

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

May 29, 2015

I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, May 29, 2015. Members present were Chairman, Barry Stumbo; James Griggs; Janice Meyer; Joan Whitman; Kathryn Moore; and Thomas Glover Larry Forester. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor and Thomas Clements, Division of Engineering; Jim Marx, Zoning Enforcement; and Andrea Brown, Department of Law. Staff members in attendance were: Bill Sallee, Jimmy Emmons, and Tammye McMullen.

II. **APPROVAL OF MINUTES** – There were no minutes to be considered at this time.

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.

There were none

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-2015-31: PINE KNOLL FARM/GILLIAN VALLIS** - appeal for a variance to reduce the required setback from the right-of-way from 30 feet to 25 feet (at its closest point) in order to partially enclose an existing riding arena (as defined by KRS 100) in the Agricultural Rural (A-R) zone, at 1101 N. Yarnallton Pike (Council District 12).

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

- a. Granting the requested variance should not adversely affect the public health, safety or welfare; nor will it alter the character of the general vicinity, as this area is dominated by equestrian related agricultural uses. Furthermore, the Metropolitan Planning Organization and the Division of Traffic Engineering have both agreed that the requested variance will not be detrimental in the unlikely event that this local rural road was to be improved.
- b. The location of the existing riding arena, which is now proposed to be covered, is a unique circumstance that justifies the requested variance.
- c. Strict application of the Zoning Ordinance requirements would either limit the amount of the riding arena that can be covered, or would possibly result in expensive operational changes to provide this function elsewhere on the farm.
- d. This is not the result of a willful violation of the Zoning Ordinance or other attempt to circumvent the regulations; rather, it is a reasonable request, considering the location of the current riding arena and drainage areas on the farm.
- e. The requested variance is not a direct result of the actions of the applicant, but is more of a response to the existing natural and built environment.

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

1. The structure shall be developed in accordance with the submitted application and site plan.
2. Encroachment agreements shall be obtained from the LFUCG and appropriate utility companies, prior to enclosure of the existing riding arena.

Representation – Ms. Lynn Pedigo was present representing the appellant, and they indicated that she 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 Mr. Forester and carried unanimously to **approve V-2015-31: PINE KNOLL FARM/GILLIAN VALLIS** - an appeal for a variance to reduce the required setback from the right-of-way from 30 feet to 25 feet (at its closest point) in order to partially enclose an existing riding arena (as defined by KRS 100) in the Agricultural Rural (A-R) zone, at 1101 N. Yarnallton Pike, for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

- b. **V-2015-34: EMERGE DEVELOPMENT** - appeals for a variance to reduce the required side yards from 5 feet to 3 feet in order to construct an apartment building on each lot in a Planned Neighborhood Residential (R-3) zone, at 412, 422, and 424 East Third Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Approving the requested variances for the internal side yards in this project will not have a negative impact on the public health, safety or welfare, nor will it have a negative impact on the overall character of the neighborhood. Many properties in this vicinity were built with less than 3' side yards, prior to the current zoning requirements.
- b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, as the staggered locations of the three apartment buildings closely approximate the "averaging" provisions for side yards, which are typically allowed "by right", and since the reduced setbacks will be barely noticeable from the street.
- c. The unusual shape of these three lots and the fact that they are able to be developed as one project 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 construction that is more compatible with existing neighborhoods.
- d. Strict application of the Zoning Ordinance would create an unnecessary hardship on the appellant and would likely result in a less desirable outcome for the design of these properties.
- e. The requested variances are not the result of any willful violation of the Zoning Ordinance but are, rather, are a reasonable response to this unique lotting situation.

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.
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 allowing 3' side yards between the three new apartment buildings that are a part of this development project. The exterior yards along the east and west sides of the subject properties shall be required to meet the 5' setback as shown on the submitted site plan.

Representation – Mr. Benjamin Clements was present, representing 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. Meyer, seconded by Ms. Whitman and carried unanimously to **approve V-2015-34: EMERGE DEVELOPMENT** – an appeal for a variance to reduce the required side yards from 5 feet to 3 feet in order to construct an apartment building on each lot in a Planned Neighborhood Residential (R-3) zone, at 412, 422, and 424 East Third Street, as recommended by the staff and subject to the three conditions outlined by the staff

- c. **V-2015-35: GREER LAND COMPANY** - appeals for a variance to reduce the required project exterior yard from 20 feet to 5 feet in order to build an addition to an apartment building in a High Density Apartment (R-4) zone, at 858 Malabu Drive (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not negatively affect the public health, safety and welfare; it will not negatively alter the character of the area, nor will it cause a hazard or nuisance. Rather, granting the variance will allow a building to be replaced at the same location as the previous building that had been destroyed by fire. Allowing an apartment building to be built as it previously existed will help to maintain and stabilize the existing building to which it will be attached, thereby ensuring greater public health and safety, and will help to maintain a cohesive appearance with the remainder of the property.
- b. Granting the variance will not allow an unreasonable circumvention of the Zoning Ordinance, as it is only due to the timing of the adjoining property's development (its subdivision to allow construction of a bank, creating a

- property line that is only 5 feet from the proposed building's existing foundation) that the variance is needed.
- c. The special circumstances that apply to this property that are not typical of other properties in the area are the significant slope of the property downward toward Bates Creek Road, in conjunction with the tall retaining walls, which greatly limits the buildable area; the location of the common property line between the bank property and the subject property, which is only 5 feet from a previous building's foundation; and the fact that there is an existing building, originally constructed with another apartment building attached to its eastern side that was destroyed by fire, that should be replaced.
 - d. Strict application of the Zoning Ordinance would disallow a structure of a reasonable size that is likely needed to provide adequate structural support for the existing building. Additionally, the existing unsupported fire wall, which was originally designed as an interior wall, could become a safety hazard over time.
 - e. The requested variance is not the result of a willful violation of the Zoning Ordinance, nor is it a result of the actions of the applicant subsequent to the adoption of the Zoning Ordinance. The building that is proposed for the site is to replace a building that was destroyed by fire, was demolished, and was removed due to being a safety hazard.

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, or as amended by the Planning Commission.
2. That action of the Board be noted on an amended Final Development Plan for Kirklevington North, Tract B.

Representation – Mr. Matt Carter was present, representing 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 Mr. Griggs and carried unanimously to **approve V-2015-35: GREER LAND COMPANY** – an appeal for a variance to reduce the required project exterior yard from 20 feet to 5 feet in order to build an addition to an apartment building in a High Density Apartment (R-4) zone, at 858 Malabu Drive, for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

- d. **C-2015-28: FIRST ALLIANCE CHURCH** - appeals for a conditional use permit to expand and pave an existing grass parking lot in an Agricultural Urban (A-U) zone, at 2201 Old Higbee Mill Road (Council District 10).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided that the parking lot is developed to specifications of a professional engineer and any required storm water improvement complies with the adopted Engineering Manuals. The site chosen for the parking expansion is mostly used for overflow parking today and will still be further back from Old Higbee Mill Road than most other uses in this corridor. Furthermore, it will be landscaped as required by Article 18 of the Zoning Ordinance.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The parking area shall be established in accordance with the submitted application and site plan, with minor changes allowed by the Divisions of Engineering or Traffic Engineering during the normal course of the permitting process. Additional parking beyond the 81 spaces now proposed will require further approval by the Board of Adjustment.
2. All necessary permits, including grading and paving permits, shall be obtained from the Divisions of Engineering and Building Inspection prior to construction of the parking lot.
3. All paving and detention facilities shall be approved by the Division of Engineering, subject to the requirements of the Engineering Manuals.
4. Landscaping for a vehicular use area shall be provided, per Article 18-3 of the Zoning Ordinance

Staff Comments – Mr. Emmons said that there was one letter of "concern" received by the staff, not necessarily in opposition, which he distributed to the Board at this time.

Chairman Stumbo said that the letter expressed a concern regarding trees that were on the property at one point, and asked if the trees were no longer there. Chairman Stumbo also noted that it stated that it would be nice to have that small section of road improved because they have curb and gutter on the properties adjacent to the subject property.

Representation – Mr. Homer Strader was present on behalf of the church. He said that the trees were on the right-

of-way, in front of the church. He said that they were old, and referred to them as "boundary trees" that had emerged. Because they were right on the road and were deteriorating, the church had them removed. Mr. Strader added that they recognize that trees are important to the environment, and also to the way their property looks; and in the last five years, they have planted 40 new trees.

Mr. Strader said that he serves on the Board of First Alliance Church. 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 Mr. Forester and carried unanimously to **approve C-2015-28: FIRST ALLIANCE CHURCH** – an appeal for a conditional use permit to expand and pave an existing grass parking lot in an Agricultural Urban (A-U) zone, at 2201 Old Higbee Mill Road, for the reasons recommended by the staff and subject to the four conditions.

- e. **C-2015-29: TATES CREEK PRESBYTERIAN CHURCH, INC.** - appeals for a conditional use permit to construct a building addition to an existing church (nursery expansion) in an Agricultural Urban (A-U) zone, at 3900 Rapid Run (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the proposed nursery addition will be built along Man O' War Boulevard, behind the required screening. The modest proposal for a nursery addition will primarily be used on Sundays by the church, and will not require additional off-street parking, nor will it negatively affect the approved private school or preschool.
- b. All necessary public facilities and services are adequate for the proposed use, and no new free-standing buildings or parking are required for this use.

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

1. The church shall be operated in accordance with the submitted application and site plan, either removing the fenced outdoor play area from the utility easement or documenting all the encroachment permits prior to construction.
2. All necessary permits, including a Zoning Compliance Permit and a Building Permit shall be obtained from the Divisions of Planning and Building Inspection.
3. All parking areas and access shall be paved, with spaces delineated, and landscaped/screened as would be required for vehicular use areas, in accordance with Articles 16 and 18 of the Zoning Ordinance.
4. All pole lighting for off-street parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward and away from adjoining residential properties.
5. The layout of the parking areas and access to Rapid Run Drive shall be subject to approval by the Division of Traffic Engineering.
6. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
7. All existing tree lines and fencing along the church property boundaries shall be preserved and maintained to the greatest extent possible.

Representation – Mr. Jeremy Kelly was present, representing 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 Mr. Griggs, seconded by Ms. Meyer and carried unanimously to **approve C-2015-29: TATES CREEK PRESBYTERIAN CHURCH, INC.** – an appeal for a conditional use permit to construct a building addition to an existing church (nursery expansion) in an Agricultural Urban (A-U) zone, at 3900 Rapid Run, based on the staff's recommendation of approval and subject to the seven conditions.

- f. **C-2015-30: SUMYA ELGUMATI** - appeals for a conditional use permit to operate a community outreach center (health screening, food and clothing bank, etc.) in a High Density Apartment (R-4) zone, at 572 Georgetown Street (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the proposed expansion of use is relatively minor. Furthermore, the parking area will now be upgraded in order to provide the required ADA accessible parking space, which it currently lacks.

- b. All necessary public facilities are available and adequate for the proposed use.

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

1. The community center shall operate in accordance with the submitted application and site plan.
2. The parking lot shall be re-stripped within three (3) months of approval by the Board, in accordance with the submitted site plan.
3. The applicant shall provide documentation of an extended parking agreement with the Robert Williams Cultural Center, or provide other appropriate parking for their patrons and employees. This documentation shall be provided at the time of the annual Zoning Enforcement review of this conditional use permit.

Representation – Ms. Sumya Elgumati, appellant, was present. She indicated that she 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 unanimously to **approve C-2015-30: SUMYA ELGUMATI** – an appeal for a conditional use permit to operate a community outreach center (health screening, food and clothing bank, etc.) in a High Density Apartment (R-4) zone, at 572 Georgetown Street, for the reasons recommended by 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.

*Note – The next hearing is a continuation from the Board's April 24, 2015 meeting.

1. **V-2015-25: INVICTUS, LLC (dba NOODLES & CO.) & SPARTAN PASTABILITIES, LLC (AMD)** - appeal 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: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare and will improve public safety by removing 4 non-compliant parking spaces that currently back through an area of high pedestrian traffic and onto a busy arterial roadway. It will not alter the character of the general vicinity, as this area is dominated by businesses with front patios, many of which are covered.
- b. The location of an existing patio, which is now proposed to be covered in its entirety; the predominance of similar patios in this Pedestrian Oriented Business District; and the removal of non-compliant parking spaces in favor of a safer and more pedestrian-friendly environment, in combination, create a unique environment for this area that justifies the requested variance.
- c. Strict application of the Zoning Ordinance requirements would limit the amount the patios can be covered, but would not result in a better design for these properties. The Board has already partially approved a variance to allow some portions of this property to have a covered patio. Granting the variance will allow for a uniform setback for these patios, located on a prominent corner near the UK campus.
- d. This application is not the result of a willful violation of the Zoning Ordinance or any other attempt to circumvent the zoning regulations. Rather, it is a reasonable request considering the location of this property in a Pedestrian Oriented Business District, a unique designation recently approved by Council after careful study and consideration.
- e. The requested variance is not a direct result of the actions of the applicant, but rather a result of seeking the proper permits for the proposed construction.

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

1. The covered patios and/or decks shall be developed in accordance with the submitted application and site plan.
2. Parking shall be provided off site, with documentation of the parking agreements prior to issuance of a Zoning Compliance Permit or Building Permit (as necessary).
3. The applicants shall consult with the Division of Building Inspection and apply for any building permits deemed necessary prior to construction.

Representation - Mr. Chad Colony, owner of Noodles & Co., was present, representing the appellants.

Staff Comment – As Mr. Emmons presented the staff report, he stated that today's application is an amended application. Mr. Emmons then displayed photos on the overhead projector.

Mr. Emmons spoke on the supplemental staff report that outlines the differences between where the application was at the last month's hearing and now. He noted that the variance request was to allow some outdoor patio space on the front of the property at 395 South Limestone be covered. He also noted that there was a lot of discussion about the four non-compliant parking spaces that back directly onto South Limestone, and across the wide sidewalk in the heavily pedestrian oriented area.

He said that originally the staff had recommended disapproval, primarily because of the concern for safety regarding this application; the applicant was going to get rid of two of those four spaces and the staff felt that it was an unsafe situation to have the two remaining non-compliant parking spaces.

Mr. Emmons said that on May 17th, after the previous hearing, the applicant officially amended their application (per the Board's request in regard to talking with other businesses and the owner), which resulted in the amended application, adding the second restaurant. The amended site plan shows getting rid of all four non-compliant parking spaces. He said that the applicant is now requesting a variance to allow the entire area to become a covered patio area, and displayed examples on the overhead projector.

Discussion – Mr. Griggs asked about the corner restaurant that used to be Hugh Jazz Burgers; in reference to a previous case that was controversial, bringing the cover all the way out to the street. He said that the Board did not give them that, and asked if the law had changed in regard to this. Mr. Emmons responded that the regulations have changed since that application. Mr. Emmons said that, most notably, when the prior case came before the Board, the entire variance was not granted. He said one of the things that is now required for the Infill and Redevelopment Area for business zones (such as the subject property) is that it is now required that the structures be brought forward so that they are at an average setback with the other buildings. Mr. Emmons said that the Pazzo's building (the dark gray building located on the aerial photo) is about 12 feet from the street. It is now required that buildings that are doing an addition be within 5 feet of the adjoining building façade(s) (either 5 feet in front of or 5 feet behind).

Mr. Sallee addressed Mr. Griggs's reference to the corner property. He said that the variance that was approved by the Board allowed the covering, about 10 feet back from the right-of-way, and it still has that patio cover. Mr. Griggs responded that that was what he remembered, and that none of the other businesses along S. Limestone are closer to the street than 10 or 12 feet. At this time, there was further discussion in regard to the covered porches/patios of other businesses in this corridor.

Mr. Griggs then asked if the objective was for everyone to be at an average; setback; and if this cover was proposed to go all the way to the street, or if they are just trying to go to the old existing line. Mr. Emmons replied that they were trying to average and be compatible with the other setbacks. He said that with the proposed building, if they were trying to do an actual building addition and not just a covered patio as proposed, they could do that, with just a building permit. It would not require a variance; a full building could extend out and be within 7 feet of the right-of-way. There was further discussion with regard to the right-of-way.

Mr. Emmons said that the staff felt that the benefit of removing the four non-compliant parking spaces would increase the overall safety for drivers and pedestrians in this pedestrian-oriented business area; and that all the individual facts worked together to create a unique environment, which justifies recommending approval of the requested variances to allow the covered patios.

Mr. Glover said that he wanted to applaud the staff for taking a second look at this case. He said that he shared the staff's concern about the pedestrian traffic. He said that he was curious about an exhibit that had not yet been presented, but had been submitted with the application. He asked for Mr. Emmons to place it on the overhead projector; along with an explanation. Mr. Emmons displayed the exhibit and discussed the driveway that cut off some parking space as it becomes all pedestrian. At this time, there was further discussion in regard to the parking and

sidewalk.

Ms. Meyer asked Traffic Engineering, with the widened sidewalk (not curbed), if cars could pull off, and have it be a drop-off zone. She asked if they have concerns about that. Ms. Kaucher replied that if the curb is not constructed/put back, they would have some concern about that. Ms. Meyer asked if Traffic Engineering would want that to happen. Ms. Kaucher responded affirmatively to adding the curb. At this time, there were further questions and discussion in regard to the curb and traffic.

Chairman Stumbo asked if there could be some type of barrier or curb, or some type of resolution that could keep it from happening. Mr. Emmons said that he believed that the Board could add a condition that the curb be restored, to the approval of Traffic Engineering.

Opposition – Mr. Jack Stewart, with Stewart Architecture, was present on behalf of Pazzo's. He said that it is not a precedent for anything that is going on in the block. Mr. Stewart said that there is nothing else on the block out to the street (i.e., Pazzo's, the record store, the house with the business in it); and beyond there, it is decks with umbrellas. He said that there are a lot of covered decks out to the front (10-foot setback), and then the rest is open. Mr. Stewart said that he thought that was much more friendly and neighborly to the street. He liked the idea of the cars being gone, because it makes it less invasive.

Discussion – Mr. Glover said that he was curious as to how the staff would respond to Mr. Stewart's comments. Mr. Emmons responded that with regard to the building permit, the staff did recommend that the applicants consult with the Division of Building Inspection, and apply for any permits deemed necessary. He then discussed to building permits and combustible materials not being allowed that close to the property line. He said that it is so complicated that the applicants have been encouraged to follow - up with Building Inspection to discuss the building permit, and this has been handled by the staff through condition #3 (regarding the technical aspects of the Kentucky Building Code). Mr. Emmons then discussed to the aesthetic aspect of the covered patios, noting that he had photos of some of the businesses that had the covered patios; Mr. Griggs said that he would like to see the photos because he could not picture the patios. As Mr. Emmons presented the photos on the overhead projector, Mr. Griggs stated that he saw some that were not covered.

Ms. Moore asked if, whether they had a roof or not, they would still require a variance to have the building up to the 0-foot setback as everyone else. Mr. Emmons responded that for the covered portion of the patio, they would. Ms. Moore asked if they were not covered at all, they would still need a variance. Mr. Emmons said that only the roofed structure would require a variance as a covered patio and explained what would and would not require variance.

Mr. Griggs said that he thought there were examples cited of covered patios, but in the photos he did not see any. Mr. Emmons said that Two Keys Tavern has a covered porch. Mr. Griggs noted that the covered porch has existed since the 1950s which. Mr. Emmons confirmed.

Representation – Mr. Bruce Simpson, attorney on behalf of the applicant, was present. Mr. Simpson presented several photos of the subject property, and had some discussion in regard to the proposed use. He addressed the elimination of the two parking spaces and said that the patio would not be completely covered. Mr. Simpson explained the proposed use of the "covered" patio and why they were requesting it.

Mr. Simpson said that the proposed use would enhance and add property value to the corridor, and that it would not have an adverse impact on anyone. He mentioned that the adjacent property has agreed to eliminate all four parking spaces to improve public safety, and would agree if LexPark wanted to add metered parking in its place. Mr. Simpson then addressed Mr. Griggs' concern/ question with regard to the curb and gutter. He said that they would not have an issue working with Traffic Engineering or anyone else to come up with something to prevent any issues with pedestrians and/or traffic problems. Mr. Griggs commented that, at the very least, they could put up posts or bollards to prevent cars from coming through. Mr. Simpson agreed.

Discussion – Mr. Glover asked if the proposed structure was going to be a permanent one. Mr. Simpson responded that it was, but it would not be attached to the buildings. Mr. Glover asked if they were structural elements. Mr. Simpson responded affirmatively.

Mr. Griggs asked in the first condition, with regard to the covered patios, some additional language could be added. Mr. Simpson said that was acceptable, and he referred back to the illustration that he had presented earlier in this hearing.

Chairman Stumbo asked if a fourth condition could be added in regard to the curb. Mr. Simpson suggested that some language suitable also be added in regard to the barriers to be added to prevent the cars from coming up on the sidewalk.

Mr. Glover asked Traffic Engineering if they would oppose bollards or something in the area. Ms. Kaucher responded that it does need to be looked at, as far as providing something to ensure there are no cars parking there.

Chairman Stumbo echoed Mr. Glover's remarks. He said that this proposed design was tastefully done. Mr. Emmons added that, as far as separating the pedestrians from the traffic, he wanted to be sure that they were not hemmed with one particular design at this hearing. He suggested that a concrete planter could possibly accomplish the same thing, but be more appealing.

At this time, Mr. Sallee presented some new language and displayed the additional (draft) condition on the overhead projector. It read as follows:

1. The ~~covered patio~~ pergolas and/or decks shall be developed in accordance with the submitted application and site plan.
2. Parking shall be provided off site, with documentation of the parking agreements prior to issuance of a Zoning Compliance Permit or Building Permit (as necessary).
3. The applicants shall consult with the Division of Building Inspection and apply for any building permits deemed necessary prior to construction.
4. Suitable barriers shall be installed to the approval of Traffic Engineering to prevent vehicles in the pedestrian area.

Action – A motion was made by Ms. Meyer seconded by Mr. Forester and carried unanimously to **approve V-2015-25: INVICTUS, LLC (dba NOODLES & CO.) & SPARTAN PASTABILITIES, LLC (AMD)** – an appeal 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, for the reasons recommended by the staff and subject to the four conditions, with the change of language in the first condition and the addition of the fourth condition.

D. Conditional Use Appeals

Note – At this time, Mr. Forester left the meeting (2:30 p.m.).

1. **CV-2015-27: WINDSWEEP VENTURES, LLC** - appeals for a conditional use permit to extend the regulations of the I-1 zone 25 feet to the southern property boundary in an R-2 zone; and a variance to reduce the required 100-foot distance from a residential zone in a Light Industrial (I-1) zone, at 729 Bellaire Avenue (Council District 1).

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

- a. Granting the request for a conditional use permit to extend the regulations of the I-1 zone 25' into the R-2 zoned portion of the property will not adversely affect the subject or surrounding properties. This property has historically been used for industrial purposes for many decades and likely pre-dates the adoption of the first Zoning Ordinance. Other similarly situated commercial properties in this general vicinity share many of these same characteristics; and approval will not be out of character with this neighborhood, which has stably existed with commercial properties since the subdivision was created.
- b. All necessary public services and facilities are available and adequate for the proposed use.

The Staff Recommends: Approval of the Dimensional Variance, for the following reasons:

- a. Granting a reduction in the distance for operable windows for this redevelopment project should not adversely affect the subject or surrounding properties. It should not cause a hazard or nuisance to the public, provided the use of the areas with the operable windows is restricted to accessory office uses and the zone-to-zone screening is installed and maintained along the southern property boundary.
- b. Granting the requested variance will not negatively alter the character of this area, as most site improvements exist in this neighborhood, and few physical changes are now proposed to the subject site.
- c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance. The intent of the setback regulation is to protect nearby residential properties from the typical nuisances associated with some light industrial uses. By limiting the use of this portion of the building with the operable windows to only accessory offices, the same level of protection is being afforded the nearby residential properties.
- d. The long-standing history of the non-residential use of this property, the fact that a non-industrial use (offices) will now be placed in the southern portion of the building, and the new three-planting landscape buffer to the adjacent property are all unique circumstances that justify this requested variance.
- e. The circumstances of this request are not the direct result of actions taken by the applicant; they are, rather, a response to the unique history and circumstances associated with this property.

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

1. The landscaping company shall operate according to the submitted application and site plan, with minor

amendments to the parking layout or drainage areas as approved by the Divisions of Traffic Engineering and Engineering during the normal permitting process.

2. The southern property line adjacent to 721 Bellaire Avenue shall be planted with new trees to meet the zone-to-zone screening requirements of Article 18-3(a)(1)(3), such that the applicant will provide a 5' landscape buffer area in conjunction with a 6' high wall or fence plus 1 tree for every 40 linear feet, prior to, or in conjunction with, the redevelopment of this site.
3. The southern portion of the building with the operable windows shall be used only for accessory office space; otherwise the applicant must comply with the provisions of Article 8-21(o) of the Zoning Ordinance.
4. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy of the building. Additionally, any paving and/or remodeling permits must be obtained from the Division of Building Inspection.

Representation – Mr. Ross Stinetorf, attorney representing the applicant, as well as Mr. Jim McFarlane (applicant), were present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Opposition – Ms. Sarah Williams, who lives at 709 Bellaire Avenue, was present. She said that she resides with this father at her address; they have been life-long residents and have had 3 generations of her family reside there. Ms. Williams said that she had signatures from residents who were unable to attend this hearing, specifically from the lady who lives directly next door to the subject property.

Ms. Williams said that one of their main concerns is the construction of the driveway, which is being constructed 10 feet from a residence where there are children present. She said that it is an impact on the safety and welfare of the families and children. Ms. Williams discussed the traffic impact of the neighborhood since the opening of the West Sixth Street Brewery. She noted that the subject street is a dead-end street. Ms. Williams also noted that Powers Transmissions was not located on Bellaire Avenue, but at North Broadway and Delcamp Drive.

Ms. Williams expressed her main concerns regarding the adverse impact on the families and children during the construction of the drive - way.

Discussion – Ms. Meyer asked Ms. Williams what she thought might be an acceptable alternative. Ms. Williams responded that there is already a driveway at the end of the proposed business. She said that if there had to be a driveway, she would ask that it did not block the fence and trees, etc.

Mr. Griggs commented that; on the drawing that the staff had displayed, and said that, it is not obvious as to how the parking is arranged or how the traffic for parking is designated. He said that he was curious, if there were a lot of trailers as part of their business, how they were going to park on their property; how they were going to get turned around; and how they are storing large pieces of landscape equipment. Mr. Emmons referred back to the aerial photos and stated that the vast majority of the subject property is already paved. If it does not have a building already on it, near the entrance that is at the northern end of the street, there is a large gravel area that can be utilized.

Mr. Emmons then presented the revised site plan from the applicant and explained the proposed use of the concrete driveway. He noted that the dimensional variance portion of the subject application is to allow operable windows on the existing building. Mr. Emmons said that in the industrial zone, in order to have operable (windows; windows that can open and close), they have to be 100 feet away from a residential zone. He further discussed the operable windows and the intent of their use (office space).

Mr. Glover noted that the staff report said that granting a variance would permit the owners of the building to create operable windows on the south side, and asked if they needed a variance to make windows. Mr. Emmons responded that they do; they could put in new windows, but they would have to be stationary windows that could not be opened. He said that the applicant is requesting windows that open so that they can let in fresh air.

Opposition (cont) – Pastor Seibert Taylor, who lives at 709 Bellaire Avenue, was present. He said that he has lived on Bellaire Avenue for 32½ years. Pastor Taylor said that he moved into the neighborhood because he adored it, and because he worked at what used to be Rainbow Bakery, from where he retired after 38 years of service. Pastor Taylor also expressed his concerns about the changes that have been made in the neighborhood and its adverse effect on traffic, noise, and parking.

Ms. April Taylor, who also lives at 709 Bellaire Avenue, said that their lives have changed drastically due to the all of the changes. She said that the neighborhood does not look like it did when they moved there years ago. She asked that the Board not approve the applicant's request.

Discussion – Mr. Griggs asked Ms. Taylor if she had a big problem with the windows being operable if there was not any noise coming out of them. Ms. Taylor responded that if there is no noise, no smell, and there is office space,

she didn't have an issue with that. She said the issue was that it appears that the way the permit was written, was that permission for the windows would, by default, also grant permission for the driveway.

Chairman Stumbo asked how this could be resolved and why the other end of the building couldn't be used.

Representation – Mr. Stinetorf said that he appreciated the fact that the neighbors believed that the neighborhood was changing; however, he said that the subject property has been an Industrial property since the 1900s. Mr. Stinetorf said that nothing has changed about the nature of the use of the property. Mr. Stinetorf referred to the photos that had been presented on the overhead projector, and discussed the proposed driveway. He said that the applicant expects that only 3-4 employees will be using the driveway.

Discussion (cont.) – Chairman Stumbo commented that, from a practical standpoint, having only office employees didn't seem realistic to him for the type of business this would be. Mr. McFarlane replied that, logistically, to get a truck down the proposed driveway would be really difficult. He said it is a narrow space, and trucks would not be able to turn at the southwest corner of the building. Mr. McFarlane said that the plan was for the driveway to be convenient for the office staff only. Logistically, it would be a problem for any other use than that (i.e., landscape crews, deliveries, etc.)

Ms. Meyer asked Mr. McFarlane if he would consider eliminating the proposed driveway. Mr. McFarlane replied that he would; and at this point, they were only trying to get the zone changed to I-1 on the R-2 portion of the property. He said he would not construct a driveway at that end of the building without Traffic Engineering's approval or if it could not be made safe. Ms. Meyer said she could not support the proposed application unless the driveway was eliminated.

Mr. Stinetorf said that the expressed concern at today's hearing is the increased traffic on the street. He said that he did not agree with that, because the request for the variance is not going to increase the traffic on the street by even one car. Mr. Stinetorf said the same level of traffic would be coming through the street. Chairman Stumbo replied that he didn't think it was so much the traffic, but the proximity of where the driveway is; and he echoed Ms. Meyer's comment that he could not support it unless the applicant agreed to eliminate the driveway.

Mr. McFarlane commented that they would like to have I-1 zoning for the property. Mr. Griggs asked why it was so important to have the I-1 zoning. Mr. McFarlane said that he wanted to make it gravel and make it functional and usable, rather than just a grass open space. Mr. Griggs asked why it would be important to make it gravel; it would only need to be gravel if it were going to be a thoroughfare. Mr. McFarlane said that they could leave the fence and not have the driveway, but have gravel and it could be used for industrial purposes. Mr. Griggs asked what kind of industrial purposes he had in mind, being 10 feet away from the house next door. Mr. McFarlane said that they are a landscape company and may want to keep some mulch or something on the side of the building. Mr. Griggs said that he thought it would be a great idea to leave the neighborhood the way it is, considering they have a huge site on the property.

Mr. Glover said that with the request to extend the I-1 boundary on the south side, and to reduce the 100-foot distance to a residential zone, there is nothing mentioned in the request about the proposed windows. Mr. Sallee replied that there are two recommendations that appear on the agenda: 1) for approval of the dimensional variance - related to whether or not the windows on the wall can be operable; and 2) the use of the property between the building and the residence to the south - the subject of the conditional use permit. Mr. Sallee said that, from the staff's perspective, the Board has the ability to separate the two issues. This led to some further discussion in regard to separating the two issues of concern.

Ms. Moore asked what would happen if later the property was used for industrial purposes. Mr. Sallee responded that it is the reason for the third condition to the wording in the variance- that the staff believes it is enforceable. The windows would need to be converted to stationary windows if the property reverted back to just industrial use.

Chairman Stumbo said there seemed to be no major issue with operable windows and the variance; however, the road is being requested by the Board to be eliminated. He believed that the Board could come up with reasons as to why they would disapprove it, unless the applicant would want to withdraw the request, because he did believe that it would have an adverse effect, and that there is a safety issue. Mr. Stinetorf said that, in regard to the safety issue, he did not believe that there was any evidence of that before the Board; and he would ask, if the Board would like for them to approach Traffic Engineering, if there were any additional issues. Chairman Stumbo said that was not what was before the Board today.

Mr. Glover said that it sounded like the main concern of the neighbors and the neighborhood association was the effect of the West Sixth Street Brewery because of the increase of traffic; it has significantly impacted the residential neighborhood and has "spilled" over to the requested application.

Opposition Rebuttal – Pastor Taylor said that he would like for the applicant to leave out the driveway. His only objection is the open area at the far end of the property, next to the house.

Ms. Meyer asked Pastor Taylor if they had spoken with Traffic Engineering about the neighborhood's traffic problems (i.e., speed bumps, signage, etc.). Pastor Taylor said that he had.

Ms. Williams added that in the previous conversation that she had with Mr. Stinetorf, he indicated to her that he had planned to have 20-30 employees work there, and she felt that there was a big difference between 20-30 and 2-3 employees. She said that for the people who are going to be driving the industrial trucks will have to drive something to the site before driving off with the trucks.

Mr. Christian Torp, who lives at 552 Elm Tree Lane, said that he supports all the contentions of the neighborhood residents; however, he wanted to point out that the applicant did not know it was a residential zone on the subject property. He said that he didn't believe of running their business in the neighborhood.

Applicant Rebuttal – Mr. Stinetorf said that, if this is approved, they agreed to the conditions; adding that and he felt that the same amount of traffic would be going up and down the road as it already is, and he had nothing more to add.

There were no further questions.

Ms. Meyer said that she would like to break the application into two motions, as follows:

Action – A motion was made by Ms. Meyer seconded by Ms. Whitman and carried 6-0 (Forester absent) to **disapprove CV-2015-27: WINDSWEPT VENTURES, LLC** – an appeal for a conditional use permit to extend the regulations of the I-1 zone 25 feet to the southern property boundary in an R-2 zone in a Light Industrial (I-1) zone, at 729 Bellaire Avenue, based on the following findings of fact:

1. The property is already served by sufficient access points;
2. The proposed use of a driveway for 20-30 employees has the potential to increase commercial traffic to the detriment of the residents in the area;
3. The proposed use may endanger the safety of residents, particularly children in the neighborhood.

Action – A motion was made by Ms. Meyer seconded by Ms. Whitman. to **approve CV-2015-27: WINDSWEPT VENTURES, LLC** – an appeal for a variance to reduce the required 100-foot distance from a residential zone to 2 feet in a Light Industrial (I-1) zone, at 729 Bellaire Avenue, for the reasons recommended by the staff and subject to the two conditions:

1. The southern portion of the building with the operable windows shall be used only for accessory office space; otherwise the applicant must comply with the provisions of Article 8-21(o) of the Zoning Ordinance.
2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection, respectively, prior to occupancy of the building. Additionally, any paving and/or remodeling permits must be obtained from the Division of Building Inspection.

Discussion - After the motion was made, Ms. Moore asked if the paving portion needed to be mentioned in the conditions. Mr. Emmons responded that if the applicant wanted to put down any paving on the existing gravel parking lot, it would still require a paving permit.

Mr. Griggs said that he would like to go on record that the Division of Traffic Engineering should understand that the Board would like to encourage some type of study of the parking and traffic problems that have occurred on the subject street since the West Sixth Street Brewery has opened. Ms. Kaucher said that she would like to let the Board know that it has been looked at, and there have not been any solutions that Traffic Engineering has come up with, but they will continually look into it.

The motion carried 6-0 (Forester absent)

Note: - Chairman Stumbo declared a brief recess at 3:17 p.m. Ms. Moore left the meeting at this time. The meeting reconvened at 3:26 p.m. with Forester and Moore absent.

E. Administrative Review

1. **AV-2015-32: BRENDA MACK** - an administrative appeal to change one non-conforming use (beauty salon) to a new non-conforming use (cocktail lounge/bar); and a parking variance to reduce the required parking by 50% in a Planned

Neighborhood Residential (R-3) zone, at 400 Chestnut Street (Council District 1).

The Staff Recommends: **Disapproval of the Administrative Appeal**, for the following reasons:

- a. The requested use of a cocktail lounge/bar will result in an increase in scope and intensity from the previous use (a beauty salon) and therefore does not meet the requirements of either Article 4-3(e) or 7-6(c) of the Zoning Ordinance.
- b. Indicators of the intensity of use include the zoning category in which the use is first allowed, the required parking for each of the uses, the hours of operation, and the potential for noise or other nuisances. The applicant's proposed use is more intense in each of these categories and is therefore an inappropriate use for the subject property since it is surrounded by residential uses.
- c. Disapproval of this requested use does not necessarily mean that this site will lose its non-conforming use status, as determined by the Board at their March, 2015 public hearing.

The Staff Recommends: **Disapproval of the Parking Variance**, for the following reason:

- a. The requested parking variance is dependent upon the requested change in use, which is recommended for disapproval; therefore, it is inappropriate to grant the requested parking variance.

Representation – Mr. Andre Regard, attorney representing the applicant, and Ms. Brenda Mack, were present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Staff Report – Mr. Emmons reported that this case is an administrative appeal to change one non-conforming (former use - beauty salon) to a new non-conforming use (a cocktail lounge or a bar), to include a parking variance to reduce the required parking for the requested use in a Planned Residential (R-3) zone.

Mr. Emmons referenced letters of opposition that were presented to the Board regarding this case. He noted that one packet was delivered a few days prior to this hearing by the neighborhood association president, Ms. Billie Mallory. Mr. Emmons also noted that just prior to this hearing, he was handed a petition of opposition to the requested appeal.

Mr. Emmons said that non-conforming uses are uses that are not allowed, but were allowed prior to a change in the regulations. Two months ago, this particular applicant was before the Board for this property. At that point in time, she was appealing the decision to file an application on the subject property because the staff had determined it had lost its non-conforming use status. Mr. Emmons said that after a long hearing, the Board did agree with the applicant and parsed out that there was enough evidence that this site had not lost its non-conforming use status. They opined that the applicant could file an application and directed the Division of Planning to accept the application. He said that the Board made no determination of whether the proposed use would be allowed or not allowed.

Mr. Emmons noted that in the staff report there are several different sections of the Zoning Ordinance that have been referenced. He said in the staff review, as with any kind of change in one non-conforming use to another non-conforming use, the staff questions whether the use is similar in intensity to the previous use; and if there is more than one way to measure that intensity. Mr. Emmons said that the staff found that the proposed use would be more intense than the previous use, and therefore recommended disapproval.

Mr. Emmons described how the staff determined that the proposed use was more intense:

1. In which zone are the uses first allowed - he referred to a listing of the zones as they appear in Article 8.
2. Parking - the parking required for a beauty salon would be one space for every 200 square feet; the parking requirement for a bar would be one space for every 150 square feet, or one space for every 3 seats, whichever is greater.
3. The impact on the neighborhood- the beauty salon operation had a lot less impact; and the proposed bar would have greater hours of operation, and would go much later into the evening.

Mr. Emmons said that because the proposed use is more intense than the previous use, the staff found that the proposal does not meet the requirements of the Zoning Ordinance for either section 4-3(e) or 7-6(c), which would require that they be of equal or lesser intensity than the previous non-conforming use.

He said that the staff did note that recommending disapproval of this proposed use does not necessarily mean that the non-conforming use status of this property is lost; a different type of non-conforming use application, or possibly a conforming use (such as a church or community center), could be requested on the subject property at a later date.

Regarding the associated variance request the required parking is completely dependent upon the use of the

property; this particular site has no parking on site. In order to reduce the amount of required parking for the subject property, an approved (or approvable) use must be able to locate on the property.

Opposition – Ms. Billie Mallory, who serves on the East End Community Development Corporation, distributed petitions and several letters of opposition from area property owners, members of the neighborhood association, and members of Greater Liberty Church, which is located around the corner from the subject property.

Mr. Aaron Baker, attorney and resident of the neighborhood, said that he purchased his home on Chestnut Street in 2004 and has lived there for 11 years. He said that he also owns the empty lot right next to his house.

Mr. Baker said that he did not want a bar at the end of his street. He said that he is from, and lives in, the neighborhood; the applicant does not. Mr. Baker said that his concern is about a person who wants to open a bar in a residential neighborhood. He noted that the area is basically a low income neighborhood; there are small children and professionals, and he is concerned about the character of the neighborhood if a bar is located there. Mr. Baker said that bars mean more traffic, more intoxicated people, and more noise.

He noted that the applicant may point out that there is another bar at the other end of the street; there is also a homeless shelter, and a small convenience store. That bar was the site of at least one shooting in 2013, the convenience store was busted a while back for selling crack pipes, and the corner is notorious for drug dealing.

Mr. Baker addressed the substance of the application that is before the Board today. He noted that the applicant is requesting to change one non-conforming use (a beauty salon) to a new non-conforming use (a cocktail lounge and a bar). Mr. Baker discussed the previous non-conforming use (Rashida's House of Style). He said that he could not recall when that use was stopped, but noted that they stopped because they were robbed and moved out to Georgetown Street. Mr. Baker said that he contacted Rashida's House of Style prior to today's hearing and confirmed that they (Rashida's House of Style) moved in 2009. He said to his understanding, when a non-conforming use has been discontinued for over a year, it cannot be resumed, according to Article 4. Mr. Baker said that his position at today's hearing was to inform them that Board does not have the power to approve the requested change to a non-conforming use. He said that nothing has operated in the subject building since Rashida's House of Style and further discussed non-conforming uses.

Mr. Baker said, in reference to the parking variance, there are very few houses that have a driveway, that they need the street on - parking. He noted that it is a one-way street and people can only park on the left side of the street. Mr. Baker said that the seven parking spaces would take up a quarter of Chestnut Street. He said that there was a proposal to use the Dollar Store's parking lot, and he believed that the Dollar Store was not aware of such. Mr. Glover said that he believed that the issue of whether or not the non-conforming use has been abandoned had already been determined at the March hearing. Mr. Baker said that he understood that that was apparently the case, but that he did not receive notice of the current hearing by virtue of living in the neighborhood. He did not receive notice of the last hearing, or he would have spoken that one.

Mr. Theodore Berry, attorney, who lives at 4700 Scenicview Road, said that he was speaking on behalf of his 83 year-old mother who lives next door to the subject property on Chestnut Street. He also named several other residents who were in the direct vicinity of the proposed use. Mr. Berry said that when he goes to visit his mother, if there are two or more people visiting at the subject property, some people have to park 150 feet away from their residence. Mr. Berry said that granting the requested variance would be inappropriate for this street; it would be a disturbance to the neighborhood. Mr. Berry noted that there have been several shootings in the neighborhood, right at the intersection of the proposed use, in the last several years. Mr. Berry said that he would like to know what evidence was used as far as the non-conforming use. He said he also agreed with Mr. Baker that the regulations require and demand disapproval of the intensity of the proposed use.

Mr. John Williams Jr., who lives at 662 Elm Tree Lane, said that his cousin was killed at the restaurant on that corner. He said that his concerns were that the proposed area is very dangerous with drunks, selling drugs; etc.; and the proposed use is just not needed in the neighborhood. Mr. Williams suggested to the Board that before they made a decision, that they ride through the neighborhood and see for themselves.

Mr. Odell Moss, who lives at 364 Chestnut Street, said that he has lived on Chestnut Street for 53 years, and it used to be a quite neighborhood. He said that times have changed and things have gotten worse. He also expressed his concerns about the issue of the drunks and drug sellers in the neighborhood.

Discussion - Mr. Griggs said that he has served on the Board for more than a decade. He said that one of the first applications that came before the Board when he joined was for the Catholic Action Center at Fifth Street and Chestnut Street. He said that in his more than 10 years of being on the Board, there was a never a vote that he made that he regretted more than allowing the Catholic Action Center to open there. He said that since it has

opened, he has seen fences built in the front yards and the "no trespassing" signs. He knows that it has done a lot of damage to the neighborhood, and he would like to apologize for his part in that vote. He said he would not let any more damage come to that neighborhood if he could help it.

Opposition (cont.) - Mr. William Bond, representing Greater Liberty Baptist Church, said that he no longer lives in the neighborhood, but he grew up there. Mr. Bond said that he never thought that he would have to get a weapon license to drive on his street.

Appellant's Presentation – Mr. Regard said that he met with the Division of Planning after the last hearing to discuss a different use for the subject property. After this meeting, he said the best defined use they could come up with was for a cocktail lounge. He stated that there is nothing in the regulations about allowable changes to non-conforming uses that discusses intensity of a use.

Mr. Regard said that the nearby Dollar Store has said that they are no longer going to assist with their off-street requirements. However, he said that according to the Infill regulations, as long as there is parking within 300 feet, that is sufficient. Mr. Regard presented a letter from a nearby deli, stating that parking there can be for this use. He said that they would support any new conditions imposed by the Board if their request is approved.

Ms. Mack noted that she does not live in the neighborhood, but she did grow up there. She said that she is not trying to create any chaos; she is only trying to create a place for the older generation. Ms. Mack said that she is not trying to start any trouble. The business would be a private club with alcohol sales. She noted that the police were called once or twice in the last 3 months that she was open, but not pertaining to her business; it was because of people's behavior outside of her establishment. Ms. Mack said that she would be willing to support the Board if they decided to put a time limit in her conditions in order to review it at a later date, to evaluate how things are going.

Board Comments – Chairman Stumbo noted that there was just overwhelming opposition to have a bar in the vicinity, and he could not support it. He opined that granting the appeal would have an adverse effect on the neighborhood, and that it is not a very good idea. He explained to why he was not comfortable granting the appeal.

Mr. Glover said that he would like to break the application down into two motions, as follows:

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs and carried 5-0 (Forester and Moore absent) to **disapprove AV-2015-32: BRENDA MACK** - an administrative appeal to change one non-conforming use (beauty salon) to a new non-conforming use (cocktail lounge/bar) in a Planned Neighborhood Residential (R-3) zone, at 400 Chestnut Street, for the reasons listed by the staff in the denial of the administrative appeal.

Action – A motion was made by Mr. Glover, seconded by Mr. Griggs and carried 5-0 (Forester and Moore absent) to **disapprove AV-2015-32: BRENDA MACK** – an appeal for a parking variance to reduce the required parking by 50% in a Planned Neighborhood Residential (R-3) zone, at 400 Chestnut Street, for the reasons listed by the staff and for the reasons indicated by the staff in the staff report.

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 Board's next meeting date would be June 26, 2015, and asked if the Board members could begin to arrive about 15 minutes earlier than the scheduled meeting time.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 4:02 p.m.

Barry Stumbo, Chair

James Griggs, Secretary