

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 24, 2015

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, April 24, 2015. Members present were Chairman, Barry Stumbo; James Griggs; Janice Meyer; Joan Whitman; Thomas Glover, and Kathryn Moore. Absent was: Larry Forester. 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: Barbara Rackers, Jimmy Emmons, and Tammye McMullen.

- II. **APPROVAL OF MINUTES** – The Chair announced that the minutes of the February 27, 2015 and March 27, 2015 meetings would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Ms. Whitman, and carried 6-0 (Forester absent) to **approve** the minutes of the February 27, 2015 meeting.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman, and carried 6-0 (Forester absent) to **approve** the minutes of the March 27, 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 staff members and other persons 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. **V-2015-27: WINDSWEPT VENTURES, LLC** – appeals for variances to: 1) reduce the required 100-foot distance from a residential zone to 27 feet in order to allow operable windows for an office as part of an office/warehouse building; and 2) reduce the required front setback from 20 feet to 5 feet to allow parking in front of the building in a Light Industrial (I-1) zone, at 729 Bellaire Avenue (Council District 1).

Staff Comments – Mr. Emmons said that the staff's recommendation of postponement was based on a technical issue that came to light during the review of this application, and that he had set up a meeting with the applicant for the following Monday to work on their application to make sure there are no technical issues that would prevent it from being heard the next month. Mr. Emmons said that postponement was being requested for 30 – days, to the May 29, 2015 hearing.

Action – A motion was made by Ms. Moore, seconded by Mr. Glover and carried 6-0 (Forester absent) to **postpone V-2015-27: WINDSWEPT VENTURES, LLC** for 30 days to the May 29, 2015 meeting.

- b. **C-2015-15: CENTRAL KY GARDEN SHOP, LLC** - appeals for a conditional use permit to construct and operate a garden center, with mulch sales; and a variance to reduce the front setback from 50 feet to 15 feet in an Agricultural Urban (A-U) zone, at 1400 Higbee Mill Road (Council District 9).

Staff Comments – Mr. Emmons said that applicant has requested a postponement until the July 31, 2015 hearing. He said that the applicant's request for postponement came in after the legal advertisement was published, so it did have to remain on the agenda and the sign had to remain on the property. However, the staff has advised all neighborhood associations and neighbors that this case would not be heard at today's hearing, and the applicant was requesting postponement. Mr. Emmons said that the applicant has also been advised that since the hearing is so far into the future, that when it comes time for the case to be heard, the applicant will need to redo their notification letters and resend to all the required property owners.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried 6-0 (Forester absent) to **postpone C-2015-15: CENTRAL KY GARDEN SHOP, LLC** for 90 days (July 31, 2015 meeting).

2. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's

recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

ABBREVIATED HEARINGS:

- a. **V-2015-26: SOUTH ELKHORN VILLAGE, LLC** – appeals for a variance to reduce the required 25-foot setback from the floodplain to 0 feet in order to construct an addition to an existing coffee shop in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance 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. In this case, the Special Use Permit process issued by the Urban County Engineer will ensure that the proposed addition to the existing coffee shop will be built above the regulatory flood elevation and will utilize other methods in its construction to minimize potential loss.
- b. Granting the requested floodplain setback variance will not be an unreasonable circumvention of the Zoning Ordinance, because there are provisions in Article 19 of the Zoning Ordinance to grant a Special Permit Use for unique situations such as this.
- c. The fact that the existing structure is partially in the floodplain and partially out of the floodplain, making the proposed location the only viable option for an addition outside of the floodplain, is a unique circumstance that justifies the requested variance.
- d. Strict application of the Zoning Ordinance would prohibit the construction of any addition to the existing commercial structure, or extensive engineering work in order to alter the floodplain associated with South Elkhorn Creek, which is unlikely to be approved.
- 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 commercial addition.

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

1. The site shall be constructed in accordance with the submitted application and site plan, except as amended by the Planning Commission on a final development plan.
2. Provided the addition complies with Article 19-7(f), or the Urban County Engineer grants a Special Use Permit, as authorized in Article 19-8 of the Zoning Ordinance. Furthermore, the applicant shall comply with all recommendations or conditions of approval set forth as a part of the permitting process.
3. All other necessary permits, including but not limited to a Zoning Compliance Permit and a Building Permit, shall be issued by the Divisions of Planning and Building Inspection prior to construction.

Representation – Mr. Rory Kahly, with EA Partners, was present on behalf of the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

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

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer and carried 6-0 (Forester absent) to **approve V-2015-26: SOUTH ELKHORN VILLAGE, LLC** – an appeal for a variance to reduce the required 25-foot setback from the floodplain to 0 feet in order to construct an addition to an existing coffee shop in a Neighborhood Business (B-1) zone, at 4379 Old Harrodsburg Road, for the reasons recommended by the staff and subject to the three conditions recommended by the staff.

- b. **C-2015-21: IDEAL EXCHANGE** – an appeal for a conditional use permit to change the location of a pawnshop within an existing shopping center in order to expand its retail space in a Highway Service Business (B-3) zone, at 510 E. New Circle Road, Suite 125 (Council District 1).

The Staff Recommends: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this type of use is not concentrated along this general portion of New Circle Road; and the applicant will not be displaying or selling merchandise outside. The use already exists at this address, and is proposed for relocation and expansion within the existing shopping center.
2. 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:

- a. The pawnshop shall be established in accordance with the submitted application and site plan.
- b. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be

obtained from the Divisions of Planning and Building Inspection prior to any construction and/or renovation, and prior to opening the pawn shop.

- c. No outdoor display or sales of merchandise will be allowed on the property, including on the right-of-way of New Circle Road.
- d. Firearms will not be sold or purchased at this location without approval of an amended application by the Board of Adjustment.
- e. This approval shall become null and void should the appellant no longer own the property or operate this business on the subject property.

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

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

Action – A motion was made by Mr. Griggs, seconded by Mr. Glover and carried 6-0 (Forester absent) to **approve C-2015-21: IDEAL EXCHANGE** – appeals for a conditional use permit to change the location of a pawnshop within an existing shopping center in order to expand its retail space in a Highway Service Business (B-3) zone, at 510 E. New Circle Road, Suite 125, based on the staff's recommendation of approval and subject to the five conditions.

- c. **C-2015-22: SHILOH BAPTIST CHURCH** – appeals for a conditional use permit to enclose a portion of the building in order to allow an elevator shaft to be constructed in a Planned Neighborhood Residential (R-3) zone, at 237 East Fifth Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- 1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the proposed expansion is relatively minor. It will only result in a short extension on one side of the building and will not expand sanctuary seating, and the site is well buffered from nearby residential areas by vacant properties owned by the church.
- 2. All necessary public facilities are available and adequate for the proposed use.

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

- a. The expansion shall be done in accordance with the submitted application and site plan.
- b. All necessary permits, including a Zoning Compliance Permit and Building Permit, shall be obtained from the Divisions of Planning and Building Inspection prior to construction.

Staff Comment – Mr. Emmons said that the staff had received two letters of opposition and distributed them to the Board.

Representation – Mr. Ed Holmes, EHI Consultants, representing the appellant, was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

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

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 6-0 (Forester absent) to **approve C-2015-22: SHILOH BAPTIST CHURCH** – an appeal for a conditional use permit to enclose a portion of the building in order to allow an elevator shaft to be constructed in a Planned Neighborhood Residential (R-3) zone, at 237 East Fifth Street, for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

- d. **C-2015-23: LEXINGTON CEMETERY** – an appeal for a conditional use permit to construct additional mausoleum buildings accessory to the cemetery in an Agricultural Urban (A-U) zone, at 833 W. Main Street (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. The new mausoleums will be sited in a fairly isolated area of the cemetery where the existing mausoleum is located.
- b. All necessary public facilities and services are available and adequate for the proposed conditional use.

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

- 1. The proposed buildings shall be constructed in accordance with the submitted application and site plan.
- 2. All necessary permits, including a Zoning Compliance Permit and Building Permit, shall be obtained from the

Divisions of Planning and Building Inspection prior to construction.

3. Approval of this use may be exercised over an extended period of time, and not necessarily within one year of the date of the Board's approval of these mausoleums.

Staff Comments – Mr. Emmons said that after the sounding of the agenda, Mr. Porfirio Rami Flores, who primarily spoke Spanish, arrived with regard to the subject case. The staff was trying to find out if he was in opposition or support; and if he wanted to speak on the case or not. There was a brief discussion in regard to whether Mr. Flores was opposed or in support of the case. It was then determined that Mr. Flores was in support of the case.

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

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

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 6-0 (Forester absent) to **approve C-2015-23: LEXINGTON CEMETERY** – an appeal for a conditional use permit to construct additional mausoleum buildings accessory to the cemetery in an Agricultural Urban (A-U) zone, at 833 W. Main Street, based on the recommendation of the staff and subject to the three conditions.

- 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-2015-25: INVICTUS, LLC/DBA NOODLES & CO.** – appeals for a variance to reduce the required front setback from 10 feet to 0 feet in order to construct an outdoor patio in a Neighborhood Business (B-1) zone, at 395 South Limestone (Council District 3).

The Staff Recommends: Disapproval, for the following reasons:

- a. Approving the requested variance will negatively affect public health, safety and welfare by creating an obstruction that lessens the sight distance for the two remaining perpendicular parking spaces. Lessening the available sight distance at this location will increase the potential for a vehicular/pedestrian collision in this area, which is one of high pedestrian traffic.
- b. Although there is precedent in the general vicinity of many of the other business uses having similarly situated patios and decks, the other properties in this corridor do not have any remaining non-compliant parking spaces that are designed to back across a busy pedestrian sidewalk and onto a major arterial thoroughfare.

Representation – Mr. Chad Colony was present, representing the appellant.

Staff Report - Mr. Emmons said that this case was a variance request to reduce the required setback in order to build a patio at the property at 395 South Limestone Street. He said that the property is in a B-1 (Neighborhood Business) zone. Mr. Emmons presented an aerial photo on the overhead projector as he explained that the building is set up to have three tenants in it. Mr. Emmons discussed on the following points:

- The former location of the restaurant, Hugh Jazz Burgers, as well as what used to be E-Campus Books - the new location of the Noodles and Company, and a unit above the restaurant: The site is primarily built out, in its entirety, with the building on the site. In front of the building there is about 30 feet from the face of the building to the sidewalk, which is where a patio is currently located. There are four non-compliant parking spaces in front of what was E-Campus Books, where Noodles and Company will be located.

