

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

July 31, 2015

- I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, July 27, 2015. Members present were Chairman, Barry Stumbo; Chad Needham; Branden Gross; Joan Whitman; and Larry Forester. Absent were: Thomas Glover and Janice Meyer. Others present were: Casey Kaucher, Division of Traffic Engineering; Thomas Clements, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were: Bill Sallee, Jimmy Emmons, and Tammy McMullen.

***Note** – The Chair welcomed Mr. Chad Needham and Mr. Branden Gross as new members to the Board of Adjustment.

- II. **APPROVAL OF MINUTES** – The Chair announced that the minutes of the May 29, 2015 and June 26, 2015 meetings would be considered at this time.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman, and carried 3-0 (Needham and Gross abstained; Glover and Meyer absent) to **approve** the minutes of the May 29, 2015 meeting.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman, and carried 3-0 (Needham and Gross abstained; Glover and Meyer absent) to **approve** the minutes of the June 26, 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. **C-2015-45: HOPE CENTER RECOVERY PROGRAM FOR WOMEN** - appeals for a conditional use permit to expand the existing rehabilitation home in a Planned Neighborhood Residential (R-3) zone, at 1524 Versailles Road (Council District 11).

Representation – Mr. Kevin Warner, with Carman, representing the appellant, requested a one-month postponement.

Action – A motion was made by Mr. Gross, seconded by Mr. Forester, and carried 4-0 (Whitman, Glover and Meyer absent) to **postpone**, **C-2015-45: Hope Center Recover Program for Women** until the August 28, 2015 meeting.

- b. **C-2015-46: LIVING LEARNING CENTER, LLC** Mr. Emmons explained that this case was recommended for postponement by Councilmember Jake Gibbs (3rd District). Mr. Emmons distributed communication from Mr. Gibbs to the Board. He said that the staff's official recommendation was for postponement; but if the Board decided to hear the case, the staff had no opposition. He noted that the applicant was present, and was requesting that the item be heard.

Mr. Dick Murphy, representing the appellant, said that the staff had requested additional information in regard to their request, and was given that information approximately one week ago; unfortunately, the staff report had already been written. Mr. Murphy said that they would like to proceed with the case at today's hearing due to time constraints. He noted that the next hearing wasn't until August 28th and the University of Kentucky starts before that time; everything goes by the calendar for the University, and the fraternity would need to know prior to that time. Mr. Murphy said that there were representatives at today's hearing, and they did not know if everyone would be able to return for the next hearing. He said with everyone who had received notification of this case, there had been no objection received in the Division of Planning regarding this, except the one letter from Councilmember Gibbs the night prior, and one other person who was at today's hearing, who may ask for postponement of this case. Mr. Murphy said that they have received a couple of letters of endorsement for this case, and clarified that the fraternity house is not a "party house."

Ms. Amy Clark requested that the case be postponed because the additional information that had been furnished was just received yesterday. She said that the additional information may or may not be sufficient to settle the

concerns about the property (i.e., a plan was submitted without any numbers and dimensions). She said the property is R-4; it has an open space requirement; it has a maximum footprint of 30%, and it looks as though the building is about half the size of the property. Ms. Clark said that all of that is fine if the existing building is grandfathered in; however, if the conditional use would constitute an enlargement of the non-conforming use, they don't have the numbers to know if that is the case or not.

The Chair asked when the staff received the pertinent information from the appellant, and if the staff had the opportunity to vet that information. Mr. Emmons replied that the staff had received two batches of information. There was information that was requested by the staff that was received one week ago (after the staff report was finalized), and then additional information that answered more of the questions was received on the day prior to the hearing. Mr. Emmons said that, should the Board decide to have a hearing on this, the staff does have copies of the information that would be distributed to the Board.

The Chair asked the staff if there was any information that was received that would change their original recommendation to approval. Mr. Emmons replied that, at this point in the process, out of the information that the staff had received, he believed parking would be the number one concern that would need to be looked into further. It was his belief that the appellant had tried to address some of the parking issue; and at that point, the information was not able to be reviewed by the rest of the division; therefore, it would be difficult to estimate what the recommendation would be at this point.

