

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

December 11, 2015

- I. **ATTENDANCE** – The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, December 11, 2015. Members present were Chairman Barry Stumbo, Thomas Glover, Janice Meyer, Joan Whitman, Chad Needham, Branden Gross 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 the minutes of the November 20, 2015 meeting would be considered at this time.

Action – A motion was made by Mr. Gross, seconded by Ms. Meyer, and carried unanimously to **approve** the minutes of the November 20, 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 Acting Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

Staff Comment - Mr. Emmons noted that the Board had received a letter from Mr. Laney Cornett, representative for Mr. Berkley Sayers (**V-2015-74: BERKLEY SALYERS**), stating that he was unable to attend today's hearing due to an unforeseen medical appointment. Mr. Emmons also noted that in the letter, it was requested that if there was any opposition, the applicant would like to postpone his request; otherwise, they have read and agree with the staff's recommendations of approval. He said that this case is a fairly simple case; and although neither the applicant nor his representative was present, the staff felt comfortable to move forward with the case and recommended approval of the application.

- a. **C-2015-71: ROMAN CATHOLIC DIOCESE OF LEXINGTON** – appeals for a conditional use permit to construct an access for the church property, which will provide access to another adjacent property in Agricultural Urban and Single Family Residential (A-U & R-1D) zones, at 4001 Victoria Way & 165-169 Toronto Road (Council District 4).

Action – A motion was made by Mr. Glover, seconded by Ms. Meyer and carried unanimously to **postpone C-2015-71: ROMAN CATHOLIC DIOCESE OF LEXINGTON** to the January 29th meeting.

While sounding the agenda, with regard to case **C-2015-71: ROMAN CATHOLIC DIOCESE OF LEXINGTON**, Chairman Stumbo noted that the staff had recommended postponement and asked if Mr. Emmons would like to address this case. Mr. Emmons said that the staff had met with Traffic Engineering as late as this morning, and had a potential alternative recommendation should the Board wish to go forward. He said that it was to the staff's understanding that the applicant did want to move forward with this, but the opposition may not want to go forward.

Mr. Ron Winfield, who lives at 173 Toronto Road, asked that the permit hearing be postponed because the letter of notification that went out made no mention of the entrance of the assisted living facility, which is the main reason for the applicant's request.

Mr. Emmons responded that, as it is designed; currently that is a cross access easement for the assisted living facility, across the church's property. As it was submitted, and as it is designed, this is still an application for the church to get access to Toronto Road, but there is a cross connection; so the assisted living facility would also have potential access to Toronto Road.

Chairman Stumbo asked if it was correct that it is the applicant that would have to ask for postponement. Mr. Emmons replied that the Board has 60 days to act on any application. Should the Board wish to postpone the application today, they could move it to the January 29th hearing, which would be within the 60 days afforded to the Board. He said that the Board could have a hearing, or they could vote to postpone it; there are multiple possibilities available to the Board.

Mr. Winfield said that his main concern was that the neighbors that he had spoken with had no idea it was going to include an entrance and egress to the assisted living facility. He said that as he stated before, the letter that went out

did not contain the full information and disclosure so that the neighbors could decide whether or not they wanted to come down and speak.

Chairman Stumbo noted that there were questions from Traffic Engineering and the Fire Department with regard to this application. Mr. Sallee responded that was correct and that Traffic Engineering and the Fire Department had reviewed this application pretty closely. He said, in terms of the notice, the staff wanted to point out to the Board that a copy of the site plan was also included with the mailing. So the letter did not specifically speak to the assisted living facility because they are not the applicant; but the site plan did show that and, in the staff's opinion, there is not a notice flaw for the hearing today. They believe that the notice was properly mailed and sent. He said that the Board does have the ability to postpone should they wish to do so.

Chairman Stumbo asked the applicant to come forward and speak on this request.

Father Nick Pagano, Pastor of Pax Christi, was present representing the church. Chairman Stumbo noted that the staff had recommended postponement. Some of the neighbors seemed to have an issue, as well Traffic Engineering and the Fire Department, and he asked if it would be an issue for the church to postpone this case for 30 days. Pastor Pagano responded that he would prefer that it not be postponed. He said that they have been meeting with the Traffic and Planning departments and came up with an alternative plan that is acceptable to the church. Chairman Stumbo asked if the staff had an opportunity to review this plan. Father Pagano said that he believed that staff had done so.

Ms. Meyer asked if the applicant has had a chance to talk with the neighbors about the alternate plan. Pastor Pagano said that they had a "meet and greet" meeting at the church about two weeks ago, and two or three neighbors showed up, one of whom was Mr. Winfield. He said that they told them what was being proposed, and Mr. Winfield said that he would be at today's hearing to object. Father Pagano said that Mr. Winfield was the direct neighbor, but the other neighbors did not seem to have an issue with the proposed application.

