falcone has operated a catering business in Lexington since 1988, and for the last 13 years has been located at the Red Mile, which is adjacent to the subject property. He said, as part of Mr. Falcone's business at the Red Mile, he operated out of the clubhouse; it is not a restaurant that is open year round. Mr. Regard said that Mr. Falcone has a lease on the Round Barn, which is a separate property from the Red Mile.

Mr. Regard said that due to the restructuring of the Red Mile, Mr. Falcone has relocated his business to an adjacent property, which is currently zoned B-3. He said their interpretation of B-3 zoning is a very permissive zone; the actual intent of the B-3 zone is to encourage economic vitality. Mr. Regard said that the subject property had actually been a failed use; and the property next to door it (a gas station), had also failed. Mr. Falcone has taken it upon himself to purchase this property; to move his business; and to create a viable business that is part of the attached space. Mr. Regard explained the use that Mr. Falcone is proposing for the property. He then discussed the uses of the B-3 zone, noting the difference between what is permitted as opposed to what is prohibited, and how they are generally regulated. He repeated that the B-3 zone is a very permissive zone.

Mr. Regard addressed Mr. Emmons' mention of a previous case in 2006 involving the idea that a catering use is an allowable accessory use. He said that catering is not listed as an accessory use; catering is only listed three places in the code. He said, so by the logic that had been used by the Division of Planning and Zoning, it is impossible for catering to be an accessory use if that logic is followed. Mr. Regard said that the staff didn't actually do that; they used the proper logic, which he further discussed, noting that in the 2006 case, the staff found a way to allow catering to be accessory to the use of the property. He expressed his thoughts as to the logic of that approach.

Board Questions/Comments – Mr. Griggs asked Mr. Regard in his opening statement how he phrased the wording of the B-3 zone being a permissive zone. Mr. Regard responded by reading the "intent" of the B-3 zone, as stated in the Ordinance, and explained that the uses allowed in the B-3 zone are intended to promote economic vitality and are often not allowed in other zones. He said that his interpretation of that is that the B-3 zone is permissive and expansive, as opposed to restrictive.

Applicant Comments – Mr. Falcone, 861 South Broadway, said that as a caterer/chef, they prepare custom foods; they do not do high volume things; they are a small business. He said that he has done very well for 13 years at the Red Mile. Mr. Falcone said that it had allowed him a chance to get a piece of property that had failed as a restaurant. He

said that he was aware of the risk, but felt because of the business he had at Red Mile at the Round Barn, he took the risk.

Mr. Falcone said that the intersection/access is limited at the subject location. He said he has five employees and two vans. Mr. Falcone said that they have 40 spaces for parking; therefore, cumulatively, his business wouldn't be an impact on traffic or parking. He said that as a restaurant operating for lunch and dinner, there would be a couple of hundred coming in and out. Mr. Falcone said that he wanted it to be understood that was not what they were proposing to do, adding that most restaurants now offer catering as a service.

Mr. Falcone presented photos on the overhead projector of his business neighbors (Waffle House and the Marriott) who offer catering. He said when one comes and goes from his B-3 zone site, they come right into the side of the Waffle House. He said the Marriott hosts banquets, weddings, small groups, private dining, and catering as well.

Mr. Falcone said that one of his competitors is also in a B-3 zone and has operated and been granted the opportunity to do what he is proposing, just down the street on Versailles Road. Mr. Falcone said he wasn't sure if it was a flaw, but thought it was. On the exhibit he presented on the overhead projector, he noted that the same type of service is also in a B-3 zone. He said that he pointed this information out to Mr. Emmons prior to this hearing, and Mr. Emmons seemed to be surprised at this information. He said that he would call Mr. Falcone back to let him what the Planning staff's thoughts were on this issue.

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

Board Questions – Mr. Griggs asked Mr. Falcone why he didn't check to make sure he was able to get the permit that he needed before purchasing the subject property. Mr. Falcone responded that he did three specific things to be sure, as this was a big investment. He said when he spoke to the previous owner, who had said that he had done a catering restaurant at this location. At the closing, Mr. Falcone's bank brought up that point; and the previous owner's attorney said that catering and commissaries are approved in the B-3 zone. He said that the only reason that this matter came up was because he was trying to obtain a catering liquor license; and it was when he asked for the signatures that one has to have to apply, that this came up, and he had already closed on the property. Mr. Falcone said that he could take the easy way out and open a restaurant; but it is confusing to him as to the difference between catering and a commissary. A commissary is a place where chefs prepare food, and the food is for sale; however, a caterer is also in the business of preparing and selling food-just for a customized event.

Chairman Stumbo asked staff if catering was prohibited in a B-3 zone. Mr. Emmons responded that it would be the staff's position that, as a principal permitted use, it is. Chairman Stumbo asked what documentation or ordinance that falls under. Mr. Saltee said that it is not because the use is not defined; the use is not listed in the permitted use section of the B-3 zone. Mr. Glover said that trying to determine whether a catering business is similar to a commissary seems to be why this case is before the Board today, and asked if that was correct. Mr. Emmons said that would be correct. He said that the staff does not see those two uses as substantially similar as applied to the Zoning Ordinance, because of how the Zoning Ordinance is constructed. At this time, there was further discussion on this topic, which during Mr. Glover asked with respect to this process, what the Board was being asked to decide. Mr. Emmons explained that the applicant was appealing the determination Planning had made regarding whether or not catering is or should be allowed in the B-3 zone and their denial of a Zoning Compliance Permit for the use. He said if the Board agreed with the applicant, they would be instructing the Division of Planning to issue a Zoning Compliance Permit for catering on the subject property, based on findings that the Board would need to provide.

Mr. Glover asked, if this use did not fit as a principal or an accessory use, if it would be appropriate to consider this as a conditional use. Mr. Emmons said that he was unaware of any existing conditional uses that would be similar to this use.

Mr. Glover then asked what the precedential value of the Board deciding to allow this to go forward would be. Mr. Emmons responded that it would depend on the particular findings that the Board may or may not provide. Mr. Emmons explained other issues for the Board to consider in regard to approval of this case, such as the scale of the use, if it is more retail-oriented or more industrial in nature, how many service vehicles are in the fleet, etc. Ms. Jones added that, in terms of precedential value, if another case came before the Board in regard to an appeal such as the one at today's hearing, the Board would have to look at the facts and circumstances of that case; and it would have to be largely similar to this case for the Board to make the same findings. There was a brief discussion on findings and being able to find enough similarities in order for there to be precedent.

In response to a question from Mr. Griggs, Mr. Emmons said that he wanted to make two points of clarification in regard to this case: 1) The Board did receive the applicant's original application in their mailing the week prior to this hearing; however, on February 23<sup>rd</sup>, the applicant submitted some supplemental justification which had more justification and more exhibits. The basic argument of the applicant, though, was in his original letter. Mr. Emmons said that he

distributed to the Board, prior to this hearing, the additional information received on February 23<sup>rd</sup>; 2) The second page of a similar case, which was an affidavit from that applicant as to her particular use.

Ms. Moore asked if the commissary was different from general catering because of the potential of having many vans deliver and have people pick up orders. She also asked the applicant if he only caters at Red Mile, or if he goes to different locations. Mr. Falcone said that he was open to everyone, but 50% of his business has been at Red Mile, much of which has been in the Round Barn.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried unanimously to **approve A-2015-12: BAYOU BLUEGRASS CATERING, LLC** – an administrative appeal to permit a catering service in a Highway Business (B-3) zone, at 861 South Broadway, based on the following findings:

- 1) That the Zoning Ordinance, Section 8-20(e), allows for uses substantially similar to principal, accessory, or conditional uses in the B-3 zone;
- 2) That Bayou Bluegrass Catering, LLC, is a use substantially similar to permitted uses in this B-3 zone such as restaurants, commissaries, and/or microbreweries;
- 3) That pursuant to the intent of B-3, the relationship of this use to other existing uses in the zone appears to be compatible with those immediately surrounding this property; and further hereby authorize the Division of Planning to issue a Zoning Compliance permit for the use of a retail catering business as described in this hearing at this location which appears more of a retail catering business than as an industrial catering business.

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 Board's next meeting date would be March 27, 2015.

Mr. Glover and Ms. Moore announced that they would not be in attendance for the next Board meeting.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 5:15 p.m.

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Barry Stumbo, Chair

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James Griggs, Secretary