The Chair asked the Board if they would like to hear the case, noting that some of the issues could probably be addressed. The Board agreed to hear the case at today's meeting.

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

ABBREVIATED HEARINGS:

- a. **V-2015-50: LAWRENCE LOT, LLC** - appeals for a variance to increase the maximum allowable height of a front yard fence from 4 feet to 6 feet in a Townhouse Residential (R-1T) zone, at 422 Lawrence Street (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Approving the requested variance to allow an additional 2' of fence height at this location 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. The proposed fence will not be located in any existing sight triangles and is unlikely to be in the sight triangle of any future driveway. The Board of Architectural Review will ensure that the proposed fence will meet the design guidelines of the H-1 zone, thereby keeping the proposed fence compatible with the character of the surrounding neighborhood.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance, as the vacant property functions as the rear yard of the adjacent Cigar Flats condo units. If this vacant property were a part of that lot, a 6-foot tall fence would be allowed "by right" as long as it were located at least three feet from the right-of-way, only a slight difference from the proposed location of the fence.
- c. The most unusual circumstance associated with the subject site is the fact that this vacant property was planned to be developed as one project area, including the Cigar Flats condo property, but has failed to develop as such for nearly 10 years. The condo association now owns the vacant property and wishes to continue to utilize this lot as a rear yard, rather than develop it at this time.
- d. Strict application of the Zoning Ordinance would require the appellant to either build a shorter fence, to set the fence back 5 feet from the right-of-way, or to consolidate the properties and move the fence back 3 feet from the right-of-way. Any of these three options would likely result in a less desirable outcome for the applicant and a hardship for some or all of the condo owners.
- e. The requested variances are not the result of any willful violation of the Zoning Ordinance but are, rather, a reasonable response to this unique lotting and ownership characteristics of this property.

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 Division of Building Inspection to be in compliance with the actions of the Board of Architectural Review.
2. A Certificate of Appropriateness shall be obtained from the Division of Historic Preservation and a fence permit shall be obtained from the Division of Building Inspection by the applicant prior to construction.

3. Should a residential dwelling unit ever be built on the subject property, this variance shall be nullified/void and the height of the fence adjusted to meet applicable Zoning Ordinance requirements.

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

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

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried 5-0 (Glover and Meyer absent) to **approve V-2015-50: LAWRENCE LOT, LLC** – an appeal for a variance to increase the maximum allowable height of a front yard fence from 4 feet to 6 feet in a Townhouse Residential (R-1T) zone, at 422 Lawrence Street, based on the staff's recommendation and subject to the three conditions.

- b. **C-2015-44: MARC T. MASON** - appeals for a conditional use permit to establish a home occupation (engraving) in a Single Family Residential (R-1D) zone, at 6464 Athens-Boonesboro Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. This proposed home occupation (engraving) will easily meet the limitations and requirements set forth in Article 1-11, which are designed to limit the impact of such a use.
- b. Adequate parking is available for this use in the driveway of the residence, if it's so low volume, this shouldn't be an issue. No disturbances to surrounding property owners are anticipated with this conditional use, and deliveries will typically only occur once or twice each week.
- c. All necessary public facilities and services are available and adequate for the proposed home occupation.

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

1. This conditional use shall be operated in accordance with the submitted application and site plan.
2. All necessary permits, including issuance of a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to operation of this home occupation.
3. The activity on the subject property shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance pertaining to home occupations.

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

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

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried 5-0 (Glover and Meyer absent) to **approve C-2015-44: MARC T. MASON** – an appeal for a conditional use permit to establish a home occupation (engraving) in a Single Family Residential (R-1D) zone, at 6464 Athens-Boonesboro Road, based on the staff's recommendation and the three conditions recommended by the staff.

- c. **C-2015-47: ANDERSON TRAIL SIDE TOWNHOMES, LLC. (CHILD CARE)** – appeals for a conditional use permit to construct and operate a child care center in a Planned Neighborhood Residential (R-3) zone, at 2935 Trailwood Lane (aka a portion of 2826 Leestown Road) (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 adequate off-street parking will be provided and sufficient space is available for the required outdoor play area. The child care will be internal and almost central to the surrounding neighborhoods and will be easily accessible.
- b. All necessary public facilities and services either are or will be available and adequate for the proposed use.

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

1. The child care center shall be established in accordance with the submitted application and the revised site plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to opening the center. This includes, at a minimum, a Zoning Compliance Permit, a Building Permit, and a Certificate of Occupancy.
3. The facility shall provide care for no more than 170 children.
4. A fenced and screened outdoor play area of at least 12,027 square feet, designed and constructed in accordance with the requirements of the Division of Building Inspection, shall be provided. Furthermore,

where the outdoor play area is near the rear and side yards of residential uses; a privacy fence shall be installed.

5. The formal closure of the two street stubs into the subject site shall occur prior to opening of the facility, in accordance with the approved final development plan, or as amended by the Planning Commission.
6. A land disturbance permit shall be obtained from the Division of Engineering prior to commencement of any site construction.

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

Citizen Comment - Mr. Marc Robinson, who lives at 153 Old Wooten Mill Lane, was present. He said that he is opposed to the proposed use because he felt that they needed to keep their greenspace. Mr. Robinson opined that there did not to be a daycare in the neighborhood; it could be done inside Townley Center; they did not need a swimming pool; it would not enhance the neighborhood. He said that he felt it would bring too many people to the neighborhood, and that there are already traffic issues in the neighborhood.

The Chair asked Mr. Robinson if traffic was his biggest issue. Mr. Robinson responded that it was traffic and greenspace. The Chair then asked Traffic Engineering if they have had a chance to take a look at this proposed use in regard to the traffic. Ms. Kaucher said that Traffic Engineering has looked at this, and they did not see any concerns of traffic.

Representation – Mr. Strom first addressed traffic concerns; the site that has been chosen is served by three collector roads (White Oak Trace, McConnell's Trace, and Trailwood Lane). He said that it provides a lot of opportunity for ingress and egress. Mr. Strom said that the proposed use is essentially located in the neighborhood itself. Most of the people who would be using the proposed uses (neighborhood clubhouse and child care center) would be the neighborhood residents. Mr. Strom noted that it is in a centralized location, and a lot of people would be walking to the locations; however, they do have a large parking lot. He said that the appellant also waited until the Leestown Road construction was nearing completion, so entrances on both White Oak and McConnell's Trace would be open and available for people to use.

Staff Comment – Mr. Emmons said that he had distributed a revised recommendation, with minor revisions, to the Board. He said there was a slight revision to the recommendation of the proposed child care center use, as well as the original site plan that was amended. Mr. Emmons, at this time, briefly discussed the revision. Mr. Emmons said that the subject property is also subject to a development plan that the Planning Commission has approved, and the applicants have filed an amended development plan that is currently being reviewed by the Planning Commission. He said that the revised conditions were the result of changes made by the applicant after completion of the original staff report. The Chair asked Mr. Strom if he and the applicant agreed to the conditions. Mr. Strom said that they did agree to the six conditions, but may be back to address condition number four in regard to the privacy fence with another option, at a later date.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried 5-0 (Glover and Meyer absent) to **approve C-2015-47: ANDERSON TRAIL SIDE TOWNHOMES, LLC. (CHILD CARE)** – an appeal for a conditional use permit to construct and operate a child care center in a Planned Neighborhood Residential (R-3) zone, at 2935 Trailwood Lane (aka a portion of 2826 Leestown Road), based on the staff's recommendation and the six conditions recommended by the staff.

- d. **C-2015-48: ANDERSON TRAIL SIDE TOWNHOMES, LLC. (NEIGHBORHOOD CLUBHOUSE)** – appeals for a conditional use permit to construct a neighborhood clubhouse facility in a Planned Neighborhood Residential (R-3) zone, at 2945 Trailwood Lane (aka a portion of 2826 Leestown Road) (Council District 2).

