

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 24, 2009

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:03 p.m. in the Council Chambers, 200 East Main Street, on April 24, 2009. Members present were Chairman Peter Brown, Carolyn Edwards, Barry Stumbo, Louis Stout, Jan Meyer, James Griggs and Kathryn Moore. Others present were Jim Hume of the Division of Building Inspection; Jim Gallimore of the Division of Traffic Engineering; Barry Brock of the Division of Engineering; and Rochelle Boland of the Law Department. Staff members in attendance were Jim Marx, Barbara Rackers and Wanda Howard.

At this point, Chairman Brown asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn.

- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the April 25, 2008 meeting would be considered at this time.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously to approve the minutes of the April 25, 2008 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

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

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

- a. **C-2009-25: BALL & WRIGHT CAPITAL HOLDING CO., LLC** - appeals for a conditional use permit to construct and operate a drive-through facility for a proposed bank, in a Professional Office (P-1) zone, on property located at 998 Governors Lane. (Council District 10)

The Staff Recommended: Postponement, for the following reasons:

1. The proposed access to this property from Governors Lane is at a location that will not function properly due to the location of the existing median in the center of Governors Lane. This could lead to significant problems with regard to the ability of customers to safely enter and exit the property when using a drive-through facility.
2. A proposed amendment to the Final Development Plan that governs the development of the subject property and the adjoining property to the east is currently under review by the Planning Commission. Action by the Planning Commission has been postponed so that issues relating to access as well as internal circulation of vehicles between the two properties can be resolved. Since the impact to the drive-through is uncertain, the Board's consideration should be delayed accordingly.

Representation – Mr. Richard Murphy, attorney, was present representing the appellant and requested a one-month postponement of the subject appeal, in concurrence with the staff's recommendation.

Chairman Brown determined that there was no one present in opposition to the requested postponement.

Action – A motion was made by Ms. Meyer, seconded by Ms. Edwards and carried unanimously to postpone **C-2009-25: BALL & WRIGHT CAPITAL HOLDING CO., LLC** until the May 29 meeting.

- b. **CV-2009-9: BROADWAY CHRISTIAN CHURCH** - appeals for a conditional use permit to

expand a church parking lot; and a variance to reduce the width of the required landscape buffer for the parking lot from 5 feet to 0 feet, in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street. (Council District 2)

The Staff Recommended: Approval of the requested Conditional Use Permit, for the following reasons:

1. The addition of four parking spaces to this accessory parking lot should not adversely affect the subject or surrounding properties. A parking lot has existed at this location for many years, and there is sufficient room, with a redesign of the parking lot, to install the required landscape buffers along both West Second Street and Saunier Street, without the need for a dimensional variance. Since there is currently no landscaping along West Second Street, a nonconforming situation will become compliant with the current provisions of Article 18 of the Zoning Ordinance pertaining to landscaping of these spaces.
2. 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. Construction of the four additional parking spaces and full landscape buffer shall be done in accordance with the amended site plan submitted on April 13, 2009, subject to any further modifications that may be needed to satisfy requirements of the Divisions of Traffic Engineering and Building Inspection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction activity taking place.
3. The landscape buffer to be provided shall comply with Article 18-3(a)(2)1 of the Zoning Ordinance, with the understanding that minor adjustments will be required to accommodate a pedestrian walkway and storm water drainage feature at the southeast corner of the lot.
4. The final design of the parking space additions and parking lot revisions shall be subject to review and approval by the Division of Traffic Engineering.
5. 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.

Mr. Marx acknowledged having received a letter from the applicant requesting a withdrawal of the variance portion of the subject appeal. He said they had revised the site plan to comply with the landscaping requirements, and only the conditional use would remain as part of that request. It was noted that no action by the Board regarding the withdrawal request was necessary.

2. No Discussion Items - The Chairman 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 proceeded to take action.

ABBREVIATED HEARINGS:

- a. **CV-2009-9: BROADWAY CHRISTIAN CHURCH** - appeals for a conditional use permit to expand a church parking lot; and a variance to reduce the width of the required landscape buffer for the parking lot from 5 feet to 0 feet, in a High Density Apartment (R-4) zone, on property located at 179 Saunier Street. (Council District 2)

The Staff Recommended: Approval of the requested Conditional Use Permit, for the following reasons:

1. The addition of four parking spaces to this accessory parking lot should not adversely affect the subject or surrounding properties. A parking lot has existed at this location for many years, and there is sufficient room, with a redesign of the parking lot, to install the required landscape buffers along both West Second Street and Saunier Street, without the need for a dimensional variance. Since there is currently no landscaping along West Second Street, a nonconforming situation will become compliant with the current provisions of Article 18 of the Zoning Ordinance pertaining to landscaping of these spaces.
2. 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. Construction of the four additional parking spaces and full landscape buffer shall be done in accordance with the amended site plan submitted on April 13, 2009, subject to any further modifications that may be needed to satisfy requirements of the Divisions of Traffic Engineering and Building Inspection.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction activity taking place.
3. The landscape buffer to be provided shall comply with Article 18-3(a)(2)1 of the Zoning Ordinance, with the understanding that minor adjustments will be required to accommodate a pedestrian walkway and storm water drainage feature at the southeast corner of the lot.
4. The final design of the parking space additions and parking lot revisions shall be subject to review and approval by the Division of Traffic Engineering.
5. 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.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Since there was no representation present at this time, the Chairman proceeded to the next case on the agenda without opposition.

(Following disposition of C-2005-53: FENDER FUNERAL DIRECTORS, the Chairman returned to the aforementioned appeal.)

Chairman Brown noted that the variance portion of this appeal was withdrawn earlier; and that the staff had recommended approval of the conditional use, subject to five conditions.

Mr. Darryl Nunnelley was present on behalf of the Broadway Christian Church and stated that they agreed with and would abide by the conditions for approval.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously to approve **C-2009-9: BROADWAY CHRISTIAN CHURCH** (a conditional use permit to expand a church parking lot in a High Density Apartment [R-4] zone, on property located at 179 Saunier Street) for the reasons listed by the staff, subject to the five conditions listed by staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- b. **CV-2009-22: STAR OF BETHLEHEM** - appeals for a conditional use permit to construct a church addition; and a variance to reduce the required front yard from 30 feet to 10 feet to accommodate the expansion, in a Single-Family Residential (R-1C) zone, on property located at 609 / 611 Lagonda Avenue. (Council District 5)

The Staff Recommended: Approval of the requested conditional use, for the following reasons:

1. The two small additions that are proposed, each less than 200 square feet in size, should not adversely affect the subject or surrounding properties. A small church has existed at this location for many years, and the additional space will be used to provide better facilities for handicapped persons.
2. All necessary public facilities and services are available and adequate for the proposed use.

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

- a. A reduction in the required front yard to 10', just for the purpose of accommodating small additions on each side of the existing foyer, should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The additions will not extend any closer to Lagonda Avenue than the foyer, and will generally align with the front edge of the commercial building on the adjoining lot to the southwest.
- b. The design and location of the existing church building limits the options for providing additional space to better serve handicapped persons on the main floor of the church. Given these limitations, the most reasonable site for adding sufficient space for handicapped

accessible restrooms is in the vicinity of the existing foyer, which already extends to within 10' of Lagonda Avenue.

- c. Strict application of the Zoning Ordinance would require that any additions be located at least 30' back from Lagonda Avenue, which would not be practical and would not serve the purpose of the proposed additions.
- d. The circumstances surrounding this request have resulted from decisions made many years ago when the church was originally built, prior to the appellant purchasing the property in 1990.

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

- 1. The additions shall be done 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.
- 3. The variance is granted only for the purpose of allowing the two additions as described in the submitted site plan, not for any other additions that might be proposed in the future.
- 4. An administrative action plat shall be filed with the Division of Planning, with a note reflecting the action of the Board. This plat shall be recorded prior to the issuance of a building permit.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Richard Wheeler, with REW General Contractors, was present representing the appellant and stated that they agreed with and would abide by the conditions for approval.

Chairman Brown inquired whether granting the requested variance would be an expansion of a nonconforming use, considering that it is increasing the nonconformity in front of the setback line. Mr. Marx responded that the whole situation would be in compliance if the Board did take action that the variance is justified. He said he didn't think the Board had taken this approach with previous variance requests if there was a historical structure that didn't comply with the Zoning Ordinance requirement, in that it is automatically called nonconforming and not able to be expanded.

Ms. Boland responded that basically, Mr. Marx was correct. She said the viewpoint could be taken that this is increasing a nonconforming structure; but because variances are available, it is not like a nonconforming use. She opined that as long as there is sufficient justification for a variance, in essence, the nonconformity is taken away by now granting a variance that will cover it. She stated that the variance is limited to what the Board is authorizing, so it doesn't give the applicant free reign to add anything beyond what is specifically being requested.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards, and carried unanimously to approve **CV-2009-22: STAR OF BETHLEHEM** (a conditional use permit to construct a church addition; and a variance to reduce the required front yard from 30 feet to 10 feet to accommodate the expansion, in a Single-Family Residential [R-1C] zone on property located at 609-611 Lagonda Avenue) for the reasons listed by the staff, subject to the four conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- c. **C-2005-53: FENDER FUNERAL DIRECTORS** - the Board of Adjustment has requested a revocation hearing for a conditional use permit granted in May 2005 (to expand and occupy an existing residential structure as a funeral home in an Agricultural-Urban [A-U] zone, on property located at 1593 Russell Cave Road [Council District 2]) for failure to comply with conditions imposed at the time of approval.

The conditions imposed at the time of the approval by the Board are as follows:

- 1. The funeral home shall be established in accordance with the submitted application and site plan, or as approved by the Division of Building Inspection.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- 3. The design of the off-street parking areas and access to Russell Cave Road shall be subject to approval by the Division of Traffic Engineering.
- 4. The off-street parking areas shall be paved, with spaces delineated, and

- landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
5. Any landscape buffers required by Article 18 of the Zoning Ordinance for the vehicular use areas shall be extended to include the full extent of the property perimeter, excluding frontage on Russell Cave Road. Existing landscaping shall be retained and maintained to the maximum extent feasible.
 6. 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.
 7. Any outdoor pole lighting for the facility shall be of a shoebox (or similar) design, with light shielded and directed downward to prevent any disturbance to surrounding residential properties.
 8. That the current privacy fence shall be maintained and extended to 10' from the sidewalk at Russell Cave Road, unless the affected neighbor is opposed.

The Division of Building Inspection will report at the hearing.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Richard Murphy, attorney, was present along with Mr. James Fender, the appellant, and Ms. Sara Tuttle (landscape architect), with Strand Associates. Mr. Murphy stated that this was a revocation hearing for a conditional use permit that was approved by the Board in 2005 for a funeral home located in the A-U zone. He said, with regard to the existing house that is being used, that it has a chapel in the main room on the first floor and a residence on the second floor; and that the chapel has a fire rating occupancy for 50 persons. Mr. Murphy explained that the original plan submittal showed a large expansion for a funeral chapel on the property, which has not been constructed; and that, on average, Mr. Fender conducts about two funerals a month at this location. He said that Mr. Fender's business model has worked a little differently than when they initially applied to the Board, in that the majority of the funeral services were conducted at other off-site locations, such as churches. He spoke about the amount of support there was for the original request, as well as the opposition from some neighbors who subsequently came to support the funeral home use.

Mr. Murphy explained how the issue of compliance regarding the outstanding conditions for the use are being addressed, as well as how the violation came to take place. He referred to page 1 of the handout that was distributed, showing the certificate of occupancy issued for the building in June 2006. He emphasized that there were no occupancy, safety or fire issues related to using an existing room on the first floor of the residence as a funeral chapel; and that he thought the misunderstanding on Mr. Fender's part occurred because he interpreted the conditions of approval being applicable in the event that the building expansion was actually completed. Mr. Murphy stated that the appellant was notified by Mr. Hume about the outstanding conditions, which were reviewed as follows: 3) Traffic Engineering's approval of the design of the off-street parking areas and access to Russell Cave Road; 4) paving, landscaping/screening of the off-street parking areas in accordance with the Zoning Ordinance; 6) Division of Engineering's approval of storm water management plan; and 7) installation of outdoor lighting for the facility. Referring to page 2, he said they have submitted a plan for parking to the Division of Building Inspection that meets the required parking for the occupancy of 50 persons, with the understanding that the plan will be subject to review and possible changes to satisfy the requirements of the Divisions of Traffic Engineering and Building Inspection. He further stated that estimates were obtained for paving the on-site parking areas, a copy of which was submitted to show that Mr. Fender has proceeded in good faith to get the work done; and that Ms. Tuttle has been in contact with LFUCG Engineer Barry Brock and was informed that, under the Engineering Manuals, this small project will not require submittal of a separate storm water study, although his signoff will be needed before a paving permit is issued. It was noted that the installation of outdoor lighting for the facility is optional.

On Mr. Fender's behalf, Mr. Murphy said they regretted the misunderstanding that took place, although he understood how it occurred. He stated that a certificate of occupancy was obtained; that Mr. Fender was a licensed funeral director and has taken out a small business administration loan to operate; and that the business plan has changed since a much lower volume of services than anticipated are held at the chapel. Mr. Murphy asked that the conditional use permit not be

revoked and that they be allowed to continue working with the City to get a paving plan that everyone could agree on and be comfortable with.

Chairman Brown asked to hear Mr. Hume's comments regarding this matter. Mr. Hume acknowledged that the situation regarding the outstanding conditions has been going on for quite some time. He said the certificate of occupancy that was issued for the building in 2006 was done prematurely (and without his approval) by an inspector who is no longer with the Division of Building Inspection, the reason(s) for which Mr. Hume was unable to explain; and that subsequent inspections of the property revealed that the appellant was not in compliance with most of the imposed conditions. The appellant had no response when repeatedly asked why things weren't done until notified of the revocation hearing, after which an effort was made to communicate with Building Inspection about their progress.

Mr. Hume stated that the appellant has started to work with Building Inspection and has submitted a plan, which was not exactly what they expected in comparison with the original site plan submittal. He said Building Inspection, along with Traffic Engineering, would continue to work with the appellant in order to provide a plan for the parking that satisfies the requirements; and that they have a good faith relationship. Mr. Hume asked the Board for their indulgence to allow a little more time to get the problems worked out.

Chairman Brown commented that he was inclined to ask for a continuance of this case, which Mr. Hume supported. In response to the Chairman's inquiry about the time frame, Mr. Hume said he wouldn't want to continue the case longer than a couple of months, with the hope that the appellant could come back for the June meeting and have something approved.

Mr. Stout asked Mr. Murphy if two months was enough time for the appellant to get this completed. Mr. Murphy indicated that he thought it was. When asked if he would agree to a two-month continuance of the case, Mr. Murphy responded affirmatively.

Action – A motion was made by Mr. Stout, seconded by Ms. Moore, and carried unanimously (Edwards abstaining) for a two-month continuance of **C-2005-53: FENDER FUNERAL DIRECTORS.**

(Following disposition of the aforementioned case, the Chairman returned to **CV-2009-9: BROADWAY CHRISTIAN CHURCH,** since representation now was present.)

- d. **C-2009-14: JOY & ASSOCIATES, INC.** - appeals for a conditional use permit to construct and operate a drive-through facility for a proposed pharmacy in the Downtown Business (B-2) zone, on properties located at 366, 370, 376 and 400 East Main Street. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

1. A drive-through facility for a proposed pharmacy at this location should not adversely affect the subject or surrounding properties. Adequate vehicular stacking space and access from both East Main Street and East Vine Street will be provided. The facility has been designed to minimize any potential safety hazards, with the functioning of the Main Street exit to be evaluated by the Division of Traffic Engineering to determine if any design changes are needed. Marked crosswalks will be provided at two locations to facilitate safe pedestrian movement from both East Main Street and East Vine Street to the pharmacy entrance.
2. Landscaping required by the Zoning Ordinance will be augmented by stone and/or brick columns, as well as walls and/or decorative fencing, to improve the appearance of the parking lot that is proposed at a highly visible location in front of the new building. Architectural features, including the use of stone and brick exterior facing with windows, in addition to a prominent entrance feature, will serve to integrate the proposed building into the surrounding downtown environment.
3. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation is made subject to the following conditions:

1. The drive-through facility shall be established in accordance with the submitted application and amended site plan of March 03, 2009, with the understanding that (a) some further site

- plan revisions may be required by the Divisions of Engineering, Traffic Engineering, or Building Inspection to satisfy their requirements; and (b) it will be necessary to complete pedestrian access to the entrance to the pharmacy from East Main and Vine Streets.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to any demolition activities and prior to construction of the new facility.
 3. The parking lot and associated traffic aisles shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
 4. The final design of the proposed access points, parking lot, and traffic aisles shall be subject to review and approval by the Division of Traffic Engineering.
 5. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
 6. Following the issuance of an occupancy permit, the functioning of the Main Street exit shall be monitored by the Division of Traffic Engineering for a period of one year to determine if it is operating safely. If safety problems are documented, either through vehicle accident reports or direct observations, alternative designs shall be pursued by the appellant, landowner and/or lessee as recommended by the Division of Traffic Engineering. If an agreement cannot be reached regarding an appropriate course of action to take, the matter shall be referred back to the Board.
 7. A raised and marked crosswalk of at least 7' in width shall be provided at the northeast corner of the building to facilitate pedestrian movement from the sidewalk along Main Street across the drive-through/circulation aisle to the pharmacy entrance. Another marked crosswalk, also with a minimum width of 7', shall be provided at the southeast corner of the building to facilitate pedestrian movement from the sidewalk along Vine Street across Water Street to the pharmacy entrance. Each crosswalk shall be located and designed in accordance with the recommendations of the Bike/Pedestrian Planner with the Division of Planning.
 8. Bike racks to accommodate a minimum of eight bicycles shall be provided at a suitable location near the pharmacy entrance, in accordance with the recommendations of the Bike/Pedestrian Planner with the Division of Planning.
 9. Landscaping required by Article 18 of the Zoning Ordinance shall be augmented by features such as brick or stone columns, low level walls and/or decorative fencing to provide an enhanced buffer and screen for the parking lot and drive aisles that will surround the proposed building and drive-through facility. A landscaping plan shall be developed that shows in detail how this is to be accomplished, subject to review and approval by the Divisions of Building Inspection and Planning.
 10. The exterior façade of the proposed building shall include stone and brick elements, with at least some windows, designed to complement the architectural features of buildings on the surrounding properties. In addition, a prominent architectural feature extending above the main roof line shall be provided at the front of the building. That entrance feature is intended to be a substantial walled and roofed structure, rather than a one dimensional parapet or false façade. These elements and features shall be described and depicted in detail in a set of elevation drawings, subject to review and approval by the Divisions of Building Inspection and Planning.
 11. Public right-of-way extending through a portion of the subject property shall be closed, and the individual lots consolidated, if deemed necessary.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Rena Wiseman, attorney, was present on behalf of the applicant, the property owners, Main & Vine Partners, and its two principals, Mr. Phil Holoubeck and Mr. Les Kimbrough. She initially stated that they have met several times with staff since last month's postponement and a newly revised site plan has been submitted. Ms. Wiseman said they were in agreement with the 11 conditions for approval recommended by the staff, and asked the Board to approve the conditional use request for a drive-through for a proposed (CVS) pharmacy. Two letters of support and signed petitions were submitted to the Board.

Chairman Brown recalled his request to have elevation drawings or renderings of the proposed pharmacy provided for presentation at today's meeting, following the postponement that was

granted last month. Ms. Wiseman responded that a final rendering was not available for the Board's review presently. She explained that this has been a lengthy process; and that they had finally gotten to the point of having a site plan that was acceptable. Ms. Wiseman reiterated about the number of discussions they have had with staff about the building in question, as well as the numerous renderings with different elevations, which she felt Condition #10 addressed in terms of the design of the building. Chairman Brown said he felt it would be premature to take action on the applicant's request at this time since a landscape plan, crosswalk plan or elevation drawings were not available for review. Ms. Wiseman responded that they did have a landscape plan and a revised site plan that showed the crosswalk for pedestrian access and other requested changes regarding ingress/egress, which she was prepared to present to the Board. She pointed out that a pharmacy is a permitted use in the B-2 zone; and it was only the drive-through facility, which is a conditional use and has to do with circulation and traffic safety impact on the adjoining roadways, that requires the Board's approval. Ms. Wiseman said they believe they have satisfied the standard to have this approved.

In response to Chairman Brown's inquiry about the Downtown Master Plan in relation to the proposed pharmacy, Ms. Wiseman stated that it has not been implemented yet, although certain principles were adopted in the Comprehensive Plan. She said there are no design guidelines or overlay zones, which is the reason for Condition #10; and that they want to work with the LFUCG and follow the Downtown Master Plan. She said it was fortunate for the community that this business wants to come here; however, the timing for this was a little ahead of the implementation.

Referring to the site plan, Ms. Meyer asked about the necessity of the two proposed drive-through lanes. Ms. Wiseman answered that the drive-through lanes are for prescriptions only. She explained that the lane closest to the building was for picking up prescriptions and speaking with the pharmacist, and the outer lane was for dropping off prescriptions. With respect to the Downtown Master Plan, Ms. Meyer inquired whether there had been any discussion about Vine and Main becoming two-way streets. Ms. Wiseman said there has been a lot of discussion about that, particularly in view of the proposed CVS pharmacy; and that the developer and the landowners as well are proponents of Vine and Main becoming two-way streets. However, making those streets two-way is in the long term plan and not ready for implementation at this point. Ms. Wiseman noted that there are things they could adapt when it happens; and that the proposed site would work with two-way traffic.

Mr. Griggs related his concern about the staff report being riddled with comments that this design was not pedestrian friendly; and it seemed that the drive-through has driven the entire design process. He wondered what the design would look like if a drive-through was not allowed. Ms. Wiseman responded that it would be purely a guess on her part, but there would have to be some surface parking with any kind of retail due to the inability to have a parking structure downtown. She said the worse pedestrian-friendly aspect of this development was not on the property itself; but where Main, Midland and Vine converge with the merging aisles, which makes trying to cross there very challenging for pedestrians. Mr. Griggs agreed that this lot was difficult to build on, but he also felt that the only chance the downtown area will have of becoming pedestrian friendly is holding a hard line when these parcels come up for redevelopment, which will happen one project at a time. However, he maintained that he didn't see anything about the proposed plan that was designed with the pedestrian in mind first.

Ms. Wiseman argued that the design was not centered around the drive-through, although it was a critical part; and that they are now on their 15th version of the site plan in order to address all these issues, which included eliminating an access point that was cause for concern about conflict. She said the proposed site is at the apex of three highways, two of which are one-way; and that it is a challenge to develop this site – with or without a drive-through. It was noted that only 25% of the customers that come to CVS utilize the drive-through; and that a majority of the customer traffic will park and come into the store. She said these days, you would no more build a pharmacy without a drive-through than you would build a bank without a drive-through, because they are low impact and an added convenience for people. Mr. Griggs commented that the Rite Aid in Chevy Chase has no drive-through and does quite well. Ms. Wiseman said she imagined they would not build a facility like that one today.

At this point, Mr. Gallimore spoke about the pedestrian friendliness issue. He stated that the

Division of Traffic Engineering originally looked at this project like a typical pharmacy with a drive-through, similar to those found in a lot of shopping areas; but they also looked at some of the downtown models with drive-throughs that are more pedestrian friendly than the conventional ones that Traffic Engineering is used to approving. As the result, he said Traffic Engineering has had somewhat of a change of heart since they were last asked their opinion on this project. Mr. Gallimore said Traffic Engineering initially felt the egress onto Main Street from the corner of the property should be eliminated from this plan because of too many conflict points and the increased risk of hitting someone, as opposed to being a one-way entrance with good sight visibility on the peripheral. Therefore, the egress point would be eliminated and the access point from Main Street converted to one-way only. However, the applicant was adamant about having a driveway connecting the parking lot to the drive-through area with the idea of simplifying the access from Main Street and aligning the drive-through lanes. Mr. Gallimore went on to say that it was now Traffic Engineering's opinion that the driveway can be optional; and that it doesn't matter to them whether the driveway connecting the parking lot to the drive-through area is there or not – which is different from their original opinion as stated in the staff report. He pointed out that when you simplify circulation, you also make that particular area more pedestrian friendly. It was noted that this was a difficult plan.

Chairman Brown asked Mr. Gallimore for further clarification. Mr. Gallimore explained that, on the site plan, the entrance off Main Street shows two lanes coming into the property, as well as a little escape lane exiting the property. He said Traffic Engineering (originally) wanted to close this access point, making it an entrance only and not allowing cars to exit onto Main Street because: 1) they didn't want vehicles that were leaving the property to have to loop around Vine to get onto Main, and 2) the safety aspects related to not having a throat on that access point. He explained that, with this property, if someone wanted to get back onto Main Street, they could go down Water Street and then get onto Main Street through the street system (without looping around on Vine). Mr. Gallimore noted that a throat is not required on an entrance, but it is nice to have the vehicles lined up 90 degrees to the road when exiting the property. He said the current configuration does not allow for that and appears to have many issues.

Responding to Chairman Brown's further inquiry, Mr. Gallimore said he was under the impression that this case was going to be postponed today, allowing Traffic Engineering more time to resolve the plan-related issues before the Board made a decision.

Chairman Brown requested that the site plan be shown on the overhead. Mr. Marx noted that there was a more recent site plan available than the one included in the Board's notebooks, which he distributed for review along with the landscape plan. Ms. Wiseman said there was a larger version of that plan available if the Board wanted to see it.

Ms. Wiseman pointed out that they were hearing Mr. Gallimore's comments regarding the plan for the first time, just as the Board was; and that one of the issues this was postponed for last month was the lane Mr. Gallimore was talking about. She reiterated that there had been meetings with the LFUCG staff since the postponement; and that Traffic Engineering had made no comments regarding the left-turn lane until today's meeting. Ms. Wiseman acknowledged that the left turn was an issue of concern raised by the Division of Planning; and that they agreed to a condition that the function of the left-turn lane would be monitored for one year by the Division of Traffic Engineering to determine if it worked safely, or if the design needed to be modified. It was noted that there had been no indication from the applicant with regard to another request for postponement.

Referring to the displayed site plan, Ms. Wiseman pointed out the two existing entrances off East Main Street, noting the cross-hatched entrance shown that would be closed (across from N. Eastern Avenue). She told the Board that they felt the circulation as shown works, which was designed by Kevin Phillips, in close consultation with Gary Joy and the Wilbur Smith firm. She said they had worked diligently with staff and made numerous changes.

For clarification, Chairman Brown asked whether Mr. Gallimore was recommending that the shaded (cross-hatched) entrance be closed. Mr. Gallimore responded affirmatively. He said it was recommended for closure because of vehicles coming off Midland that want to merge over into the left lane on Main; and that it would create a conflict to have an access point that close.

Ms. Moore inquired whether the proposed building could be shifted slightly forward and located where the parking area is shown, to allow more room for ingress/egress, etc. Mr. Kevin Phillips, with Endris Engineering, responded that a major concern was the 96" Town Branch culvert that comes down Midland Avenue and angles right through the front parking lot; and that relocating the building where Ms. Moore indicated would put it right over the culvert. He said that is what is keeping the building away from the intersection.

Mr. Marx noted the following condition for approval that was added for emphasis since there are a lot of complicated utility issues on the site: Any necessary utility relocations and easement releases should be completed prior to the issuance of any building permits. Ms. Wiseman indicated being in agreement with the added condition.

Mr. Stout asked whether Ms. Wiseman had a problem with closing the access or driveway under discussion, to which she responded affirmatively, noting that it provides two ways out onto Main Street. She said not only does it provide the ability for cars to exit onto Main Street, but also the ability for cars coming out Vine to get into the site at the first entrance. She further stated that it was fairly common for cars to turn left or right onto the one-way streets downtown.

Mr. Phillips added that one benefit of the circulation, as it is now, is that there is no exiting across traffic; and that cars will be exiting into traffic going the same way they are going to turn.

Mr. Gallimore commented that they didn't really have an issue with cars exiting onto Main Street; however, a major concern was the geometry of the way that exit was laid out. He felt there was room for a compromise where the exit onto Main could still be accomplished; however, he said they aren't comfortable with the way it is set up now.

Ms. Wiseman acknowledged that there have been some issues related to the configuration of the entrance in question, which they have expressed their willingness to work on with the Divisions of Traffic Engineering and Planning.

Mr. Gallimore reiterated Traffic Engineering's recommendation that this access point be closed. He said he didn't know if there were any options where the store could be shifted or if the corner of the store could be cut off where the drive-through is located; but if there is no flexibility on the footprint of the building or its location, he didn't see how they could make the exit onto Main Street work. He said he didn't feel comfortable approving this configuration and then going back and looking at the safety aspects a year later, because it would be a very difficult thing to judge and probably would end up being an argument that comes right back to the Board. In the meantime, he said accidents may occur because of how vehicles are approaching Main Street.

Mr. Griggs said one of the problems he has with this proposal is that any problem with the exit onto Main Street would be resolved later rather than being resolved before the Board's approval. Mr. Gallimore concurred. He hoped there was a way the applicant could come up with a different site plan showing a better geometry to keep the ingress/egress.

Ms. Meyer inquired whether any thought was given to changing the design or shape of the proposed store, rather than having a box store. Mr. Phillips answered that it was really for the developer to decide, noting his effort to do what he can with the footprint that is provided, which he is bound to. Ms. Meyer then asked why the proposed pharmacy/store had to be the typical footprint of the CVS located in Chevy Chase, for example. Mr. Gary Joy, (with Joy & Associates) representing CVS as its developer, was present. He said that CVS, Walgreen's and Rite Aid all work within their prototypical designs; and they are required to do these box designs – period. He noted four different prototypes that can be used; and that this is the smallest prototype they have in their design profile.

Mr. Griggs said if the drive-through lane that runs parallel to Main Street were eliminated, a wonderful sidewalk access for pedestrians going into the store can be provided. He felt he could live with the drive-through if the aisle was eliminated and the building was moved closer to the sidewalk. Then, there would be 136' of building on the sidewalk and entrance doors for pedestrians on Main Street, which seemed very pedestrian friendly to him.

Ms. Wiseman referred to the site plan that showed the existing sidewalk just to the right of the cross-hatched entrance (proposed for closure), which she said is where the fence, railing and shrubs will be, in addition to a walkway from the Main Street sidewalk into the store. She noted that they are trying to accommodate getting people from the street onto the property with the walkway.

Mr. Phillips commented that the real driving force to keeping the parallel lane, which he realized was not desirable from a Traffic Engineering or Downtown Master Plan perspective, was considering when Main and Vine Streets become two-way. He explained in detail how the overall configuration would function considering that scenario. He said the lane was necessary for the two-way circulation that eventually will happen on Main and Vine; and they were trying to make safe movements out of the site without crossing two lanes of opposing traffic.

Mr. Griggs felt that no amount of discussion could convince him that there was not a compromise that would make this building more pedestrian friendly. He said the applicant sounded very inflexible, in that there are four designs and one of them has to work or they will go elsewhere. He didn't think this was the best that could be done for pedestrians. Mr. Phillips responded that they obviously thought otherwise.

Mr. Phil Holoubek, landowner, was present. He initially spoke about his background as a downtown developer (e.g., Main & Rose, the Nunn Building lofts, etc.); the winner of several awards, including the streetscape and historic preservation awards; and being a proponent of both the Downtown Master Plan and the Streetscape Master Plan. He said they don't take anything lightly that they do downtown; and there was a reason CVS has done 14 revised plans so far -- not just because the city has required it, but because he, as the landowner, has required it. He said they have put \$40 million into the downtown area so far with their projects; and they are fierce advocates of two-way streets. Mr. Holoubek felt they wouldn't be having these discussions if the streets were two-way to begin with, which he said was a moot point; and there are benchmarks that need to be accomplished before Main and Vine are two-way streets, which he estimated would not happen until 2014. It was noted that this is the most pedestrian unfriendly part of downtown right now, which the video that was shot of pedestrians trying to cross Main Street close to Midland demonstrated (i.e., the traffic coming from Midland making a right turn onto Main never stops; the traffic from Vine making a left onto Main never stops). Mr. Holoubek talked about the type of screening that will be provided for the site, which includes a fence with railing, stone veneer columns and shrubbery behind it. Referring to the landscape plan, he said there will be a cutout in the screening for pedestrian access to the property. He asked the Board to keep in mind that until the traffic patterns change, this area will never be pedestrian friendly.

Regarding the background on this site, Mr. Holoubek said they tried to buy this land beginning in January 2007; and that a large mixed-use project was originally planned, which included a pharmacy on the first floor and three stories of office space on the upper floors, as well as first-floor retail with apartments above and a parking garage farther down Main Street. He explained, however, that parking garages cannot be paid for by the private sector because of Lexington's parking rates; and that parking garages lose about \$1,000 per space per year. As an example, he said a 600-car garage would lose about \$600,000 a year. Instead, it would have to come from the public sector because of sales and property and payroll taxes that would offset the infrastructure investment. He went on to say that there are 15 parking garages downtown, as the exhibit shown on the overhead illustrated. It was noted that only one parking garage was on the east end and 14 in the center or west end of downtown. Without a parking garage, he said the only option was to build a one-story structure with surface parking; and until the infrastructure for parking garages is built on the east end, one-story buildings are the only option.

Continuing, Mr. Holoubek said the best possible use for a single story is to carry convenience-oriented retail items for people who are coming to live downtown and people who are working downtown, as indicated by the submitted petitions from Main & Rose residents and LFUCG employees; and that having grocery items downtown has been a demonstrated community need for several years. He spoke about the lost opportunities to have two groceries downtown at Main and Rose because of the one-way streets, as well as a pharmacy at that location because there was no drive-through. It was noted that 70% of a grocery's business is drive-home business, but Main Street unfortunately goes in the opposite direction from where most people who would be using it

live. Mr. Holoubek related being told by developers that there would be no CVS store without having drive-through service. He spoke about the lack of retail uses along Vine, from the Civic Center to Thoroughbred Park, with the exception of Tonio's Mexican Restaurant. He said approving a drive-through in order to get a pharmacy that has a demonstrated community need for selling groceries is critical, and getting out to Main Street is important as well. As discussed previously, he reiterated about the possibility of reversing the ingress and egress lanes that would allow cars to be squared up at a 90-degree angle to Main Street, which he thought Mr. Gallimore was more comfortable with.

In closing, Mr. Holoubek said he felt great about the master plan for this block, because the proposed CVS pharmacy/store was placed in a location so that the rest of the block can be filled in with a higher density project (i.e., mixed-use project that is 4 to 5 stories tall with light retail on the first floor, apartments above and a parking garage in between, if and when, the city is able to afford a parking garage). He also spoke about being a good steward of the land and meeting several times with Mr. Anthony Wright, the LFUCG director of Economic Development. He asked the Board to consider how much time had been put into this project and how they are trying to do the right thing. He reiterated his question to Mr. Gallimore about reversing the ingress and egress on Main Street, because he didn't know where else the egress could be placed.

Mr. Stumbo thanked Mr. Holoubek for his concise presentation, as well as his commitment to downtown development. He said he didn't think anyone disputed the demonstrated need for a more vital retail component downtown. However, he stated that his biggest concern with this proposal was the existing ingress/egress onto Main Street; and secondly, the proximity of four parking spaces to the drive-through lane, which he felt were impediments. He queried whether one or two of those parking spaces could be eliminated because of visibility concerns.

Regarding the parking spaces in question, Mr. Holoubek said they had worked very closely with the Parking Authority, and he believed that Mr. Gary Means would be open to the possibility of losing one or two of the parking spaces on Main Street, if that would help to improve the sight triangle.

In response to Mr. Stumbo's query, Mr. Gallimore commented about the potential traffic safety problems related to the sight triangle when exiting onto a street system that has one-way parking (i.e., inability to see oncoming traffic and pedestrians crossing the street, elevation issues, etc.). He noted that some parking spaces downtown have been removed due to sight visibility problems.

Mr. Stout asked how much time would be needed for Mr. Gallimore and Ms. Wiseman's group to put together a plan that was acceptable to the Board, because it seemed that this one particular area was problematic. He related his feeling that this issue should have been resolved before the plan was brought to the Board for consideration. Mr. Gallimore responded that his time was very flexible and he could meet with the applicant at their convenience. He said one other thing for the Board to keep in mind was that the applicant was planning to use tractor trailers to stock this store; and part of the layout beside the drive-through area is designed to get tractor trailers into the property and allow them to be unloaded. He said the point he was trying to make was they didn't want to fix one thing and, as a result, mess up another thing that works. Mr. Gallimore went on to say there are some other issues related to this lot and surrounding streets that have not been brought forward, such as using part of Water Street, which is currently one way, as a parking area. He said he would very much like to have the opportunity to work with the applicant and make this project work in order to provide the best vehicular and pedestrian access. The Board was also asked to keep in mind that most downtown bank drive-throughs can only be accessed from one side – not both sides, which seems to function adequately.

Ms. Wiseman responded, after conferring with Mr. Joy, that if the Board wanted them to work on the access issue and return in a month, they were agreeable to do so. However, she pointed out that, with the Board's approval of the plan today, they would still have to work with Traffic Engineering regarding the final design of the proposed access points, traffic aisles and parking lot, in accordance with Condition #4. Ms. Wiseman said they just wanted to make this project a reality, but reiterated that, if the Board preferred, they would come back next month.

Ms. Moore commented that she didn't think anyone on the Board objected to having a pharmacy downtown; but one of the findings required for approval is that the proposed use wouldn't create

any safety issues, and it appeared that most of the Board didn't feel comfortable saying that. She said if the plan-related problem(s) could be resolved and Traffic Engineering could say there were no safety concerns, the Board probably would feel more comfortable. Ms. Edwards concurred.

Chairman Brown called for a motion, at which time an objector who was not present for the sounded agenda items to determine any opposition, was recognized.

For clarification, Mr. Stout asked counsel whether the motion he was prepared to make should be for postponement or a continuance. Ms. Boland explained that if the motion was for a continuance, it meant that, in essence, everything that has been discussed today was part of the record in this case. She advised that a continuance was more accurate.

Chairman Brown asked if, in the event this case was continued, the objector's testimony could be heard at next month's meeting rather than today. Ms. Boland replied that the decision was up to the Chairman. She stated that, as long as the objector was given an opportunity to present his comments, it was up to the Chairman as to whether it was today or at the continuance next month.

Ms. Moore asked whether the objector, who did not identify himself, would be able to come back next month, to which he responded that he would. His comments from the audience were inaudible, after which there was a brief discussion.

Action – A motion was made by Mr. Stout for a continuance of **C-2009-14: JOY & ASSOCIATES, INC.** (a conditional use permit to construct and operate a drive-through facility for a proposed pharmacy in the Downtown Business [B-2] zone, on properties located at 366, 370, 376 and 400 East Main Street) until the May 29 meeting.

Before the motion was seconded, Mr. Stumbo commended Ms. Wiseman and her group, Mr. Gallimore and everyone involved for working hard and trying to get this plan done. He said he thought the Board could see the merits of this project, and that no one was opposed to having the much needed CVS store downtown; but the Board just wanted to have the right comfort level and the best possible outcome for all concerned. Mr. Stumbo then seconded the pending motion, which carried unanimously.

- e. **C-2009-20: KAREN C. MILLER** - appeals for a conditional use permit to provide family child care for up to 12 children, in a Single-Family Residential (R-1D) zone, on property located at 541 Mt. Tabor Road. (Council District 7)

The Staff Recommended: Approval of a conditional use for family child care for up to eight children, for the following reasons:

1. An increase of just two children, from six to eight, allowed at this family child care should not adversely affect any of the surrounding properties. Adequate parking is available in the existing driveway, and Mt. Tabor Road in the immediate vicinity is marked for on-street parking. A large back yard is already fenced for use as an outdoor play area.
2. 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. Family child care shall be provided in accordance with the submitted application and site plan, with no more than eight children to be cared for, to include the appellant's children that also require care.
2. An occupancy permit shall be obtained from the Division of Building Inspection within two months following action by the Board.
3. Prior to obtaining an occupancy permit for this use, the back yard fencing shall be improved/maintained as deemed necessary to comply with the requirements of the Division of Building Inspection.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Ms. Karen Miller, appellant, was present and indicated that she agreed with and would abide by the conditions for approval.

In response to Ms. Rackers, Ms. Miller said she understood that the number of children to be cared for was limited to 8, which would include her own two children. Ms. Miller told the Board that she has kept six children in her home for the past six years; and that she was unaware until recently that her own two children should have been included in the six child limit for an accessory use. Ms. Miller acknowledged being out of compliance, which was the reason she was coming before the Board.

Chairman Brown commented about vehicles having to back out of the applicant's driveway onto Mt. Tabor Road, which is a heavily traveled street. Chairman Brown asked Mr. Gallimore if he had any traffic safety concerns about where the applicant's property is located. Mr. Gallimore responded that, for commercial applications, they do not allow backing out onto the street by vehicles, which is not applicable to a home daycare situation. He noted that Mt. Tabor does have quite a bit of traffic, in addition to being a fairly narrow street that now is striped for bike lanes; and that a couple of stop signs have been installed, which weren't there previously, to slow down vehicles due to excessive speed in that area. Mr. Gallimore went on to say that he wasn't aware of any sight distance issues because he was unsure about the exact location of the applicant's property. He said he probably didn't really answer the Chairman's specific question; but it was noted that Traffic Engineering always advocates being able to drop off, turn around and come forward into the street. In those cases where a higher number of children is involved, he said they have asked for a turn-around pad to be installed. Mr. Gallimore said he couldn't think of anything that was that bad about Mt. Tabor in general, other than being a fairly busy street – because it is a collector street and not a local street.

Ms. Miller responded that her property is actually located in the middle of the main stretch of Mt. Tabor; and that there has not been a significant problem with cars backing out into the street during the 6 years that the day care has been operating there. She thought her property could accommodate a turn-around, if necessary, provided the driveway was widened.

With respect to the submitted site plan, Mr. Stumbo asked about the driveway being 17 feet wide when, according to the staff report, it is actually 12 feet wide. Ms. Miller replied that the driveway is 12 feet at the street and actually widens to 17 feet past the house. She apologized if the information was misleading.

Mr. Griggs shared his personal observation about the danger involved in backing out of a residential driveway onto the section of Mt. Tabor close to Richmond Road due to the nearly continuous traffic. He then asked if Mr. Hume had visited the subject property because of his concerns about the construction of two additions at the back of the house, one of which adjoins the garage. Mr. Hume replied that he had not visited this particular site; and that Building Inspection couldn't enforce anything if the additions Mr. Griggs mentioned had been there over a year.

Ms. Miller responded that building permits were obtained for the additions in question, which she said were constructed over a year ago; and that the location of the additions was determined as the result of issues with an adjoining property owner.

Action – A motion was made by Mr. Stumbo and seconded by Ms. Edwards to approve **C-2009-20: KAREN C. MILLER** (a conditional use permit to provide family child care for up to 8 children in a Single-Family Residential [R-1D] zone on property located at 541 Mt. Tabor Road) for the reasons listed by the staff; subject to the three conditions listed by the staff; and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

The votes were as follows:

Ayes: Edwards, Stout, Moore, Brown, Stumbo

Nays: Griggs, Meyer

The motion for approval carried, 5 to 2.

- f. **C-2009-21: CARRIAGE STATION FARM, INC.** - appeals for a conditional use permit to construct and operate an under-roof horse riding arena, open on all sides, in the Agricultural-Rural

(A-R) zone, on property located at 4470 Old Frankfort Pike. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The covered riding and training arena will be located at the rear of the property, over 2,000 feet away from Old Frankfort Pike. Noise and traffic disturbances are not anticipated due to the private nature of the horse riding and training activities that will be taking place.
2. All necessary public facilities and services are available and adequate for the proposed use, and sewage treatment and garbage pick-up will be handled privately.

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

1. The covered riding and training arena shall be built and operated 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.
3. 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.
4. The existing septic system intended to serve this facility shall be inspected by the Fayette County Department of Health, and upgraded as necessary to comply with their requirements.
5. The facility shall be used for private horse riding and training purposes only, with no public events such as riding shows.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

At this point, Ms. Meyer announced that she would be disqualifying herself from this case (because her husband is Ms. Bollinger's insurance agent).

Mr. Marx noted the amendment of Condition #3. He said the concern about the proximity of the existing riding arena at the edge of the floodplain came up during the BOA review meeting that morning; and as a precaution, the staff felt that applicable federal and state permitting requirements regarding the floodplain area should be addressed. Therefore, Condition #3 was amended as follows: A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, and evidence of compliance with State and Federal permitting requirements related to the proximity of the floodplain shall be obtained, subject to acceptance by the Division of Engineering.

Representation – Ms. Jessica Bollinger was present and indicated, when asked, that she agreed with and would abide by all the conditions for approval. She noted that the riding arena has been at this location for 20 years; and that they wanted to build a cover for it without walls. Ms. Bollinger also said that the Steel Run Creek runs adjacent to the field where the arena is located, but it has never come up to or entered the arena.

Action – A motion was made by Ms. Edwards, seconded by Ms. Moore, and carried unanimously (Meyer abstaining) to approve **C-2009-21: CARRIAGE STATION FARM, INC.** (a conditional use permit to construct and operate an under-roof horse riding arena, open on all sides, in the Agricultural-Rural [A-R] zone on property located at 4470 Old Frankfort Pike) for the reasons listed by the staff; subject to the five conditions listed by the staff, including the amendment of Condition #3 as noted herein; and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- g. **C-2009-24: JASON SHEER** - appeals for a conditional use permit to amend a previously imposed limit on seating at a restaurant with live entertainment, in a Neighborhood Business (B-1) zone, on property located at 303 South Limestone Street. (Council District 3)

The Staff Recommended: Approval, for the following reasons:

1. Eliminating the seating restriction for this conditional use permit should not adversely affect the subject or surrounding properties. Adjoining and nearby properties are primarily

commercial in nature, and are not expected to be disturbed by any increase in seating at this facility. Adequate off-street parking will be provided, subject to verification by the Division of Building Inspection that additional parking has been obtained off site.

2. 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. Any increase in seating at this location shall be provided in a manner that is consistent with the amended Final Development Plan for the subject property, as approved by the Planning Commission.
2. An amended occupancy permit shall be obtained from the Division of Building Inspection prior to increasing seating at this establishment, with that permit to reflect future seating limitations based on the extent of parking to be provided off site (as verified by Building Inspection) in addition to other factors normally considered, such as fire and emergency response.
3. An amended development plan shall be filed with the Division of Planning if the seating at this location exceeds 90.

Chairman Brown asked whether or not there were objectors present to the subject appeal. There was no response; therefore, photos of the subject property were not presented.

Representation – Mr. Andrew Moore, with EOP Architects, was present on the appellant's behalf. He spoke about having come to the Board for a conditional use permit last September to allow live entertainment at the Tin Roof restaurant, which was granted with the stipulation that limited seating to no more than 72 persons. He stated that the Board was asked at that time to delete the condition in question, which they were in agreement with since the Final Development Plan for the subject property was going to be amended (subject to review and approval by the Planning Commission); however, the motion for approval did not include any reference to deleting that condition. As a result, they were unable to get a final certificate of occupancy from Building Inspection because the seating capacity exceeded the 72-person limit.

Mr. Moore went on to say that the liquor license available for restaurants stipulates the need for 100 or more seats; and they are basically providing 100 seats. He said they have 30 parking spaces on the final amended development plan that was approved; and they are proposing to provide additional off-site parking spaces to be able to accommodate 100 seats. A signed lease agreement for the additional parking spaces will be provided to Building Inspection. Therefore, Mr. Moore formally requested the deletion of the original condition restricting the seating capacity to 72, as well as Condition #3 above, which requires an amended development plan if the seating capacity exceeds 90. He offered to provide a copy of the approved amended development plan for the Board's review.

Chairman Brown asked Mr. Hume if a certificate of occupancy would not be issued until a lease agreement for the additional parking was provided by the applicant. Mr. Hume responded that was correct. Mr. Moore added that he had spoken with Nancy Marinaro in Building Inspection; and that they have an oral agreement with UK to provide additional parking spaces at the Jersey Street lot.

Mr. Griggs asked the staff if the requested increase in seating capacity from 90 to 100 persons was a concern. Mr. Marx responded that it was not. He explained that the intent of Condition #3 was not to limit the capacity to 90, but to ensure that the development plan is further amended if the seating capacity does exceed 90.

Mr. Moore asked how the development plan should be amended to reflect this change since the additional parking will be provided off site. Mr. Marx said this is something that Mr. Sallee had looked at closely, and it was his opinion that the development plan can be amended to accommodate more than the 90 seats.

Action – A motion was made by Ms. Moore, seconded by Mr. Stumbo, and carried unanimously to approve **C-2009-24: JASON SHEER** (a conditional use permit to amend a previously imposed limit on seating at a restaurant with live entertainment in a Neighborhood Business [B-1] zone on property located at 303 South Limestone Street) for the reasons listed by the staff; subject to the three conditions listed by the staff; and based on the Certificate of Land Use Restriction attached as

an appendix to these minutes.

- B. **Transcript or Witnesses** - The Chairman 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.

None Remaining

D. **Conditional Use Appeals**

1. **CV-2009-23: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** - appeals for a conditional use permit to expand an existing church, which will involve the demolition of a residential building; and variances to: 1) increase the allowable distance between the church building and off-street parking (at Cassidy Elementary School) from 300 feet to 475 feet, and 2) eliminate the required landscape buffer for 25 feet of new driveway, in a Single-Family Residential (R-1D) zone, on property located at 920 Tates Creek Road. (Council District 3)

The Staff Recommended: Approval of the requested conditional use, for the following reasons:

- a. Granting the requested conditional use permit will not adversely affect the surrounding neighborhood. The church, as expanded, will be comparable to the size and scale of the Faith Lutheran Church situated on the opposite corner of Melrose Avenue and Tates Creek Road. Since many of the residential structures between the church property and the intersection of Sunset Avenue and Tates Creek Road are two stories in height already, the relatively large increase proposed for this church will still not be out of character with these long-established residential uses to the north of this site.
- b. The proposed church expansion has been designed appropriately from an architectural and site design perspective, with at least a 3' landscape buffer to be provided in most areas between the church and adjoining residential properties to the north and west. Provisions have been made to accommodate pedestrian traffic from the sidewalk along Melrose Avenue to the new church entrance at the rear of the property.
- c. Existing storm and sanitary sewers are available to the church property, and other public facilities are available and adequate to serve this congregation.

The Staff Recommended: Approval of the requested parking distance variance, for the following reasons:

- a. Although a dimensional variance is not needed to continue use of the Cassidy Elementary School parking lot (and loop drive) some 475' away from the church building, and is "grandfathered" to the extent that it supports the activities at the existing church constructed over fifty years ago, it is necessary to allow the increase in sanctuary seating now proposed.
- b. Strict application of the Zoning Ordinance would require that a closer site be obtained to provide alternative off-street parking, which would possibly require demolition of 50+ year old home(s), or that the size of the expansion be significantly reduced to allow for more off-street parking on site.

Such a substantial reduction would not be feasible in a way that will not affect their worship, creating an unnecessary hardship to this congregation.

- c. The variance will not adversely affect the public health, safety or welfare, nor alter the character of this vicinity since a complete and adequate sidewalk system exists from the parking area at Cassidy Elementary School to the front and rear doors of the church, served by a signalized intersection at Hart Road and Tates Creek Road (with a crosswalk) to allow safe pedestrian movements along this 475' distance.
- d. This variance will not result in an unreasonable circumvention of the Zoning Ordinance, and is the result of special circumstances not generally found with other properties in this area, since the church was originally permitted at this location without off-street parking some 50 years ago, and since the on-street and off-street parking conditions will result in a continuation of the status-quo.
- e. The variance is not a direct result of actions by the church since its original construction years ago.

The Staff Recommended: Approval of the requested landscape variance, for the following reasons:

- a. Granting such a limited variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The variance will only apply to a short 25' section of the rear property line, with a 6' tall privacy fence to be provided.
- b. The unusual 4' offset in the rear property line where the variance is now requested is a special circumstance unique to the site that has constrained the design of the proposed access drive and off-street parking area for this church expansion.
- c. Strict application of the Zoning Ordinance would require that the 3' wide landscape buffer be provided continuously around the 4' offset in the rear property line, which would in turn force the appellant to shift the proposed access drive inward on the lot, and reduce the amount of off-street parking that can be provided. Such a shift is possible, but would also result in a less desirable connection between the existing church building and the proposed addition.
- d. The primary circumstance surrounding this variance request is the manner in which the alignment of the rear lot line was originally created many years ago, which was not under the control of the appellant.

These recommendations of approval are made subject to the following conditions:

- 1. The expansion shall take place in accordance with the submitted application and site plan, or as amended to satisfy the requirements of the Division of Traffic Engineering.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to any demolition and construction.
- 3. The expanded church shall provide sanctuary seating for no more than 124 persons.
- 4. The final design of the loop drive and three off-street parking spaces shall be subject to review and approval by the Division of Traffic Engineering.
- 5. A minimum of 22 off-street parking spaces for church use shall be leased off site, or shared through a joint parking agreement, with at least six of those spaces to be located in front of Cassidy Elementary School. Any such leasing or shared parking agreement shall be subject to review and approval by the Division of Building Inspection.
- 6. The agreement with Cassidy Elementary School for shared parking shall be amended, in a manner acceptable to the Division of Building Inspection, to reflect use of the parking area in front of the school in addition to the parking lot to the rear of the school.
- 7. 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.
- 8. Any new outdoor lighting associated with the proposed additions shall be directed downward and away from neighboring property to the north, east or west of this site.

Representation – Mr. Scott Pennington, attorney, was present on behalf of the church. In review, he stated that the last time they appeared before the Board, in December 2008, there was a 3 to 3 deadlock; and that the staff's recommendation was for approval then as now. However, there were concerns expressed by the Board about parking. He said, since that time, they had worked hard to resolve the issues of concern and had taken the recommendations that were made into account with regard to their current plan.

Mr. Alex Christoforidis, project architect, was present. He said there were a few critical points that should be made. He said they had made some slight physical changes to the plan that was proposed in December, as well as some behavioral changes within the community, including communicating with members of the parish and making them aware of other available options for parking, which has alleviated

much of the pressure of the on-street parking. Third, there was an agreement with the Faith Lutheran Church (located across the street) to allow the use of six parking spaces within 300 feet of the entrance to the Greek Orthodox Church. He said these are the three points he felt should be made to answer the concerns that they heard last December, noting the main concern seemed to be alleviating the parking strain on the neighborhood.

Referring to the site plan displayed on the overhead, Mr. Christoforidis spoke about the physical design, noting that Dr. Karounos would speak about the initiatives the community had taken at the suggestion of some of the Board members. In terms of the physical plan, he felt it was important to compare the proposed situation versus the current situation. Regarding the current site plan, he indicated where three on-site parking spaces, one of which is van accessible, are located off Melrose. He said this is a safe, off-street drop-off area, which they currently do not have. He explained that after going through the drop-off area, a vehicle can go through the (new) driveway where there is a permanent sign directing churchgoers to the off-street parking area at Cassidy School. He said they were going from 7 off-street parking spaces to 3, which is a reduction; however, 6 spaces within 300 feet will be provided at the Faith Lutheran Church across the street.

Mr. Griggs noted that according to the staff report, the 6 parking spaces at the Faith Lutheran can be utilized by parishioners of the Greek Orthodox Church if they are available.

Continuing, Mr. Christoforidis referred to a plan of the current situation, depicting the church, parish house and room for 7 parking spaces (which are not marked on the lot). He said it does not provide a drop-off area; there is no handicap-accessible space on site; and there is no easy way to get from those (7) spaces to the front door of the church. He said the proposed plan alleviates the over-all parking picture.

Dr. Dennis Karounos, Vice President of the Parish Council and Building Committee Chair, was present. Referring to a rendering showing the street level of the church, he said the new church addition was designed to be complementary and in keeping with the existing structures in the neighborhood (i.e., porches and roof lines). He said one good suggestion they received at the December 12 hearing was to ask the parishioners to sign parking pledges (with respect to the off-site parking arrangement at Cassidy School). He noted that the Greek Orthodox Church has been at this location since 1948, when parking on site was not required; and that they have relied 100% on on-street parking. He spoke about how the parishioners have been strongly encouraged to walk from Cassidy Elementary School to the church, rather than parking along Melrose and other neighboring streets. Dr. Karounos spoke about the distance parishioners currently walk when they have Palm Sunday services with the maximum number of 40 cars parking at Melrose and Kastle, which is 900 feet from the church; however, the distance to the church from the corner of Cassidy is 445 feet. The distances were measured and confirmed by a professional appraiser (Marshall Estep, Estep & Company) and Google maps. He said, clearly, that someone would walk twice the distance by parking at the end of Melrose on a busy Sunday rather than at Cassidy. He said not only can you park on the front drive at Cassidy, but the back lot as well. It was noted that Hart Road along Cassidy's property line allows parking on weekends (but not during the week when school is in session); and that about 455 feet of on-street parking is available there with only three houses across from that. It is enough to accommodate 22 cars on Sunday, which will almost accommodate the entire church congregation, since on average they have 29 cars each Sunday.

Dr. Karounos talked about the parking pledge (copy shown) that parishioners were asked to sign agreeing to park at Cassidy Elementary School and volunteering to drive the shuttle (in inclement weather). 40% of the parishioners signed the pledge to park at Cassidy and walk to church. He noted that the lot at 918 Bates Creek (next to the church) was closed on August 1, 2008 and has not been used since then. Parking surveys were conducted in February, March and April to document the number of parishioners that attend Sunday services; the number of cars that are driven to the church; and the location where the cars are parked. In response to an objector's previous comment that 75 cars were observed on one occasion, Dr. Karounos argued that, on average, there were only 29 cars driven to the church each week, for an average attendance of 75 parishioners. He reiterated that 40% of the parishioners are parking at Cassidy, walking or taking alternative transportation to the church on a consistent basis, despite inclement weather conditions (i.e., cold temperatures, ice storm, etc.). A parking decal was developed to identify the parishioners' vehicles, and photos were taken to verify that the data of the cars parking in these areas was correct. A photo was shown to document the number of church members attending Sunday services. The survey, which was voluntary, had 90% participation.

Mr. Stumbo asked why only 40% of the parishioners were willing to sign the parking pledge if there was 90% participation in the survey. Dr. Karounos said he thought if you looked at their community, maybe one-third of the parishioners are retired, have had knee or hip replacements, and are elderly, or are families with small children. He reiterated that the survey was done on a voluntary basis. The 40% far exceeds the number of spaces that they have to gain because of their small seating increase in capacity. Mr. Stumbo said he recognized that they have some older parishioners; however, knowing the parking has been a major issue during the (previous) hearings before the Board, he thought it would a little bit higher than 40%.

Mr. Pennington responded that they weren't trying to get to a situation where everyone was parking at Cassidy and the street was clear during their services. They thought the Board was interested in at least making up the difference and then some of what the parking situation is now. He said they weren't really trying to herd people into Cassidy, but were asking them to voluntarily do this, which would help the situation with the Board. He said if the Board wants them to keep the street(s) clear, they could go back and tell the parishioners they have to park at Cassidy; but he thought 40% participation on a voluntary basis was pretty good.

Mr. Stumbo said he thought the parking situation along Melrose was one of the issues discussed previously. Dr. Karounos responded that they've always parked on Melrose, and that he thought the concern was not to exacerbate traffic problems by having increased parking on Melrose. He said since their parishioners have been parking at Cassidy, there actually have been fewer cars parked on Melrose. He also noted that Faith Lutheran's services start at 8:30 a.m., and some of their congregation also parks on Melrose. Faith Lutheran has a later service. There is a gap between the two services, and they do have spaces available when the 10:00 a.m. service starts at the Greek Orthodox Church.

Mr. Stumbo noted another concern he had about the availability of the 6 parking spaces to be provided on Sunday at Faith Lutheran for those persons attending service at the Greek Orthodox Church. He said he appreciated that Faith Lutheran could provide the spaces; however, he asked about the odds of those parking spaces actually being available when Faith Lutheran begins services at 8:30 a.m. Dr. Karounos reiterated that the Sunday services at the Greek Orthodox Church begin at 10:00 a.m., which would allow a "window" where the spaces are available between services.

Chairman Brown inquired about possibly utilizing the property at 912 Bates Creek, a couple of doors down, to provide some parking, which was mentioned previously in the staff report. Dr. Karounos responded that the church does own the property at 912 Bates Creek, and they had discussed with staff the possibility of utilizing that property for parking. However, he said it would be necessary to pursue a zone change in order to provide the parking because there is a lot located between the two lots owned by the church. Dr. Karounos explained that the house at 912 Bates Creek was renovated and is being rented out to generate income for the church's building fund; and that they would rather not make such a drastic change (as far as putting a parking lot there).

At this point, photos were shown of the parishioners' cars parked at the rear of Cassidy; the parking decal provided to identify vehicles belonging to parishioners of the Greek Orthodox Church; a view of the on-street parking along Melrose on Sunday, including cars of Faith Lutheran churchgoers, before and after services (when majority of vehicles are off the street by 2:00 p.m.); and the amount of parking available adjacent to Cassidy on Hart Road (455 feet) on weekends, which can accommodate about 22 cars. Dr. Karounos reiterated that he thought the survey results demonstrated the willingness of their parishioners to utilize the off-site parking at Cassidy. In closing, he said they are interested in community support (regarding the church expansion). He mentioned that a third open house was held on April 11 (in response to a previous comment from an audience member that they hadn't seen any notification about the church's open house). Postcards were sent to the property owners in the (400-foot) notification area. Those attending the open house signed a letter of support. The church has tried to be a good steward of the neighborhood. The (new) plans have been on display at the church. Dr. Karounos reiterated that, based on the survey documents, the remote parking can work, since they've been doing it for 8 months; and it is a viable plan that can accommodate any extra spaces the church needs for its expansion project. Most importantly, this expansion would provide access for all the parishioners to attend services. This design, which is the eighth variation over the last eight years, with the input of Traffic Engineering, is much better in terms of dropping off people and general flow. It also enhances the community, giving them the proper space to worship as Orthodox Christians, and lets all the parishioners attend services. In closing, he asked for the Board's support of this appeal.

Mr. Pennington commented about the church's property at 912 Bates Creek Road. He said they couldn't guarantee anything about the property right now (in terms of utilizing it for parking purposes); but he said the idea wasn't totally off the table for the future. There has been some discussion about possibly entering some type of agreement and deed with the person who owns the intervening property, which might allow them to consider it one continuous property. He said it's not totally out of the question, but it's not something they can come forward and say they're going to do right now.

(The meeting was recessed at 3:26 p.m., and reconvened at 3:37 p.m.)

Opposition – Ms. Amy Clark, who resides at 628 Kastle Road (a block away from the church), was present. She said she had sympathy for the church and wanted to see it grow and thrive in the community, but she felt the church's expansion plans may be too hard on the community. In addition, there's a lot the neighborhood is already putting up with, in terms of traffic, that no one has said anything about. She said she wanted to support the church in all its endeavors, which included more (worship) space, handicap access, an eastern orientation for the new building and preserving the heritage of the existing church building. She briefly spoke about the history of the Greek Orthodox Church with respect to the design and revisions of the building expansion, beginning with a rendering from 2006 that was shown on the overhead (i.e., new sanctuary on the corner; parish house preserved; connecting Byzantine arches; consolidated lots; the design had the advantage of putting the mass and scale nearest the widest street and on the outer edge of the consolidated lot), as well as the rendering from 2009 (i.e., original church preserved; new sanctuary adjacent to existing church on inner part of the lot; loop drive and parking behind the new church). She related her concern about the mass and scale of the proposed structure as it relates to the surrounding neighborhood; that the building footprint would be doubled to accommodate the increase in sanctuary seating to 124; that green space would be lost due to paving for the loop drive and parking; and that the solid building mass would encroach into the front yard when the rest of the street front has open porches. She questioned whether the proposed expansion would be detrimental to the neighborhood, noting this was a lot of building in a limited amount of space. Referring to a rendering showing the elevation, she said the first story of the new part of the structure (sanctuary) sets the eave/roof line higher than the second story of the neighboring house.

Ms. Clark said the proposed structure is unique in the neighborhood in terms of the height, width, depth, lot coverage and floor area (mass and scale). The other concern she addressed was the on-street parking and safety issues related to churchgoers being dropped off on the street near the church entrance (as shown on the applicant's photo sheet). She said parking already renders the church a nonconforming use and creates a nuisance and danger on the neighboring streets due to the crowded parking condition. She didn't believe there was any evidence offered that the church may actually have a valid contract for shared parking with Cassidy School; and that the school administration had no knowledge of the church's proposed parking agreement. The church is a permitted conditional use in the R-1D zone; however, the parking is nonconforming. Referring to Article 4-3(a) of the Zoning Ordinance, she said nonconforming uses are those uses that would be otherwise permitted in the zone, like a church; but they do not meet the requirements associated with such uses, e.g., parking, open space and the like. With the present sanctuary seating at 110, the church offered until recently about 7 or 10 of the requisite 22 on-site parking spaces at the rear of the adjacent parish house; but for several months, since August, that parking area has been blocked off. The 7 spaces are proposed to be reduced to about 3. Now the church is requesting a conditional use permit to expand the structure and to increase its sanctuary seating to 124, which is counter to the intent of the Zoning Ordinance (e.g., not to encourage the survival of nonconformities; and that nonconformities not be enlarged or extended beyond the scope and area of their operation at the time of the Zoning Ordinance adoption).

Ms. Clark also expressed concern about the distance from the off-site parking area at Cassidy to the church, noting that the variance request is to increase the allowable (walking) distance to the front of Cassidy; which, according to the GIS measured distance, was around 600 feet instead of 475 feet as requested. Past experience has shown that even people who can and wish to park at a distance beyond 300 feet, like the church members, will regularly choose not to do so.

At this point, Ms. Clark spoke about the building line reduction from 35 feet to 30 feet that was recently granted by the Planning Commission. A copy of the original Hollywood Terrace plat was shown on the overhead, as well as the deed for the subject and adjacent properties. The deed specifies that the front wall of any building erected in the Hollywood Terrace subdivision shall not be closer than 35 feet to the

front property line of lots fronting on East High Street (now Tate's Creek) and not closer than 30 feet for nearly all the other lots in the neighborhood. She said she preferred not to see the building line altered for this single new structure because it would not be aligned with other neighboring structures. Photos were shown of the church property and adjoining residential properties on the block to illustrate the uniformity in the setbacks of the structures. She also noted, with regard to the rear lot line and the associated landscaping variance request approved by the Landscape Review Committee, that it was important to preserve a landscape buffer for the property located directly behind the church on Melrose.

Ms. Clark then spoke on behalf of a number of concerned property owners in the neighborhood who had submitted letters and spoken at previous meetings regarding the proposed church expansion, but who were unable to attend today's hearing. She asked the Board to consider whether this conditional use has a detrimental effect on neighboring properties; whether this is cramming a use into a space; and whether the parking is wishful thinking or a realistic long-term and permanent plan. She thanked the church for working very hard and trying to resolve the issues of concern, as well as the Board for listening.

Rebuttal - Dr. Karounos responded that there are fewer of their parishioners' cars parking on Melrose (as photos and the parking survey indicated), due to the program that was initiated to promote off-site parking at both Cassidy and the Faith Lutheran Church across the street. This has improved the crowded parking situation in the neighborhood. With respect to the conditional use, he pointed out that the church has been utilizing on-street parking since 1948; and if they were not allowed to expand, as Faith Lutheran did, it would be like letting the larger church push them out. He concurred with Ms. Clarke that unloading churchgoers in the street is a traffic hazard, which they are trying to address, with the help of Traffic Engineering, by constructing a paved drive that can be used for drop-off and pick-up purposes to eliminate that problem. He said the Planning Commission approved the change in the setback from 35 feet to 30 feet, which was partly to accommodate the proposed driveway for handicap parking and deliveries. In looking at the porch lines and roof lines, the church's is consistent with the existing houses. As far as the height of the area where weddings and other ceremonies are performed (the solea, located near the dome), this is the only area that is raised up. The remainder of the church is the same height as any other two-story structure in the immediate vicinity. He said that, based on feedback, the scale of the whole project has been reduced since the original proposal was presented in April 2008. It was his opinion that the scale was not an issue.

Regarding the issue of scale and mass, Mr. Christoforidis said he thought that because they were looking at a perspective drawing and because the church is closer than the houses in the drawing, it made the houses look smaller. He noted that the actual height difference between the roofline/eave of the church and the house next door is only 3 feet (the church is 20 feet and the house next door is 17 feet).

Chairman Brown commented that he viewed the dome as their version of a steeple. He also said he saw Mr. Christoforidis' point – that the true roofline is not much different than the adjacent houses.

Dr. Karounos noted, with respect to the comment that neighbors didn't have a chance to see the plan until right now and make comment, that they had held three open houses. There was a sign posted in front of the church for 10 days announcing the April 11th open house, and letters were sent to neighbors within the conditional use notification area. They also had the drawings and a sign up during the church bake sale. He said they had given people plenty of opportunity to look at this in detail; and they were reassured that there wasn't a problem. As far as the landscape variance, he said Mrs. (Mary) Reed lives in the house adjacent to the rear of the property line; and that he personally went to visit her to discuss the plan, which she verbally supported. He said the statement about 70 cars was not true, and they have (on average) 29 cars driven to the church each week, for an average attendance of 75 parishioners. He said there was a letter in the packet from the principal of Cassidy Elementary School that granted permission to the Greek Orthodox Church to park there. He also reiterated that Hart Road is fully open, and they could park there without having to have any administrative approval from anyone. He reiterated that the Planning Commission approved the change in setback from 35 to 30 feet. He said he didn't think they were cramming the church on the site and had scaled back the drawing considerably. He said this proposed church expansion would be an enhancement to the community; and he thought any parishioner that has special needs would now be able to attend services. He said they have been good neighbors; the church is beautiful and well kept; and 95 percent of the time, there are no cars there at all. He also said they were very helpful to the community and an enhancement as well; and they had received numerous letters of support. He asked the Board for its favorable consideration of the proposal.

Supporter – Mr. Ed Brown, who resides at 712 Mt. Vernon Drive, was present to express his wholehearted support of the proposed church expansion. He noted being the incoming co-president of the neighborhood association, and has been on the Board for the last 22 years. He said he was present to support the Greek Orthodox Church because they are good neighbors. He said if obstacles keep being put in their way, they will go elsewhere. He concurred with Dr. Karounos' statement that 95% of the time, they are not there. As to the complaint about parking, he said most of the churches in Lexington are nonconforming with regard to parking; and that most of them don't have the parking (percentage-wise) that the Greek Orthodox Church has. It was his opinion that this parking was better than some of the mega-churches in confined areas. As far as nonconforming parking, he said this church was built before the zoning laws were in effect and they should not be penalized for that. He said he wouldn't have a problem with the church being located next door to his property and would welcome it, adding that he liked the expansion plan. He asked for the Board's approval of the church's proposal.

Mr. Griggs asked Mr. Gallimore to comment. Mr. Gallimore noted having to disagree with the previous speaker that the Greek Orthodox Church is more in conformance with the parking requirements than most other churches. He said the churches that are constructed now must meet the parking guidelines (1 space for every 5 seats) and do not have off-street parking agreements; and that most other churches have on-site parking which, he acknowledged, didn't mean there wasn't overflow parking on the street. In his opinion, it was a misstatement that other churches do not meet the parking requirements, otherwise their plan would not be approved by Traffic Engineering. Secondly, he said there seems to be a disagreement as to whether there's a problem with on-street parking. He said he tries to keep in mind that this expansion will create a higher parking demand, even if they are not increasing the number of sanctuary seats, because of the increase in usage of the church for other functions during the week. He said he liked the idea of the pledge to park in the Cassidy lot, but he didn't know if people would hold up to that pledge; and he didn't know if the pledge covers "non-church type applications". If it doesn't, maybe it could be amended to do so. Mr. Gallimore then said the proposed parking area itself has not changed that much from what the Board has seen previously. He reiterated that it is still extremely tight – a 12-foot loop with a building on one side of it is pretty encumbering for larger vehicles with mirrors; however, he said he had reached the point where he could approve that. He also noted that right now, the Cassidy school parking lot is under construction, and that he thought only the front parking lot was involved and people could still park in the back parking lot. He said Cassidy is going through a major renovation, and there may be some interruption in the church's off-site parking scenario.

Mr. Gallimore went on to say that he didn't think much had changed, in his opinion, from the last time he spoke about this; and that if the Board wanted him to reiterate anything, he would be glad to offer those comments again.

Mr. Stout asked (without Mr. Gallimore rehashing what they've been through several times with the church), if this was a good or bad idea. Mr. Gallimore reiterated that the lot is tight, and that he had given the church fair warning that if there are issues inside on property, it will be their problem to handle. He said that the biggest concern still is whether this proposed expansion will overwhelm the neighborhood. He said it seems like they've heard several variations as to whether or not off-site parking is going to be an issue. He commented about the advantages and disadvantages of residential parking, including the cost, guest pass and the actual process regarding the feasibility of residential parking. He noted having talked about striping "no parking" areas on the street also. He reiterated that his biggest concern is if this will overwhelm the neighborhood, with regard to cars. He said, personally, he would rather see more parking off-site than on the street.

Mr. Stout said he has been around a long time and has listened to parking concerns involving both on- and off-street parking. He also has driven downtown when Rupp Arena is active and has never heard anyone complaining about getting out of their car on the street when there's a basketball or football game. He thought it was unfair to the church, unless there was a real reason as to why this couldn't be worked out; and it was unfair for them to sit in judgment over the parking issue. He noted having more concern about the construction aspect of this project than the parking issue, because the parking issue was not a day-to-day concern; but rather, a Sunday issue or a church special activity issue.

Mr. Griggs disagreed with Mr. Stout, saying he thought that ball games for a couple of months were less intrusive than 52 weeks a year, plus bake sales, weddings, special meetings and kids' activities. He felt this neighborhood was overwhelmed already. He said what bothered him most was the danger from the

cars not being able to see pulling out onto Tates Creek Road, when the cars on Tates Creek are going 40-45 mph.

Dr. Karounos responded, with regard to Mr. Gallimore's comment, that the parishioners have consistently been parking at Cassidy, as documented in the surveys, and would continue to do so. He reiterated that the distance measured to park on Kastle (near Ms. Clark's house) is 955 feet from the front door of the church; to the front drive of Cassidy is 476 feet; and to the back driveway is 640 feet. He said it was actually much closer to park at Cassidy and much easier to get in and out, which is what the parishioners are doing; and that they are trying to get more people to participate. A Google map was submitted to show the actual distance from the church to the off-site locations noted and as supportive documentation.

Mr. Pennington spoke regarding the comment about the 40% participation of the parishioners parking at Cassidy. He said he was taken aback by that, because the last time they were here, one of the Board members stated that they just didn't want to make the problem worse; and if the Board was shown something that would not exacerbate the problem, they would consider it. He said they would have an increase of three on-site spaces with this plan; and they have (on average) at least 10 people parking at Cassidy now. He said he didn't think that argument still existed. Mr. Pennington went on to say they could try to get 80% of the parishioners parking at Cassidy and have nothing of any substance on the street; but that was not their understanding from the last meeting. With that, he asked the Board to approve their plan.

Ms. Edwards asked, because these are public streets, unless parking is prohibited, why anyone would not be able to park there.

Dr. Karounos said he failed to point out that the 40% of the cars parking there consists of families with 4 to 5 people per car. He said a large number of the parishioners are actually parking at Cassidy, and this far exceeds the three extra spaces they need for the expansion of the church seating.

Ms. Meyer commented that the parking is on everyone's mind right now; but there was no guarantee that a year from now the parishioners are still going to park at Cassidy. She said what the church has done is admirable, but they cannot predict future behavior regarding the parking.

Dr. Karounos commented that they would continue to reinforce and educate people; and when people make a pledge, they mean it.

Mr. Pennington said he wasn't sure there was anything else they could do to alleviate the Board's concern about the parking, other than a condition to maintain the program to keep people at Cassidy, which he said they didn't have a problem with at all. He wasn't sure there was any way to actually ensure that, to everyone's satisfaction, other than the fact that they have a track record of several months of having done it.

After determining that there were no further questions or discussion, Chairman Brown called for a motion.

Action – A motion was made by Ms. Edwards and seconded by Mr. Stout to approve **CV-2009-23: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** (a conditional use permit to expand an existing church, which will involve the demolition of a residential building; and variances to 1] to increase the allowable distance between the church building and off-street parking [at Cassidy Elementary School] from 300 feet to 475 feet, and 2] eliminate the required landscape buffer for 25 feet of new driveway in a Single-Family Residential [R-1D] zone on property located at 920 Tates Creek Road) for the reasons listed by the staff and subject to the 8 conditions listed by the staff.

The votes were as follows:

Ayes: Edwards, Stout, Moore

Nays: Griggs, Meyer, Stumbo, Brown

The motion for approval failed, 3 to 4.

Mr. Stumbo remarked that this was one of the toughest decisions he has had to make since being appointed to the Board. However, he said with the additional traffic problems that might lead to public safety problems, and adding almost an additional 3,000 square feet to existing space, he thought it was too much for the amount of property that the church has. He said it has been a very, very difficult decision for all the Board members and he wished the church nothing but the very best.

Dr. Karounos commented that, as far as the conditional use, if the Board was going to hold the church to that standard, to look at Christ the King and Good Shepherd and the number of cars parked on the street there. He noted having taken photos before and after services at both locations, and there were many more cars parked on the street in these neighborhoods every Sunday. He said the Board was holding them to a much higher standard than these other churches that are within two miles of their church, which he found very difficult to accept.

Mr. Griggs asked counsel if a motion was needed for disapproval of this appeal. Ms. Boland responded that another motion could certainly be made, because no action has been taken at this point. Mr. Griggs explained that no action meant that the church could come back in a month if they desired to do so, with which Ms. Boland concurred. She said that basically, the reason they were back here again was because there was no disapproval last time with two tied votes.

Action – A motion was made by Mr. Griggs to deny **CV-2009-23: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** (a conditional use permit to expand an existing church, which will involve the demolition of a residential building; and variances to: 1] increase the allowable distance between the church building and off-street parking [at Cassidy Elementary School] from 300 feet to 475 feet, and 2] eliminate the required landscape buffer for 25 feet of new driveway in a Single-Family Residential [R-1D] zone on property located at 920 Tates Creek Road) based on the following findings for disapproval:

1. The proposed project is too intensive for this site, providing only 3 to 4 parking spaces on site for a use that requires 25 spaces.
2. Currently, off-site parking is located at least 475 feet away from the property, as measured to the closest parking at the front of Cassidy School where only 8 spaces are available. The remaining required parking is located to the rear of the school much farther away. That is two times the distance authorized by the Zoning Ordinance for a joint parking agreement. It is unrealistic to believe that such parking will be regularly used by the parishioners. Therefore, to allow this expansion and to grant this variance would create an adverse impact on surrounding properties due to the excessive on-street parking.
3. Currently, parking at the off-site location is grandfathered in. If considered today, allowing parking more than 50% and as much as 300% farther away than ordinarily permitted would have an adverse impact on surrounding properties and alter the character of the neighborhood by causing intensive on-street parking. Therefore, without a variance, the proposed addition requiring 3 more parking spaces would increase the current nonconformity in the church parking.

The motion for disapproval was seconded by Ms. Meyer. The votes were as follows:

Ayes: Griggs, Meyer, Stumbo, Brown

Nays: Edwards, Stout, Moore

The motion for disapproval carried, 4 to 3.

E. **Administrative Review**

None Remaining

IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time. There were none.

V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this

time.

Mr. Hume requested that a revocation hearing be scheduled for the Episcopal Diocese of Lexington, located at 203 E. Fourth Street, for failure to install the required parking.

Action – A motion was made by Ms. Moore, seconded by Mr. Stumbo, and carried unanimously to have a revocation hearing next month for the Episcopal Diocese.

VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be May 29, 2009.

VI. **ADJOURNMENT** - Since there was no further business, the Chairman declared the meeting adjourned at 4:39 p.m.

Peter Brown, Chairman

James Griggs, Secretary