MINUTES FOR THE BOARD OF ADJUSTMENT MEETING
August 26, 2016

I. **ATTENDANCE** – The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, August 26, 2016. Members present were Thomas Glover (Acting Chair), Joan Whitman, Larry Forester, Chad Needham and Branden Gross. Absent: Barry Stumbo and Jan Meyer. Others present were: Casey Kaucher, Division of Traffic Engineering; Thomas Clements, Division of Engineering; Bill Sallee, Planning Services; Tracy Jones and Andrea Brown, Department of Law. Staff members in attendance were: Jim Marx, Barbara Rackers, and Tammye McMullen.

II. **APPROVAL OF MINUTES** – The Chair announced that the minutes of the July 29, 2016 meeting would be considered at this time.

Action – A motion was made by Ms. Whitman, seconded by Mr. Gross, and carried unanimously (Stumbo and Meyer absent) to **approve** the minutes of the July 29, 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.

Tribute: Mr. Glover made a tribute to former Board of Adjustment and Planning Commission member, Ms. Martha Jenkins, who recently passed away.

Staff Comments – Mr. Marx noted corrections on the following items:

- Page 3, item #4 on the agenda is listed as **Villa at Chevy Chase** (prior owner); due to a computer glitch, it should be listed as **Duke Road Personal Care, LLC.**
- Page 2, item #2- the letters that went out to the property owners indicated **Yan Lin** as the applicant, who is the person who wants to lease the property; the applicant, as noted on the agenda is **Thompson Engineering Partners**.

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. **PLN-BOA-16-00016: MORNING STAR MISSIONARY CHURCH** – requests a conditional use permit to expand an existing church; and a variance to reduce the required rear yard setback from 28.4 feet to 12 feet in a Two Family Residential (R-2) zone, at 424 Ash Street (Council District 2).

The Staff Recommends: **Approval of the requested conditional use**, 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 and will connect to the existing building. Sanctuary seating will not be increasing, so no increase in traffic or parking demand is anticipated.
b. All necessary public facilities are available and adequate for the proposed use.

The Staff Recommends: **Approval of the requested variance**, for the following reasons:

a. The location chosen for the building addition, while fairly close at one point to the rear property line, can be used without the need to alter any of the existing parking spaces, which should be highly beneficial for church activities.
b. The relatively shallow lot depth, combined with the much deeper lot depth on the adjoining lots to the rear of the property, are special circumstances that together serve to justify the moderate setback reduction that has been requested.
c. Strict application of the Zoning Ordinance would result in any reasonable expansion having to take up some of the existing parking lot. This would likely result in having to add parking spaces to the rear of the building addition, which might ultimately result in more disturbances to adjoining/nearby properties than an actual

building addition.

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 Zoning Compliance Permit and Building/Occupancy Permits (and possibly a Land Disturbance Permit), shall be obtained from the Divisions of Planning, Engineering and Building Inspection prior to construction.
3. The two lots shall be consolidated by plat in accordance with Division of Planning requirements prior to the initiation of any construction activity.

Note: Staff received one letter of support with regard to this application.

Representation – Pastor O.B. Ford, 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. Gross, seconded by Mr. Forester and carried unanimously (Stumbo and Meyer absent) to **approve PLN-BOA-16-00016: MORNING STAR MISSIONARY CHURCH** – a request for a conditional use permit to expand an existing church; and a variance to reduce the required rear yard setback from 28.4 feet to 12 feet in a Two Family Residential (R-2) zone, at 424 Ash Street, based on the recommendations of the staff and subject to the conditions set forth in the staff report.

2. **PLN-BOA-16-00015: ERIN GREEN** - requests a conditional use permit to expand an existing daycare facility in a Planned Neighborhood Residential/Historic District (R-3/H-1) zone, at 455 East Maxwell Street (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 a child care center has been operating at this location for many years. The minor increase in the number of children should have no real impact on the area. The existing parking and play areas more than meet the requirements of the Zoning Ordinance.
b. All necessary public facilities are available and adequate for continued use of the property as a child care center.

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

1. The child care center shall be operated in accordance with the submitted application and site plan, with a minimum of ten (10) off-street parking spaces to be maintained (the requirement as stated in the Zoning Ordinance).
2. All necessary permits, including a Zoning Compliance Permit, a Building Permit, possibly a Land Disturbance Permit and a Paving Permit, and a Certificate of Occupancy shall be obtained from the Divisions of Planning, Building Inspection and Engineering (Land Disturbance Permit), as appropriate.
3. The number of children cared for shall be limited to 76.
4. No freestanding signs and only one wall sign, not to exceed two square feet, shall be permitted.
5. The conditional use permit shall become null and void should the appellant cease to own or occupy the property as a child care facility.
6. Any exterior changes to the property shall be subject to the approval of the Board of Architectural Review.

Representation – Ms. Erin Green, appellant, was present. She indicated that she had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Ms. Whitman, seconded by Mr. Forester and carried unanimously (Stumbo and Meyer absent) to **approve PLN-BOA-16-00015: ERIN GREEN** – a request for a conditional use permit to expand an existing daycare facility in a Planned Neighborhood Residential/Historic District (R-3/H-1) zone, at 455 East Maxwell Street, for the reasons provided by the staff and subject to the six conditions provided the staff.

3. **PLN-BOA-16-00017: DUKE ROAD PERSONAL CARE, LLC.** - requests a conditional use permit to expand the existing personal care facility, and to provide off-street parking spaces for the facility in a Planned Neighborhood Residential/Neighborhood Design Character Overlay (R-3/ND1) zones, at 319 Duke Road (Council District 5).

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

a. Granting the requested conditional use permit will not adversely affect the subject or surrounding properties, as the use will remain the same; there will be no increase in the number of residents that can be accommodated – only an expanded and modernized facility to better serve the residents and staff; the parking in the rear of the property will resolve a currently non-conforming situation, alleviating the on-street parking that is currently experienced on Duke Road; and the facility will be inspected and approved by both the Office of the Inspector General and the Division of Health Care with the State of Kentucky, as well as all appropriate local government agencies.

b. All public facilities and services continue to be available and adequate for the expanded facility.

<u>This recommendation of approval is made subject to the following conditions:</u>

1. That the property be developed according to the submitted application and site plan.
2. That any permits, including a Zoning Compliance Permit, a Land Disturbance Permit (if necessary), a Paving Permit, a Building Permit and a Certificate of Occupancy Permit be obtained from the Divisions of Planning, Engineering and Building Inspection, as appropriate.
3. That all encroachment agreements be obtained from the Urban County Government, as well as all applicable utilities.
4. That the parking area be paved and screened, in compliance with Articles 16 and 18 of the Zoning Ordinance.

<u>Representation</u> – Mr. Solomon Van Meter, appellant, was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

<u>Action</u> – A motion was made by Mr. Forester, seconded by Mr. Needham and carried unanimously (Stumbo and Meyer absent) to **approve <u>PLN-BOA-16-00017: DUKE ROAD PERSONAL CARE, LLC.</u>** – a request for a conditional use permit to expand the existing personal care facility, and to provide off-street parking spaces for the facility in a Planned Neighborhood Residential/Neighborhood Design Character Overlay (R-3/ND-1) zones, at 319 Duke Road, based on the staff's recommendation and subject to the four conditions.

4. **<u>PLN-BOA-16-00013: STEVE WRIGHT & JIM BALL</u>** - an administrative review to determine that a self-service car wash may have up to 4 employees rather than the previously allowed one employee; and a request for a conditional use permit for a self-service car wash in a Planned Shopping Center (B-6P) zone, at 440 W. New Circle Rd. (Council District 1).

<u>The Staff Recommends: **Approval** of the administrative review</u>, for the following reasons:

a. The proposed car wash will be fully automated and will be designed/operated as a self-service facility. Customized services by employees, such as vacuuming, drying, polishing or detailing will not be provided.
b. Activities of employees on site will be limited to performing maintenance and clean-up, addressing overall management needs and tending to related functions.

<u>The Staff Recommends: **Approval** of the conditional use</u>, for the following reasons:

a. A new fully automated self-service car wash should not adversely impact any of the surrounding properties, as this location is along a heavily commercialized section of New Circle Road and there are no nearby residential uses that might be disturbed.
b. The potential for any significant traffic impacts will be minimized by having the facility designed in accordance with the recommendations of the Division of Traffic Engineering, with a focus on the most efficient use of the service roads that border the subject property.
c. All necessary public facilities and services are available and adequate for the proposed use.

<u>This recommendation of approval is made subject to the following conditions:</u>

1. The car wash shall be built and operated in accordance with the submitted application, to be a fully automated self-service facility with no customized services (e.g., detailing) provided by employees.
2. The final design of the car wash shall be subject to review and approval by the Division of Traffic Engineering.
3. All necessary permits, including a Zoning Compliance Permit and Building/Occupancy permits from the Divisions of Planning and Building Inspection, shall be obtained at the appropriate times during the construction process.

<u>Representation</u> – Mr. David Royse, attorney, was present on behalf of the applicants. He indicated that they had reviewed the recommended conditions and agreed to abide by them. Mr. Royse also presented a revised site plan to the Board members, and noted that this was satisfactory with Traffic Engineering.

<u>Board and Staff Comments</u> – There were several questions as well as discussion with regard to access to and from the property and traffic on New Circle Road in the general vicinity.

<u>Action</u> – A motion was made by Mr. Forester, seconded by Ms. Whitman and carried unanimously (Stumbo and Meyer absent) to **approve <u>PLN-BOA-16-00013: STEVE WRIGHT & JIM BALL</u>** – an administrative review to

determine that a self-service car wash may have up to 4 employees rather than the previously allowed one employee; and a request for a conditional use permit for a self-service car wash in a Planned Shopping Center (B-6P) zone, at 440 W. New Circle Rd., based on the staff's recommendations and subject to the three conditions.

3. **PLN-BOA-16-00010: SCHNEIDER SALES CO.** - an administrative appeal to transfer 18 square feet of available unused signage from one sign to another in a Highway Business (B-3) zone, at 180 E. New Circle Rd. (Council District 1).

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

a. Granting the requested 18 square-foot transfer and the additional 15 square feet of signage from unused allowable square footage to the proposed 108 square-foot free standing business sign is a reasonable request and will make the sign, which was originally permitted for 75 square feet, legally conforming.
b. The new sign will be in scale with its surroundings, and its increased size will likely be unnoticeable to the traveling public on New Circle Road.

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

1. A sign permit shall be obtained from the Division of Building Inspection prior to expansion of the sign.
2. The sign shall be located as shown on the submitted application and site plan.
3. Any future transfer of square footage shall be limited to 36 square feet, unless existing signage is either removed or reduced in size.

Representation – Mr. Patrick Schneider II, Secretary and Treasurer of Schneider Sales Co., was present. He indicated that he had reviewed the recommended conditions and agreed to abide by them.

Action – A motion was made by Mr. Gross, seconded by Ms. Whitman and carried unanimously (Stumbo and Meyer absent) to **approve PLN-BOA-16-00010: SCHNEIDER SALES CO.** – an administrative appeal to transfer 18 square feet of available unused signage from one sign to another in a Highway Business (B-3) zone, at 180 E. New Circle Rd. based upon the recommended approval of the staff and subject to the conditions set forth in the staff report.

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**

There were none remaining

E. **Administrative Review**

Note: Mr. Gross recused himself from this case due to personal conflict.

1. **PLN-BOA-16-00008: THOMPSON ENGINEERING PARTNERS** - requests a conditional use permit to establish a bar/restaurant with karaoke (live entertainment); and a variance request to reduce the required 100-foot distance from a residential zone to 75 feet in a Planned Shopping Center (B-6P) zone, at 3330 Partner Place (Council District 9).

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 restaurant/bar will occupy an existing suite in the shopping center and adequate off-street parking will be provided.
b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: **Approval of a dimensional variance from 100' to 75'**, for the following reasons:

a. Granting the requested variance will not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, as no physical change or expansion of the existing building or shopping center parking lot is required or proposed to accommodate this use.
b. A setback reduction to 75' will not result in an unreasonable circumvention of the Zoning Ordinance, because the level of variance requested is fairly modest and the actual entertainment area will come very close (within 5' or less) to complying with the required 100' setback.
c. The layout of the shopping center relative to the residential zone to the east is, at least to some extent, a special circumstance that contributes to justifying a modest setback reduction.
d. Strict application of the requirements of the Zoning Ordinance, including a determination that the 100' setback applies to the rear building wall rather than the actual entertainment area, would make it physically impossible (without a tear down of a portion of the building) to provide any live entertainment at all at this location.

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

1. The restaurant and bar with karaoke shall be established in accordance with the submitted application and site plan, indicating use of Suite 140.
2. A Zoning Compliance Permit and a Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to opening the business.
3. Outdoor speakers and seating shall be prohibited, and any exterior doors (front and rear) shall not be propped open during the times when karaoke is being provided.
4. Live entertainment shall consist only of karaoke.
5. Hours of operation of the karaoke shall be limited to beginning no earlier than 8:00 PM and 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.

Note – Several letters of opposition were distributed by the staff to the Board.

Representation – Mr. Preston Worley, attorney, was present on behalf of the applicant. He indicated that they had reviewed the recommended conditions and agreed to abide by them, but wished to discuss a possible revision to condition #5 relating to hours of operation.

Board and Staff discussion – At this time, there was discussion on the possible disturbance to the residential neighborhood because of the bar and karaoke (i.e., people smoking outside and being loud, loud music, etc.); whether or not the required distance is needed; and a change to the hours/times karaoke could be offered.

Note: Mr. Glover declared a brief recess at 2:37 p.m. to allow for discussion of time limits for the karaoke. The meeting reconvened at 2:49 p.m. with the same members in attendance.

Action – A motion was made by Mr. Needham, seconded by Mr. Forester and carried 4-0 (Stumbo and Meyer absent; Gross recused) to **approve PLN-BOA-16-00008: THOMPSON ENGINEERING PARTNERS** – a request for a conditional use permit to establish a bar/restaurant with karaoke (live entertainment); and a variance request to reduce the required 100-foot distance from a residential zone to 75 feet in a Planned Shopping Center (B-6P) zone, at 3330 Partner Place, subject to the staff's recommendation and subject to the conditions recommended by the staff, except condition #5, which was amended as follows:

5. Hours of operation of the karaoke shall be limited to from 7:00 PM to no later than 2:30 AM on Sunday through Friday, and from 11:00 AM to 2:30 AM on Saturday.

IV. **BOARD ITEMS**

None were presented.

V. **STAFF ITEMS**

None were presented.

VI. **NEXT MEETING DATE** – The Board's next meeting date will be held on September 30, 2016.

VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 2:52 p.m.

Action – A motion to **adjourn** was made by Mr. Forester, seconded by Mr. Gross and carried unanimously (Stumbo and Meyer absent).

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Thomas Glover, Acting Chair

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Joan Whitman, Secretary