The Staff Recommends: Approval, for the following reasons:

- a. The physical arrangement of the improvements on the subject property, along with the relatively large size of the lot, will minimize any potential negative impact of this conditional use upon the surrounding neighborhood. The proposed neighborhood clubhouse will provide a desirable service to the nearby neighborhoods, and will be located so as to be conveniently accessible by the neighborhood's existing collector streets.
- b. All services and infrastructure are or will be adequate and available for this proposed use.

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

1. The proposed clubhouse shall be constructed as indicated on the corollary site plan, or as amended by the Planning Commission on a final development plan, and shall be operated in accordance with the submitted application.
2. All necessary permits shall be obtained from the Divisions of Planning, Building Inspection, and Engineering prior to the construction and/or occupancy of the site. This will include, at a minimum, a Land Disturbance

- Permit, a Building Permit, a Zoning Compliance Permit and a Certificate of Occupancy.
- 3 The right-of-way stub street into the subject property shall be officially closed prior to the operation of the proposed clubhouse.
 4. The membership of the club shall be limited to a maximum of 332 members, to ensure compliance with the minimum off-street parking requirement.

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

Citizen Comments – There were no further citizen comments on this request.

Action – A motion was made by Ms. Whitman, seconded by Mr. Forester and carried 5-0 (Glover and Meyer absent) to **approve C-2015-48: ANDERSON TRAIL SIDE TOWNHOMES, LLC. (NEIGHBORHOOD CLUBHOUSE)** – an appeal for a conditional use permit to construct a neighborhood clubhouse facility in a Planned Neighborhood Residential (R-3) zone, at 2945 Trailwood Lane (aka a portion of 2826 Leestown Road), for the reasons provided by the staff and subject to the four conditions provided by the staff.

- e. **C-2015-49: MICHAEL VANHOOSER** – appeals for a conditional use permit to operate an indoor recreational facility in a Wholesale and Warehouse Business (B-4) zone, at 340 & 342 Richmond Avenue and 949 National Avenue (Council Districts 3 & 5).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit to operate an indoor recreational (soccer training) facility should not adversely affect the subject or surrounding properties, provided that adequate off-street parking will be available when this business is in operation. As the site exists today, with a minor addition of new off-street parking spaces, adequate parking can be achieved for the proposed use.
- 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 facility shall be operated and conducted in accordance with the submitted application, including the revised site plan, or as amended by the Planning Commission on a final development plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction or remodeling of the building. In addition, prior to an issuance of Certificate of Occupancy by the Division of Building Inspection, a Zoning Compliance Permit shall be obtained from the Division of Planning.
3. The applicant shall provide a minimum of 36 paved off-street parking spaces for this conditional use. The location of the parking spaces shall be either within the redevelopment area known as National Station or by an off-site parking agreement within 700 feet of the subject property. The final design of any newly paved parking areas shall be subject to review and approval by the Division of Traffic Engineering.
4. New parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance and the approved Final Development Plan.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

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

Citizen Comments – There were no citizen comments on this request.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried 5-0 (Glover and Meyer absent) to **approve C-2015-49: MICHAEL VANHOOSER** – an appeal for a conditional use permit to operate an indoor recreational facility in a Wholesale and Warehouse Business (B-4) zone, at 340 & 342 Richmond Avenue and 949 National Avenue, based on the staff's recommendation and subject to the five conditions.

- f. **A-2015-41: LEXMARK INT'L., INC.** - an administrative review to transfer 42 square feet of unused wall signage to a free standing sign in order to erect a 117 square-foot replacement sign in a Light Industrial (I-1) zone, at 740 W. New Circle Road (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested 42 square-foot transfer of signage from an unused wall sign to the proposed 117 square-foot free standing business sign is a reasonable request.
- b. Building 4, which faces New Circle Road and is the closest building to the proposed sign, has an allowable but unused 2,325 square feet of signage that could be used. Allowing 42 square feet to be transferred to a single free-standing sign constitutes less than 2% of this total wall signage.

