

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

August 28, 2015

I. **ATTENDANCE** – The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, August 28, 2015. Members present were Chairman, Barry Stumbo; Thomas Glover; Chad Needham and Branden Gross. Absent were: Janice Meyer; Joan Whitman and Larry Forester. Others present were: Casey Kaucher, Division of Traffic Engineering; Thomas Clements, 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 Tammye McMullen.

II. **APPROVAL OF MINUTES** – The Chair announced that there were no minutes to be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time to several 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-2015-52: LEX PROPERTIES, LLC** - appeals for variances to: 1) reduce the required front setback from 20 feet to 2 feet in order to provide parking in the front yard; 2) increase the maximum allowable width of a driveway from 10 feet to 16.5 feet; 3) eliminate the maximum 50% requirement for paving in the front yard; 4) eliminate the landscaping requirement for additional parking; 5) reduce the required driveway setback on either side of the property from 2 feet to 0 feet; and 6) reduce the required side yard (building) setback from 3 feet to 0 feet to allow a landing and stairs to remain as constructed in a Single Family Residential (R-1E) zone, within the defined Infill and Redevelopment Area, at 171 Montmullin Street (Council District 3).

Representation – Mr. Christopher Clendenen, attorney, was present, representing the appellant and requests a one-month postponement until the September meeting.

Chairman Stumbo asked if the appellant thought they could get things resolved in one month. Mr. Clendenen responded that they have met with the Planning staff this week; they are working on some resolution; they have requested that Fire and EMS evaluate one of the variances, and they believed they could get some resolution to this prior to the next Board of Adjustment meeting.

Action – A motion was made by Mr. Glover, seconded by Mr. Gross and carried 4-0 (Meyer, Whitman and Forester absent) to **postpone V-2015-52: LEX PROPERTIES, LLC to the September 25, 2015 meeting.**

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

ABBREVIATED HEARINGS:

a. **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).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the request for an amended conditional use permit should not adversely affect the subject or surrounding properties, as the proposed expansion will fit within the undeveloped areas of the property without the need for variances. Reviewed independently, the proposed facility will be able to meet all the requirements of the Zoning Ordinance, as well as when reviewed in conjunction with the two independent (but related) neighboring uses of the Hope Apartments and the Chrysalis House community center.
- b. All necessary public facilities are available and adequate for the proposed use, including the provision of

waste management collection and fire protection services.

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

1. The expansion shall be done in accordance with the submitted application and site plan, allowing minor adjustments during the normal permitting process, if required by the Department of Fire or the Divisions of Engineering and Traffic Engineering.
2. All necessary permits, including a Zoning Compliance Permit, Building Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the additions.

*Note – Mr. Emmons said that the staff had received one of letter of support for this case, and he distributed this to the Board members.

Representation – Mr. Kevin Warner with Carman was present representing the appellant. He 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 Mr. Glover, seconded by Mr. Gross and carried 4-0 (Meyer, Whitman and Forester absent) to **approve C-2015-45: HOPE CENTER RECOVERY PROGRAM FOR WOMEN** – an appeal for a conditional use permit to expand the existing rehabilitation home in a Planned Neighborhood Residential (R-3) zone, at 1524 Versailles Road, for the reasons recommended by the staff and subject to the two conditions.

- B. Transcript or Witnesses - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

C. Conditional Use Appeals

1. **C-2015-51: ST. JOHN'S LUTHERAN CHURCH, INC.** - appeals for a conditional use permit to construct and occupy a church expansion, with associated changes in the parking and play area; and to increase the number of children in the existing child care facility from 30 to 70 in Single Family Residential (R-1B and R-1C) zones, at 516 Pasadena Drive and 2713 Southview Drive (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. The church has the available room to expand its facilities on this 4-acre parcel, while new landscaping and changes to the dumpster location will mitigate the impact that this expansion will have on the surrounding properties.
- b. All necessary public facilities are available and adequate for the proposed use. Stormwater, in particular, will be designed in conjunction with the Engineering Stormwater Manual, which will require additional retention due to the known downstream stormwater problems in the neighborhood.

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

1. The expansion shall be done in accordance with the submitted application and site plan, allowing slight modifications as may be required by the Divisions of Waste Management, Engineering, and Traffic Engineering during the normal permitting process.
2. All necessary permits, including a Zoning Compliance Permit and Building Permit, shall be obtained from the Divisions of Planning and Building Inspection prior to construction; and occupancy permit will be required prior to occupancy of the building addition(s).
3. A minimum of a six-foot tall hedge and trees every forty feet shall be installed along the eastern property boundary (except where adjacent to 2713 Southview Drive) in order to buffer the adjoining residential properties on Southview Drive.
4. All outdoor lighting shall be directed away from neighboring residential properties.
5. The dumpster pad shall be located along the western property boundary (near the adjacent church's parking lot), a minimum of 120 feet from the nearest residential property.
6. ~~The property at 2713 Southview Drive shall be consolidated with the adjoining church property, by way of an appropriate plat filed with the Division of Planning and recorded prior to beginning the church use.~~

Staff Comment – Mr. Emmons noted that a correction to the staff report was needed. He indicated that in the original staff report (the 2009 case), there was a proposed condition to consolidate the properties; but during that hearing, the Board did not impose that condition. As such, the staff has recommended approval of this case with the first five conditions, and that condition number six be deleted.

Representation – Mr. Todd Ernst was present representing the appellant. He indicated that they had reviewed the

recommended conditions and agreed to abide by them.

Opposition – Ms. Julie Riesenweber, who lives at 2701 Southview Drive the eastern edge of the property, was present. Ms. Riesenweber presented some photos on the overhead projector, and noted the impact the building(s) would have, since the construction would be done in two phases and is influenced by the topography in the area. She said that according to the staff report, the church's property was 1-2 feet higher than hers, but she believed that it was more like 3-4 feet. Ms. Riesenweber discussed her concerns regarding the proposed building towering about 40 feet over the properties along the eastern boundary. She then displayed some of the photos on the overhead, which illustrated her concerns. Ms. Riesenweber said that her biggest concerns were specifically with the location of the building and its close proximity; the effect on her property value (as they would be looking at a blank brick wall); the lighting (sun/shade patterns) that could affect her landscaping and gardening, as well as her concerns as to what type of "corridor" it could create between the church and the side property line. Ms. Riesenweber also addressed her concerns about the child care that is being proposed for up to 70 children in a residential zone. She further discussed the impact that the church building would have on the neighborhood with its proposed location.

Mr. Daniel Headley, who lives at 2709 Southview Drive, said that his concerns were that he would no longer have the visibility that he currently has. He also believed the value of his property would go down due to the view from the back yard being a brick wall that is going to be there for the church. Mr. Headley said that he would have to move his vegetable garden to the front of his property where it would be able to get sunlight. He said that he didn't understand, while the applicant was going through its two building phases, why they couldn't rent a different property while the new church was being built. He felt it would be more convenient to the surrounding residents. Mr. Glover asked Mr. Headley to show him on the photo where his house was located relative to the proposed building location. Mr. Headley pointed to his house on the map.

Mr. Dennis Moore, who lives at 577 Lamont Drive (south end of the proposed church building), echoed everything that had been said, noting that his concern was the parking. He said that currently the parking is approximately 40-50 feet from the fence; but, if approved, the parking would then be 10-15 feet away from the fence, and he requested that there be some type of sound barrier placed (if this application is approved by the Board) in order to have some type of buffer between the church and the residents.

Representation – Mr. Ernst presented documentation on the overhead projector and addressed the concerns of the neighboring residents. He pointed out that there was significant vegetation on the property. Mr. Ernst said that the wall is about 10 feet tall before the roof pitch goes up to the main ridge over that space. He said that they are looking at materials of brick and stone for the church; it is not a metal building. Mr. Ernst noted that they were trying to provide some visual relief from the eastern property line and be as neighborly as they could. The Chair asked how tall they planned to the brick wall to be when it is fully constructed. Mr. Ernst replied that it would be 10 feet (ridge about 33-34 feet), and it would point northeast to southwest.

Mr. Glover asked if the wall followed the yellow line that was shown on the overhead. Mr. Ernst responded affirmatively. Mr. Glover then noted that he did not see much green space; it looked as if the entire property was taken up with either a parking lot or a building. He said that he was sure that the staff had given some thought to drainage run-off, etc.; but he wanted to be sure that someone had thought of that. He also said that he wasn't sure which way the property drained. Mr. Ernst responded that it drains toward the western property line, up toward Pasadena. Mr. Glover asked if the parking lot had already been there. Mr. Ernst replied, yes, but not in the same configuration. Mr. Glover said that it didn't look like there was a lot of space between the parked cars and the church's property line; and that, to his knowledge, there was no screening planned for the back area. Mr. Ernst responded that the staff's recommendation was for a 3-foot hedge along the property line and for trees to be placed every 40 feet, as well as a 6-foot hedge line along the eastern property line with trees every 40 feet.

Staff Comments – At this time, Mr. Emmons presented photos on the overhead projector, giving a report on the proposed use. He reiterated the staff's recommendation of a 6-foot tall hedge, plus a tree every 40 feet. He noted that there is already existing vegetation, including trees. Mr. Emmons said that the staff would recommend that a new 6-foot hedge be planted so that it would be consistent along that buffer area, and trees be planted so that the existing trees could be counted as part of the buffer.

Mr. Emmons said that the subject property is zoned Single Family Residential (R-1B), and the single-family homes along Southview Drive are zoned R-1(C). Those two zones are both Single-Family Residential zones, and there is not any required zone-to-zone screening; therefore, the screening that the staff is recommending for the proposed conditional use is above and beyond the minimums that are required by the Zoning Ordinance.

Mr. Emmons said that as the staff was reviewing the application, the ample greenspace on this site was considered. He said the property is about 4 acres in size and has been there for quite some time (late 50s, early 60s); the church does have room to grow on the property. He said that the proposed expansions and additional parking spaces do not

require any dimensional variances; everything that they have designed is within the minimum requirements of the Zoning Ordinance.

Discussion – Mr. Glover asked about of the “wall shadow”; he wasn’t sure if this was referring to the 10-foot setback of the wall from the property line or the building itself. Mr. Emmons responded that the staff did not do a shadow study with this application. Mr. Glover asked if the staff was concerned with the building corner shading Ms. Riesenweber’s property. Mr. Emmons replied that the staff did not look at it in terms of the shadow that it would cast, but the primary concern was for the property and along the eastern property line technically it would be a one-story addition at the rear, but a tall one-story addition for the main sanctuary. Mr. Glover asked how tall the sanctuary is at the eastern corner. Mr. Ernst replied that it was 15 feet; the highest point of the building is not casting a large shadow, but for the intersection.

Mr. Moore addressed the “wall” that was of concern, and said that he believed there wasn’t going to be a 10-foot wall; it was the side of the building that was the main concern. He referred to the photo on the overhead projector, where the yellow line ends, and noted that the land slopes down to the southeast. It was said by the applicant that the water will run west, but Mr. Moore opined it would not. Mr. Emmons responded that, according to the application, the applicant planned to put underground detention under the parking lot where the stormwater will then go into a detention basin. Mr. Ernst replied that this was correct; the fall (4-foot slope reference by Mr. Moore) happens outside of the church’s property line.

Mr. Gross asked if it was going to be designed so that the water from the buildings and the parking lot is going to run into the detention basin. Mr. Ernst responded affirmatively. Mr. Glover said that he did not understand the concept of the underground detention basin. Mr. Clements replied that there would be rock with voids between it; there would be space in there to store any water during the event of a storm (one way it could be done). He said there are a few different ways that it could be done, but he didn’t know what the plan was. Mr. Ernst replied that they hadn’t gotten into the stormwater design details yet.

Cont. Opposition Rebuttal – With regard to the light and shadow patterns, Ms. Riesenweber said that her house sits behind the midline (maybe about 25 feet), so that is going to impact how the shadow falls. She said that there is a lot of brush up along the fence line on her property, which is difficult to manage. She asked how that would get managed, because it is constantly invading her property now. Mr. Glover said that the Board is sympathetic to the opposition’s concerns, as well as the applicant’s desire to develop their property as they see fit. He asked Ms. Riesenweber what her solution was to the controversy, and asked if they have talked about ways to accommodate the residents on the south and southeast sides. Ms. Riesenweber responded that they spoke with the church representatives at a neighborhood meeting and residents were asking why the church building had to be sited at the proposed location. She provided more information about the discussion at the neighborhood meeting, and said that at the meeting she didn’t hear many answers or much willingness to discuss that sort of thing.

Mr. Ernst responded that after the meeting that they had hosted, they did look around for rental properties to see if there was something feasible. He said that what they found was that renting would be too much, and they would have to shut down the pre-school. They feared they would lose the ministry and the revenue stream. He said all of this was discussed after the neighborhood meeting, but they had not had any formal meeting thereafter to discuss the findings.

He said that he also did a study (a visual graphic) of a cross-section of the site showing where the new building would be in relation to the some of the homes on the adjacent properties, which he displayed on the overhead projector.

Mr. Headley said that when he purchased his home, he thought that it was just a “small church,” but it now appeared that it was trying to become a commercialized church. He said that if they are going to double their occupancy and daycare center, he felt he may lose value on his home. He said also noted that there is a retention pond on the other side, and asked why the church couldn’t be moved to that side, leaving the existing building where it is, and reversing the parking lot.

As Mr. Ernst was coming to the podium, Mr. Glover said that the Board does not discuss cases beforehand, as all the meetings are public meetings and are not discussed in private either before the meeting or after. Therefore, he was not comfortable with the plan, based on the information provided today. He suggested that this case be continued for further study. The Chair addressed Mr. Headley’s question in regard to “flipping” the parking lot, and asked Mr. Ernst if this was something that they might consider. Mr. Ernst replied that they looked at “flipping” the parking lot and presented their proposed suggestion on the overhead projector. He said that in order for the new sanctuary to be built, the old one would have to come down, which would force them off site for a year and a half. He said, it is also due to the grade of the land - it is approximately a 9 foot drop from the western face of the existing building to the drainage ditch, and that would add significant cost to that foundation wall. The Chair asked, if they flipped the parking lot, if they would have to tear down the existing structure and be out of business for a year. Mr. Ernst responded affirmatively. He said that another concern that they had was that there would be a lot more traffic along the neighbors’ yards, and they

felt that the building would act as a buffer from that. Mr. Gross asked about putting the sanctuary in the southwest corner instead of the fellowship hall. Mr. Ernst said that has been looked at as well, but it is set back so far from Pasadena that they felt they would have not have any visibility, and the parking would be in front.

At this time, the Chair said that he had a great deal of sympathy for the neighbors because this proposal is a very imposing renovation and new construction project; however, the church does have legal rights to expand their facilities, as they have proposed at this hearing. He said, sharing Mr. Glover's concerns, he is not for tearing down the sanctuary and displacing the church and children in the childcare, and that he would support this today.

Mr. Glover said that the Board had a minimum quorum, and asked the legal staff what would be needed to pass a motion. Mr. Saltee responded and said that the Board would need a majority vote with the four members present.

Mr. Ernst noted that presently the pre-school operates in the basement of the existing facility; therefore, they are unable to become an accredited program, and that was another driver for moving this to grade level.

Action – A motion was made by Mr. Gross to **approve C-2015-51: ST. JOHN'S LUTHERAN CHURCH, INC.** - an appeal for a conditional use permit to construct and occupy a church expansion, with associated changes in the parking and play area; and to increase the number of children in the existing child care facility from 30 to 70 in Single Family Residential (R-1B and R-1C) zones, at 516 Pasadena Drive and 2713 Southview Drive, with the recommended conditions made by the staff.

The motion **failed** due to lack of a second.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 4-0 (Meyer, Whitman and Forester absent) to **continue C-2015-51: ST. JOHN'S LUTHERAN CHURCH, INC. for 30 days** until the September 25, 2015 meeting.

- D. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2015-53: JULI and ROBERT ESKRIDGE** - appeal for a variance to increase the allowable floor area within the defined Infill and Redevelopment Area from 2,600 square feet to 3,089 square feet in order to construct a residential addition and a detached garage in a Single Family Residential (R-1E) zone, at 723 Melrose Avenue (Council District 3).

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

- a. The requested variance does not arise from a special circumstance that does not generally apply to land in this same R-1E zone. There are no unique physical characteristics, such as topography or neighborhood character, that would serve as a justification to approve the additional floor area requested.
- b. Granting the requested variance will cause this property to be out of character with others in the neighborhood, as this property is already the largest residence in the 700 block of Melrose Avenue (approximately 1,000 square more than the average home size).
- c. Strict application of the Zoning Ordinance will not deprive the applicants of a reasonable use of their property, as a smaller home addition and a smaller detached garage than what is requested are allowed by right, with only the issuance of a building permit.

Representation – Ms. Juli & Mr. Robert Eskridge, appellants, were present. Ms. Eskridge said that the reason they were proposing this request was because she and husband had just married and their family size has increased. She said they love the neighborhood. She said that she originally moved there as part of the "UK Live Where You Work" program, which allowed her to be close to the university. Ms. Eskridge said that she also chose to live in the neighborhood because it was very affordable. She said their intent is to improve on what is already there and try to

increase the overall value of the neighborhood. If they cannot get it the way they need, they would be forced to move, and it could create an undue hardship for them.

Ms. Eskridge said that one of the points made in the recommended disapproval of their request was that it exceeds the overall allowable square footage, which they understand; however, that is why they were requesting a variance because it is a fairly small exception. These are existing structures, and they are not adding anything other than a one-car space. Ms. Eskridge discussed the history of the subject house, noting that it would not change the character of the neighborhood because they are not doing anything to the front of the house - they are proposing to only add a garage.

Ms. Eskridge said that when they first purchased the house, it was in very bad shape. It had been unattended for quite some time; and over the course of the years, they transformed the house from something that was falling down inside, to something beautiful. She said it was originally a five-bedroom house and, when renovating, they did lose a bedroom. Ms. Eskridge said that they felt that they have brought some value back into the neighborhood by bringing the house back to where it should be. It has increased substantially in value, and they would like to do this for the entire neighborhood.

Mr. Eskridge presented some photos on the overhead projector and noted that removing the doors at the top of the house would make it safer for their children. He said the addition would be a screened in porch that is attached to the house, and they planned to "square it up" and make it more useable. Mr. Eskridge said that they do recognize that it would take up more floor space, which is the reason they are asking for the variance. Mr. Gross asked if this proposal would be a one-floor addition. Mr. Eskridge responded affirmatively. Ms. Eskridge noted that both bedrooms on the second floor have exit doors, and an outdoor stairwell. She said that she has wanted to then ever since she has lived in the home because they are not necessary.

Staff Comment - At this time, Mr. Emmons presented photos on the overhead projector along with a report on the staff's recommendation of disapproval. He said that the staff is very sympathetic to the appellants' desire to stay where they are; however, the staff could not find any physical characteristics of the property or any special circumstances that would lead to justifying the requested variance. Mr. Emmons noted on the overhead projector where he had highlighted the proposed additions, and said that there were two proposals to discuss, which were as follows:

- 1) The addition on the house; and
- 2) A two-story garage in the rear that would have a useable second floor.

He said, with regard to the overall requirements, anyone inside the Infill and Redevelopment Area is allowed up to 2,600 square feet. Mr. Emmons said that in this particular instance, the subject property already contains a 2,512 square-foot house; so there is some room under the existing Ordinance to add square footage on this particular property. If one was just looking at the addition to the house, the square footage would increase to 2,729 square feet for the overall property - that is 129 square feet over what is allowed (in other words, about a 5% increase). Mr. Emmons said that the 3,089 square feet includes that second floor of the detached accessory garage. It is proposed to be a two-car garage; the variances that are before the Board are not dimensional variances. He said this proposed used has been reviewed by the Division of Building Inspection, and it meets all the required setbacks.

Mr. Gross said that, according to the staff report, it said that the applicants could do a 9' by 9' addition. Mr. Emmons responded that, mathematically, if they have 2,512 square feet, they have 88 square feet that they are allowed to build by right. At this time, Mr. Emmons presented a PowerPoint and discussed the characteristics and nature of the property and the surrounding neighborhood.

Mr. Emmons said that, when reviewing this case, one of the questions that was asked, was why there is a restriction on the size of a house in the Infill and Redevelopment Area. He said that it was meant to aid in maintaining the scale of the buildings, especially in the older neighborhoods that were Single-Family and Two-Family Residential in the Infill and Redevelopment Area. At this time, Mr. Emmons further explained the requirements of the Infill and Redevelopment Area and why they were implemented.

Mr. Emmons said that one of the things that the staff did focus on was the character and nature of the neighborhood. He said that they looked at the 700 block of Melrose Avenue and at the PVA record of every property that fronts on, and has an address in, the 700 block of Melrose Avenue. Mr. Emmons said that what they found was that this property is actually the largest property in that block of the street; the average house size (according to PVA) was about 1,500 square feet, and the subject house is already about 2,500 square feet.

Lastly, Mr. Emmons wanted to make the point that something can be done on this property - not granting the variance does not completely prohibit the property owner' from doing any renovations to their property. He said if they were to take away the second story of the garage, there is still a very viable addition onto the house. The Chair asked if he was suggesting that the applicants could build a 9' by 9' addition onto their house, and they could rebuild their garage; but

couldn't put a second story on their garage, as that would be considered living space. Mr. Emmons responded affirmatively. Mr. Glover confirmed that it could be a detached garage as proposed, but without the second story. Mr. Emmons responded that they can build a two-car garage in the back - it would meet the dimensional requirements; it is the second story and the floor area that create the problem. Mr. Glover asked if the Board denied the second story on the detached garage on the back, if they could approve the proposed 14 X 15 addition to the house without setting a bad precedent. Mr. Emmons replied that that would be up to the Board, and suggested that they concentrate on the new information that the applicants had presented at today's hearing. He said that he would consider the addition to the house to be only about a 5% variance.

Mr. Gross asked, in regard to the garage's floor space, if it matters if there is plumbing or anything, or if it is just the fact that there is floor space, and that is what causes the violation. Mr. Emmons said that the Zoning Ordinance has a very detailed definition as to what constitutes floor area and said that it was placed in the staff report, verbatim. Mr. Gross asked if the addition was being proposed to be used as a bedroom. Mr. Emmons said that he did not know the answer to that. Mr. Gross then asked if Mr. Emmons knew the average space of a bedroom. Mr. Emmons replied that he did not know the answer to that either, but would see if they could collectively get that answer. Mr. Sallee said that a 9' by 9' bedroom would be small, but would be a bedroom. Mr. Eskridge responded that when taking into consideration two by four studs, the sheeting, and the drywall, it would be more like a 7'10" X 7'10". The Chair said that that wasn't the issue. He said that it would be a little difficult for the Board to approve the second floor addition on the garage and that there needs to be some kind of compromise somewhere. He said that he was not opposed to Mr. Glover's suggestion of the 14 X 15 room off the back and going over by 5% (129 square feet). The Chair said that he felt it would be setting a dangerous precedent for the Board to allow the second story on the two-car garage. Mr. Eskridge responded that a two-car garage would be somewhat beneficial, but it still does not alleviate a lot of the storage constraint problems that they have. At this time, Mr. Eskridge presented a slide on the overhead projector in regard to the Sunset Drive strip area and the Hollywood area as he discussed other houses in the area that have expanded in comparison what they have proposed.

At this time, there was further discussion with regard to what has been done to other properties in the neighborhood. It was noted that the other properties were done prior to this Board; and if brought to the Board today, they would not have approved those other situations. Mr. Eskridge asked if there was any consideration being taken for what happens on the other side of the street, given today's environment. He asked if that goes through the Board, or if there are no regulations in Chevy Chase. Mr. Gross responded that the Board is willing to work with the applicants, and what is being proposed by the Board is what the Board is offering. The Chair responded that the Board could not address the things that are going on across the street; however, he agreed that there are some things that seemed inconsistent. He said that granting a 14 X 15 room and a two-car garage would be a good compromise. Mr. Eskridge said, with all due respect, he felt that the Board was subjectively telling them what they should have.

The Chair responded that the Board is actually allowing 129 square feet more than what is allowed. Mr. Eskridge replied that he understood. He referred to a slide on the overhead projector and noted that he saw spots in Chevy Chase that are within 100 feet of each other and they have construction that is going on all over the place, and one is a three story addition across from the church and the school, as well as a rear garage that is almost 4,500 square feet in size. For clarification and for the record, Mr. Sallee said that the properties across Tates Creek Road are not within the defined Infill and Redevelopment Area. For confirmation, the Chair said that the properties that Mr. Eskridge is referring to are not subject to the same requirements. Mr. Sallee responded that Chevy Chase is not within the Infill and Redevelopment Area, and land across Tates Creek Road is covered by different regulations. Mr. Glover said that even if they were, the Board can only take one application at a time, and the Board makes decisions on the properties as they are presented. He said that the Board understands that there are properties that have not been approved, that are incompatible with zoning and that have not come before the Board; but they cannot correct all of the problems that have zoning violations in the present application at today's hearing; and they cannot approve the subject application as proposed, based upon someone else's building that is outside the Zoning Ordinance requirements.

Mr. Eskridge asked if there is another path besides the Board of Adjustment; or if the Board is the final decision-making body. The Chair responded that the only other option that he had was to file an approval with Circuit Court.

Note: - Chairman Stumbo declared a brief recess at 3:08 p.m. The meeting reconvened at 3:15 p.m.

Citizen Comment - Ms. Amy Clark, who lives at 628 Kastle Road, said that she is a little at a loss with the Board drafting a motion. She said that she is in support of the staff's recommendation of disapproval. Ms. Clark noted that she can see the house from her bedroom window. She said that everybody in the neighborhood learns to "do more with less;" this is a traditional, older neighborhood with small yards, generous tree canopy, open porches, small houses. It is also very affordable, and it is close to everything. Ms. Clark said that there is a fine line between being close to everything in a close knit neighborhood and being in one's face; and it is exactly the Infill regulations that help to draw that line. She noted that in this case, the yards on the block (like on her block, which is immediately around the corner), are about 600 square feet. The standard Infill proportion gives about a third of that in floor space; in the case of this

house, about 2,200 square-feet. She said that it is a fine, tall Dutch Colonial; there are six or eight in the neighborhood, and it makes good use of its footprint - it goes up two stories. Ms. Clark said that the house has been greatly enlarged already; so that it comes to about 2,500+ square feet of floor space. This is the original 1920s house and its addition. At this time, Ms. Clark further discussed the Infill regulations of the neighborhood. Ms. Clark said that adding a garage basically covers the whole back yard, as well as taking out a tall tree; and canopy is valued very much in the neighborhood. She said another thing is, it could increase their property value and maybe increase everyone's property value. Ms. Clark said that the applicant noted that it is a great place to live, but the constraints faced are opportunities. She said that it is her belief that the property would be more attractive to the next family if it weren't larger and more expansive in floor space, but rather if it had a back yard. Ms. Clark said it happens that the tree that is there now would likely not be there if they made the addition. In conclusion, Ms. Clark said that the Board's duty is to uphold the Zoning Ordinance; there has been a lot of talk about extraordinary hardship. What she sees is the ordinary hardship of everyone who lives in the neighborhood; and they live there by choice, and learn to "do more with less."

Ms. Eskridge said that they had spoken with their surrounding neighbors, and had letters of support, signed by them. She said that they had spoken to the majority of their neighbors, with the exception of a few, and there was no opposition. Ms. Eskridge said, with all due respect, Ms. Clark has never been in her back yard; therefore, she does not know what the garage would look like. She said that they also had a petition from the neighbors. Ms. Eskridge noted that the tree in question is actually a Silver Maple tree that has to come out. If the tree falls on the house, it will destroy their house; her stepfather is a landscape architect and has recommended for years that it come down.

In response, Ms. Clark said that she values the good will in the neighborhood. That is why the Board does its job - so that there are no conflicts. Ms. Clark said that she spoke with Ms. Eskridge before the meeting; and by her report, their support for the proposal is the house right next door to her and several down the row, and one across the street in the other direction. It doesn't include at least three houses between herself and the applicant; it does not include all the adjacent neighbors. The Chair responded that if there was an overwhelming level of opposition, he believed they would be at today's hearing. Ms. Clark said that she did mention this case to very few people, and they all expressed relief that the staff recommended disapproval, and felt that they wouldn't need to come out. The Chair responded that the Board is coming up with a very reasonable compromise for the applicant and the opposition.

Action – A motion was made by Mr. Glover, seconded by Mr. Gross and carried 4-0 (Meyer, Whitman and Forester absent) to **approve V-2015-53: JULI and ROBERT ESKRIDGE** – an appeal for a variance to increase the allowable floor area within the defined Infill and Redevelopment Area from 2,600 square feet to 2,729 square feet in order to build a 14 X 15 square-foot addition to the house, and to limit the building at a one-story, two-car garage on the back of the property in a Single Family Residential (R-1E) zone, at 723 Melrose Avenue, based on the following three reasons:

- 1) The granting of the variance would not adversely affect public health safety or welfare of the neighborhood;
- 2) The addition would not be visible from the street and will not alter the essential character of the general vicinity;
- 3) The proposed additions to the property are within the dimensional requirements of the zone.

To include in the motion, to **disapprove** the remainder of the requested variance for the reasons recommended by the staff.

E. **Administrative Review**

There were none.

IV. **BOARD ITEMS**

- A. **A-2009-16: EFREN ALAMI** - appeals for an administrative review to allow a liquor store and drive-through sales window in conjunction with a nonconforming grocery store in a Planned Neighborhood Residential (R-3) zone, on property located at 500-502 East Seventh Street (Council District 1).

Ms. Jones reported that a couple of months ago, she brought to the Board's attention the matter of a Court of Appeals decision in regard to the subject applicant. Ms. Jones said that since the Circuit Court has overturned the Board's decision, subsequently it was appealed to the Court of Appeals, and they have remanded it back to the Board of Adjustment for action consistent with their opinion.

Representation – Mr. Jack Michaels was present representing the appellant. He indicated the findings adequately reflect what the Court of Appeals decided.

He noted that this refers to case number **A-2009-16**, which was an earlier proceeding involving the same parties and the same issue, but the actual proceeding that was appealed and at today's hearing was case number **A-2012-53**. Other than that, everything else is the same.

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

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried 4-0 (Meyer, Whitman and Forester absent) to **approve A-2012-53: EFREN ALAMI** - an appeal for an administrative review to allow a liquor store and drive-through sales window in conjunction with a nonconforming grocery store in a Planned Neighborhood Residential (R-3) zone, on property located at 500-502 East Seventh Street, based on the following five findings:

- 1) The use of this property at 500 East Seventh Street and the corner of Shropshire Avenue has remained the same during the time the Alamis have owned the property;
- 2) The use of this property has consistently, over the years, been a neighborhood retail store selling groceries and alcohol;
- 3) The window being used on this property for a drive-through window has existed on this property during its use as a neighborhood retail store;
- 4) There has been no change of the specific use on this property at this location; and; further, there have been no changes to the physical building on this property or the parking drive aisles during its use as a neighborhood retail store;
- 5) Based on the foregoing, there is no expansion of a non-conforming use on this property at this location and the drive-through window use may continue so long as neither the use nor the physical building are modified from existing use and condition.

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

VI. **NEXT MEETING DATE** - The Chair announced that the next Board's meeting date would be September 25, 2015.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 3:38 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary