

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 26, 2015

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 26, 2015. Members present were Chairman, Barry Stumbo; James Griggs; Janice Meyer; Joan Whitman; Thomas Glover; Kathryn Moore and Larry Forester. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones and Andrea Brown, Department of Law. Staff members in attendance were: Bill Sallee, Jimmy Emmons, and Tammy McMullen.

- II. **APPROVAL OF MINUTES** – The Chair announced that the minutes of the April 24, 2015 meeting would be considered at this time.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer, and carried unanimously to **approve** the minutes of the April 24, 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-2015-33: ECONOMY HOME IMPROVEMENT** - appeals for variances to: 1) reduce the required front setback from 8 feet to 0 feet; 2) reduce the required side yards from 6 feet to 0 feet; 3) reduce the rear yard from 10 feet, 6 inches to 0 feet; 4) exceed the maximum allowable floor area by 500 square feet; and 5) reduce the required parking from 4 spaces to 2 spaces, in order to construct a duplex in a Two Family Residential (R-2) zone, at 524 Lawrence Street (Council District 3).

At this time, the Chair recognized the applicant's June 18th request for withdrawal, and removed this item from the agenda.

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-2015-42: ALICIA DEBOOR & GORMON COLLINS** - appeal for a variance to reduce the required side yard from 3 feet to 0 feet in order to remove a non-conformity regarding the residence in a Planned Neighborhood Residential (R-3) zone, at 2673 Red Leaf Drive (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- Granting the requested variance should not adversely affect the public health, safety or welfare and will not alter the character of the general vicinity, as utility encroachment agreements have been obtained and no new construction will result from this request.
- The location of the existing house in the side yard, in conjunction with the fact that it was not recognized for 13 years (even during the home's construction), is a unique circumstance that justifies the requested variance.
- Strict application of the Zoning Ordinance requirements would mean that this house will remain non-compliant with the Zoning Ordinance, which may jeopardize any lending institution's willingness to loan money to a prospective buyer.
- This is not the result of a willful violation of the Zoning Ordinance or other attempt to circumvent the regulations; rather, it is a response to what appears to be a field mistake that was made during the construction of the home many years ago.
- The requested variance is not a direct result of the actions of the applicants, as the error occurred prior to their purchase of the home, but is a response to the existing location of the house and an attempt to remedy its non-compliance with Article 8-12(o) of the Zoning Ordinance.

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

1. Encroachment agreements from the LFUCG and appropriate utility companies shall be obtained and recorded at the County Clerk's office.

Representation – Ms. Alicia DeBoor-Collins and Mr. Gormon Collins, appellants, were present. They indicated that they had reviewed the recommended condition and agreed to abide by it.

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

Action – A motion was made by Ms. Moore, seconded by Ms. Whitman and carried unanimously to **approve V-2015-42: ALICIA DEBOOR & GORMON COLLINS** - an appeal for a variance to reduce the required side yard from 3 feet to 0 feet in order to remove a non-conformity regarding the residence in a Planned Neighborhood Residential (R-3) zone, at 2673 Red Leaf Drive, for the reasons recommended by the staff and subject to the one condition recommended by the staff.

- b. **V-2015-43: SPARTAN PASTABILITIES, LLC** - appeals for a variance to increase the maximum distance from 300 feet to 750 feet in order to accommodate the off-site parking requirements in a Neighborhood Business (B-1) zone, at 395 South Limestone Street (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, because a safe and convenient route is available to provide access to the proposed off-street business from the parking location. It will not alter the character of the general vicinity, as this area is dominated by pedestrian activity.
- b. The Pedestrian Oriented Business District, the safe and pedestrian-friendly environment of the immediate area, and the lack of available parking closer to the establishment, (in combination), create a unique set of circumstances for this area that justifies the requested variance.
- c. Strict application of the Zoning Ordinance requirements would limit the amount of seating or may prevent the issuance of a Zoning Compliance Permit for this restaurant.
- 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 their 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 use.

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

1. As long as parking is provided off site, the applicant shall provide documentation of the parking agreements as a condition to issuance of an Occupancy Permit for the proposed restaurant use at this location.