- c. The new sign will be in scale with its surroundings, and its increased size will likely be unnoticeable to the traveling public on New Circle Road, considering the size of the campus, the size of the nearby buildings, the amount of open space, and its distance from the road.
- d. Although not required, Lexmark has coordinated their proposed sign location and design with the Kentucky Transportation Cabinet and has made arrangements for the sign's location such that it will not be impacted by future widening of New Circle Road. As a result; the sign will be 35 feet further away from New Circle Road than the existing free standing sign.

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

- 1. All sign permits shall be obtained from the Division of Building Inspection prior to construction.
- 2. The sign shall be located as shown on the submitted application and site plan.

Representation – Mr. Nick Nicholson, attorney, 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. Whitman, seconded by Mr. Forester and carried 5-0 (Glover and Meyer absent) to **approve A-2015-41: LEXMARK INT'L, INC.** - an administrative review to transfer 42 square feet of unused wall signage to a free standing sign in order to erect a 117 square-foot replacement sign in a Light Industrial (I-1) zone, at 740 W. New Circle Road, with the staff's recommendation and subject to 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. **C-2015-46: LIVING LEARNING CENTER, LLC.** - appeals for a conditional use permit to allow the operation of a fraternity in a High Density Apartment (R-4) zone, at 163 East Maxwell Street (Council District 3).

The Staff Recommends: **Postponement**, for the following reason:

- a. A one-month postponement should allow the applicant sufficient time to provide additional information, as enumerated in the staff report, which is needed in order to evaluate the proposal and make a substantive recommendation for the requested conditional use for a fraternity at this location.

Staff Comments - At this time, Mr. Emmons distributed information to the Board in regard to this case. The Chair asked the staff if they had an opportunity to look at the information distributed, particularly the proposed conditions of approval, and if there was anything that the staff would like to add. Mr. Emmons replied that, at this point, the staff had not yet seen the applicant's proposed findings or their potential conditions of approval. He said that the staff would like to review that information during the course of the hearing. Mr. Emmons said that the first two pages he gave the Board was information provided by the applicant, and a letter of support that was sent to the Planning division.

Representation – Mr. Dick Murphy, attorney for the appellant, was present. Mr. Murphy said that they met in the Council Chamber hallway with the opposition (Ms. Clark), and were unable to work out anything with her.

He said that the Living Learning Center is a private company, owned by Mr. Craig Hardin. Mr. Murphy said that Mr. John Schrader, a former Judge, and the attorney for the alumni board of the local chapter, was also present at this hearing. Mr. Ken Fister, who is the President of the alumni board; Mr. Robert Leash, who is the chapter advisor; and a number of members of the fraternity, were all present at this hearing in support of the proposed use.

Mr. Murphy discussed two aspects of the case- the subject property itself and the fraternity, and how the two came together. He then presented a photo of the subject property on the overhead projector. He discussed the history of the building and its different occupants. Mr. Murphy said that the subject building was built in 1961; when it was built, the Zoning Ordinance allowed professional offices on the first floor in the R-4 zone. Today, if a building is built in the R-4 zone, it can only have residential uses in it. Mr. Murphy said that this building is a valid, non-conforming use that was built legally, and can remain that way in the future even though the Zoning Ordinance has changed. Mr. Murphy discussed the purchase and proposed purpose of the subject property. He presented more photos of the property on the overhead projector, noting the building's unique architecture and other aspects of the property including renovations made by Mr. Hardin after purchasing the property.

Mr. Murphy addressed the parking situation for the fraternity use. He said that there are currently 11 or 12 parking spaces on site, which meets the Zoning Ordinance parking requirements for a fraternity; for a fraternity, it is required to have 5 parking spaces plus one space for every 5 beds, which would be 9 for the proposed use. Therefore, the applicant meets the required parking. Mr. Murphy discussed other options of parking in case there might be a need for additional parking.

Mr. Murphy then discussed the purpose and history of the fraternity that would be residing there and utilizing the building. He said the current total membership is 108; they expect a total of 160 at some point. Mr. Murphy emphasized that only 18 people can actually live in the building. If it were not being used as a fraternity, the building would be considered to consist of 5 apartment units. He distributed a copy of the parking policy for the fraternity to the Board and provided additional information with regard to parking in the area. Mr. Murphy said that they are encouraging people to walk to the subject property since it is so close to campus.

Mr. Murphy addressed the fact that the application was applied for in the name of the owner of the building, not in the name of the fraternity. He said this was done because in the past, the Board has often imposed a condition that, in the event a fraternity leaves a particular location, the next fraternity would have to come to the Board and apply for a new conditional use permit. Mr. Murphy said that they were requesting that that condition not be put on this application because the owner has purchased the building and remodeled it with the intent of doing exactly this type of use, with a fraternity or sorority or other type of student organization in the building. He said that they would like to request that if the current fraternity were to leave the building that the next occupant of the building, be it a fraternity or sorority, be a UK- recognized fraternity or sorority, and be one that subscribes to the UK code of student conduct. He said that that would provide the control and UK oversight over the fraternity or sorority.

In conclusion, Mr. Murphy presented proposed findings and conditions, should the Board approve this use.

Board Questions – Mr. Forester asked about the signage on the subject property. Mr. Craig Hardin said that they intend to have the Greek letters for whatever particular organization, facing East Maxwell Street; additionally, he said that would eventually apply for a 4 X 5 sign, out on the corner that would say "Living Learning Center" with the owner's office contact information on it.

Staff Comments – The Chair asked if the staff had a chance to look over the proposed findings and conditions. Mr. Sallee replied affirmatively, noting that they had also discussed them with Ms. Jones. He then presented some revisions on the overhead projector for consideration by the Board.

Citizen Comment – Ms. Amy Clark, who lives at 638 Kastle Road, said that she thought that the proposed use was a great location to place a fraternity house, and was very appreciative that someone local was providing student housing. She said that she objects to the shortness of time. She felt there was not enough time to get adequate information to the citizens who may have some concern. Ms. Clark said that she did agree with a lot of the conditions that are being considered, and would like to ask the Board to consider other conditions.

Ms. Clark asked for the parking regulations to be placed on the overhead projector as she addressed some of her concerns in regard to this. She asked that the Board add a condition that the yard widths and the existing open space and greenspace not be altered. She also said that there is a condition to have the applicant furnish 16 parking spaces controlled by permit. She said that she would strongly suggest that the conditional use permit be held by the fraternity chapter rather than the landlord because this is what is customary.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried 5-0 (Glover and Meyer absent) to approve **C-2015-46: LIVING LEARNING CENTER, LLC.** – an appeal for a conditional use permit to allow the

operation of a fraternity in a High Density Apartment (R-4) zone, at 163 East Maxwell Street, based on the findings provided by the applicant and subject to the five conditions.

2. **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 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.

Staff Comment – At this time, Mr. Emmons distributed some information to the Board in regard to this case. As Mr. Emmons did this, Mr. Bayer, who is the neighbor of Mr. Afshari, noted that there had been a slight revision to the information Mr. Emmons was distributing. (i.e., conditions he was requesting). He said that the change was in paragraph number 8. Mr. Emmons said that there were three conditions that the staff wanted to bring to the Board's attention (primarily the wording) before they chose to act. The first was item number 2 - the staff would like to point out that Article 17 would not allow this bed and breakfast to have an off-site sign at the corner of Rosalie Rd. and Jennie Kate Lane, and he believed that it would be confusing if the Board imposed such a condition, when the Zoning Ordinance did not allow it. The Chairman asked if Mr. Emmons was stating that this condition would need to be struck for that reason. Mr. Emmons responded that under the current Zoning Ordinance, it is not allowed. Mr. Emmons said that there was also a concern with the language "a small marker" - when a sign permit was issued, what would be considered "small". There is a certain amount of signage that would be allowed for this use. He said that if this was adopted as a Board condition, that the staff would need a little more information.

The Chairman asked the applicant to explain what type of sign he had in mind, to which Mr. Afshari replied whatever signage is allowed. At this time, the Chairman asked about different wording for the sign's verbiage. Mr. Emmons said that the other wording concerns (not the substance) were in condition numbers 12 and 13. He said that condition

number 12 is very lengthy, and it essentially copies what is already in the Zoning Ordinance and regulations. Mr. Emmons said that the staff would propose a much simpler and a more typical condition that there will be a one-year review of this conditional use, deleting the other language, should everyone agree. The Chairman asked if everyone agreed on the one-year review of the conditional use, which everyone did. Mr. Emmons said that condition #13 is much the same and is redundant, noting that the condition is already covered. He said asked if the applicant is proposing these as all of the conditions, or if they are in addition to the staff's recommended conditions. Mr. Bayer said that condition number 13 (very similar to 12) is a reiteration of what is required by the ordinance, so that Mr. Afshari would know exactly what is required. Mr. Bayer said that it did not have to be verbatim, as long as the actual condition incorporates the provisions of the Ordinance. Mr. Emmons responded that, in that case, he would recommend deleting item number 13. He said that some of the concerns are just a practical matter; and if the regulations are already there, they do not need to be repeated. At this time, there was further discussion regarding what conditions should be imposed and which should be eliminated if this application were approved

Discussion – Ms. Jones questioned condition number 6 in regard to the mention of financial participation on the cost of repairing or repaving Jennie Kate Lane. She said that that is a private street and she did not want the Board or Zoning Enforcement to be caught in the middle of private agreements due to the fact that the Board does not have any jurisdiction over those matters. At this time, there was further discussion in regard to the private agreement and how it was to be worded in the conditions.

Mr. Afshari believed that the same issue could arise in regard to the applicant and resident agreement about the plank fence. At this time, there was further discussion in regard to the private agreements between property owners. Ms. Jones said that she would suggest changing the language in condition number 5, as well as in condition number 6. Mr. Emmons then presented all the proposed changes that had been discussed on the overhead projector, and explained each.

Mr. Afshari said that condition number 6 mentioned lighting on the street. He said that there was already a light on the pole in front of his residence and questioned this. Mr. Emmons replied that it would be worded as “any new outdoor lighting.”

Citizen Comment – On the overhead projector, Mr. Bayer presented a drawing of how the applicant had planned to do the parking on the subject property, and asked that it be recorded as part of the record for this case. He then discussed the recommendation of the staff as well as the findings that were made. Mr. Bayer noted that there is a distance of only 750 feet between the bed and breakfast that already exists and the bed and breakfast that the applicant has requested, and he asked that any findings that reference a half mile be excluded because he felt that was an inaccurate assessment. He also requested that the wording remain in the condition where it stated that a plank fence be put between his property and the applicant's property; due to the fact that the applicant's property would become a commercial property and his being a residential, and the fence would keep the two separated. Mr. Bayer also requested that there be time limitations on the additional conditions.

Staff Comments – Mr. Emmons said that the staff has made some changes in the language of the findings that were proposed; he believed they were unnecessary, but making the changes also does not have an impact on the staff's recommendation. Mr. Bayer responded that he agreed with the staff's changes.

The Chairman asked Ms. Jones if she thought a condition of an annual review should be placed on this application with regard to the fence. Ms. Jones responded that she was reluctant to have the Board add that condition. She said that it is the same zone with two different uses, but one is a conditional use allowed in the zone. Ms. Jones said that she is reluctant to place time limits on the money because it is not something that the Board can enforce, noting what the Board's authority encompassed. The Chairman said that he agreed with Ms. Jones. He said that he did not feel comfortable adding a time limit on the conditions; it should be handled as a private matter.

Ms. Whitman said with regard to the signage, she had a problem with the “small marker” language. She asked why it couldn't just say that signage must be in compliance with the sign ordinance. Ms. Jones replied that that would be acceptable. She said when they go to get a sign permit they will get what is allowed by the ordinance. Mr. Emmons said that it is shown in condition numbers 4 (recommended by the staff) and 2 (recommended by the applicant); they are pretty much the same, but state the same.

*Note - At this time, Mr. Needham and Mr. Gross noted their abstention from the vote due to the fact that they were not present for the prior hearing.

Action – A motion was made by Ms. Whitman, seconded by Mr. Forester and carried 3-0 (Needham and Gross abstained. Glover and Meyer absent) to **approve CV-2015-40: BEN AFSHARI** – an appeal 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, subject to the recommendations

as listed for the approval of both the requested conditional use permit and the requested dimensional variance, as listed on the overhead projector; and approval subject to the following six conditions, with number 6 being modified to say: "That any new outdoor lighting used for this property be limited to a maximum of 8 feet in height" and also other conditions to be included as proposed by Mr. Bayer, eliminating number 13, and changing number 2 to read as follows: "A sign may be placed at the edge of the Afshari property in compliance with the sign ordinance;" number 5 to read as follows: "Reinstallation of the plank fence between the Afshari and Bayer properties subject to private agreement;" number 6 to read as follows: "Proportion financial participation and the cost to repave and repair Jennie Kate Lane, subject to private agreements;" number 12 to read as follows: "Review after one year of conditional use according to KRS 100.237(4) shall apply;" and including condition number 8 that was submitted at this hearing.

Note: The Final conditions of approval are:

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 new outdoor lighting used for this property be limited to a maximum of eight (8) feet in height.
7. No new exterior lighting that will be intrusive to the neighborhood.
8. A sign may be placed at the edge of the Afshari property in compliance with the sign ordinance.
9. Permanent displayed instructions/restrictions/cautions regarding:
 - patrons are not to feed, or harass horses
 - horses are inherently dangerous and by Kentucky laws the guests are liable for their own injuries and any damage to the horses. The provisions of KRS 247.402 shall be permanently posted in a manner to assure each guest has the opportunity to read.

The inherent risks of farm animals' activities are deemed to be beyond the reasonable control of farm animals' activity sponsors, farm animal professionals, or other persons.

No participant or representative of a participant who has been reasonably warned of the inherent risks of farm animal activities shall make any claim against, maintain an action against, or recover from a farm animal activity sponsor, a farm animal professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of farm animal activities.

10. Guests will be advised that the farms and surrounding areas on Jennie Kate are privately owned and guests are not to roam the properties, which will be treated as trespassing.
11. Reinstallation of the plank fence between the Afshari and Bayer properties subject to private agreement.
12. Proportionate financial participation and the cost to repave and repair Jennie Kate Lane, subject to private agreements.
13. Preparation of scale parking schematic, displaying capability to accommodate parking, entry and departure for five guests, residents and employees. This must be accomplished before issuance of permit.
14. No parking anywhere except in the designated parking area (lines will not be required).
15. No commercial weddings, parties, or events that will require parking in excess of accepted load capacity.
16. Must have all licenses, certifications, permits, and approvals within 90 days.
17. Review after one year of conditional use according to KRS 100-237(4) shall apply.

E. Administrative Review

None Remaining.

IV. BOARD ITEMS

- A. Election of Officers - Generally, at the January meeting each year, the Board elects a Chairperson, a Vice-Chairperson, a Secretary and any other officers it deems necessary. However, due to the expiration of the terms of Ms. Moore and Mr. Griggs, a Vice-Chair and a Secretary must be elected. Nominations shall be made from the floor, and the candidate receiving the majority vote of the membership in attendance shall be declared elected and shall take office at the close of the meeting.

* Note - At this time, the Chairman nominated Mr. Glover as Vice-Chair and Ms. Whitman as Secretary.

Action – A motion was made by Mr. Forester, seconded by Mr. Gross, and carried 5-0 (Glover and Meyer absent) to

recommend that Mr. Glover be appointed as the Vice-Chair and Ms. Whitman Secretary for the Board of Adjustment.

- B. Delegation of Secretarial Duties - In the past, the duties of the Secretary have been delegated to the Planning Manager or a staff member appointed by the Planning Manager. The Chair will request action on this item.

Action – A motion was made by Whitman, seconded by Mr. Forester, and carried 5-0 (Glover and Meyer absent) to delegate the secretarial duties to the Planning Staff.

- C. Closed Session – The Department of Law has requested that the Board go into closed session to discuss a matter related to pending litigation.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman, and carried 5-0 (Glover and Meyer absent) 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 3:07 p.m.*

- 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 would not be in attendance for the July meeting, as well as Ms. Meyer who would 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 August 28, 2015.

- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 3:39 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary