

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

September 29, 2017

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, September 29, 2017. Members present were: Branden Gross, Thomas Glover, Harry Clarke, Chad Needham, Joan Whitman, Jan Meyer and Raquel Carter. Others present were: Josh Dezarn, Division of Engineering; Tracy Jones and Andrea Brown, Department of Law; and Stephen Parker, Traffic Engineering. Staff members in attendance were: Jim Marx, Autumn Goderwis, Barbara Rackers, and Tammye McMullen.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the August 25, 2017, meeting would be considered at this time.

Action - A motion was made by Mr. Clarke, seconded by Mr. Glover, and carried unanimously to **approve** the minutes of the August 25, 2017 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 with regard to any postponements, withdrawals, applicants present and objectors.

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

- a. **PLN-BOA-17-00066: HOPE CENTER** – requests a conditional use permit to construct a rehabilitation home in a Professional Office (P-1) zone, at 298 West Loudon (Council District 1).

Representation – Mr. Chris Mischel, Palmer Engineering, withdrew their application and explained the situation that led to the withdrawal.

Citizen Comment – Mr. James Brown, Councilmember, 1st District, shared a few comments from the neighbors that received letters with regard to the proposed use. Mr. Brown further discussed the concerns of the challenges of high concentration for emergency services when such uses are being requested, but expressed his support of the project as proposed, and expressed his desire that someone from the neighborhood association might possibly fill the vacant position on the Hope Center Board in order to improve communication between the two. Mr. Walter May, with the Hope Center, also provided comments.

B. ABBREVIATED HEARINGS:

1. **PLN-BOA-17-00061: HARRY & LOUISE BUSH** - request a variance to reduce the required side yard from 6 feet, 4 inches to 4 feet in order to expand the existing residence in a Single Family Residential (R-1C)/Neighborhood Design Character Overlay (ND-1) zone, at 221 Cochran Road (Council District 5).

The Staff Recommends: **Approval of a variance to reduce the required side yard from 6 feet, 4 inches to 5 feet,** for the following reasons:

- Granting this somewhat lesser variance should not adversely affect the public health, safety, or welfare; nor should it have much effect on the character of the general vicinity. The property is relatively deep, with an average depth of 163 feet. At its shortest dimension, the rear setback from the house will be 87 feet, significantly exceeding the required rear yard setback of 10 feet. This variance will allow the addition to be constructed in line with the existing residence and will prevent any change in the appearance of the home from the street view.
- This variance will allow the applicants to construct a sizeable addition to their home without encroaching any further towards the property line than the house already does. This should not deprive them of the reasonable use of the land or create an unnecessary hardship, as they will still be allowed to construct an addition that has nearly the same square footage as the existing structure.
- The need for a variance is not the result of a willful violation of the Zoning Ordinance, as the applicants have taken care to go through the necessary permitting processes and have applied for the variance prior to construction.

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

1. The addition shall be constructed with a minimum average side yard of 5'.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction.
3. The addition and new garage shall be subject to the Chevy Chase Neighborhood Design Standards.

*Note – At this time, Ms. Goderwis distributed one letter of opposition to the Board.

Representation – Harry Bush, applicant, and Don Hamilton, builder, were present. Mr. Bush indicated that he had reviewed the conditions and agreed to abide by them.

Board Questions and Comments – Mr. Gross noted that one of the neighbors was concerned about water run-off with the expansion, and asked Mr. Bush how he planned to address this concern. Mr. Hamilton responded, with additional comments from Mr. Bush.

Mr. Glover questioned the recommendation of the staff with regard to the setback of the addition. Ms. Goderwis explained, with comments from Mr. Bush. At this time, Mr. Glover requested a photo on the overhead projector with explanation of the applicants' proposal. Mr. Bush presented the photo and explained, with comments from Ms. Goderwis.

Mr. Clarke asked why it was necessary to extend beyond the setback of the original structure. Mr. Bush responded, and explained his reasoning.

Mr. Glover asked why the Staff was not recommending what the applicant was requesting. Mr. Marx responded that the Staff was not opposed to reducing it; part of the Staff's challenge was not knowing if the adjoining neighbor was going to be present to know if they would have issues. Mr. Needham also provided comments, and there was further discussion with regard to the proposed expansion.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried 4-3 (Whitman, Meyer, and Glover opposed) to **approve PLN-BOA-17-00061: HARRY & LOUISE BUSH** – a request for a variance to reduce the required side yard from 6 feet, 4 inches to 5 feet in order to expand the existing residence in a Single Family Residential (R-1C)/Neighborhood Design Character Overlay (ND-1) zone, at 221 Cochran Road, based on the staff's recommendations and subject to the three conditions.

2. **PLN-BOA-17-00068: BROOKE LOYD** - requests a variance to reduce the required side yard from 18 inches to 0 inches to allow construction of a deck adjacent to a swimming pool in an Expansion Area Residential (EAR-2) zone, at 1169 Deer Haven Lane (Council District 12).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety, or welfare; nor should it affect the character of the general vicinity. The deck is located within the fenced in back yard and will not be visible from the street.
- b. The location of 2 sewer lines in the rear yard of the property is a special circumstance that limits the applicant's use of her yard and justifies the need for a variance.
- c. The request is not a result of a willful violation of the Zoning Ordinance. The applicant has taken care to go through the necessary processes for this project by securing a sewer encroachment agreement, applying for a deck permit, and applying for the variance prior to construction of the desired deck.
- d. A compliant deck, placed 18" from the property line, would only allow for 18" of deck space (given the location of the pool) and would result in an awkward gap between the deck and fence, which could potentially result in maintenance issues as the narrow area would be hard to access.

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

1. The deck shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Brooke Loyd, applicant, was present. She indicated that she had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-17-00068: BROOKE LOYD** – a request for a variance to reduce the required side yard from 18 inches to 0 inches to allow construction of a deck adjacent to a swimming pool in an Expansion Area Residential (EAR-2) zone, at 1169 Deer Haven Lane, as recommended by the staff and subject to the two conditions.

3. **PLN-BOA-17-00069: ANDOVER CONSTRUCTION** - requests a variance to reduce the required front yard from 20 feet to 0 feet in order to allow a 16-foot wide driveway within the defined Infill & Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 468 Holiday Road (Council District 5).

The Staff Recommends: **Approval of a variance to reduce the required front yard from 20' to 15'**, for the following reasons:

- Granting the somewhat lesser variance should not adversely affect the public health, safety, or welfare.
- Granting this variance should not have much effect on the character of the general vicinity, as there are driveways of varying widths along this portion of Holiday Road.
- Granting this lesser variance will not deprive the applicant of the reasonable use of the land or create an unnecessary hardship because, by allowing the front yard setback to be 15', the applicant will have 20 feet of space in which they can have a 16-foot wide paved area for parking in front of the garage.

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

- The driveway shall be paved in compliance with the approved variance and shall be no wider than 10 feet for 15' from the front lot line.
- All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- An administrative action plat shall be filed to document Board of Adjustment action.

Representation – Mike Hall was present on behalf of the applicant. He indicated that he did not agree with condition #1 and explained further.

Discussion – Mr. Marx explained staff's recommendations, noting that there is a significant difference between that and what the applicant is requesting. Mr. Marx presented a photo on the overhead projector and explained further, with comments from Ms. Goderwis. At this time there was further discussion with regard to the driveway.

At this time, Mr. Hall explained his reasoning for the request.

Mr. Needham asked if the house has been built. Mr. Hall replied that it has not. Mr. Clarke then asked why the entire driveway needed to be connected to the street. Mr. Hall explained, after which Mr. Glover commented on the character of Holiday Road.

At this time, there was further discussion with regard to the proposed driveway, with comments from Ms. Jones.

Mr. Hall presented a photo on the overhead projector, again explaining his request.

Action – A motion was made by Mr. Glover, seconded by Mr. Clarke and carried 6-1 (Gross opposed) to **approve PLN-BOA-17-00069: ANDOVER CONSTRUCTION** – a request for a variance to reduce the required front yard from 20 feet to 0 feet in order to allow a 16-foot wide driveway within the defined Infill & Redevelopment Area in a Planned Neighborhood Residential (R-3) zone, at 468 Holiday Road, based on the discussion and testimony given and based on the two recommendations (a & b), without taking into account recommendation c; and subject to the three conditions, striking everything in condition #1 after the word "variance", and the comment from Ms. Jones to remove "somewhat lesser" in recommendation a. (Mr. Hall agreed to the revised recommendations and conditions). Changes are as follows:

The Staff Recommends: **Approval of a variance to reduce the required front yard from 20' to 0'**, for the following reasons:

- Granting the ~~somewhat lesser~~ variance should not adversely affect the public health, safety, or welfare.
- Granting this variance should not have much effect on the character of the general vicinity, as there are driveways of varying widths along this portion of Holiday Road.
- ~~Granting this lesser variance will not deprive the applicant of the reasonable use of the land or create an unnecessary hardship because by, allowing the front yard setback to be 15', the applicant will have 20 feet of space in which they can have a 16-foot wide paved area for parking in front of the garage.~~

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

- The driveway shall be paved in compliance with the approved variance ~~and shall be no wider than 10 feet for 15' from the front lot line.~~
- All necessary permits shall be obtained from the Divisions of Planning, Traffic Engineering, Engineering, and Building Inspection prior to construction and occupancy.
- An administrative action plat shall be filed to document Board of Adjustment action.

4. **PLN-BOA-17-00062: TOM & CATHRYN MILLER (dba THE RUFFLED HEN CO.)** – request a conditional use permit for a home occupation (wardrobe consultation and fitting) in a Single Family Residential (R-1B) zone, at 821 Chinoe Road (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The applicant has been operating in this manner for many years, with only the complaint made in April of this year being recorded. Clients are scheduled one at a time, and adequate parking is provided on the applicants' property, so traffic should not be an issue.
- b. Only samples are kept at the residence for display; therefore, the operation is unlike that of a retail store. Staff views this service as similar to that of a seamstress, which is an allowable home occupation.
- c. 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 use shall be conducted in accordance with the submitted site plan and application.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, within one month following action by the Board.
3. Hours of operation shall be limited to 10 a.m. to 7 p.m., Monday through Saturday.
4. This approval shall be considered null & void if the applicant should cease operating this use at this location or ceases to reside at the subject property.

*Note – At this time, Ms. Goderwis distributed one letter of opposition and several letters of support to the Board.

Representation – Tom and Cathryn Miller, applicants, were present. They indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Ms. Whitman and carried unanimously to **approve PLN-BOA-17-00062: TOM & CATHRYN MILLER (dba THE RUFFLED HEN CO.)** – a request for a conditional use permit for a home occupation (wardrobe consultation and fitting) in a Single Family Residential (R-1B) zone, at 821 Chinoe Road, for the reasons recommended by the staff and subject to the four conditions.

5. **PLN-BOA-17-00063: TRINITY UNITED METHODIST CHURCH** – requests a conditional use permit to expand the existing church in a Planned Neighborhood Residential (R-3) zone, at 3600 Tates Creek Rd. (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed building expansion should not adversely affect the subject or adjoining/nearby properties. The new building will be centrally located on the property, and set back a reasonable distance from adjoining residential uses to the east and south. The new and improved facilities should be beneficial for the surrounding community.
- b. All necessary public services and facilities are available and adequate for the proposed expansion.

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

1. The building expansion shall take place in accordance with the submitted application and site plan, or as revised to satisfy requirements of the Divisions of Engineering, Traffic Engineering or Building Inspection.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
3. The final design of the reconfigured parking and traffic circulation shall be reviewed and approved by the Division of Traffic Engineering.
4. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. Required landscaping for the reconfigured vehicular use areas shall be provided and maintained in accordance with the provisions of Article 18 of the Zoning Ordinance.

Representation – Chris Howard, with Carman, was present on behalf of the applicant. He indicated that he had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Clarke, seconded by Mr. Glover and carried unanimously to **approve PLN-BOA-17-00063: TRINITY UNITED METHODIST CHURCH** – a request for a conditional use permit to expand the existing church in a Planned Neighborhood Residential (R-3) zone, at 3600 Tates Creek Rd, based on the staff's recommendation and subject to the five conditions.

6. **PLN-BOA-17-00064: YMCA OF CENTRAL KENTUCKY, INC.** – requests a conditional use permit to expand the previously approved picnic shelter from 2,000 square feet to 3,800 square feet in the R-3 portion of a property that is split-zoned R-3 (Planned Neighborhood Residential)/P-1 (Professional Office) at 2681 Old Rosebud Road (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed expansion to 3,800 square feet should not adversely affect the subject or adjoining/nearby properties. The structure will be constructed in essentially the same location as was previously approved by the Board, and will be no nearer adjoining residential properties to the north of the site. The new and improved facility should be beneficial for the surrounding community and will enhance the services able to be provided by the YMCA.
- b. All necessary public services and facilities are available and adequate for the proposed expansion of the pavilion.

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

1. The pavilion shall be constructed as shown on the site plan submitted with this application, as revised to satisfy requirements of the Divisions of Engineering or Building Inspection during the normal permitting process, or as approved by the Planning Commission on an amended development plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy of the pavilion.
3. Assuming that this request is approved, if construction of the playing fields has not yet been completed, all previous conditions imposed by the Board in December of 2015 regarding construction, lighting and screening shall remain in effect.
4. If deemed necessary by the Division of Engineering, a storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by that Division.
5. Action of the Board shall be noted on the development plan (PLN-MJDP-17-00087) for the subject property.

Representation – David Martorano, YMCA, and Thomas Todd with Kinhead & Stilz, were present on behalf of the applicant. They indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and carried unanimously to **approve PLN-BOA-17-00064: YMCA OF CENTRAL KENTUCKY, INC.** – a request for a conditional use permit to expand the previously approved picnic shelter from 2,000 square feet to 3,800 square feet in the R-3 portion of a property that is split-zoned R-3 (Planned Neighborhood Residential)/P-1 (Professional Office) at 2681 Old Rosebud Road, for the reasons recommended by the staff and subject to the five conditions.

7. **PLN-BOA-17-00065: TIME TO SHINE CAR WASH, INC.** – requests a conditional use permit to establish a self-service car wash in a Planned Shopping Center (B-6P) zone, at 2320 Grey Lag Way (Council District 6).

The Staff Recommends: Approval, for the following reasons:

- a. The proposed self-service car wash should not adversely affect the subject or adjoining/nearby properties. The facility will be located where minimal traffic impacts are anticipated, and will be far removed from the nearest residential uses to the west on the opposite side of Sir Barton Way. The property is of sufficient size to allow for proper design with adequate parking and internal vehicle circulation.
- b. All necessary public services and facilities are available and adequate for the proposed use.

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

1. The facility shall be constructed and operated in accordance with the submitted application and site plan, or as revised by the Planning Commission or otherwise modified to satisfy requirements of the Divisions of Engineering, Traffic Engineering or Building Inspection.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and occupancy.
3. The final design of the parking, access and traffic circulation shall be reviewed and approved by the Division of Traffic Engineering.
4. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. Landscaping for the vehicular use areas shall be provided and maintained in accordance with the provisions of Article 18 of the Zoning Ordinance.

Representation – Darrin Croucher and Jeremy Duncan with Thoroughbred Engineering were present on behalf of the applicant. They indicated that they had reviewed the conditions and agreed to abide by them.

Action – A motion was made by Mr. Needham, seconded by Mr. Clarke and carried unanimously to **approve PLN-BOA-17-00065: TIME TO SHINE CAR WASH, INC.** – a request for a conditional use permit to establish a self-service

car wash in a Planned Shopping Center (B-6P) zone, at 2320 Grey Lag Way, based on the staff's recommendations and subject to the six conditions.

C. **Discussion items:**

1. **PLN-BOA-17-00046: JEFF GRAVES** - requests a variance to increase the allowable width of a driveway from 10 feet to 21 feet at a property within the defined Infill & Redevelopment Area in a Single Family Residential (R-1E) zone, at 509 Marquis Ave. (Council District 3).

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

- a. The need for a variance has come about because the applicant did not procure the proper permits prior to installation of the driveway.
- b. The site is located within the Infill and Redevelopment area, which generally has more restrictive requirements regarding the amount of allowable paving and parking areas. Additionally, the subject property is located near the University of Kentucky campus, and creating a precedent to allow non-compliant paving would have negative impact on the character of the general vicinity.
- c. There is a substantial and recently improved parking area to the rear of the home, and temporary parking of medical personnel in a 10' wide driveway at the front of the home is feasible.

*Note – Ms. Goderwis distributed several letters of opposition to the Board.

Representation – Jeff Graves, who lives at 509 Marquis Avenue, was present.

Staff Report – Ms. Goderwis gave a staff report and provided photos on the overhead projector. She explained the staff's reasoning for their recommendation of disapproval. There were questions and comments from the Board, as well as further discussion.

Note: *Mr. Gross declared a brief recess at 2:49 p.m. in order for the Board to review the letters. The meeting reconvened at 2:59 p.m., with the same members in attendance.*

Applicant Comments – At this time, Mr. Graves was called to present his case. He distributed letters of support to the staff and Board members. Mr. Graves presented photos on the overhead projector and explained the reasons for his request.

Board Comments – Mr. Glover asked if there was paving in the back yard. Mr. Graves responded affirmatively.

Citizen Comments – Mark Barker, who lives at 439 Park Avenue, expressed his concerns about the neighborhood's long-term impact of putting parking pads in the front yard. He presented a photo on the overhead projector, noting the parking in the back yard of the subject property. He believed that could be used for parking, versus a parking pad in the front yard.

Kate Savage, who lives at 619 Columbia Avenue, expressed her concerns with regard to front yard parking. She noted her belief that it would set a bad precedent for the rest of the neighborhood. Ms. Savage said that she would like to request, if approved, that there be a condition that if the applicant was to move, the variance would not follow.

Applicant Rebuttal – Mr. Graves addressed the concerns of the citizens, and further explained his request, one of which has standing water in the street.

Citizen Rebuttal – Mr. Barker noted that the water issues appear to be much better than before.

Board Discussion – Mr. Gross said, that if there is someone else in the neighborhood who has a parking pad in their front yard, and it was believed to be without proper permits, it would need to be brought to the attention of the City.

Ms. Carter requested to see a photo of the rear parking pad. Mr. Marx presented what was recently paved. Mr. Graves presented before and after photos of the paved area and explained further.

Action – A motion was made by Mr. Needham, seconded by Mr. Glover and carried unanimously to **disapprove PLN-BOA-17-00046: JEFF GRAVES** – a request for a variance to increase the allowable width of a driveway from 10 feet to 21 feet at a property within the defined Infill & Redevelopment Area in a Single Family Residential (R-1E) zone, at 509 Marquis Ave., based on the staff's three reasons.

2. **PLN-BOA-17-00057: BEHRS & DAWGS, LLC.** – requests a conditional use permit to allow indoor and outdoor live entertainment and dancing accessory to a cocktail lounge; and a variance to reduce the required setback of such a use from a residential zone from 100 feet to 30 feet within the defined Infill & Redevelopment Area in a Neighborhood Business (B-1) zone, at 385 South Limestone (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, provided the applicant complies with appropriate measures, as recommended. These include restrictions on the days, hours, and amplification of the entertainment.
- b. All necessary public facilities and services are available and adequate for the proposed live entertainment conditional use.
- c. 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 provided there are limits on the hours of operation and amplification is prohibited. No physical change or expansion of the existing building is required or proposed by the applicant to accommodate this use.
- d. Granting the requested variance will not result in an unreasonable circumvention of the Zoning Ordinance because, although the residential zone is closer to the proposed use than 100', the nearest residential structure is over 100' away.

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

1. The use shall be conducted in accordance with the submitted site plan and as further regulated below.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection, prior to establishing the use.
3. Amplified music/entertainment shall be limited to Thursday through Saturday nights, beginning no earlier than 9:00 p.m. and ending no later than 1:00 a.m.
4. All music/entertainment shall be provided in a manner that does not create a nuisance to the surrounding neighborhood.

Representation – Brian Behr, applicant, and Taylor Stuckey with Stites & Harbison, were present. Mr. Stuckey indicated that he had reviewed the conditions and agreed to abide by all but #3, requesting that the Board consider removing the time restriction, changing it from 1:00 am to 2:00 am. At this time, Mr. Behr explained the reason for this request, indicating that he had done a sound impact study to determine the level of sound from his business to the residences. Mr. Stuckey, provided additional comments. Mr. Gross asked if the staff could present the plans on the overhead projector at this time, as Mr. Stuckey explained further.

*Note – At this time, Ms. Goderwis distributed a number of letters of opposition to the Board.

Board Questions and Comments – Mr. Clarke questioned the results of the sound check, asking if the music could be heard as it is being played at volume at Center Court. Mr. Behr said that it could barely be heard, Mr. Stuckey explained the decibels that were measured.

Mr. Clarke asked what time the other establishments along Limestone close. Mr. Behr replied that they close 2:30 a.m.

Citizen Comments – Robert Ryan, with Wyatt, Tarrant & Combs, was present on behalf of the Center Court Board. He expressed concerns regarding noise disturbance to the residents in the same vicinity. Mr. Ryan also noted that there is some concern for the proposed complex (The Hub) that could be going in, in the same vicinity, with regard to precedential value of the property relative to other bars & restaurants in the immediate area. He noted that the Center Court neighborhood is requesting that this request be denied.

Jim Wims, Assistant Provost for the University of Kentucky Student and Academic Life, read a letter into the record, expressing his concerns regarding noise and hours of operation that would negatively impact the residents in the vicinity.

Mike Kovash, who lives at 371 South Upper Street, also expressed his concern with regard to the noise nuisance for the residents. Mr. Kovash also addressed the applicant's statement with regard to the measurement of the music's noise level.

Carolyn Gago, representing 63 condominium units in South Hill Station (located to the rear and side of the subject property), expressed her concerns about the extended hours of the late night entertainment.

Representation Rebuttal – Mr. Behr addressed the concerns expressed about decibel measurement and discussed. Mr. Stuckey added comments.

Discussion – Mr. Clarke asked if this would be setting a precedent. He also asked if and where there was outdoor music in this area now. Mr. Glover stated that, to his understanding, the Tin Roof was the only establishment in this area that has amplified music. Ms. Goderwis responded and discussed the concerns of Mr. Clarke and Mr. Glover. At this time, there was further discussion between the Board and the staff with regard to the current uses, as well as the times and type of music being played in the area. Mr. Marx, at this time, presented an aerial photo of the surrounding properties on the overhead, and explained further.

Mr. Stuckey noted that the Tin Roof was closer than the subject establishment is, and the areas are not separated by much. Mr. Wims stated that he failed to mention, as he read his letter, that the students he mentioned live directly across from the subject property, and that he wanted to challenge the comment the “students’ weekend starts on Thursday.”

Mr. Ryan noted that this is not just the concern for the students, but there are other residents (i.e., professors, doctors, nurses, etc.), that should be considered with regard to the noise disturbance.

Mr. Kovash also made follow-up comments, expressing concern about the noise.

At this time, there was further discussion between the Board, the applicant, and the staff with regard to the proposed use as far as the Noise Ordinance, hours of operations, and possible precedent setting. Mr. Behr presented photos on the overhead projector, as he further explained his proposed use. Comments were also made by Ms. Jones.

Note: Mr. Gross declared a brief recess at 4:41 p.m. for further discussion with regard to a motion. The meeting reconvened at 4:52 p.m., with the same members in attendance.

Action – A motion was made by Mr. Glover, seconded by Mr. Needham and **failed** 3-3 (Gross, Clarke & Meyer opposed; Glover abstained) to **approve** PLN-BOA-17-00057: BEHRS & DAWGS, LLC – a request for a conditional use permit to allow indoor and outdoor live entertainment and dancing accessory to a cocktail lounge; and a variance to reduce the required setback of such a use from a residential zone from 100 feet to 30 feet within the defined Infill & Redevelopment Area in a Neighborhood Business (B-1) zone, at 385 South Limestone.

IV. **BOARD ITEMS**

- a. Mr. Gross welcomed Ms. Raquel Carter as the newest member of the Board of Adjustment.

V. **STAFF ITEMS**

None

- VII. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be October 27, 2017.

- VIII. **ADJOURNMENT** - There was no further business. The Chair declared the meeting adjourned at 4:55 p.m.

Branden Gross, Chair

Joan Whitman, Secretary