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

Board Questions – Mr. Griggs said, regarding the logistics of the proposed use, the parking is a long way away from the front door of this restaurant. He asked how people will know where to park, and how it would work. Mr. Simpson responded that any parking in the 300 block of South Limestone has been extremely difficult; people that go into those facilities "find a way." He said that they are mostly for students. Mr. Simpson said that part of the time, when it is really busy there will be valet service; and the rest of the time, they could post signs indicating that parking is available at the specific address. Mr. Griggs asked if the reserved parking spaces would be enforced in that only the cars that are owned by the people in the restaurant could park there. He wondered how they would control this. Mr. Simpson replied that, like any other private parking space, the applicant and owner of the lot would be responsible for making sure the parking spaces were available.

Mr. White, the property owner, responded that from a practical standpoint, the five parking spaces that are required and that they have for the restaurant is not adequate. He said that they gave up two of those five parking spaces in order to make the area a much safer place (the ones that back out onto South Limestone and Euclid); they have been in search of parking spaces all within the area. Many restaurants have agreements with the University of Kentucky. Mr. White said that it is in their best interest to get as many parking spaces around them as possible; but, there are not many parking spaces dedicated to each of the individual establishments there.

Mr. Griggs asked how this is going to work, not in theory, but in practically. He said it seems that the distance is so far removed from the restaurant, there would be no one at the other end to enforce it; and he thought it could even be a bad precedent. Mr. White said that the purpose of that parking space is primarily for valet parking use, and it will be enforced because he would be having valet parking attendants that would be parking vehicles in those

spots. Mr. Griggs asked if a condition could be placed on this that there would be valet parking. Mr. White replied that if the condition is added, he would be forced to have valet parking 100% of the time. Mr. Griggs said that it could be worded so that it was during the times of operation in order to make it work. Mr. White agreed that he wanted it to work and for people to be able to have parking to get into the establishment. At this time, there was further discussion between the Board and the applicant in regard to the provision of adequate parking.

Mr. Glover said that he was a little uncomfortable with putting restrictions on a business such as valet parking, noting that thought this was a walking area- a high density area (principally for students walking for the most part from the campus). Mr. Glover said that the parking requirement seems to be the problem. He further stated that the parking requirement is a problem in that area because most people walk; and because most people walk, there is less space for parking because people leave their cars, and there is more space for walking. Ms. Meyer agreed with Mr. Glover and said that she believed the problem would sort itself out on its own. Mr. Simpson said that he felt it would be a burden at this point to put restrictions on having to pay someone to be out there at certain hours; it could impose a struggle on the business that the applicant doesn't need. Mr. Simpson said that there hasn't been sufficient parking in the 300 block of South Limestone for 60 years. Chairman Stumbo said that he also agreed with the comments that had been made in regard to no restrictions on the parking. Mr. Griggs said that this is an education process because of the distance and was worried about enforcement; however, Mr. Glover had made a good point, and he agreed that it would work itself out, and that was good enough.

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

Action – A motion was made by Mr. Griggs, seconded by Mr. Forester and carried unanimously to **approve V-2015-43: SPARTAN PASTABILITIES, LLC** – an appeal for a variance to increase the maximum distance from 300 feet to 750 feet in order to accommodate the off-site parking requirements in a Neighborhood Business (B-1) zone, at 395 South Limestone Street, for the reasons recommended by the staff and as further discussed, and subject to the one condition recommended by the staff.

- c. **C-2015-36: BEAUMONT PRESBYTERIAN CHURCH OF LEXINGTON, KY., INC.** - appeals for a conditional use permit to construct an addition to the existing church in a Single Family Residential (R-1C) zone, at 1070 Lane Allen Road (Council District 11).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the addition is very minor in scope and adequate off-street parking will be provided.
- b. All necessary public facilities and services are available and adequate for the proposed expansion.

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

1. The additional square footage shall be done 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 Division of Planning and Building Inspection prior to construction of the addition.

Representation – Mr. Steven White, architect, 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 C-2015-36: BEAUMONT PRESBYTERIAN CHURCH OF LEXINGTON, KY, INC.** – an appeal for a conditional use permit to construct an addition to the existing church in a Single Family Residential (R-1C) zone, at 1070 Lane Allen Road, for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

- d. **C-2015-37: FIRST UNITED METHODIST CHURCH** - appeals for a conditional use permit to establish a church in addition to an existing child care center in a Planned Neighborhood Residential (R-3) zone, at 474 Stone 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. Adjoining or nearby land uses are of a residential and commercial nature, and are not likely to be disturbed by typical church activities. The church's maximum parking needs are during the off hours of the existing child care center, which operates only during weekdays.
- b. All necessary public facilities and services are available and adequate for the proposed use.
- c. The current use of a child care center, and the proposed church, are effective transitional uses between the

existing single-family residential areas to the north and west and the commercial use areas along Stone Road farther to the south.

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

1. The church shall be established in accordance with the submitted application and site plan, unless amended by the Urban County Planning Commission.
2. All necessary permits, including a Zoning Compliance Permit, a Certificate of Occupancy, and/or a sign permit shall be obtained prior to the commencement of this use.
3. Should a future expansion of the church at this location be desired, approval by the Board of Adjustment will be required.
4. Five additional parking spaces shall continue to be provided by the adjacent Kentucky Utilities facility for this use, unless or until there is an amendment to the approved Final Development Plan for this location.

Representation – Mr. Foster Ockerman, Jr., counsel for the appellant was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them. Mr. Ockerman said that Ms. Miller, who lives next door to the proposed church, had some concerns about the hours that the worshipping community would be there. She mistakenly thought that they were going to add onto the building in the direction that would go toward her bedroom. He said that they had assured her that there would be no exterior changes, and even their lease limits their presence to Sunday mornings.

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-2015-37: FIRST UNITED METHODIST CHURCH** – an appeal for a conditional use permit to establish a church in addition to an existing child care center in a Planned Neighborhood Residential (R-3) zone, at 474 Stone Road, based on the staff's recommendation of approval and subject to the four recommended conditions.

- e. **C-2015-39: CRESTWOOD CHRISTIAN CHURCH** – a request to amend a conditional use permit to build an addition (expand the nursery and children's ministry areas) in a Single Family Residential (R-1C) zone, at 1882 Bellefonte Drive (Council District 4).

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

- a. Additional building square footage at this existing church should not adversely affect the subject or surrounding properties. Off-street parking and outdoor play areas are conveniently located and well exceed the minimum requirements of the Zoning Ordinance. The expansion of the building is to be located toward Bellefonte Drive in a highly landscaped area, away from the adjacent residential properties.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. Additional building square footage for this proposed use shall be provided in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Building Permit, shall be obtained prior to construction of the proposed nursery expansion.

Representation – Mr. John Carman 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. Forester, seconded by Mr. Glover and carried unanimously to **approve C-2015-39: CRESTWOOD CHRISTIAN CHURCH** – a request to amend a conditional use permit to build an addition (expand the nursery and children's ministry areas) in a Single Family Residential (R-1C) zone, at 1882 Bellefonte Drive, based on the staff's recommended reasons and the two conditions recommended by the staff.

- 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.

D. Conditional Use Appeals

1. **CV-2015-40: BEN AFSHARI** - appeals for a conditional use permit to establish a bed and breakfast with up to five (5) rooms; and a variance to reduce the required 1-mile distance (5,280 feet) to 752 feet in the Agricultural Rural (A-R) zone, at 4950 Jennie Kate Lane (Council District 12).

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

- a. Bed & breakfast facilities are permitted as a conditional use in the A-R zone. The existing home and parking area are large enough to accommodate the proposed use of a bed & breakfast without making any physical changes to the property. No adverse impacts on the neighborhood are expected as a result of this use; and allowing this use will create an opportunity for an adaptive use for a uniquely situated property, and a location able to provide patrons with an alternative for lodging near Keeneland, which is one of the major tourist destinations in the county.
- b. All public facilities are available, adequate and in operation for the proposed use as a bed & breakfast facility.

The Staff Recommends: **Approval of the Requested Dimensional Variance**, 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 there will be no physical change to the subject property. A total of 10 bedrooms for rent in this area will not have an adverse impact on the general vicinity.
- b. There are several unique features to consider that justify the proposed variance. Although located 750 feet from property line to property line, the subject properties are located about ½ mile from each other via the traveling distance along the existing driveways and roads; and due to the topography of the area and existing tree lines, these properties are not visible from each other. Also, the subject property is located within 1 mile of Keeneland, which is a unique tourist destination in Fayette County.
- c. Strict application of the Zoning Ordinance requirements would mean that this proposed bed & breakfast facility could not be approved unless and until the existing bed & breakfast facility at 3463 Rosalie Road ceases to operate, which would result in an undue hardship to the appellant.
- d. This is not the result of a willful violation of the Zoning Ordinance or other attempt to circumvent the regulations; but, rather, a reasonable request considering the unique location and attributes of the improvements located currently on the subject property.
- e. The requested variances are not a direct result of the actions of the applicant, as the location of their home and of the existing bed & breakfast facility have not changed over the last 20 years.

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

1. That the bed and breakfast facility be operated in accordance with the submitted application and site plan.
2. That a Zoning Compliance Permit and Certificate of Occupancy be obtained from the Divisions of Planning and Building Inspection, prior to operation of this use.
3. That the septic system be reviewed and approved for this use, as necessary, by the Fayette County Board of Health.
4. That any signage for the bed & breakfast facility be in accordance with Article 17 of the Zoning Ordinance, that it be limited to two (2) square feet in size, and that it not be internally illuminated.
5. That the bed & breakfast be in compliance with all applicable State and local laws, including those of the Fayette County Health Department and that the residence meet all applicable fire safety codes.
6. That any outdoor lighting used for this property be limited to a maximum of eight (8) feet in height.

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

Opposition – Mr. Bennett Bayer, who lives at 5020 Jennie Kate Lane, was present in opposition. He said that his is the property that is immediately next door to the subject property (to the right). He discussed his concerns of Jennie Kate Lane being a private lane. He said that each resident has access to the use of the lane based upon easements, and it barely one vehicle wide. Mr. Bayer said that he had not been approached by the applicants in regard to this request; therefore, he did not have a chance to express his concerns to them are shared by neighbors Jennie Kate.

Mr. Bayer said that one of the concerns that they have is the change in character of the neighborhood. He said that he had forwarded an email with a photo in regard to his opposition. He also said that they currently have people who cut across yards on a regular basis that they have never seen before; and the concept of having more people there would double the population of Jennie Kate Lane, as well as increase the traffic. Mr. Bayer said that he was not saying that it cannot be worked out, and there may need to be some conditions that can be imposed; but they would like the opportunity to discuss this with the applicants. Mr. Bayer discussed on the road construction and parking requirements. He said that he did not have a fence between his property and the applicants'; they purposely took their fencing down so that the properties would be wide open. He said that if the applicants are going to be running a commercial establishment, he would like to request that his fence be reinstalled to protect his property so that people would not be able to cross onto his property. Mr. Bayer said that there are also horse farms in the area, and he would like to come up with some manner to protect animals.

Staff Comments – Chairman Stumbo asked the staff if they wished to make any comments. Mr. Emmons said that in regard to the email that Mr. Bayer referenced, he did not recall receiving any photos from him. He checked and did find an email; however, there was no photo attached. Mr. Emmons said that he did have a presentation that was shown on the overhead projector and went over the following points:

1. The location of the property.
2. Existing Bed and Breakfast (approximately ½ mile from proposed use)
3. Major feature of subject property - South Elkhorn Creek

After his comments, Mr. Emmons said that the staff did feel that the variance was justifiable for the subject property, bed & breakfast noting that within a one mile radius of the bed and breakfast, there would be a total of ten bedrooms (to include the one on Rosalie Road), and the staff did not feel that it would be an overburden on the general vicinity for the subject properties. Mr. Emmons said that the residence on this property sets back as far off the road as the Eighth Pole Inn is from Rosalie Road.

Mr. Emmons said the staff took into account that even though from property line to property line is 750 feet, the driving distance between the two is about ½ mile. The existing tree lines and topography mean that one could not see one facility from the other, in conjunction with the ½-mile driving distance unique circumstances that make this variance justifiable.

Discussion – Mr. Glover said that he didn't understand the significance of relating one bed and breakfast to the other. Mr. Emmons replied that in an A-R zone, bed and breakfast facilities are required to be one mile apart from each other, unless the Board of Adjustment makes findings that the number of rooms granted shall not have an adverse effect on the surrounding properties; or the Board shall take into consideration the number of bed and breakfast facilities within the general neighborhood of the property being considered for such.

Mr. Glover asked why there is a restriction of limiting the number of bed and breakfast within one mile area of each other. Mr. Sallee replied that the Zoning Ordinance that set up the bed and breakfast regulations as a conditional use took six years from start to finish. One of the major issues when the committee was forming these regulations was the potential density of these uses in the rural area; in the urban area it wasn't felt to be necessary to place a distance requirement on them. He said that there was general fear in the community about allowing these uses in the rural area. Mr. Glover replied that he was not opposed to a bed and breakfast as a concept, even in the A-R zone; but the Board was being asked to grant a variance from that requirement, and asked what it mattered if the distance between the two mattered. He asked if the actual distance, as opposed to driving distance provided further justification to granting the variance. Mr. Emmons responded that that was part of the justification and discussed the unique circumstances of what made this application justifiable.

Mr. Emmons said that the staff did look thoroughly at what the burden would be on the neighborhood of the subject property if there were two bed and breakfast facilities within a mile of each other. He said, in looking at the specific characteristics of the subject property to the other property (Eighth Pole Inn), they found that they are much further apart from a driving distance standpoint than it would appear on the variance that is requested (750 feet), as well as the fact that neither facility is readily visible from Rosalie Road or from each other. Mr. Glover said that he felt as though the staff is recommending a cluster of two bed and breakfast within a mile of each other, and off of the same road. Mr. Emmons opined that the two bed and breakfasts are far enough apart, such that he would not classify the two as clustered. Mr. Sallee agreed, and said that the staff was not recommending a "clustering" of these uses.

Mr. Glover asked about Mr. Bayer's concern of about the one-lane road that has no shoulders and that the density is being doubled on the rural road. Mr. Emmons responded that bed and breakfast facilities are limited to a maximum of five bedrooms, plus the owner/operator of the facility and those are very low traffic generating uses. The majority of the time it is used on the weekends, and the majority of the time a bed and breakfast is not filled to the maximum. At this

time, Mr. Emmons addressed Mr. Bayer's concerns. Mr. Glover said that his biggest concern is the parking on the road.

Ms. Meyer asked how far the subject property was from Rosalie Road. Mr. Emmons responded that it is roughly about 650 feet back (give or take 10 or 20 feet); but he did measure it, and it was about the same distance as the Eighth Pole Inn. Ms. Meyer asked if the Board could require that parking for this facility be confined to the subject property. Mr. Emmons responded that the Board could, but could only require that the parking be on the subject property and not on its road frontage. Mr. Glover asked if the restrictions could not be placed on the parking because Jennie Kate Lane is being a private road. Mr. Emmons said that the Board, as part of the conditional use, could restrict that they not allow any patrons of the bed and breakfast facility to park along the frontage and that they park on the property.

Chairman Stumbo said that in sharing Mr. Bayer's concerns and following upon previous Board comments, he had to agree that he would not want to see cars parked along the side of the road. He said that, in looking at the property and driveway, it looks as if there is ample parking on the property. There is a huge 3- car garage, there appeared to be plenty of room to park, and he couldn't see why people would want to park on the road anyway. Chairman Stumbo said he could probably support this if, in, fact the parking was confined to the circle driveway, garage area, and the paved area.

Mr. Griggs said that in the recommended findings in favor of the conditional use, it is stated: "No adverse impacts on the neighborhood are expected as a result of this use." He said that the opposition had provided a pretty good list. Mr. Emmons replied that the (list) information was new, and the staff was not aware of their concerns at the time of writing the report. Mr. Griggs said that the road is maintained by the five homeowners; now there could be a commercial use on that road, which is going to exacerbate the need for maintenance on that road. This becomes an adverse impact on the neighborhood because the whole neighborhood has to share the maintenance of that road, which is being more quickly deteriorated by the new commercial use.

Appellant's Presentation – Mr. Afshari said that the car shown on the photo (in the grass) was his car. He said that sometimes he will just pull up there for a few minutes as he runs in to do something in his home; there is plenty of space for anyone to park in his driveway. Mr. Afshari said that his neighbor and other neighbors would sometimes use his driveway to pull in and allow other cars to pass, as well as use the road for their or their visitors' parking. He noted that his house is the first house on the road from Rosalie Road, and the traffic would be limited to his house due to the three or four-bedroom bed and breakfast. He addressed Mr. Bayer's concern about people walking through the yards, and he said he has never seen anyone walking through his property; however, it is possible that people come in and want to use the creek. At one point, about two years ago, he found a hunter trying to hunt on the other side of the creek, and had to tell them that they could not hunt there with their boat. Mr. Afshari said that there are certain circumstances that are beyond their control when other people come in to an area.

Mr. Afshari said that for anyone that comes to his bed and breakfast, he would have a notation in the log/sign-in book with a signature line stating that no one could just walk around to other residents' properties, but they could use the creek if they wanted because it is easily accessed from his property.

In regard to the fence that Mr. Bayer had mentioned, Mr. Afshari said that when he moved into his residence, there was no fence there and he did not know who had removed it. However, he had no problem putting a fence back in, although he did not see a reason to because the bed and breakfast would be so far away from Mr. Bayer's house (approximately 300-400 yards). He said that he would be willing to guarantee that no one would park on the road. He said that he believed that all issues raised today are very resolvable and that he would ensure that his visitors would be made aware to not touch nor feed the other residents' animals on their property.

Chairman Stumbo said that Mr. Bayer had some very legitimate concerns, and asked if Mr. Afshari would be opposed to continuing this hearing for 30 days in order for him and his neighbor to try and work out some of the issues raised today. He said that he was not sure if the Board was ready to act on this case at this hearing. Mr. Afshari said that he believed that Mr. Bayer and he would be able to agree on many matters, and he felt that continuing for 30 days would just make things worse for him. Chairman Stumbo replied that it would make the Board feel a lot more confident with going forward with the case if Mr. Afshari and Mr. Bayer could work out their differences, and said that he would encourage Mr. Afshari to consider that. Mr. Bayer said he had no problem with the Chairman's suggestion. Ms. Meyer asked if there were any other neighbors in opposition at today's hearing.

Opposition (cont.) – Mr. Christopher Swann, who lives at 4951 Jennie Kate Lane, said that he believed these issues are things that could be easily resolved. He said that one of the neighbors; who is elderly, could not be at today's hearing, and asked if he could speak on her behalf to advise the Board that she did oppose. Mr. Swann said that he felt that Mr. Afshari should speak with her as well. He said that he leases the property across the street from Mr. Afshari, and they do have some pretty high dollar horses on their property. He would like for some language to be put into the conditions that if the applicant has guests and they have encounters with the animals, that they would agree

not to sue or anything if they get bitten or otherwise injured.

Chairman Stumbo said that he would really prefer to continue this case until the Board's July meeting in order for the applicant and opposition to further discuss some of the named issues. He said that there may even have to be added conditions on the requested conditional use. Mr. Afshari agreed to the continuance.

Opposition (cont.) – Mr. John Leininger, who lives at 5056 Jennie Kate Lane, said that most of his concerns were already covered by the other opposition. He said; from his earlier conversation with Mr. Afshari in the hallway, he had a good feeling that this all could be worked out.

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously to **continue CV-2015-40: BEN AFSHARI** – until the July 31, 2015 meeting.

2. **C-2015-38: AMITABHA BUDDHIST EDUCATION SOCIETY OF KENTUCKY** - appeals for a conditional use permit to occupy an existing building for religious assembly purposes in a Single Family Residential (R-1D) zone, at 920 Tates Creek Road (Council District 3).

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

- a. Churches, Sunday schools and places of religious assembly are permitted as conditional uses in the Single Family Residential (R-1D) zone with Board of Adjustment approval.
- b. Granting the requested conditional use permit should not adversely affect the subject property or surrounding properties, since the existing facilities will be used as they currently exist. The proposed use will be much less intense than the former church, with a parking requirement that would be about 1/3 of that required for the previous church. No new structures are proposed that would affect storm water drainage on the property, and other facilities are available and adequate for this proposed use.

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

1. The use shall be operated in accordance with the submitted application and a revised site plan that eliminates the proposed parallel parking spaces along the northern property boundary, or otherwise revised as required by the Division of Traffic Engineering. A minimum of 6 parking spaces shall be maintained at this location.
2. 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 operating the proposed facility.
3. A minimum 3-foot tall screen, hedge or fence shall be placed along the western property line, where adjacent to the existing parking lot.
4. Any outdoor lighting shall be shielded and directed away from the adjacent residential uses.

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

Citizen Comment – Ms. Amy Clark, who lives at 628 Kastle Road, said that her concerns had been addressed and clarified. She said that she was concerned about the parking requirement of 6-7 spaces (tied to a maximum of 42 seats in a meditation hall -the principal assembly). Ms. Clark said she wanted to clarify that exhibits 1, 2, and 3, which were part of the application, also are a comprised part of the record because they clarify the applicant's intent to use those as auxiliary spaces (i.e., a social room and schools and offices.) Ms. Clark said that her issue of concern is about the parking. She said that 42 seats in the main auditorium needing off-site 7 parking spaces, sounds great and no problem; however, if there were concurrent assemblies of some size rather than auxiliary uses, that might be a concern; but as long as the exhibits make clear that they are not, then it is no longer a concern. She said that the applicant has clarified with her that any need for overflow parking can be comfortably accommodated.

Ms. Clark asked for the site plan to be presented on the overhead projector, and pointed out that she noticed a curb cut on the site plan at the rear lot line. She said that the applicant clarified that he just used another site plan, and did not intend for a curb cut to be there. Ms. Clark said that the applicant had mentioned putting some large trees in that area; and that would be very welcomed.

Discussion – Mr. Griggs noted that the church building is a 2-story structure with a full basement. It was called a one-story in the staff report, with approximately 1600 square feet of floor area, but he believed that it was double that size. Mr. Emmons said that he has not been inside the subject building. Mr. Griggs then asked if, as the membership increases, and parking becomes a problem, there would be any type of review each year. Mr. Marx commented that there is a minimum of once a year inspections performed. He said that if issues come up, Zoning Enforcement does check on such sites more frequently. Chairman Stumbo said that the proposed use seems to be a lot less intense of a use than previous for the church at this location.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs and carried unanimously to **approve C-2015-38:**

AMITABHA BUDDHIST EDUCATION SOCIETY OF KENTUCKY - an appeal for a conditional use permit to occupy an existing building for religious assembly purposes in a Single Family Residential (R-1D) zone, at 920 Tates Creek Road, for the reasons recommended by the staff and subject to the four conditions recommended by the staff.

E. **Administrative Review**

There were none.

IV. **BOARD ITEMS**

- A. **LANDSCAPE REVIEW COMMITTEE** - The term of Jim Griggs, Board of Adjustment member of the Landscape Review Committee, will expire on June 30 of this year, due to the end of his third term on the Board of Adjustment. Ms. Jan Meyer has agreed to be appointed to this advisory Committee as his replacement. Names and terms of current Landscape Review Committee members are as follows:

<u>TERM</u>	<u>NAME</u>	<u>REPRESENTING</u>
Term on BOA	Jan Meyer	Board of Adjustment
11/30/2015	Ms. Karen Angelucci	Tree Board
11/30/2016	Mr. Mike Cravens	Lexington Homebuilders Association
11/30/2017	Mr. Louis Hillenmeyer, III	Nurseryman
11/30/2018	Mr. Richard Weber	Landscape Architect

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman, and carried unanimously to **recommend** that Ms. Meyer be assigned to the Landscape Review Committee.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman, and carried unanimously to go into closed session pursuant to KRS Chapter 61 for the purpose of discussing a matter of pending litigation.

Note: *The Chairman declared a closed session at 2:42 p.m. The meeting was reconvened in open session at 3:00 p.m.*

At this time, Chairman Stumbo congratulated Board member Mr. Larry Forester on the recent birth of his son.

- B. **RECOGNITION OF BOARD OF ADJUSTMENT MEMBERS** - At this time, the Board (and the staff) formally expressed their sincere appreciation to Ms. Kathryn Moore and Mr. Jim Griggs for their dedication and service to the Urban County Board of Adjustment and to the citizens of Lexington-Fayette County, as the term of each would expire as of June 30.

Chairman Stumbo noted that Mr. Glover will not be in attendance for the July meeting, as well as Ms. Meyer who will not be in attendance for the July and August meetings.

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

- VI. **NEXT MEETING DATE** - The Chair announced that the next Board's meeting date would be July 31, 2015.

- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 3:06 p.m.

Barry Stumbo, Chair

James Griggs, Secretary