- The applicant's proposal of the four parking spaces: Mr. Emmons said that the applicant proposes to get rid of two of the four parking spaces to put in an outdoor patio; and, for the most part, this is allowed. He then presented photo on the overhead projector, showing the applicant's rendering of the proposed patio. He then presented an aerial view of the property and explained the parking situation relative to what was being proposed.
- The applicant's justification: He said that it was actually a good justification and not without merit, asking for the covered patio to come out to the street right-of-way. He said that the two-block area has been designated as a "pedestrian orientated business district" (designated by Council in 2012), which allows an 80% reduction in the required parking for all of the business uses in that corridor. Mr. Emmons said that it is actually a major consideration; there is nowhere else in town that has that sort of parking reduction.
- The applicant's submission of several photographs of the Limestone Street corridor, showing other patios similar to what is being proposed.
- The primary reason for disapproval the two remaining non-compliant parking spaces would worsen the sight distance, as one would back out across the very business sidewalk onto the arterial street. He said that not granting the variance is a safer situation than granting the variance, in the case.
- The applicant's alternative interpretation on regarding the safety of this proposed use: Mr. Emmons said that he would allow the applicant to discuss this further. He said that the staff does not disagree with the applicant's interpretation, but did take the more conservative approach and simply could not support the requested variance as it was submitted.

Mr. Emmons said that both the Divisions of Planning and Traffic Engineering recommend disapproval of the requested proposal. He said that the staff offered in the staff report an alternative that if all four of the non-compliant parking spaces were to be removed, in favor of the entire area becoming a pedestrian friendly area; the staff would be in favor of a variance. Mr. Emmons said that it is not a strong disapproval, but it is not a variance request that the staff could support or recommend for approval to the Board.

Mr. Emmons concluded his presentation by saying that granting the variance would create an additional obstruction, which would lessen the sight distance for the remaining parking spaces that are currently there, thereby increasing the potential for vehicular/pedestrian collisions. The staff recognized that there is a precedent of other patios coming out to the sidewalk in this generally vicinity, but they do not have the same non-compliant parking spaces as the subject location.

Board Questions/Comments – Mr. Griggs asked if the parking for the entire building was a number that the staff tried to determine; and if there are three uses on the ground floor. Mr. Emmons said that he believed (on this particular property alone) that there are four non-compliant parking spaces in the front, and there is one (non-compliant) parking space off of Lawrence Street. He said that when the applicant came in to ask for approval of the restaurant, it was demonstrated, they were able to get the five required parking spaces for their use off site and be compliant with their off-street parking.

Mr. Griggs asked if the staff looked at parking requirements on the use of individual spaces in a building, and if the staff was not concerned about the entire building or if that is a Code Enforcement issue. Mr. Emmons said that the staff is concerned about the entire building, but the two parking spaces were traditionally allocated for E-Campus Books (the last user that that was there). Mr. Emmons further discussed the parking spaces for the proposed use.

Mr. Glover asked if the staff had discussed doing away with all of the parking spaces. Mr. Emmons replied that it had been discussed several times. Mr. Emmons said that Mr. Colony is a tenant in the building and does not have authority over the parking spaces that were designated for the users of the building.

Mr. Glover asked if he was correct in viewing the photo, it appeared that the patio was either an elevated patio, or it has a brick side on the parking side, which Mr. Emmons confirmed.

Representation Comments – Mr. Chad Colony, owner of Noodles and Company, began his presentation by distributing some packets to the Board. Mr. Colony stated that he and his family moved to Lexington six years ago. He said that he then decided to invest in a family-owned business in order to be able to stay in Lexington. Mr. Colony stated that he has invested in many small businesses around the city.

Mr. Colony said that he believed his request for a variance is merited for several reasons. He believed that a patio is good for commerce and the overall aesthetics for the neighborhood; it creates a great outdoor atmosphere for the neighborhood on North Limestone; it creates a great upscale urban look; and he planned to remove two very hazardous parking spaces (going from four to two). Mr. Colony referred to several pages in his packet in regard to the parking spaces that he referred to as parking spaces 1, 2, 3, and 4 (from right to left). He contended that parking space number 4 is very dangerous; there is almost zero visibility. Mr. Colony said that his intention was to eliminate parking spaces 3 and 4 to increase the safety of backing out of those spaces.

Mr. Colony said that during the process, he had been working with the Planning division; and the staff had been very gracious and fair. He said in order to make a "win-win" situation and he had revised the plans and distributed the revisions to the Board. He said that in the original plan, there were pillars that would impede visibility from the main two spots; however, those pillars have been removed by his architectural design team and the stone wall will be lowered. Therefore, rather than build it up, they will actually build it lower (no higher than two and half feet, which is below a car window). Any remaining parking that remains there would have virtually no impediment to visibility. He said that parking spaces 1 and 2 would be greatly enhanced. Mr. Colony further discussed their plans for the parking spaces and site visibility.

Mr. Colony discussed the character of the vicinity. He said that every restaurant in the area has a patio. He said that he believed there was a precedent set within the area, that patios have been allowed. Mr. Colony said, furthermore, that he believed not granting a variance would cause harm to his business by alienating him, being the one restaurant on North Limestone to not have a patio. He also believed that as one goes along North Limestone, there are a lot of restaurants that people go to for drinks and a good time, but there are no family restaurants.

Mr. Colony said that he has been working with Greg White (the new tenant next door to his business), and Mr. White's intention is to eliminate the two parking spaces. He said that Mr. White advised him that he would be going before the LFUCG with his plans, as he wants the two parking spaces removed, as well.

In closing, Mr. Colony said that he would be more than happy to work with the City in a symbiotic relationship, and he believed that the plan he has offered would overcome the staff's objections; and that by going from 4 to 2 parking spaces, it would increase the public safety. He said that the patio would be built like everyone else's, and he would use all local contractors. It was his belief that he should have the same rights as his neighbors.

Board Questions and Comments – Mr. Glover asked if there were any architectural construction problems in removing the columns. Mr. Colony said that removing the columns would not cause any problems, which he verified with his architect. Mr. Glover asked why the columns were there, to which Mr. Colony responded that they were there more for aesthetics than anything.

Mr. Glover said that he didn't fully understand the argument on the parking reduction. Mr. Colony said that removing the 2 parking spaces (referred to as 3 & 4), would lessen the danger for oncoming vehicles and pedestrians. Mr. Glover said that, from what he understood, the argument of the applicant removing the two parking spaces would eliminate the staff's reason for disapproval and asked Mr. Emmons if that was, in fact, the case. Mr. Emmons said that he did believe that the proposed site conditions would help with the sight distance triangle for the cars that are backing out. He said that he would like to leave those comments to Traffic Engineering.

Ms. Kaucher said that, in analyzing the sight distance, they were looking at the concern for pedestrian safety because the vehicular traffic on North Limestone is a one-way flow. She said that she didn't know if the two parking spaces that are proposed for elimination are the "worst" of the four; however, she thought that the applicant's proposal to lower the walls would address that concern.

Mr. Glover asked if it was fair to say that by eliminating two of the four spaces that the danger level to pedestrians is decreased. Ms. Kaucher said that she didn't know if she would agree with that sentiment. Mr. Glover asked if it was a mathematical conclusion- that two are better than four. Ms. Kaucher responded that for Traffic Engineering, the two parking spaces are still not something that they could support. Mr. Colony said that; for the record, he did not have any control over the two remaining parking spaces; however, his counter-proposal meets the spirit of the law; he agreed to it and is still working on his final plans.

Mr. Glover then asked if Traffic Engineering would agree that eliminating all of the parking spaces would be a safer solution for this area. Ms. Kaucher responded affirmatively. Mr. Glover asked, from the staff's perspective, if it would be possible to eliminate all four of the parking spots. Mr. Emmons said that he did not think that the Board currently had the authority to eliminate all four of the spots. Mr. Glover replied that he was asking, if there was a proposal to eliminate all four spaces, if the Board would have grounds for disapproval. Mr. Emmons said that, in fact, the Division of Planning staff has gone on record in saying that if all four parking spaces were to go away, the staff would be in support of the requested variance; but given the way it was proposed, the staff felt it was a safer situation to not grant the requested variance.

Ms. Moore said that she recalled when the Board had considered a variance for the restaurant on the corner; there was a long debate about an awning and a permanent structure there, and this proposal appeared to have a roof-like structure. She asked how this proposal was different. Mr. Emmons said that, in short, the rules have changed since the Board considered at the original patio covering for Hugh Jazz Burgers. Mr. Emmons then generally discussed the recent changes that had occurred within the business zones and in the Infill and Redevelopment area.

Mr. Colony said that, the night prior, he had spoken with the landlord (owner of the building), who was under the impression that the patio variance was for the entire building. Mr. Emmons said that he didn't think that the variance was for the entire building; and the variance for the covered patio on the corner was disapproved by the Board of Adjustment.

Mr. Griggs said that the variance request is from 10 feet to 0 feet and asked if that was only needed because of the covering, or could a patio be built without a cover. He also asked if the 10 feet meant 10 feet from the sidewalk. Mr. Emmons replied that in this instance the sidewalk and right-of-way were coincident with each other. Mr. Griggs then asked if they would be able to eliminate the two parking spaces and build a patio out within 10 feet of the sidewalk without coming before the Board of Adjustment. Mr. Emmons said that he believed that the applicant could place seating in that area, even if it weren't covered; but he would question whether it could be raised or lowered from street level. At this time, there was further discussion in regard to the parking spaces and what would be allowable.

Ms. Whitman asked how high the wall would be that they are proposing at that front corner. Mr. Colony replied that it would be no more than 2 ½ high, but he was open to suggestions and compromise.

Citizen Comments – Mr. Jack Stewart was present, representing the owner of Pazzo's, which adjoins the property. He said that it was very intimidating to have this kind of proximity to Pazzo's, when the business the patio is serving is really away from where the requested proposal is. He questioned the combustible structure at the property line (he was sure it was not permitted); and he said that he did not see a property line on the site plan to show how the appellant would build the piers that close to the building. Mr. Stewart said that it seemed like it would be better if it were not that invasive to the other businesses. He said that this proposal does not seem to be appropriate, in being a good neighbor.

Board Questions/Comments (cont.) – Mr. Griggs said that in looking at the plan of the structure, it did not appear to be connected to the building at all. He asked if that it made it a separate structure, and if it affects whether the structure can be put there. Mr. Emmons responded that he did not know that answer to that; it would be considered an accessory structure if it wasn't attached. Mr. Colony responded that he did not know as well, but would be more than happy to attach it if that was the initial hold-up.

Chairman Stumbo said that his issue was that he did not like any of the four parking spaces; he would like to see all of them eliminated and would like to see some kind of compromise. Chairman Stumbo suggested that the patio could be extended if the other two parking spaces would be eliminated, and asked Mr. Colony if he would be opposed to that. Mr. Colony said he would not be opposed; he would like to get done what he could as soon as possible. He said he would like to go forward. He agreed that the parking spaces were dangerous and would like to have them removed. Mr. Colony said that the way he looked at it was that currently, with four parking spaces, it is a bad situation (everyone agrees it is dangerous); and it is currently the worst scenario. Mr. Colony said the second best scenario is to eliminate two parking spaces, and the best scenario is to get the parking spaces down to zero. Chairman Stumbo said that, even with eliminating two spots, it is still extremely dangerous; and he would like to try and reach some kind of compromise. He said that he really appreciated Mr. Colony's investment in the community and his embrace of Lexington, but this case is a very unusual circumstance and a very dangerous spot. Chairman Stumbo said that he would like to approve a part of the patio and have the appellant come back before the Board when the other two parking spaces have been eliminated. At this time, there was further discussion in regard to possibilities of what could be done to arrive at a compromise.

Mr. Colony asked if he would be able to create half of the project and then continue that at later date; he said he could work with his architect to see if it was plausible and also work with the other tenant to see if he could possibly go before the Board and move forward. Chairman Stumbo said that he would like to have this issue studied a little more to see what some options may be. He asked Mr. Colony if he would be willing to continue the case for another 30 days to have time to come up with some type of solution. Mr. Colony said that he knew that Mr. White would be going before the City with recommendations; and if those start to proceed, they could collectively work together, and he would be more than happy to come back in 30 days, hoping that everyone would be able to work all together to create a safe area.

Mr. Griggs suggested that the request be approved, but with an added condition that it couldn't be built unless all four parking spaces were removed. He would not have to come back to the Board of Adjustment, but he could resolve the issues with the other tenant; and when he does, then the request would already be approved. Chairman Stumbo asked Ms. Jones (Law Department) what her thoughts were on this from a legal perspective. Ms. Jones responded that her concern would be if, in 30 days they haven't worked something out, what would happen. Mr. Griggs asked why give a time limit and suggested that they just approve it with the condition that the four spaces be eliminated. There was further discussion as to whether or not to approve this application with conditions or to continue it.

Chairman Stumbo said that he would prefer a continuation of this case, and not have a condition imposed at this time, because there were so many unanswered questions. It would give the appellant time to talk with his architect and the adjoining property owner come back to the Board and try to find a way to resolve this for all. Mr. Colony replied that if, in fact, Mr. White didn't follow through, he would still like the opportunity to come back before the Board to argue his points if those spaces stay. Mr. Glover said that if this case was continued generally; without any conditions, the Board would be giving the appellant time to answer questions and solve problems without requiring any particular thing. He said that he would support a 30-day continuation so that the appellant could get more information, and maybe have other people speak, and to explore alternatives.

Mr. Griggs said that he did not understand the concern expressed by Pazzo's this application. He said he didn't know if it was a fire code issue or if they had a right to suggest that the appellant is blocking their presence on the street, adding that he wasn't exactly sure what their objection was. Mr. Stewart responded that he thought as it goes forward toward the street that it is invasive with regard to the adjacent patio; and for a combustible material to be that close, it is not permissible. To build the foundation that is shown on the site plan, he believed it was too close to the building. Mr. Griggs asked Mr. Emmons to look more into Mr. Stewart's concern before the next Board of Adjustment hearing, if this is continued, as to whether the proposed building is an accessory structure, and whether there are rules about combustible materials right on a property line. Mr. Emmons replied that he would check with the commercial section of Building Inspection.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried 6-0 (Forester absent) **to continue V-2015-25: INVICTUS, LLC/DBA NOODLES & CO.** –for 30 days to the May 29, 2015 meeting.

2. **V-2015-24: HAPPY HOME KY, LLC.** – appeals for a variance to reduce the required parking for a triplex from 5 spaces to 4 spaces (a 20% reduction) in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, at 125 Ransom Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the modest reduction in the off-street parking for this project should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. The proposed parking reduction will increase the amount of available open space on this property, while providing a reasonable number of parking spaces for the proposed use.
- b. Granting the requested variance will not negatively alter the character of this area, as it will be developed similar to other properties with parking in the rear, and will ultimately be reviewed by the Board of Architectural Review for compatibility and compliance with the H-1 design guidelines.
- c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance. The applicant has demonstrated that there will be less need for parking due to the decreased number of bedrooms, when compared to other typical multi-family dwellings, and because of the proximity to public transit and other amenities - all within a 20-minute walking distance of the subject property.
- d. The low number of bedrooms, the walkable nature of the surrounding neighborhood, and the Board of Architectural Review's expressed concern about providing five parking spaces on the subject property are all special circumstances that apply to this property that do not generally apply to other more typical multi-family dwellings in an R-3 zone.
- e. Although some renovation is currently occurring on the property, the parking area is not yet constructed. The circumstances of this request are not the direct result of actions taken by the applicant; but are, rather, a response to the complex nature of doing an Infill & Redevelopment project within an H-1 Overlay zone.

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

1. This property shall be developed in accordance with the submitted site plan and application, or as amended to fully comply with the requirements of the Board of Architectural Review.
2. All necessary permits shall be obtained, including but not limited to a Certificate of Appropriateness from the Historic Preservation Office and a paving permit through the Division of Building Inspection prior to construction of the parking lot.
3. The parking area shall be developed in accordance with Article 16 of the Zoning Ordinance.
4. Any outdoor lighting (if desired by the property owner) shall be less than 5' in height, if free-standing, and shall be directed away from any adjoining residentially zoned properties, regardless.

Chairman Comments – Chairman Stumbo said that he was aware that there was some opposition for this case, and asked the appellant if they were able to discuss the issues.

Representation – Mr. Kyle Hoelscher, owner of Happy Home, Ky., LLC, said he had reached out to Ms. Clark (opposer) via phone and email, to no avail, and would be willing to step into the hallway and discuss whatever issues Ms. Clark had.

Chairman Stumbo asked Mr. Hoelscher if he and the opposer (Ms. Clark) were able to discuss the issues that the Ms. Clark had. Mr. Hoelscher replied that they had not; however, he had previously tried to contact Ms. Clark to discuss her issues, but she failed to return his phone calls and email.

Note: Chairman Stumbo declared a brief recess at 2:29 p.m. The meeting reconvened at 2:41 p.m. with the same members in attendance.

Board Comments – Upon return from the recess, Chairman Stumbo asked Mr. Hoelscher if he and Ms. Clark were able to resolve the issues. Mr. Hoelscher replied that they had not.

Chairman Stumbo noted that the staff was recommending approval for this application, subject to four conditions, and asked Mr. Hoelscher if he agreed to abide by the conditions. Mr. Hoelscher replied that he was.

Citizen Comments – Ms. Amy Clark, who lives at 628 Kastle Road, asked the Board to deny the variance because she believed it allows for a density and intensity of use that is too great for the lot size, for the traditional neighborhood design and the surrounding vicinity/residential area. Ms. Clark believed that other neighbors shared her views on this, and that they could win a judgment on it, and believed that is why there were no other neighbors at this hearing.

She said that she would like to ask the Board to not judge the case without first having an accurate and complete site plan, to get the whole picture, and so that the public could also get the whole picture and have an opportunity for comment in advance.

Ms. Clark said that when the staff makes a judgment or an act of interpretation that the citizens don't agree with, they (the citizens) are able to appeal to the Board; however, when the Board makes a judgment, their (the citizens') appeal is to Circuit Court. That is complicated and expensive, so she would rather that everyone have the whole picture before the judgment is made because it is better to go to the Board first for a hearing.

Ms. Clark said that she would like the Board to look more closely at their ability to vary the parking requirement for an R-3 use; as she read it, "such a variance, which is only possible in an Infill/Redevelopment area, requires a development plan approved by the Planning Commission", following Article 9. Ms. Clark said she would be interested to see whether the staff concurs in that.

It was her belief that the applicant and she do agree on one thing, that it is a property that would be "happier" with an R-2 development than an R-3. Ms. Clark said that the issue is not really about off-street parking; but, rather, the floor space relative to lot area (the floor area ratio). Ms. Clark discussed what is allowable in an R-2 zone with regard to floor area and what is allowed in an R-3 zone.

Ms. Clark said that the issue is not off-street parking; it is the lot area and green space. She said that the lot is relatively small for the zone; she noted that the minimum lot size for R-3 is 6,000 square feet; this lot is near 6,250, and is cramped. She noted that it is not clear that an R-3 use of this size can meet the constraints of the zone, and knowing all the circumstances of the site is needed to make a balanced judgment; walkability is not the only issue for this proposed use. Both the findings of fact and the conditions, recommended by the staff along with their recommendation of approval, make reference to the site plan. She said that they refer to open space and the number of bedrooms (findings A, C, and D); condition #1 says that the site is to be developed in accordance with the submitted site plan and application.

Ms. Clark said that the issue here is when everything is pushed to the limit, there needs to be an accurate and complete measurement of things; there needs to be a record of all the things that pertain to the site; in order to judge whether it can work at all, and whether the parking variance is justified. Ms. Clark said what she was referencing was that the dimensions and areas are illegible and sometimes absent. She would like to see the required open space of 20% reckoned out and reported; the lot coverage of 25% reckoned out and reported; the parking, vehicular use area, and the required landscape buffering associated with that reckoned and reported. Some of the dimensions are missing- the width of the driveway and the porch width. She said when you multiply the length by the width; one does not come up with the reported area.

Ms. Clark said that she believed that the plan is deficient enough that the Board cannot make a fair and balanced judgment. She stated that the front lot line is missing and that there was not enough accurate and complete information for the Board to make a judgment on this application.

Ms. Clark said that, in asking for a variance, the applicant is asking the Board to exercise their discretion and override what the Zoning Ordinance says. Ms. Clark requested that the Board continue this application in order to get more definite information.

Board Questions and Comments – Chairman Stumbo asked the staff if the Board had enough information to make a decision. Mr. Emmons responded that he believed that the Board had adequate information. He said that the requested variance is on the number of parking spaces. Mr. Emmons said that it was brought into question as to whether or not the Board had the authority to grant such a variance, and the staff believes that the Board does indeed.

Mr. Emmons presented a copy of the Zoning Ordinance - Article 7-6(b)- on the overhead projector, and stated that it gives the Board the specific ability to grant parking variances to up to 50% of the minimum required parking. He said that in this particular instance, a tri-plex would require five parking spaces (the 50% reduction would be 2½): Based on that, the Board could allow a reduction on this particular site from 5 to 3; 5 to 4 has been requested by the applicant. Mr. Emmons then referred to Article 16-10, noting that this is the section of the Zoning Ordinance that regulates parking variances that are allowed by right. Mr. Emmons discussed what was allowed, referring to different Articles in the Zoning Ordinance. Mr. Emmons said that the applicant's proposal was very detailed and justified. It does not cause a negative or a safety issue.

Mr. Emmons said that because of the unique circumstance for this request, the staff did find that the proposed variance is justified. In addition to the legal requirements of granting any variance, the staff has also applied the additional filters in looking at what is an appropriate justification to grant a parking variance. The staff looked at the walkability; at alternative parking in the area; at the overall picture, and whether it was a justifiable request. The staff would recommend to the Board that it is a justifiable request, and had noted so in the staff report.

Mr. Griggs asked if it was the responsibility of Building Inspection to calculate the floor area ratios that are required in the zoning code. Mr. Emmons responded that he believed that Building Inspection had looked at this and said that they were close. He said that when a requirement is not met, they (Building Inspection) send this applicant to the Division of Planning. Mr. Emmons said that multiple people have to look at and authorize before he can actually get permit for what he is proposing. He said the exterior of the site is controlled by the Board of Architectural Review (BOAR). Mr. Emmons said there was a first application to the BOAR; they disapproved that, and then the applicant came back to the Division of Planning with a new application that matched the proposed site plan that the BOAR did approve.

Mr. Griggs said that the original question was who makes sure that all of the floor area ratios are within what is allowed by the Zoning Ordinance. Mr. Emmons said for multi-family, it would be the Division of Planning that would have to review it and issue a Zoning Compliance Permit. Mr. Griggs asked where the data come from; there is nothing on the plan that said it came from a licensed surveyor. Mr. Emmons responded that it does not need to be for a Board of Adjustment site plan. Mr. Griggs replied that the applicant would need to be in compliance with the ratios. Mr. Emmons agreed, and said that the applicant would have to demonstrate compliance before the Division of Planning would issue a Zoning Compliance permit for it. Mr. Griggs discussed Ms. Clark's comments, noting that she did have some valid points that this is approaching the limit, and just wanted to make sure that this didn't go over the limit. Mr. Emmons replied that prior to construction, the applicant would have to get the appropriate permits, and show all of that; however, for the purpose of the variance that is being requested, there was enough information on the site plan to get at the question about the parking, which is the variance that is before the Board today. The use is allowed by the Zoning Ordinance, and is not in question at today's hearing. He said for that purpose, the site plan is sufficient to evaluate the requested variance.

Ms. Meyer asked if there was any landscaping that is required in this request. Mr. Emmons said that there is a vehicular use area screening requirement; there is not zone-to-zone screening required for this area, but the new parking lot that would be constructed would have to be screened. The applicant's proposed site plan indicates that there would be enough area on the driveway side to get in the vehicular use area screening.

Citizen Rebuttal – Ms. Clark asked if it was the Zoning Compliance permit that makes the final judgment on whether the open space and the lot coverage, etc., is in good order, which would mean that any citizen appeal for that is to the Board of Adjustment as a separate process. Mr. Emmons responded that if someone questioned on the validity of a Zoning Compliance Permit that the Planning Division issued, someone could appeal that decision as an Administrative Review.

Ms. Clark said that she is sympathetic with someone who wants to build and get on with their project, due to the financial hardship associated with a delay. The applicant is aware of, and has put to good use; the tax credits and financial incentives for building and redevelopment in this area. She said that as long as the applicant follows the federal guidelines for historic rehabilitation, he could qualify for getting up to 40% of his building expenses back (with strings attached, it may be closer to 30%). She said that the applicant has shown, in other places in town, that he has done an incredible job that fits well in the neighborhood; and, as far as the parking request, she wondered if the appeal shouldn't be to the Planning Commission or if it should be a Board of Architectural Review decision. Ms. Clark said that the applicant's preference would be to build a duplex rather than a tri-plex, and it is the parking requirement that is the problem.

Representation Comments – Mr. Hoelscher read a statement that he had prepared to put a broader perspective on what he was proposing, which read as follows:

"To the members of the BOA, and to all the residents of Lexington, Kentucky:

Thank you for your interest in the restoration project at 125 Ransom Avenue. I am personally very excited about this project. I am always excited when I have the opportunity, and am able to find the means, to restore a historical home that has fallen on rough times to its former glory.

This property has in fact fallen into a state of terrible disrepair. Over \$60,000 is needed just to repair the foundation, the box gutters, eaves and roof. The walls are literally crumbling from foundation issues, and a constant barrage of water coming into the box gutters has destroyed the plaster and threatens to rot away the framing itself. Once the renovation is complete, not only will these immediate threats be corrected, but the property will have all new plumbing, electrical, paint, refinished flooring - simply put, the property will have new life again.

I have financing in place for a \$300,000 renovation to create a very high-end residence. It is very similar to a project I completed at 623 East High Street; that was a six-plex slum that I had renovated into a luxury tri-plex. Mr. Hoelscher said that that was a case where he was doing the opposite and reducing the total density of the property. He then continued with his prepared statement: "I always enjoy reducing the density where I can. In fact, ten of the last ten renovation projects I have completed, I've either reduced the density or kept them as single-family homes".

"Unfortunately, an additional unit on 125 is going to be required to achieve the financing. The only issue from preventing the plan from proceeding is merely an aesthetic issue. I am requesting that one less parking spot be required so that there is more green space in the back yard for future residents.

Mr. Hoelscher said that he personally doesn't have a strong opinion on whether there are five spots or four spots; but he had been working diligently for seven months now with the Board of Architectural Review, and they have a very strong opinion that they would prefer four spots versus five spots. This is in line with their recommendations as another division of Planning and Historic Preservation.

Continuing his prepared statement, he read: *"This project will be completed under the guidelines of not only the Lexington Board of Architectural Review, but also the Kentucky Historic Preservation department, and also the United States Federal Historic Preservation.*

The renovation to the interior of the house will be entirely reversible. Long term, it will be possible to return the property to a single-family home, once the renovation costs have been recovered. For the meantime, there is absolutely no other way to finance the renovations".

Mr. Hoelscher said that he has personally tried to sell the property three different times, and the couples looking to buy the property were unable to secure financing because the property simply won't appraise as a single-family home due to the extent of the renovations required.

Continuing, he read: *"So what would happen if the parking spot is not approved by you today? Well for one, I would lose all my financing. That would mean I would have not money for the repairs required for the project. Without adequate funds for the property, it would remain in very poor condition. Being in poor condition, it would only attract the very worst of residents, and it would decrease the value of the neighborhood, rather than increase the overall property values of the neighbors".*

Mr. Hoelscher said that he was happy to have the staff share his contact information with any other citizens who may be watching at home and have a personal interest in the project. He said that he has reached out to all of his neighbors on the street, as well as Ms. Clark. Unlike the way she previously characterized the neighbors, he said they are actually quite excited about this project. The house has been sitting vacant for over two plus years. If you look up at the eaves, they are literally rotting and falling down. There are raccoons and birds nesting, and all that water is rushing into the interior of the house. He said that, as everyone is aware, there is a large amount of abandoned properties that are in a state of disrepair in this city.

Mr. Hoelscher further discussed the hardship that it would be if his request was not granted. He also addressed the landscaping question that was mentioned prior. He said that there is a full landscaping plan in place that has been submitted to the BOAR and the staff of Historic Preservation. He suggested that if anyone had any suggestions on the plan, he would be more than happy to take it into consideration, and would be willing to make any adjustments, if necessary.

He thanked Ms. Clark for her concern with the City, and addressed her comments about the accuracy of the plans. Mr.

Hoelscher said that there is a different set of plans required for the City in addition to what has been presented today, and that he could validate the accuracy of those plans.

Mr. Hoelscher then addressed the comment on the National Register (of Historic Places, noting that it is a very difficult process. Usually one can receive up to 30% of eligible renovations, but not of the total cost (only portions are deemed eligible).

Citizen Comment – Ms. Clark said that she does appreciate the work that Mr. Hoelscher had one and does agree on the open space; however, what they disagree on is how much is possible. She said that the floor space (floor area ratio) is the issue.

Ms. Clark re-addressed and clarified what she had mentioned in regard to the National Register. She also addressed the statement in regard to the citizens; noting that there have been several citizens who attended the BOAR meeting, and voiced their objections to the proposed request.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 6-0 (Forester absent) to **approve V-2015-24: HAPPY HOME KY, LLC.** – an appeal for a variance to reduce the required parking for a triplex from 5 spaces to 4 spaces (a 20% reduction) in a Planned Neighborhood Residential/Historic District Overlay (R-3/H-1) zone, at 125 Ransom Avenue for the reasons recommended by the staff and subject to the four conditions listed in the staff report.

D. **Conditional Use Appeals**

None Remaining.

E. **Administrative Review**

There were none.

IV. **BOARD ITEMS** - No such items were presented.

V. **STAFF ITEMS** - No such items were presented.

VI. **NEXT MEETING DATE** - The Chair announced that the next Board's meeting date would be May 29, 2015.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 3:29 p.m.

Barry Stumbo, Chair

James Griggs, Secretary