Chairman Stumbo said that he believed that there were other issues that probably needed to be resolved, as well as the staff having some issues; therefore, he would like to see it postponed for 30 days. Pastor Pagano said that he would accept the Board's decision.

- b. **A-2015-60: STEVE PERRY & LEX PROPERTIES, LLC** – a third party administrative appeal of the decision of Zoning Enforcement to accept the as-built survey as evidence of compliance with the development plan and plat in a High Density Apartment (R-4) zone, at 201 & 205 Burley Avenue and 1107, 1109 & 1111 Stillwell Avenue (Council District 3).

Representation – Dr. Jacob Walbourn, attorney, was present representing the appellant and requested a one-month postponement, until the Board's January meeting.

Action – A motion was made by Mr. Needham, seconded by Ms. Whitman and carried unanimously to **postpone A-2015-60: STEVE PERRY & LEX PROPERTIES, LLC** to the January 29th 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-2015-72: JEFF & JENNY STRINGER** – appeal for a variance to reduce the required side yard from 25 feet to 1.5 feet in order to construct a detached accessory garage in an Agricultural Urban (A-U) zone, at 4420 Old Schoolhouse Lane (Council District 10).

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

- a. Granting the requested variance will not cause a negative effect on the subject or surrounding properties and will not cause any problem with the public health, safety or welfare. The proposed placement of the garage will not be out of character with other properties in the vicinity, and will likely not be visible from any public street.
- b. This request for a variance is not an unreasonable circumvention of the Zoning Ordinance but is, rather, a logical outcome of the unique circumstances of this property. It is common for accessory structures to be within 18 inches of a property line, and the unique circumstances of this property make the proposed location of the garage the only viable place to construct it.
- c. The sloping topography of the property and the location of the existing septic system behind the house are

- unique circumstances that make the proposed location of the garage the only viable place for its construction, all of which provides a reasonable justification for granting the requested variance.
- d. Strict application of the Zoning Ordinance would require that the applicants either not build a garage or go to great expense to regrade their property and relocate an existing septic system, which may be impractical based on the current size and access limitations associated with the property.
 - e. The requested variance is not the result of a willful violation of the Zoning Ordinance. No construction has begun and the applicants learned of the need for this variance during the normal building permit process.

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

- 1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Engineering; Traffic Engineering or Building Inspection as a part of the normal permitting procedures.
- 2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the garage prior to construction.

Representation – Mr. Jeff Stringer, 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. Needham, seconded by Mr. Forester and carried unanimously to **approve V-2015-72: JEFF & JENNY STRINGER** – an appeal for a variance to reduce the required side yard from 25 feet to 1.5 feet in order to construct a detached accessory garage in an Agricultural Urban (A-U) zone, at 4420 Old Schoolhouse Lane, as recommended by the staff.

- b. **V-2015-73: GREEN LANTERN FARM, LLC** – appeals for a variance to reduce the required front yard from 300 feet to 75 feet in order to (re)construct two tenant homes in the Agricultural Rural (A-R) zone, at 4400 Kenny Lane (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not cause a negative effect on the subject or surrounding properties and will not cause a public health, safety or welfare problem. The proposed placement of the tenant homes will actually increase the personal safety and welfare of the farm by keeping a presence at the farm entrance. Furthermore, it will not alter the character of the general vicinity, as there were previously tenant homes in this location, and many other agricultural properties in the area have tenant homes with similar setbacks.
- b. This request for a variance is not an unreasonable circumvention of the Zoning Ordinance but is, rather, a logical outcome of the unique circumstances that prompted the original farm owners to build a tenant home at this location many decades ago.
- c. The existing location of the tenant home, the existing location of the functioning septic system, the existing roads, the soils, the topography, and the nature of the agricultural operation are all circumstances of this farm that justify the requested variance.
- d. Strict application of the Zoning Ordinance would require that the new tenant homes be moved to a less desirable location on the farm, necessitating costly solutions to deal with the loss of the functioning septic systems, and would move the tenant homes into valuable pasture land, which would cause the owners a hardship.
- e. The requested variance is not a willful violation of the Zoning Ordinance. Rather, it is in response to the existing condition of the tenant homes on this property. No construction has begun; and the applicant learned of the need for this variance during the normal building permit process.

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

- 1. The property shall be developed in accordance with the submitted site plan and application; allowing minor modifications, if required, by the Divisions of Engineering, Traffic Engineering or Building Inspection as a part of the normal permitting procedures.
- 2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.

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

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

Action – A motion was made by Mr. Glover, seconded by Mr. Forester and carried unanimously to **approve V-2015-73: GREEN LANTERN FARM, LLC** – an appeal for a variance to reduce the required front yard from 300

feet to 75 feet in order to (re)construct two tenant homes in the Agricultural Rural (A-R) zone, at 4400 Kenny Lane, for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

- c. **V-2015-74: BERKLEY SALYERS** – appeals for a variance to increase the maximum allowable height for a front yard fence from 4 feet to 4'8" in a Two Family Residential (R-2) zone, at 301/303 Lakeshore Drive (Council District 5).

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

- a. Granting the requested variance will not adversely affect the public health, safety or welfare. It will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The existing fence is not located in a sight triangle, and would otherwise be permitted except for the additional 8 inches in height.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance, considering the type of fence and its height relative to the existing stone wall it was built to match.
- c. There are several special circumstances that apply to this property that do not generally apply to land in the general vicinity:
 - 1) The type of fence - a 4-plank horse farm fence has more opacity than a typical wooden residential fence;
 - 2) The fence is constructed along a steep slope area (25%) that makes the additional height of the fence basically imperceptible;
 - 3) The fence was built to the 4'8" height in order to match the height of the existing stone wall in the front yard located on Lakeshore Drive;
 - 4) There is extensive landscaping between the house and the fence that negates any potential negative effects that the additional height might have caused.
- d. Strict application of the requirements of the Zoning Ordinance would likely require the fence to be reconstructed, as it would be impractical to simply remove the top 8" of top board of this style of fence. This would be impractical and result in a financial hardship for the property owner.
- e. The circumstances surrounding the requested variance are not the direct result of a willful violation of the Zoning Ordinance. The applicant was unaware of the need for a permit, and pursued the proper permits and approvals as soon as he became aware of the need for a variance. The final stage of construction (painting) has been delayed by the applicant, pending the outcome of the Board's action.

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

1. The applicant shall obtain a fence permit for the construction of the front yard fence.

Representation – There was a letter submitted in the place of the applicant and his representative. In the letter, the applicant stated that he had read and agreed to the recommendation of approval and conditions made by the staff.

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

Action – A motion was made by Ms. Meyer, seconded by Mr. Needham and carried unanimously to **approve V-2015-74: BERKLEY SALYERS** – an appeal for a variance to increase the maximum allowable height for a front yard fence from 4 feet to 4'8" in a Two Family Residential (R-2) zone, at 301/303 Lakeshore Drive, for the reasons recommended by the staff and subject to the one condition recommended.

- d. **CV-2015-69: TONY & LISA HODGES** - appeal for a conditional use permit to operate a nightclub with indoor live entertainment; and a variance to the required distance from a residential zone from 100 feet to 65 feet in a Neighborhood Business (B-1) zone, at 828 Lane Allen Road, Ste. 140/150 (Council District 11).

The Staff Recommends: **Approval of the conditional use**, for the following reasons:

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

The Staff Recommends: **Approval of a dimensional variance from 100' to 65'**, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare. It will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. No physical change or expansion of the existing buildings or parking lot is required or proposed by the applicants to accommodate this use.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because the proposed use of the private seating area for the nightclub will have the same impact as a private dining area for a restaurant, provided that no live entertainment is permitted in this portion of the establishment, as volunteered and agreed to by the applicant.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that the orientation of the nightclub/bar is to the interior of the shopping center. There will not be any

direct access from the private seating room to the exterior of the building, which faces the residential neighborhood across Garden Springs Drive. Because of the orientation and the prohibition of live entertainment in this portion of the bar, disturbances to the neighborhood are not expected.

- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicants of a reasonable use of the property, because without the variance this portion of the suite would have to be utilized as an office, storage, or some other accessory use that is not technically the nightclub use.
- e. The circumstances surrounding the requested variance are not the result of the prior actions of this applicant, but are related to the existing location and layout of the building.

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

1. The nightclub with live entertainment shall be established in accordance with expanded hours and the submitted application and site plan.
2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to occupancy as a nightclub with live entertainment.
3. A note reflecting the action of the Board shall be denoted on any amended Final Development Plan for the subject property, other than for ingress and egress.
4. Outdoor speakers shall be prohibited, and the doors to the restaurant shall not be propped open during the times when live entertainment is present.
5. Hours of operation of the live entertainment shall be limited to nights ending no later than 2:30 am.
6. This use shall be sound-proofed to the maximum extent feasible by using existing technologies, with noise and other emissions not creating a nuisance to the surrounding neighborhood.

Representation – Mr. Tony Hodges, 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 unanimously to **approve CV-2015-69: TONY & LISA HODGES** – an appeal for a conditional use permit to operate a nightclub with indoor live entertainment; and a variance to the required distance from a residential zone from 100 feet to 65 feet in a Neighborhood Business (B-1) zone, at 828 Lane Allen Road, Ste. 140/150, based on the staff's recommendations for both the conditional use and the variance, and subject to the six conditions as 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.

There were none remaining.

D. **Conditional Use Appeals**

1. **C-2015-70: YMCA OF CENTRAL KENTUCKY, LLC** - appeals for a conditional use permit to develop and use the property as part of the adjoining YMCA in a Planned Neighborhood Residential (R-3) zone, at 2625 Old Rosebud Road (Council District 6).

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

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the proposed use for outdoor sports programs is a very low intensity use. Furthermore, the applicant has agreed to make the fields unlighted, to set the fields back 150' from the adjacent residential properties, and to install a row

- of evergreen trees to screen the rear yards of those properties from 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 community center use shall be operated in accordance with the submitted site plan and application, allowing minor adjustments if deemed necessary by the Divisions of Planning or Building Inspection during the normal building permit process.
2. All necessary permits, including a Zoning Compliance Permit and a Building Permit for the pavilion, shall be obtained from the Divisions of Planning and Building Inspection prior to construction of the addition.
3. The outdoor fields shall be unlighted and located a minimum of 150' from the adjacent residential properties.
4. A staggered evergreen screen shall be installed adjacent to residential properties to the north, with trees at least 15' on center. The screening shall be installed prior to the operation of this property as a community center.
5. The sidewalk along Pascoli Place shall be constructed prior to the operation of this property as a community center.
6. The applicant acknowledges that a multi-use trail is intended to be developed near the floodplain at the rear of the property and agrees to negotiate with the LFUCG should there be a need for construction of the trail on this property.
7. The applicant shall have up to three years to exercise this conditional use permit.

Note: Mr. Emmons noted that there were several letters of opposition, which he distributed to the Board.

Representation – Mr. Tommy Todd, attorney for the appellant, and Mr. David Martorano, President of the YMCA, were present. Mr. Todd indicated that they had reviewed the recommended conditions and agreed to abide by them.

Chairman Stumbo asked if, when the applicant and opposition went into the hallway to discuss the issues, they were able to come to any resolution. Mr. Todd responded that they were in favor of a couple of the suggestions that were presented. He said that with regard to Pascoli Place, which is one of the streets that adjoins the fields, one of the concerns expressed by the neighbors is that it would be a high traffic area. They requested that there be "no parking" signs on that street. He said they are in favor of that. Mr. Todd said that they will have about 100 more parking spaces at this YMCA than the Beaumont YMCA. Even though the facilities are the same size, they would much prefer that the participants in their youth program park in the parking area and walk across the sidewalk and into the athletic fields.

Audience Comments – Mr. Rudy Lesshafft, 2437 Rossini Place, said that they live in a nice neighborhood with a lot of things going on. He said there is a high school going up on one end of the neighborhood, and a YMCA on the other end. It seems to be that behind where the high school is there is a road "coming out" right behind the homes. Mr. Lesshafft said that they are concerned about the traffic impact on Pascoli Place because the rear entrance from the YMCA (off Old Rosebud), exits onto Pascoli, and will bring a lot of traffic. Mr. Lesshafft said that the YMCA is requesting to put a pavilion and two small fields, on the lot, and neighbors are concerned about the noise that will result. He said that another concern is whether or not there are going to be lights for the field, which they hope there will not be. Mr. Lesshafft said that he believed that pavilions bring drug activity into an area. At this time, he discussed further concerns of possible drug activity that could go on, noting that he did a crime analysis near the YMCA on the north side of town (Georgetown Street, as well as the crime that is currently going on, on Loudon Ave.). Mr. Gross asked if this YMCA would be more equivalent to the Beaumont YMCA than the YMCA on Loudon Ave. Mr. Lesshafft responded that they did not get a chance to get to the one at Beaumont.

Ms. Donna Ensminger, 2408 Coroneo Lane, said that she, too, is concerned with the traffic. She said that Pascoli Place is parallel to I-75. It is in a 25 mph zone, and there are days that people drive 60 mph through the neighborhood. Ms. Ensminger said that one of their concerns is that if a parent is coming to the YMCA for a game, and has multiple children in the car who may be excited, one may just get away from supervision, which is a safety concern with through traffic and cars parked on Pascoli. Ms. Ensminger said that she would love to see a fence there; however, she was told by Mr. Todd that Mr. Haymaker has placed a restriction that there would be no fence put around the YMCA property.

Board Questions/Comments – Mr. Glover asked if the Board had any authority over on-street parking in connection with this application. Mr. Emmons responded that they had no authority on an existing public street, but he believed that the Urban Council or possibly Traffic Engineering would. Mr. Emmons directed that question to Ms. Kaucher, who noted that that was correct. She said she would caution restricting the on-street parking on Pascoli. Pascoli and Old Rosebud are both built to collector standards (with wide pavement). If the parking is removed from those streets, the cars will speed up and increase these stated concerns. Mr. Glover asked if Ms. Kaucher was saying that parking on the street would slow down the traffic and make it safer than if no parking was there. Ms. Kaucher replied that it definitely would because it makes the driving lane narrow/smaller; it is a perception that if the lane is smaller, one is going to go slower. Mr. Glover asked Ms. Kaucher if Traffic Engineering had any concerns with traffic issues. Ms. Kaucher replied that she did not; the adjacent streets are capable of handling the traffic; they are close to the

intersection. Ms. Kaucher said if there was a concern with getting out of the car, they could walk on the sidewalk to the intersection, cross and access the lot that way.

Mr. Glover asked how the remnant property was currently being used. Mr. Todd said that currently it is just a big pile of dirt and weeds. It is the last 4½ acres of a 78-acre parcel in Hamburg, the rest of which has been developed. Mr. Todd said when Mr. Gatton owned the land; he donated the 10-acre site where the YMCA is being proposed. At this time, Mr. Todd discussed the current use of the land.

Appellant Presentation - In addressing Mr. Glover's questions, Mr. Todd stated that there will not be a lot of fertilizers, chemicals, etc. running off the property. He said they are going to grade, seed, and straw it, for little kids to play field sports. Mr. Todd noted that the age group would be small, younger kids. He said, with regard to the pavilion question, to his understanding there was already a pavilion at the Latter Day Saints Church, and he didn't know why criminal element would pick their pavilion out more than any others. Mr. Todd said that they have not yet developed their property- they do not have the money; and they have asked for a 3-year extension on the normal 1-year Board of Adjustment application. He said that if they end up putting restrooms in there, they would see that they are locked at the close of day so that nobody could get in there at night. Mr. Todd also stated that there would be no lights on the field. Mr. Glover asked the staff if the Board of Adjustment has the authority to extend the permit from 1 year to 3 years. Mr. Emmons responded affirmatively.

Discussion - Mr. Gross asked, with regard to the fence, if it would go down Pascoli. Mr. Todd replied that the Mr. Haymaker does not want a fence. He said Mr. Haymaker insists that the property and pavilion be built in keeping with the neighborhood.

Mr. Forester addressed some questions posed in the letters of opposition with regard of the times of events. Mr. Todd responded that, due to not having lights and the proposed use by smaller children, the events would end at dusk (9 or 9:30). Mr. Needham noted that his child attends sports as well; the parking is very heavy, even to the point that it overflows into the neighborhood. He asked what is necessary for those types of events, and asked if any studies have been done. At this time, Mr. Martorano discussed the YMCA's programming. Mr. Needham asked how many teams there would be for the 3-5 year old age range. Mr. Martorano responded that there would be two teams playing at a time. Mr. Gross said, when looking at the design, there seemed to be only one field. Mr. Martorano verified that there would only be one.

Mr. Stumbo asked if the applicant would be opposed to another condition stating that it would be for pee wee use only. Mr. Martorano replied that it would be no problem at all for sports programs. Mr. Glover said that he didn't feel a need to micro-manage the use that severely; and that he believed it would likely receive more traffic with younger kids using these facilities than with older kids, due to the fact the younger kids would always have to have a parent to bring them there. Mr. Todd agreed with Mr. Glover, and noted that they were in agreement with the staff's recommendations. Mr. Glover said that the staff report stated that hopefully, should the YMCA purchase the property, it will continue the sidewalk that they are constructing as part of the new facility at the corner, and then in condition #5, it is stated differently. He said that it seemed inconsistent and he didn't understand that. Mr. Emmons said that it was not meant to be inconsistent and then explained the reason why it was worded as such. The staff was simply recommending earlier construction of the sidewalk, (during the construction of the main campus), but requiring the construction prior to the use of the site.

Mr. Glover asked what the applicant's intent was. Mr. Todd replied that they planned to move forward and to finish this development by constructing the sidewalk on Pascoli to where it connects up to the residential portion of the development. Mr. Emmons said the recommended condition is just the last step, saying that even if they don't want to build it with the rest of the construction, the staff does not want the site being used for the YMCA purposes without the sidewalk, even if they were to build it at a later date.

Mr. Glover said that he wondered about the trail that was located on the other side of the creek, and asked if this was part of the application. Mr. Emmons responded that it is not part of the YMCA application - there is a plan for it to be used as a multi-use trail along the floodplain. He said the condition was just intended to put everybody on notice; the trail is not designed at the current time. Mr. Glover then asked what the measures were to mitigate potential noise or other disturbance, Mr. Todd responded that there will be no lights, the fact that it would not primarily be used athletically for older children, and they will be required to screen the use from the adjoining residential property. Mr. Todd presented this information on the overhead.

Ms. Whitman said that, based on the letters and what has been said at this hearing, her question was about the traffic and parking. She asked what parking is available for this activity that is not on Pascoli Place. Mr. Todd responded that the proposed facility is the same size as the Beaumont YMCA and has 100 additional parking spaces. He then discussed the parking availability on this site. Mr. Emmons added that he had the approved development plan for the YMCA. He said that it is required to have 112 parking spaces, and they would be providing 334 parking spaces; three

times as many as required. Ms. Whitman asked if there would be a path constructed that would be easy to access. Mr. Todd responded that there is a back parking area that, when one gets out of their car, they would only need to take a few steps and they would be on the field. Ms. Whitman stated that she would like to see a cut-through developed. Mr. Glover asked if there was going to be any type of obstruction between the parking and the field. Mr. Todd replied that there would be no fence. Mr. Gross then asked if a hedge would be considered instead of a fence. Mr. Todd replied that at this time, he had no answer for that, but that he could not see Mr. Haymaker agreeing for them to do that.

Mr. Forester asked if the development plan for this proposed use been shared with the home owners' association. Mr. Todd responded that it was public record and they were not trying to hide it from anybody.

Audience Comments (cont.) - Mr. Jim Ensminger, 2408 Coroneo Lane, said that he strongly disagreed that the parking on both sides would slow down, the traffic. He asked how many members are anticipated to belong to the proposed YMCA, and how many members belong to the YMCA at Beaumont. Mr. Martorano said, at any given time, he wasn't sure; but Beaumont's total membership is about 16,000. Mr. Ensminger said that he was told that they anticipated about 4,000 members, of which he and his wife would each be a member. He said that he is not opposed to the YMCA being there, but is opposed to the resulting traffic pattern. Mr. Ensminger noted that there is going to be a school on Winchester Road that is going to dump partially into their area 17-18,000 students in the year 2017. He said there is also a daycare proposed to be built at the other end of street, which could possibly cause even a bigger traffic impact. Mr. Ensminger continued to express his concerns about the impact of traffic that this proposed use could bring to the neighborhood.

Mr. Lesshafft said that he did not realize that there were proposing to put in an outdoor swimming pool; as neighbors did not get information on that proposal. Mr. Saltee responded that the pool was not a part of the application that is before the Board today. He said that pool and the rest of the buildings that were being shown on the overhead projector were in the Professional Office zone, and no conditional use permit was necessary for those uses.

Discussion (cont.) - Ms. Meyer said that her concern is about the parking; and if was some allowance in the plan for that. Mr. Glover said that, to his understanding, this proposed YMCA was being compared to the Beaumont YMCA, and he did not understand the parking concern. Mr. Todd said that it is correct that there is to be a whole lot more parking at this proposed YMCA than at the Beaumont Center, and the facilities are essentially the same size. Mr. Gross said that he understood the neighbors' concern regarding parking, which is essentially side street parking; it can be a nuisance at times; however, he believed that it would be a limited nuisance at most.

Action – A motion was made by Mr. Gross, seconded by Mr. Glover and carried 6-1 (Meyer opposed) to **approve C-2015-70: YMCA OF CENTRAL KENTUCKY, LLC** - an appeal for a conditional use permit to develop and use the property as part of the adjoining YMCA in a Planned Neighborhood Residential (R-3) zone, at 2625 Sir Barton Way (aka 2440 Pascoli Place), based upon the recommendations of the staff and subject to the conditions proposed by the staff, noting that the applicant shall have up to three years to exercise this conditional use permit.

E. Administrative Review

None remaining

IV. BOARD ITEMS

- A. The Board has requested an update from Zoning Enforcement with regard to 7524 Old Richmond Road (**CV-2006-20: AARON JAMISON / MARVIN FELDPAUSCH**).

Note: At this time, Mr. Glover and Mr. Forester recused themselves from the following discussion due to matters of a professional conflict of interest.

Mr. Marx provided an update on the Zoning Enforcement case at 7524 Old Richmond Road (**CV-2006-20: AARON JAMISON / MARVIN FELDPAUSCH**), which Dr. Lisa Gannoe had previously brought to the Board at the October 25 and the November 20, 2015 meetings. Mr. Marx handed out information with regard to the updated status/summary from the representative of the property owner. He apologized for just now handing it out; however, he had just received it that morning. He summarized, stating that the letter addressed items that the applicant has done related to: stormwater manage analysis for Division of Engineering; information from Pogue Engineering and the structural assessment of the building; purchase orders related to replacing some panels on the roof that have caved in; and their efforts to work with District 7-department of Transportation, which relates to the access to Old Richmond Road (that has to be approved by the Transportation Cabinet). Mr. Marx said that they have been working to get all the stuff in the works. He believed it has taken more time than they anticipated because of things such as doing the stormwater analysis, which they weren't expecting. He noted that they have been advised by Traffic Engineering that they would need a much more detailed site

plan that has specifications and dimensions for Traffic Engineering to do their review.

At this time, Mr. Marx updated the Board members who weren't present at the previous discussion of this case. During his discussion, Mr. Marx noted that revocation hearings are very rare; there have only been two revocations in the last four years, both of which had been very active uses. Mr. Marx said that the case before the Board today is very dissimilar to those; there is no active use going on that property; there was briefly in the fall, for which a Notice of Violation was issued, but they have since departed and vacated the property.

Mr. Marx stated that if the Board did decide to have a revocation hearing, and did decide to revoke the conditional use, there is no guarantee that the building is going to be removed. There is no condition applied by the Board in 2006 that there would be removal of that building if the use is discontinued. Mr. Marx said that the only way that the building would come down is if the property owner agrees to dismantle it and rebuild somewhere else or just take it down; or if the building is just not maintained and the Division of Code Enforcement could condemn it and have it removed through their process of condemnation.

Audience Comments - Dr. Lisa Gannoe, who lives at 7525 Old Richmond Road, distributed a letter to the Board and said that this is her third straight month of being at the Board hearing to request a revocation for the subject property. She said that it has been difficult to prepare for these meetings because she had been trying to get updates for this case since December 3rd. Dr. Gannoe noted that on December 3rd, she contacted Mr. Jim Duncan, Division of Planning, and talked to him via phone; he did not have any update on the project at the time. On Monday, December 7th, she contacted Mr. Marx, who left her a voicemail, stating that there was not really much to report, other than that the staff had met with Engineering about what might be needed regarding the stormwater management plan; and that was all that he had to report. She said on Wednesday, December 9th, she spoke with the Vice-Mayor who had spoken with Mr. Marx earlier that day. She believed that it was the Vice-Mayor's understanding, that the staff was not going to move forward with this project; and because nobody was occupying the building, it might become a Code Enforcement issue, and that it could just sit there. Dr. Gannoe said that she believed the Vice-Mayor was under the impression that the Board of Adjustment could not take any action on that, and that it would be a Code Enforcement issue. She said that it is interesting that she received the new information at this hearing because that was not what she was told on Wednesday, and she did not realize how much this had moved forward. Dr. Gannoe noted that on the day she spoke with the Vice-Mayor that the MICA group had spoken with the District 7 Transportation Office.

Dr. Gannoe stated that she had issues with the "after the fact permitting." She said when she looked at the original application the architect was listed as the Greenhouse Company (which she contacted). The Greenhouse Company had a record of supplying the materials, but had no record that they had put up the structure, or how the gas lines got there. Nobody seems to know how the electrical got there or the plumbing because there are no records of these issues. She said the person who is listed as the building contractor on the original permit (when she did an open records request), did not pull any permits in 2006, 2007, or 2008. Dr. Gannoe said that it is really a mystery to her as to how this structure got there, and questioned the safety of the building. She said that she believed that all the variances that were necessary were not sought for this project, which she listed in her letter. The reason for her letter for today's hearing was based on the information she had on Wednesday.

Dr. Gannoe said that she has been told, and it came up at the last meeting, that there are revised plans and different things for the subject property, and she has not seen those. She said that she has asked her Councilman (12th District Councilman) for that information, and she has not received it. Dr. Gannoe said that she has asked both Council-at-Large members for it, and has not received it. She said she wanted to know if the revised plans were different from what was proposed in 2006; she would like to know if they had planned on making any changes to the driveway - it went from a loop driveway to a single driveway; she wanted to know how many people they planned on having at the greenhouse - originally in the paperwork it appeared to be one employee. Dr. Gannoe stated that she believed she deserved to know what the plan is for the subject property, and she felt like they were getting a "do over".

Dr. Charles Martin, who lives at 7416 Grimes Mill Road, said that he had little to add, other than to reiterate what had been said. Dr. Martin said that December 1st was the deadline for the applicant to get it all fixed. Not only did they not have it all fixed, but they had nothing fixed by the deadline and had made no plans for efforts to get anything fixed. He noted that the applicant had contacted the Department of Transportation on December 9th. He does not believe that they have acted in good faith, and does not believe that they will. Dr. Martin said that his question was if they actually have a conditional use permit.

Ms. Jones responded that, to her understanding, there was a conditional use permit approved with certain conditions, and that some of those were starting to be put in place; then there was some issue after the Certificate of Land Use Restriction was recorded that some of those conditions may or may not have been met. There may have been a period of some kind of vacancy. Ms. Jones said that once a conditional use permit is issued, and there is some kind of action that takes place, it doesn't just go away. She said, at that point, it could be revoked, but the goal has typically been to bring a property into compliance if there are problems; and also a property that has no active use going on is typically considered to be in

violation. Mr. Marx added that there was some discussion about a one-year window, and the conditional use was exercised during the one-year window. They received an original building permit for the greenhouse building and started construction; at some point they stopped, and he didn't know why that permit was ultimately voided; and the building was completed.

Mr. Marx said that the conditional use has been exercised. Dr. Martin asked about the other conditions, such as, the driveway, and said that they did not meet their conditions. He asked whether they had a conditional use permit, or not. Ms. Jones responded that they do have a conditional use permit because they have now begun exercising the conditions. Not every condition has to be met; the Land Use Restriction form has been recorded; and the question at this meeting is, what is going to be done with it going forward. Dr. Martin had further questions as to whether or not the property had a conditional use or not. Ms. Jones stated that the way things are going is the way the process works. Dr. Martin said that he would just like to ask that the Board vote for a revocation hearing.

Mr. Gross asked for clarification of the process involved here. Mr. Emmons responded that the Land Use Restriction form is typically recorded within a month after the case has been approved. He said the applicant is then responsible for making sure the required conditions are met. Mr. Gross noted that, upon the Board's vote, that, the applicant has a conditional use permit; and then they have one year to be in compliance. Mr. Emmons responded that the one year review mandate comes from KRS.100; In addition, Article 7 Of the local Zoning Ordinance says: "For any conditional use permit that has not been exercised in the time limit set by the Board, or within one year", and no specific time limit has been set. He noted that it stays with the land unless there is a revocation hearing. Mr. Emmons said that there have been some conditional uses over the approved permit years that have been approved with "null and void" conditions on them and provided some examples of the different conditional uses. Mr. Gross asked if, in this instance, a plant nursery was approved as a conditional use, it could still be used for whatever its zoned use is; and if this was just an additional use they could do on the property. Ms. Jones said that is correct; there is a difference between not using it for what it was approved for and using it for something totally different. At this time, there was further discussion on the proper use of the conditional use permit.

Dr. Gannoe said that she wanted to clear up that the Land Use Restriction form for this case was not recorded until this November when she started asking for copies of various documents. She said it had not been filed since 2006. She said that there was a question at the last hearing about whether there was an agricultural use here, and she said that according to the definition of agricultural use one has to have 5 contiguous acres. This property is 1.4 acres with a 6,000 square-foot greenhouse. Dr. Gannoe said that she thought it was important to point out that all of the variances that they should have received on this property were obtained. She said that she disagreed on the one-year thing being exercised, and that is why she is questioning how the building was completed. Dr. Gannoe referred to Article 7 of the Zoning Ordinance, and read the following: "The Board may approve, modify, or deny any application for a conditional use permit. The Board shall have the power to revoke conditional use permits for non-compliance with the conditions thereof; furthermore, the Board should have the right of action to compel offending structures or uses removed at the cost of the violator, and may have judgment in persona in for such cause." She said that, she believed that was different from what Mr. Marx said that even if the Board voted for that- that the building couldn't come down- because that is not what she read in the Zoning Ordinance.

Dr. Gannoe also read: "If the land owner is not complying with all the conditions listed in the conditional use permit, the Division of Planning shall report that fact in writing to the Chairman of the Board of Adjustment. The Board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the land owner at least one week prior to the hearing." She said that she has asked for the revocation hearing three times now. It was reported at the last hearing that, since 2007, every year this property had been reported as out of business; she disagreed with that, too, because it was never exercised or utilized. Dr. Gannoe said that she did not understand why nothing has been done about this. She noted that in 2009, letters went to Mayor Newberry and Vice-Mayor, Jim Gray with regard to this property; still, nothing has been done.

Mr. Stumbo said that this is a very challenging issue; and after listening to Mr. Marx and Ms. Jones, he was not prepared to schedule a revocation hearing for this permit. He said that the Board does have the authority to hold a revocation hearing; but under the circumstances and the seriousness of holding revocation hearings, he did not feel this qualifies for a revocation hearing at this point in time. Mr. Stumbo noted that the Board just reviewed the information presented today for the first time. He noted that one of the things that had been discussed was if the owner was going to make a good faith effort, and the Board is seeing some movement on this. Mr. Stumbo said that he understood that it is frustrating, because he went to view the building, and said that it is an eyesore; however, he would like to see the MICA group move forward on their word to bring the property into compliance. He asked Mr. Marx for another update on this and to report at the Board's January 29th hearing.

Dr. Gannoe said that if the owner is planning to move forward, she would really like to see a copy of what their plan is for the property. She asked if she could get a copy of the plan. Mr. Marx responded that the staff would be happy to get her the information as they get it, but they have no control over when the information is provided to them. Ms. Whitman asked Mr. Marx if he believes that anything has been done on-site. Mr. Marx responded that they have contacted Palmer Engineering contractors, and they may be able to verify who is to do the stormwater assessment; and they have ordered materials from the greenhouse company. Mr. Marx said that they have been working on this.

B. The staff distributed copies of the 2016 Meeting & Filing Schedule at this time.

V. **STAFF ITEMS**

A. The staff wished the Board members and their families a safe and happy holiday season.

VI. **NEXT MEETING DATE** – Mr. Stumbo confirmed that the Board's next meeting date would be January 29, 2016.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 3:07 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary