

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 24, 2016

- I. **ATTENDANCE** – The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, June 24, 2016. Members present were Chairman Barry Stumbo, Thomas Glover (arrived 1:40 p.m.), Joan Whitman, Chad Needham, Larry Forester, and Jan Meyer. Absent: Branden Gross. 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 March, 2016 meeting would be considered at this time.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover, and carried 5-0 (Gross absent) to approve the minutes of the March 25, 2016 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time to several staff members and other persons in the audience.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
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 would proceed to take action.

ABBREVIATED HEARINGS:

1. **V-2016-33: EARLE & DIANE BENEZET** – request a variance to reduce the required side yard from 8 feet to 3 feet in order to construct a detached accessory building in a Single Family Residential (R-1C) zone, at 1732 Houndstooth Glen (Council District 7).

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, and this is further evidenced by the written support of the adjacent property owner. The proposed placement of the storage building will not be out of character with other properties in the vicinity, and will likely not be visible from any public street.
- b. This variance will not result in an unreasonable circumvention of the Zoning Ordinance but, rather, it is a logical outcome of the unique circumstances of this unique property. It is common for accessory structures to be within 18 inches of a property line, and the location of the storage shed on the subject site will be twice that distance.
- c. The location of the existing easements and mature trees, the size of the lot and the location of the house on the property are all unique circumstances that provide a reasonable justification for granting the requested variance.
- d. Strict application of the Zoning Ordinance would require that the applicants either not build a shed, place it in a less than optimal location in their yard, or remove existing mature trees.
- 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 Division of 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 storage shed prior to construction.

Staff Comment – Mr. Emmons indicated that the staff had received one letter of support, and he distributed to the Board at this time.

Representation – Mr. Earle & Mrs. Diane Benezet, appellants, were present. They indicated that they had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried 5-0 (Gross and Glover absent) to **approve V-2016-33: EARLE & DIANE BENEZET** – a request for a variance to reduce the required side yard from 8 feet to 3 feet in order to construct a detached accessory building in a Single Family Residential (R-1C) zone, at 1732 Houndstooth Glen, for the reasons recommended by the staff and subject to the two conditions outlined by the staff.

2. **V-2016-35: BRUCE WEBB** – requests a variance to reduce the required distance from a residential zone from 150 feet to 40 feet in order to occupy a building as a gymnasium in a Professional Office (P-1) zone, at 1122 Oak Hill Dr. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not cause a negative impact on the subject or surrounding properties and will not cause a public health, safety or welfare problem. The previous athletic activities that were in operation at this location for more than two decades demonstrate that the proposed athletic activities, occurring indoors in the same structure as before, should also be able to operate without adversely affecting the surrounding neighbors or altering the character of the general vicinity.
- 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 request. The setback restriction for this use in the P-1 zone is intended to protect and buffer residential uses. This site has had a long history of providing this type of activity without complaint, long before the restriction was put in place.
- c. The existing location of the gymnasium, combined with the large lot size and its unique placement, literally surrounded by single family residential rear yards on all sides and the previous 23 years of similar usage under a different zone, creates a unique circumstance that applies to this property that does not apply to others in this immediate vicinity, or generally in this zone.
- d. Strict application of the Zoning Ordinance would require that the use of an athletic club facility would not be allowed anywhere on this property, even though it is not prohibited by conditional zoning restrictions.
- e. The requested variance is not a willful violation of the Zoning Ordinance. Rather, it is in response to the existing layout of the property and its location within the neighborhood. The athletic activities have ceased; and the applicant learned of the need for this variance during the normal zoning compliance 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.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a Zoning Compliance Permit and Certificate of Occupancy for the athletic club facility, prior to commencement of the use.

Staff Comment - Mr. Emmons said that the staff had received one letter of concern, and provided it to the Board members.

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

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried unanimously (Gross absent) to **approve V-2016-35: BRUCE WEBB** – a request for a variance to reduce the required distance from a residential zone from 150 feet to 40 feet in order to occupy a building as a gymnasium in a Professional Office (P-1) zone, at 1122 Oak Hill Dr., based on the staff's recommendations and the two conditions.

3. **V-2016-36: LEAH TAYLOR** – requests a variance to reduce the required front yard from 30 feet to 0 feet in order to construct a single family residence in a Single Family Residential (R-1C) zone, at 916 Bravington Way (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested front yard variance to the Longwood Road right-of-way (the unbuilt street) will not adversely affect the subject or surrounding properties. It will not cause a health, safety or welfare issue; nor will it have a negative impact on the character of the surrounding properties.
- b. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance. The frontyard setback requirement from the right-of-way typically applies to built streets, unlike the subject property. The residence will be at least 180' from Bravington Way, the public street that serves to access this lot, which far exceeds the 30' setback requirement from which the applicant seeks relief.
- c. Based on the complicating physical features associated with the site, it is a logical choice to build the residence at the proposed location because there are areas of steep slopes and dense tree stands that

otherwise restrict the buildable area on the subject property. The size of the lot, the unbuilt street, the topography, and the dense vegetation are all unique circumstances that apply to this property that do not apply to others in the general vicinity.

- d. Strict application of the Zoning Ordinance would likely require either the loss of mature trees, increased cost of building on the more environmentally sensitive areas on the subject property, or would require a different architectural plan for the property.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The need for the variance was discovered by the applicant's architect during the normal permitting process.

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

- 1. The addition to the existing house shall be constructed in accordance with the submitted application and site plan.
- 2. A building permit shall be obtained by the applicant from the Division of Building Inspection prior to construction of the addition, and an occupancy permit shall be obtained once the construction has been completed.

Staff Comment – Mr. Emmons announced that there were several letters of concern and one letter of support received by the staff, and he distributed these to the Board members at this time.

Representation – Mr. Nathan Wright was present on behalf of Ms. Taylor. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Board Question – Mr. Needham questioned the character of the proposed residence, as compared to the other homes in the neighborhood. Mr. Wright responded to Mr. Needham's question, noting that the houses were built as far back as the 60s. He said that the average size of the houses is about 2,500 square feet.

Action – A motion was made by Mr. Needham, seconded by Mr. Forester and carried 6-0 (Gross absent) to **approve V-2016-36: LEAH TAYLOR** – a request for a variance to reduce the required front yard from 30 feet to 0 feet in order to construct a single family residence in a Single Family Residential (R-1C) zone, at 916 Bravington Way, subject to the staff's recommendations and based on the staff's recommended conditions.

- 1. **C-2016-29: BLUEGRASS CHRISTIAN ASSEMBLY** – requests a conditional use permit to replace the existing swimming pool with a larger one and install an associated bath house the Agricultural Rural (A-R) zone, at 7463 Athens-Boonseboro Road (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use for a minor expansion of the existing campground by relocating and upgrading the pool and adding a pool house should not adversely affect the subject or surrounding properties, as this campground has occupied this property for approximately 67 years. The new facility will be placed in an area that is out of the floodplain, and the nearest residential use will be well protected from the proposed expansion by distance, topography and heavy vegetation.
- b. All necessary public facilities and services are available and adequate for the camp and will not need to be expanded to accommodate the requested use.

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

- 1. The property shall be developed in accordance with the approved site plan and application.
- 2. All applicable permits, including a Zoning Compliance Permit, Building Permit and a floodplain Special Use Permit, shall be obtained by the applicant from the Divisions of Planning, Building Inspection and Water Quality prior to construction and use of the pool.
- 3. The recreational facilities, including the pool, shall be only for the use of sponsored church camp activities and will not be offered to the general public as a recreational amusement.

Representation – Mr. Michael Fain, representing Bluegrass Christian Assembly was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them, on behalf of the appellant.

Staff Comment – Mr. Emmons stated that the staff had received one letter of support and he provided it to the Board members at this time.

Board Questions – Mr. Glover requested that the site plan be placed on the overhead projector, and asked about the restoration of the natural floodplain. Using a visual of the site, Mr. Emmons addressed this question/concern, as did Mr. Fain.

Referencing the letter of concern, Ms. Meyer questioned the historical nature of the mill and location of the camp in

relation to the mill. Mr. Fain responded that it was part of the property but not part of the project.

Action – A motion was made by Ms. Meyer, seconded by Mr. Glover and carried 6-0 (Gross absent) to **approve C-2016-29: BLUEGRASS CHRISTIAN ASSEMBLY** – a request for a conditional use permit to replace the existing swimming pool with a larger one and install an associated bath house in the Agricultural Rural (A-R) zone, at 7463 Athens-Boonseboro Road, for the reasons recommended by the staff and subject to the three conditions.

2. **C-2016-30: FIRST UNITED METHODIST CHURCH** – requests a conditional use permit to construct a church addition, up to an additional 10,000 square feet above what was approved in 1994, allowing up to a 17,310 (max) square-foot church in the Agricultural Rural (A-R) zone, at 4131 Todds Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the church property is nearly 10 acres in size along two major roadways, and adequate off-street parking will be provided.
- b. All necessary public facilities and services are available and adequate for the proposed expansion.

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

1. The 10,000 square-foot addition shall be made in accordance with the submitted application and site plan, except that the Todds Road access shall be deemed temporary until such time as Polo Club Boulevard is constructed and dedicated to public use, at such time it shall be removed.
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 of the addition.
3. That the Fayette County Health Department approve the use of a septic system for the church expansion, or that the property be connected to the public sanitary sewer system.
4. That the development comply with the Engineering Manuals.
5. That the temporary access point to Todds Road be approved by the Kentucky Transportation Cabinet.
6. That any signage conform to the requirements of Article 17 of the Zoning Ordinance, and not be internally illuminated.
7. That any outdoor play area (in association with a child care use) be fenced and screened as required by the Zoning Ordinance.

Representation – Mr. Chris Howard, with Carman & Associates, was present representing the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Glover, seconded by Ms. Whitman and carried 6-0 (Gross absent) to **approve C-2016-30: FIRST UNITED METHODIST CHURCH** – a request for a conditional use permit to construct a church addition, up to an additional 10,000 square feet above what was approved in 1994, allowing up to a 17,310 (max) square-foot church in the Agricultural Rural (A-R) zone, at 4131 Todds Road, for the reasons recommended by the staff and subject to the seven conditions.

3. **C-2016-32: SOUTHSIDE CHURCH OF CHRIST** – requests a conditional use permit to demolish an existing one-story building, and rebuild a new two-story building as a Sunday school facility in a Single Family Residential (R-1C) zone, at 1533 Nicholasville Rd. (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the proposed expansion is relatively minor. Being in the H-1 zone will ensure that it will remain compatible with the district, as it requires approval of the Board of Architectural Review (BOAR) prior to issuance of a Certificate of Appropriateness and a building permit.
- b. All necessary public facilities are available and adequate for the proposed use.

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

1. The expansion shall be done in accordance with the submitted application and site plan, allowing minor modifications by the Divisions of Engineering, Traffic Engineering, and Building Inspection, as a part of the normal permitting process, if necessary.
2. All necessary permits, including a Certificate of Appropriateness, Zoning Compliance Permit and Demolition and Building Permits, shall be obtained from the BOAR and the Divisions of Planning and Building Inspection prior to construction.
3. That any exterior changes to the property be subject to the approval of the Board of Architectural Review.
4. That any signage be in compliance with Article 17 of the Zoning Ordinance and that it not be internally illuminated.

Representation – Mr. Bobby Morris, with EOP Architects was present representing the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried 6-0 (Gross absent) to **approve C-2016-32: SOUTHSIDE CHURCH OF CHRIST** – a request for a conditional use permit to demolish an existing one-story building, and rebuild a new two-story building as a Sunday school facility in a Single Family Residential (R-1C) zone, at 1533 Nicholasville Rd., based on the staff's recommendations and the four conditions.

4. **A-2016-31: EMPLOYMENT SOLUTIONS, INC.** - an administrative appeal to change one non-conforming use (child care facility) to another non-conforming use (adult day care facility) in a Single Family Residential (R-1D) zone, at 3600 Appian Way (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested change in non-conforming use from a child care center to an adult day care center should not adversely affect the subject or surrounding properties, as this change is very minor in scope and the two uses have similar impacts on the subject and surrounding properties. It will not result in an increase in scope of the non-conforming use. Rather, it should be considered as lessening its scope because the applicant will be providing additional parking, removing one non-conforming aspect of the existing legal non-conforming use.
- b. Such a similar change in uses should not negatively impact the neighborhood or alter the character of the subject or surrounding properties.

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

1. The change in use to an adult day care center shall be done in accordance with the submitted application and site plan, limited to the days and hours noted.
2. All necessary permits, including a Zoning Compliance Permit, Building and Paving Permits and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to operation of the new use.

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

Action – A motion was made by Ms. Whitman, seconded by Ms. Meyer and carried 6-0 (Gross absent) to **approve A-2016-31: EMPLOYMENT SOLUTIONS, INC.** -- an administrative appeal to change one non-conforming use (child care facility) to another non-conforming use (adult day care facility) in a Single Family Residential (R-1D) zone, at 3600 Appian Way, based on the reasons provided staff and subject to the two conditions provided 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.

1. **V-2016-34: CM CHEVY CHASE, LLC** – requests a variance to reduce the required parking from 54 spaces to 34 spaces for office/restaurant uses in a Neighborhood Business (B-1) zone within the defined Infill and Redevelopment Area, at 630 Euclid Ave. (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance to reduce the required parking by 20 spaces should not adversely affect the subject or surrounding properties, nor cause a hazard or nuisance to the public. This small commercial center is in

a very walkable and bikeable commercial corridor, well served by the transit system. Additionally, there are existing public and private parking options for the few times that their parking demand may exceed what is to be provided.

- b. Granting the requested variance will not negatively alter the pedestrian-friendly character of the corridor or the nearby neighborhood. The applicant is proposing to more efficiently utilize existing parking and is not attempting to provide new surface parking in the area. Furthermore, the 8 public parking spaces that are partially located on the applicant's property is a unique circumstance that only applies to a small handful of other properties in Lexington.
- c. Granting the requested variance will not allow an unreasonable circumvention of the Zoning Ordinance, as the Zoning Ordinance anticipates that certain properties within the defined Infill & Redevelopment Area will be suitable candidates for modest parking variances.
- d. The applicant contends that there will be an undue hardship to their business and a negative impact on the surrounding neighborhood if the last commercial unit remains vacant solely due to parking restrictions.
- e. Although the current parking deficit is a direct result of the property owner's decisions to place higher parking generating uses than originally planned, the staff does not consider this to be a willful violation of the Zoning Ordinance. The applicant was unaware of higher parking requirements when making the arrangements prior to seeking a Zoning Compliance Permit for these uses in the shopping center.

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

1. The property shall be developed in accordance with the approved application and site plan, except as amended by the Planning Commission on a final development plan.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to the opening of the business in the final suite on the subject property.
3. The Final Development Plan shall be amended to indicate the current proposed uses and their required parking, including reference to the Board of Adjustment's action of approval.

Staff Comment – Mr. Emmons noted that the staff had received one letter of support but expressing concern, and provided it to the Board members.

Representation – Mr. John Talbott, attorney representing CM Liberty, LLC., owner of the property, was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them. Mr. Talbott noted that they had met with Dr. Headley, owner of the Chevy Chase Animal Clinic, who had a concern about this request, and they did resolve the issue.

Citizen Comment (opposition) – Ms. Amy Clark, who lives at 628 Kastle Road, submitted a letter to the Board with regard to her opposition. Ms. Clark spoke in opposition with the following points:

- The 35th parking spot that should be required
- Nose out parking/reverse angle parking
- Traffic and pedestrian safety
- B-1 zoning in the area
- New and renewed buildings
- Leasing out the final space at the building
- Sewer capacity of the property

Board Questions/Discussion – Mr. Glover asked if Ms. Clark's proposed solution to the parking issue would be to require the applicant to contract for some additional off-site parking. Ms. Clark responded affirmatively. At this time, there was further discussion with regard to the parking for the proposed use, as well as traffic safety.

Staff Comments/Discussion – Mr. Emmons explained how the staff came up with their recommendation of approval for this application, using an aerial photo on the overhead projector to point out some of their findings. During this time, Mr. Glover asked if the reverse angle parking was nose in, or back in. Mr. Emmons responded that it was back-in, and explained the difference and why it was used. At this time, there was some discussion between the staff and the Board with regard to the parking. Ms. Kaucher discussed some of the reviews received of the reverse-angle parking as well as the design theory of why back-in parking is chosen.

Ms. Meyer asked about signage for the reverse-angle parking, to which Ms. Kaucher responded. Mr. Glover asked about the pedestrian traffic and safety impact with regard to the reverse-angle parking, and Mr. Emmons responded to his question(s). Mr. Needham asked what the permitted uses would be for this space, based on the current parking availability. Mr. Emmons said that, without either getting a parking variance or making an agreement with an adjoining property owner, the applicant has used up all of their available parking. He said in the staff's review, they found that with the three current uses, the parking on site met the requirement. Mr. Emmons said that this all came about when told to the applicant that the one vacant suite would need to meet the required parking. At this time, there was further

discussion on the parking requirements for the proposed use.

Representation Comments/Discussion – Mr. Talbott introduced Mr. Jason Taylor, with Home Equity Management, and Mr. Tony Barrett with Barrett Partners. Mr. Talbott explained how they got to the point of applying for the variance. He noted that the property was always designed to have 34 on-site spaces that were available. He opined that they should get credit for the dedication of land that was theirs through an easement to make the spaces available and that facilitated the traffic movement. He further explained their proposed use and reasons for the parking request, noting that leasing is not a good option for them.

Ms. Meyer asked if there was any discussion at the Planning Commission hearing about leasing out parking spaces. Mr. Barrett responded that initially leasing spaces was discussed, but he couldn't demonstrate that on the development plan; so he had to take that off and reduce the intensity of the restaurant seats so that it would fit on site.

At this time, there was further discussion between the Board members and the staff about the different uses on the property and the parking (on site and off site) Mr. Needham questioned the amount of parking necessary, noting that it seems there is always more than what is used and if there was any reduction possible with the bike racks.

Mr. Taylor discussed the building design on the property. He said that they didn't think that they were going to have a problem with the parking. Mr. Taylor said that they do have signs where they are supposed to be. Mr. Needham said that he thought that getting a lease for the parking would be an easy thing to do. Mr. Talbott responded that it would be easy to do if they had a parking problem; however, what they are trying to do is to have certainty with regard to parking. Ms. Meyer said that it seemed to be a "double-edged sword" by putting a burden on the neighborhood, and wondered at what point they need to lease spaces, to which Mr. Taylor replied that it would be when they get complaints. Mr. Needham asked if they could lease to themselves (i.e., from another property owned by the appellant). In response, Mr. Taylor said that he didn't think it would be a problem. Mr. Glover asked if it could be placed as a condition to do an annual review. Mr. Sallee responded that he was not sure if there was a process that could be used for the Board to revisit the variance; however, the Board does have the authority to condition a variance, and the conditions can be fully enforced. There was further discussion between the applicant, the staff, the Board, Zoning Enforcement, and the Law Department with regard to what type of restrictions could be placed as conditions for this proposed use.

At this time, Mr. Emmons explained why the staff struggled with their decision on the recommendation of this case; however, there was a potential resolution, which would be for the Board to restrict the variance to the uses that are being proposed by the applicant at this time, because the variance runs with the land. In the alternative, they could submit an amended Board of Adjustment application for a change in use. At this time, there was further discussion about the different options for the proposed use, as well as potential changes to the conditions and/or language of the conditions.

Note: Chairman Stumbo declared a brief recess at 3:04 p.m. The meeting reconvened at 3:14 p.m. with the same members in attendance.

Citizen Rebuttal - Ms. Clark noted that when voting on a variance, a finding would need to be made that the applicant would not suffer unnecessary hardship under the constraints under the zoning as it exists. She further discussed her concerns of the following:

- Findings that would need to be made when granting a variance for this proposed use
- That renting of parking be required of the applicant
- The signage, noting that the signage reads "Free customer parking"
- Nose in/nose out parking
- Restricting a variance
- Proposed use possibly being too intensive
- Further variances at a later date
- Zone change for current use (question of intensity)
- Land that furnishes the extra public parking along the side of the property
- Number of seats needed
- Parking requirements
- Long term uses of the property

Discussion Item – Ms. Kaucher addressed, for the record, the location and size of the right-of-way on Marquis Avenue, and why half the parking is in the right-of-way, and half is on private property. She said that when they were going through the development process, there was originally on-street parking on Marquis Ave. With the development, they didn't want to lose any on-street parking. Ms. Kaucher further discussed the reasons for the parking on the subject property.

Action – A motion was made by Mr. Glover, seconded by Mr. Forester and carried 4-2 (Meyer and Needham opposed; Gross absent) to **approve V-2016-34: CM CHEVY CHASE, LLC** – a request for a variance to reduce the required parking from 54 spaces to 34 spaces for office/restaurant uses in a Neighborhood Business (B-1) zone within the defined Infill and Redevelopment Area, at 630 Euclid Ave., based on the testimony at this hearing, for the reasons recommended by the staff and subject to the conditions that were presented on the overhead projector, which read as follows:

1. The property shall be developed in accordance with the approved application and site plan, provided the required parking for all uses does not exceed 54 parking spaces.
2. All necessary permits, including a Zoning Compliance Permit and Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to the opening of the business in the final suite on the subject property.
3. The Final Development Plan shall be amended to indicate the current proposed uses and their required parking, including compliance with the Board of Adjustment's action of approval.

D. Conditional Use Appeals

There were none remaining

E. Administrative Review

There were none remaining

IV. BOARD ITEMS

None were presented.

V. STAFF ITEMS

A. Mr. Duncan, Director of the Division of Planning, introduced himself to the Board members at this time. He discussed the following with the Board:

- Senior Planner Jimmy Emmons transferring to Transportation Planning. Today would be his last Board meeting.
- In a small reorganization, there will be assignment of the BOA staff (Planner Sr. and Tammye) to the Zoning Enforcement section, which is managed by Jim Marx. In addition, Administrative Officer Barb Rackers and Planner Dave Jarman will be assigned to Zoning Enforcement to oversee the Zoning Compliance permitting.
- It will likely take 3 months to fill the Senior Planner vacancy. Until then, Jim Marx and Barb Rackers, with assistance from Dave Jarman, will ensure that BOA applications are processed and presented as usual. Administrative Specialist Tammye McMullen will play a vital role in ensuring continuity.
- Beginning June 29, applications for Conditional Uses, Variances and Administrative Appeals will be processed electronically through a program called Accela. All applicants will have to submit their requests online. The Planning staff has been trained in the use of Accela and will assist applicants through the new filing process.
- There will be a reduction in the amount of paper and other resources it takes to assemble reports. The staff will be sending reports via email to those who are able and willing to receive them electronically, and will soon make better use of the Granicus system in the Chambers as a resource for displaying reports and other information.

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

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 3:41 p.m.

Barry Stumbo, Chair

Joan Whitman, Secretary