

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

April 25, 2008

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on April 25, 2008. Members present were Chairman Mike Owens, Carolyn Edwards, James Griggs, Louis Stout, Joanne Bell and Barry Stumbo. Member Kathryn Moore was absent. Others present were John Bryant and George Dillon of the Division of Building Inspection; Barry Brock of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; and Rochelle Boland of the Department of Law. Staff members in attendance were Jim Marx, Barbara Rackers and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the July 27, 2007 meeting would be considered at this time.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Moore absent) to approve the minutes of the July 27, 2007 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. **V-2008-40: REV. and MRS. GEORGE NAZE** - appeal for variances to: 1) reduce the required rear yard from 10 feet to 5.5 feet, and 2) reduce the side yard from 5 feet to 0 feet, to allow a sunroom and deck to remain as built in a Planned Neighborhood Residential (R-3) zone, on property located at 319 Retrac Road. (Council District 9)

The Staff Recommended: Disapproval, for the following reasons:

1. There are no special circumstances unique to the subject property sufficient to justify a 50% reduction in the required rear yard (for the sunroom) and elimination of the 5' side yard requirement (for the elevated deck).
2. Absent any compelling circumstances to justify the requested variances, approval would have broad applicability to virtually all of the 50+ lots (along Retrac Road and Winthrop Road) that have rear yards backing up to Shillito Park. This could lead to a widespread circumvention of the requirements of the Zoning Ordinance.
3. Strict application of the Zoning Ordinance will not deprive the appellants reasonable use of their property or create an unnecessary hardship. This portion of the subdivision was designed with few opportunities for substantial rear yard improvements, due to the small size and limited depth of the lots, and the presence of a 15' wide utility easement along the rear property lines. Any hardship associated with having to remove the unauthorized improvements is the result of the remodeler/builder hired by the appellants not obtaining a building permit prior to construction.

Representation – Mr. Phil Moloney, attorney, was present on the appellants' behalf to request a 30-day postponement of the subject appeal. He explained to the Board that they are still in the process of finding out where the affected utility easements are located, as well as trying to contact the builder of the deck in question.

Action – A motion was made by Mr. Stout, and seconded by Ms. Edwards to postpone **V-2008-40: REV. and MRS. GEORGE NAZE** until the May 30 meeting.

At this point, Chairman Owens asked if there was anyone present who wished to speak in regard to this case, or who was opposed to the requested postponement.

Mr. Song Kim, the property owner at 315 Retrac Road, was present and spoke. He related to the Board that the steps to the appellants' covered porch actually encroach on his property; and that he asked to have the side steps removed after having discussed this issue with the appellants. Mr. Kim also felt that the value of his property would be lowered due to the extension of the steps, of about 2 feet, into his yard. A letter to that effect was submitted to the staff.

In response to the Chairman, Mr. Kim said he had no objection to the requested postponement.

The pending motion for postponement carried unanimously (Moore absent).

- b. **C-2008-33: PULL-A-PART** - appeals for a conditional use permit to establish an auto salvage yard in a Heavy Industrial (I-2) zone, on properties located at 1501 and 1631 Old Frankfort Pike. (Council District 2)

The Staff Recommended: Postponement, for the following reasons:

1. Additional time is needed for the appellant to finalize plans for an alternative access to Old Frankfort Pike, and work out permitting issues associated with alteration of an existing rock fence.
2. Construction of a new access to Old Frankfort Pike will require that the original plans for the parking lot, building and scales be modified. Additional time will enable the appellant to amend their proposed site plan to reflect these changes.

Representation – Mr. Matt Carter, with Vision Engineering, was present representing the appellant and requested a one-month postponement of the subject appeal.

Mr. Griggs asked whether the staff's case report for next month's meeting would address environmental and economic impact issues related to the applicant's request to establish an auto salvage yard at the former LFUCG landfill site. Mr. Marx responded that it would, to a certain extent.

Ms. Boland stated that it would be up to the LFUCG to determine whether to provide information that really doesn't fall within this zoning decision or the Board's purview, including possibly hiring outside appraisers to provide economic-related information. A brief discussion followed.

Mr. Richard Murphy, attorney, was present on behalf of the Townley Park Neighborhood Association. He noted that the presidents of both the Townley Park Neighborhood Association and the Meadowthorpe Neighborhood Association also were present. Mr. Murphy stated that while neither of the associations had any objection to a postponement, they did want to request two months to allow them ample time to coordinate their schedules, meet for discussion and make a decision. He said a representative from Pull-A-Part would be coming to talk to the associations next week regarding their proposal. It was noted that since the agreement between the applicant and LFUCG was signed in June 2007 and the appeal was only brought to the Board in April 2008, there didn't appear to be a timing issue involved.

Chairman Owens inquired whether Mr. Carter would be agreeable to a 60-day postponement. Mr. Carter responded that he had only been authorized to request a 30-day postponement. The Chairman then asked whether Mr. Carter was aware of the meeting with the neighborhood associations, to which he responded affirmatively. In light of this information, Chairman Owens questioned why this had not been done previously, considering the lease was signed almost a year ago.

It was Ms. Bell's feeling that a two-month postponement was not unreasonable because

of the obvious concern. Mr. Stout concurred.

Action – A motion was made by Ms. Bell, seconded by Mr. Stout, and carried unanimously (Moore absent) to postpone **C-2008-33: PULL-A-PART** until the June 27 meeting.

- c. **C-2008-32: JOHNNY WINCHESTER** - appeals for a conditional use permit to establish a vehicle storage yard in a Light Industrial (I-1) zone, on property located at 2245 Frankfort Court. (Council District 12)

The Staff Recommended: Postponement, for the following reasons:

1. Additional time is needed for the appellant to prepare a detailed and scaled site plan describing the proposed activity and how it will interface with the existing moving and storage business. At a minimum, this plan should identify all proposed and existing structures, show the proposed layout of the vehicle storage area, and identify how access to the storage area will be maintained in conjunction with the large moving trucks and other vehicles and equipment that are used by the moving and storage company. A detailed explanation of how the existing business will be scaled back, or their operations modified, is also needed to accompany the revised site plan.
2. Additional time will also allow the appellant an opportunity to clarify exactly what types of vehicles will be stored on the property, and where the vehicles will originate.
3. In past conditional use applications for vehicle storage yards, detailed layouts for vehicle parking spaces, with drive aisles to support that parking, have been provided for review by the Board. This type of site assessment is necessary to ensure that a vehicle storage yard does not morph into a junkyard over time.

Representation – Mr. Johnny Winchester, appellant, was present and asked for a 30-day postponement of the subject appeal, in concurrence with the staff's recommendation.

Mr. Marx said the staff needed to have more details provided as to how the two uses -- the proposed vehicle storage yard and the existing moving and storage business -- will be undertaken on this single property. Mr. Winchester expressed his willingness to work with the staff in order to address this issue.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Griggs, and carried unanimously (Moore absent) to postpone **C-2008-32: JOHNNY WINCHESTER** until the May 30 meeting.

- d. **C-2008-31: SONJA GREGORY** - appeals for a conditional use permit to establish a school for academic instruction, on the same property as an existing commercial greenhouse, in an Agricultural-Urban (A-U) zone, located at 1045 Higbee Mill Road. (Council District 9)

The Staff Recommended: Disapproval, for the following reasons:

1. Inadequate off-street parking has been identified for this proposed use. For a school with three or four classrooms (for 20 to 28 students) and four or five employees, between 7 and 9 off-street parking spaces are required by the Zoning Ordinance. The most recent submittal by the appellant, which would maintain a clear traffic aisle for trucks leaving the property, indicates a total of just six parking spaces are to be provided. Due to the limited area of existing pavement, it does not appear feasible to designate any additional areas for parking unless the extent of pavement is significantly increased.
2. Any shortage of off-street parking at this location will adversely affect the surrounding properties by increasing the likelihood that on-street parking will be pursued at times by parents, employees, visitors or other persons. Old Higbee Mill Road in the immediate area of the subject property is not suitable for on-street parking, as it has few curbs and incomplete sidewalks. That road is already subject to more traffic than would ordinarily be expected, due to the

connection with Grassy Creek Drive providing a cut-through for persons attempting to avoid the intersection of Clays Mill Road and Man O' War Boulevard.

3. There are inherent conflicts between the proposed school use and continued operation of a landscaping business at this location. Since the single access to Old Higbee Mill Road will be shared, landscaping trucks will at times be entering and exiting the property at the same time as school traffic, which could lead to conflicts and potential safety problems. Operationally, there does not appear to be a reasonable and safe way to separate the proposed school activities from the landscaping business, and no method of separation has been proposed by the appellant. Since the landscaping business occupies a large area of the property, and uses fairly heavy machinery (e.g., a Bobcat), the potential for accidents involving students is considered an unacceptable risk.
4. This property has a number of improvements, including a 6,000 square-foot greenhouse, which are not proposed for school use and are not currently used by the landscaping business. The uncertainty associated with the future disposition of these improvements, especially the greenhouse, is a concern. Any expansion or diversification of the landscaping business, possibly related to these improvements, will likely intensify conflicts with the school.

Mr. Marx acknowledged that a letter of withdrawal from the applicant had been received by the staff. No action by the Board regarding the applicant's request was necessary.

- e. **C-2008-34: RALPH SENNINGER** - appeals for a conditional use permit to establish a commercial and non-commercial recreational facility in the Agricultural-Rural (A-R) zone, on property located at 8795 Beach Road. (Council District 12)

The Staff Recommended: Disapproval, for the following reasons:

1. The subject property is located almost entirely within a designated floodplain, with insufficient land outside of the floodplain for the development of a recreational facility. Constructing improvements within the floodplain, including water and electric hook-ups, for the purpose of parking trailers and recreational vehicles, would adversely affect the public health, safety and welfare.
2. Access to the subject property is via Beach Road, which does not have sufficient width for two-way traffic flow and is not suitable for regular traffic from trailers and recreational vehicles. Traffic to and from a recreational facility would disrupt use of this narrow road by residents and would create a potentially unsafe situation. Emergency response, especially for fire trucks, would be hindered.
3. Acceptable plans for the treatment of sewage generated by the proposed recreational facility have not been presented by the appellant. Given the constraints of the floodplain, it will not be feasible to provide sewage treatment on site in a manner that complies with requirements of the Department of Health.
4. The subject property is located within the boundaries of the Clays Ferry Rural Settlement, an historic area with a well-defined residential character recommended for preservation in the 2007 Comprehensive Plan. A recreational facility at this location, whether commercial or noncommercial, and clearly beyond the scope of what might be considered a private residential use, would degrade this established residential character.

Mr. Marx related to the Board that a letter of withdrawal was received from the applicant. Therefore, no action by the Board regarding this request was necessary.

2. No Discussion Items - The Chairman asked if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

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

ABBREVIATED HEARINGS:

- a. **V-2008-38: MANCHESTER DEVELOPMENT, LLC** - appeals for a variance to eliminate required landscaping for a vehicular use area in a Light Industrial (I-1) zone, on property located at 896 Manchester Street. (Council District 2)

The Staff Recommended: Approval of a partial reduction in required landscaping, for the following reasons:

1. A partial reduction in required landscaping should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The property has historically been used for parking, without the benefit of any landscaping at all. Placement of trees at each property corner, and a 18"-36" tall hedge along Manchester Street, will improve the overall appearance of the property.
2. The lower elevation of the subject property relative to Pine Street and the adjoining property to the south is a special circumstance that contributes to justifying the request, as landscaping in those areas, especially shrubs and hedges, would have limited visibility and effectiveness.
3. Strict application of the landscaping requirements of the Zoning Ordinance would result in fewer parking spaces being provided on the subject property, with limited benefit. Maximizing the number of parking spaces provided, while still providing landscaping at the most noticeable and beneficial locations, is a prudent approach to take given the prior use of this small lot for parking.

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

1. The parking lot shall be constructed in accordance with the current Development Plan approved by the Planning Commission (DP-2008-30), or any subsequent amendments to that plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction/renovation of the parking lot.
3. Trees shall be planted at each property corner, within those small areas of open space created by the parking lot design. A 3' tall hedge shall be planted along Manchester Street, extending for a short distance along Pine Street up to the first parking space. These plantings shall be done in accordance with the recommendations of the Landscape Examiner with the Division of Building inspection.

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

Representation – Mr. Barry McNees was present representing the appellant and stated that they understood, agreed with and would abide by the conditions for approval.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stout, and carried unanimously (Moore absent) to approve **V-2008-38: MANCHESTER DEVELOPMENT, LLC** (a variance to eliminate required landscaping for a vehicular use area in a Light Industrial [I-1] zone, on property located at 896 Manchester 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. **V-2008-39: ROBERT M. HARRISON** - appeals for a variance to reduce the required side yard from 8 feet to 4'6" in order to construct a room addition in a Single-Family Residential (R-1C) zone, on property located at 1824 Farmview Drive. (Council District 7)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity, since the addition will not be visible from the public street and will be no closer to the side property line than the existing garage.
2. The layout of the existing residence relative to the side property line, established and built by a previous property owner, is a special circumstance that contributes to justifying the request.
3. Strict application of the Zoning Ordinance would require that the width of the addition be reduced by approximately 3'6". Such a reduction might be manageable, but would not result in an efficient use of the available space to the rear of the existing garage.
4. The circumstances surrounding the requested variance are the result of the original home construction in 1987, many years prior to the property being purchased by the appellant.

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

1. The addition shall be constructed in accordance with the submitted application and site plan, with a minimum side yard of 4'6" to be provided.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The addition shall be limited to a single story with height not to exceed the existing garage.

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

Representation – Mr. Robert M. Harrison, appellant, was present and stated that he understood, agreed with, and would abide by the conditions for approval.

Action – A motion was made by Ms. Edwards, seconded by Ms. Bell, and carried unanimously (Moore absent) to approve **V-2008-39: ROBERT M. HARRISON** (a variance to reduce the required side yard from 8 feet to 4'6" in order to construct a room addition in a Single-Family Residential [R-1C] zone, on property located at 1824 Farmview Drive) 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.

- c. **C-2008-27: BETA CHI OF KAPPA KAPPA GAMMA** - appeals for a conditional use permit to convert a porch to a sunroom for a sorority house in a High Density Apartment (R-4) zone, on property located at 238 East Maxwell Street (Council District 3).

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 proposed sunroom will be over 90' away from the eastern property line. A fully enclosed room will reduce the potential for any noise disturbances compared to an open porch.
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. The sunroom shall be constructed in accordance with the submitted application and site plan, with size not to exceed 432 square feet.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

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

presented.

Representation – Mr. Tom Burke was present representing the appellant. With respect to Condition #1, he asked for an increase in the square footage of the proposed sunroom, from 432 to 437 square feet.

In response to the Chairman, Mr. Marx said this slight increase would be fine. Mr. Burke indicated that he was in agreement with the conditions for approval, including the modification of Condition #1.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Moore absent) to approve **C-2008-27: BETA CHI OF KAPPA KAPPA GAMMA** (a conditional use permit to convert a porch to a sunroom for a sorority house in a High Density Apartment [R-4] zone, on property located at 238 East Maxwell Street) for the reasons listed by the staff; subject to the two conditions listed by the staff, including the following modification of Condition #1: The sunroom shall be constructed in accordance with the submitted application and site plan, with size not to exceed 437 square feet; and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- d. **C-2008-28: JEANIE GORRELL** - appeals for a conditional use permit to establish a home occupation (wedding florist) in a Two-Family Residential (R-2) zone, on property located at 3860 Sugar Creek Drive. (Council District 4)

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely impact the subject or surrounding properties. Materials and equipment typically used for a floral business are relatively safe and should not generate significant levels of noise or other potential disturbances. No increase in traffic or parking demand is anticipated, provided that only one vehicle is used for the business and that the number of events handled by the home occupation does not exceed two per week.
2. All necessary public services are available and adequate for the proposed use.

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

1. The home occupation shall be established in accordance with the submitted application and a revised site plan indicating a work area of no more than 300 square feet.
2. The home occupation shall at all times comply with the provisions of Article 1-11 of the Zoning Ordinance.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to starting the home occupation, including an occupancy permit. Building Inspection shall inspect this site prior to issuance of the occupancy permit to ensure compliance with the 300 square-foot restriction of the Zoning Ordinance.
4. Clients shall not come to the home for any reason.
5. The home occupation may provide floral services for no more than two weddings or other special events per week.
6. Only one vehicle is allowed to support the home occupation.
7. This conditional use permit shall become null and void should the appellant cease to either own or occupy the residence on the subject property.

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

Representation – Ms. Jeanie Gorrell, appellant, was present and stated that she understood, agreed with, and would abide by the conditions for approval.

In response to Mr. Stumbo's inquiry, Ms. Gorrell said she would be making floral arrangements for special events, such as bridal shows and weddings; and that she would

be not be meeting clients at her home. It also was noted that there will be no retail sales.

With respect to Condition #5, Ms. Bell asked about the limitation on the number of events per week for which the appellant can provide her services. Mr. Marx responded that there is still activity associated with running a business out of her home; and that the appellant would have to deliver the materials to the wedding site or other special events. He also noted that this is a tight property and the appellant shares a driveway with the adjoining property. He said the staff thought this was a reasonable limit to make sure there is not continuous traffic going to and from this property.

Ms. Gorrell stated that she probably would not do more than one event per week at the most, since she has another job.

Regarding Condition #3, Chairman Owens asked about ensuring that the proposed work area complies with the 300 square-foot restriction. Mr. John Bryant, with Building Inspection, responded that the work area in question would be inspected by Mr. Hume for compliance prior to issuance of the occupancy permit. A brief discussion followed.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously (Moore absent) to approve **C-2008-28: JEANIE GORRELL** (a conditional use permit to establish a home occupation [wedding florist] in a Two-Family Residential [R-2] zone on property located at 3860 Sugar Creek Drive) for the reasons listed by the staff, subject to the seven conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- e. **C-2008-30: JEFFREY BLANDON / STEPHEN CHANDLER** - appeal for a conditional use permit to establish a night club with live music and dancing as part of an Industrial Mixed Use Project in a Light Industrial (I-1) zone, on property located at 903 Manchester Street. (Council District 2)

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 proposed nightclub will be integrated into a diverse mix of uses intended for an Industrial Mixed Use Project, and the overall redevelopment will be implemented in accordance with a development plan that has been approved (although not yet certified) by the Planning Commission. Adequate off-street parking will be provided, assuming that all of the parking proposed for Phase 1 of the redevelopment (138 spaces) is constructed or otherwise made available.
2. All necessary public facilities and services are available and adequate for the proposed uses.

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

1. The nightclub shall be established in accordance with the submitted application and site plan, in a manner consistent with the Final Development Plan for Manchester Development, LLC (DP 2008-30) or subsequent amendments to that plan.
2. An occupancy permit, as well as any permits required for renovations to the building, shall be obtained from the Division of Building Inspection prior to opening the nightclub.
3. An occupancy permit shall not be issued for this facility until all of the Phase 1 parking (a total of 138 off-street parking spaces) is available for use.
4. The nightclub shall be soundproofed to the maximum extent possible using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood.
5. No indoor connection is to be allowed between the nightclub and adjoining skate park.
6. A note regarding action of the Board shall be placed on the Final Development Plan for the subject property.

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

Representation – Mr. Stephen Chandler and Mr. Jeffrey Blandon, appellants, were present and indicated being in agreement with the conditions for approval.

Mr. Marx noted the modification of Condition #3, which was shown on the overhead: An occupancy permit shall not be issued until all of the required parking (23 off-street spaces) is available and dedicated for this night club use. He explained that the proposed use is part of a number of other uses that will be taking place in this Industrial Mixed Use project along Manchester Street; and that the original condition required the provision of all 138 Phase I parking spaces when the development plan for this project went to the Planning Commission for approval. He went on to say that this particular use didn't come close to needing all of the 138 parking spaces; and since the appellants are anticipating the opening of the nightclub very soon and didn't want to have to wait until all of the Phase I parking was completed, the staff revised the condition to try to accommodate those things. Mr. Marx clarified that, at the minimum, the appellants will have to provide and dedicate 23 off-street parking spaces for their use before an occupancy permit is issued. Both Mr. Chandler and Mr. Blandon were in agreement with the revised condition.

Chairman Owens commented about the Board's approval last month of an indoor recreational area (skate park) and an alcohol-free nightclub as part of this mixed use project, in relation to the current request for a nightclub (with live music and dancing) that caters to adults and serves alcohol. He asked about the separation of these uses from the proposed use, as well as security, and expressed his concern about the possible comingling between adults and the younger people, considering the proximity of the uses in the warehouse building. Mr. Chandler answered that since the (nightclub) use they are proposing is at the front of the building on Manchester Street, and the skate park will be located in the back, he didn't foresee any problems. In addition, there will be no internal doors connecting the proposed use to any other uses in the building, and security will be provided inside the building and the parking area outside as well.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Moore absent) to approve **C-2008-30: JEFFREY BLANDON / STEPHEN CHANDLER** (a conditional use permit to establish a night club with live music and dancing as part of an Industrial Mixed Use Project in a Light Industrial [I-1] zone on property located at 903 Manchester Street) for the reasons listed by the staff; subject to the six conditions listed by the staff, including the modification of Condition #3, as follows: An occupancy permit shall not be issued until all of the required parking (23 off-street parking spaces) is available and dedicated for this night club use; and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- f. **C-2008-35: CROSSFIT LEXINGTON, LLC** - appeals for a conditional use permit to establish an indoor recreational facility (athletic club) in a Light Industrial (I-1) zone, on property located at 2610 Palumbo Drive. (Council District 7)

The Staff Recommended: Postponement, for the following reasons:

1. Additional detailed (and scaled) site plan information is needed, identifying the number and location of off-street parking spaces that will serve the proposed athletic club.
2. Since the area between the two buildings on this property is not currently designed for vehicular parking, careful attention must be paid to the parking issue to ensure that truck movements in that area are not interfered with. Additional time will enable the appellant to address that issue in detail.

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

Representation – Since neither the appellant nor representation was present, the Chairman asked the staff for an update.

Mr. Marx stated that he had met recently with the applicant to discuss an alternate site they had found for the athletic club that they would be applying for, which he noted would be on next month's agenda. He said since they weren't really sure that the new site would work out, they were not yet ready to withdraw the conditional use appeal for the site currently being proposed. Mr. Marx said, as far as he knew, the applicant wasn't objectionable to the postponement.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Moore absent) to postpone **C-2008-35: CROSSFIT LEXINGTON, LLC** until the May 30 meeting.

- g. **C-2008-23: ERIC McANALLEN** - appeals for a conditional use permit to construct a building for an existing horse training facility containing an equine swimming pool in the Agricultural-Rural (A-R) zone, on property located at 2349 Long Valley Lane. (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. There are no adjoining or nearby properties expected to be disturbed by the construction and operation of an enclosed equine swimming pool. Significant increases in traffic to and from the training facility are not anticipated.
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. The building and pool shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A Certificate of Occupancy shall be obtained from the Division of Building Inspection once all construction is complete.

Chairman Owens asked whether the objector's concerns regarding the horse training facility had been addressed by the applicant.

Mr. Don Todd, attorney, was present and stated that his client and the applicant had met and resolved their opposition, subject to the applicant's amended proposal. He noted having a letter (dated April 24, 2008) that summarized what they had agreed to, which could be made part of the record. He said with the provisions indicated as part of the agreement, any opposition they previously had to the applicant's request would be withdrawn (i.e., the relocation of the proposed equine pool from east of Barn #2 to the new site west of Barn #3; no expansion of any parking facilities along Long Valley Road; the paddock areas [adjacent to his clients' property], which was the original site for the proposed pool, be returned to and used for turn outs (horse pastures); that any discharge from the swimming pool or backwash be retained as in the applicant's proposal, in a reservoir/lagoon built with 100,000 gallon capacity, and that the chemicals will not be deposited into any free-flowing watershed or stream approximate to the property. Further, that upon completion of the construction, the applicant's portion of the property along Long Valley, which is gravel, will be paved; and the construction of this project will be subject to and in conformity with all State and local guidelines regarding discharge points and water quality requirements.). The Chairman thanked Mr. Todd for summarizing the letter of agreement.

In response to Chairman Owens, Mr. Eric McAnallen stated that he was in agreement with what Mr. Todd stated.

Mr. Marx added that each of the Board members should have gotten a packet that describes the new proposal involving the changed location of the building with the pool.

Mr. Stout commended the involved parties for their efforts to resolve the issues and work out this agreement. Ms. Bell concurred.

Chairman Owens asked if the applicant had been in contact with Mr. David Banks, an adjoining neighbor, about the proposal, specifically the change in location of the building with the equine pool. Mr. McAnallen responded that he had not spoken with Mr. Banks personally.

Action – A motion was made by Ms. Bell, and seconded by Mr. Stout to approve **C-2008-23: ERIC McANALLEN** (a conditional use permit to construct a building for an existing horse training facility containing an equine swimming pool in the Agricultural-Rural [A-R] zone on property located at 2349 Long Valley Lane) 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.

Mr. Todd asked the Chairman whether the motion could be amended to include the conditions set forth in their letter, since a contract had not yet been formalized and signed. Mr. Marx noted that Condition #1 would need to be amended to reflect the submittal of the revised site plan to the Board.

The said conditions included in Mr. Todd's letter were displayed on the overhead for review, at Chairman Owens' request. The Chairman, after noting that a motion for approval had been made and seconded, called for the vote. The motion for approval carried unanimously (Moore absent).

The six conditions for approval are enumerated as follows:

1. The building and pool shall be constructed in accordance with the submitted application and revised site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A Certificate of Occupancy shall be obtained from the Division of Building Inspection once all construction is complete.
4. That the proposed initial location of the pool as shown on the preliminary rendering dated 3/1/08 be retained as open space and used for paddock purposes.
5. That there be no expansion of any parking facilities along Long Valley Road, and the paddock areas adjacent to the Moores be used for turn outs (horse pastures).
6. That any discharge from the swimming pool or backwash shall be retained in a reservoir/lagoon built with a 100,000 gallon capacity, and that the chemicals will not be deposited in the free-flowing watershed or stream approximate to the property.

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.

1. **V-2008-41: FREDERICK COTTON** - appeals for a variance to reduce the required front yard from 20 feet to 14 feet in order to complete construction of a single-family residence in a Two-Family Residential (R-2) zone, on property located at 459 Greenwood Avenue. (Council District 2)

The Staff Recommended: Disapproval, for the following reasons:

- a. Special circumstances pertaining to this particular lot, that require the construction of a detached single family residence with a front yard of just 14' in order to make reasonable use of the property, have not been identified by the appellant. Circumstances related to the location of existing residences on each adjoining lot have already been accommodated through the permitting process, which resulted in a reduction of the otherwise required front yard from 30' to 20', since this lot is within the defined Infill and Redevelopment Area. Absent any other special circumstances, further reduction in the required front yard is not justified, and would result in a circumvention of the Zoning Ordinance requirements.
- b. Strict application of the Zoning Ordinance will not prevent a reasonable use of the property or create an unnecessary hardship. Altering the foundation is a manageable option in this particular case, as the front footer and side footers can be retained where currently located even if the main part of the proposed residence is shifted 6' farther to the rear of the lot. A porch could be provided on the front of this residence, which would be in keeping with adjacent dwellings.
- c. The circumstances surrounding this variance request are the direct result of a measurement error made by the appellant. Given the careful attention devoted to the required front yard issue during the permitting process, such an error cannot be appropriately used to justify a 6' reduction in the required front yard.

Representation – Mr. Frederick Cotton, appellant, was present.

Presentation – Referring to an aerial view of the property, Mr. Marx spoke about the variance request to reduce the required front yard from 20 feet to 14 feet in order to complete construction of a single-family residence in an R-2 zone. The property is within the defined Infill and Redevelopment Area. The 20-foot front yard setback was determined by averaging the front yards of the residences on the adjoining lots, which is allowed by the provisions of the Zoning Ordinance. Normally, the setback requirement would be 30 feet. Mr. Marx explained that as the result of a measurement error related to the sidewalk, the footers were placed 14 feet back from the street right-of-way rather than 20 feet back as required by the permit. He said that aside from the measurement error, the staff was unable to find any special circumstance that would justify the requested variance since the circumstances pertaining to how this property is situated relative to the residences on each side were already addressed during the permitting process (with the 10-foot reduction of the front yard requirement of 30 feet). Mr. Marx went on to say that, fortunately, construction of this residence had not progressed beyond the point of being able to correct the mistake, and a manageable option was available to leave the front footer in place for use as a porch. In addition, a new footer at the rear would have to be poured 6 feet farther back, with each side footer extended by 6 feet in order to comply with the 20-foot required front yard.

Mr. Stout asked whether Mr. Cotton was willing to accept the staff's recommendation to extend the back footer 6 feet in order to construct the house. Mr. Cotton responded that he didn't have a problem with doing that, in concurrence with the suggestion by staff.

Chairman Owens asked counsel whether a motion was necessary, or if Mr. Cotton should request a withdrawal of the variance request since he was in agreement with the suggestion from the Planning staff. Ms. Boland responded that it was up to the applicant; and that with the Board's permission, since the hearing has started, Mr. Cotton can withdraw it. Alternatively, the Board can simply adopt the staff's recommendation and disapprove it. She said it seems that, since the applicant is going to go ahead and comply with the required setback, it really wouldn't make any difference to him which way it goes.

In response, Mr. Cotton said he accepted the staff's recommendation and would willingly withdraw the case. The Chairman noted that no further action was needed.

D. **Conditional Use Appeals**

1. **C-2008-19: TRINITY BAPTIST CHURCH** - appeals for a conditional use permit to allow a 930 square-foot canopy for church vehicles (buses and vans) to remain as built in a Single-Family Residential (R-1C) zone, on property located at 1675 Strader Drive. (Council District 5)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The carport has been placed at a convenient location for the parking of church vans, and is set back 6.5' farther from the rear property line than required by the Zoning Ordinance for an accessory structure. It is a few feet shorter than the nearest adjoining residence, and several feet shorter than the 20' maximum for an accessory structure established by the Zoning Ordinance.
- b. All necessary public services and facilities are available and adequate for the retention of a detached carport at this location.

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

1. The carport may remain where currently located in accordance with the submitted application and site plan.
2. A permit shall be obtained from the Division of Building Inspection within 30 days of action by the Board.

Chairman Owens noted the continuation of this case from last month's meeting.

Mr. Marx distributed a packet of information to the Board for review, which was prepared by the applicant and included a professional engineer's assessment of the installation of the carport structure in question.

Representation - Pastor Jay Robison was present on behalf of the Trinity Baptist Church. In review, Mr. Robison stated that there was one neighbor who spoke in opposition when he brought this appeal to the Board for consideration last month; and that he was able to meet with Mr. Owen, the objector, on April 15 to discuss the issues of concern that were raised with respect to the type of structure that was installed, certification of the structure and its location. He referred to the engineering specs for the structure, as well as a brochure that described the ability of the carport to withstand winds up to 120 m.p.h. As to the proper installation of the structure, he said Mr. Charles Clary, a State approved engineer with Poage Engineers & Associates, came to inspect the carport and determined that it was sound; however, an additional anchor installation was recommended. To ensure that the carport was adequately anchored to the ground, two additional anchors (instead of one, as recommended) were installed, after which Mr. Clary returned for a final inspection to ensure the proper installation of the anchors. A letter containing Mr. Clary's assessment was noted. With respect to the issue raised previously about the distance of the structure from the sidewalk adjoining the rear of the church property, Mr. Robison stated that the front of the building is 39 feet away from the sidewalk and the back of the building is 47 feet away from the sidewalk.

Opposition - Mr. Richard Owen, a neighboring resident, stated that he still had strong reservations about the structure's durability under high wind conditions, as well as the possibility of incurring property damage and/or personal injury. He said the information he brought to the meeting with

Mr. Robison confirmed what he already knew, even though he was not a structural engineer; and that he had done research and contacted the headquarters of two companies that manufacture and install canopy-style carports similar to the one under discussion. He emphasized that the structure, because of the large openings, lack of a footer and proper anchor bolts, was prone to being lifted into the air and possibly causing damage to nearby homes, vehicles, etc., during heavy winds. Mr. Owen suggested removing the back of the structure as one way to mitigate the winds, although he didn't know how this could be done without interfering with the integrity of the structure.

Mr. Robison stated that he also had been in touch with the factory about the (wind) issue, and a representative here in Kentucky as well. He pointed out that there are 26 studs securing the structure along the sides and 8 anchors around the back; and that the church's insurance would cover any damage caused by the structure.

Mr. Griggs commented that he didn't have a problem with the structural integrity of the building or its attachment to the ground; however, he still was concerned that the structure was built without a permit, which may have denied any other neighbors who objected to it from having a chance to speak.

Mr. Robison apologized for the oversight and accepted full responsibility. He said at least this company now knows that when they build in Lexington, it will be necessary to have a permit; and that they were quite responsive when he contacted them about what needed to happen.

Chairman Owens asked if Mr. Robison was in agreement with the two conditions for approval. Mr. Robison indicated that he was.

Prior to the motion, Mr. Stumbo stated that he appreciated Mr. Owen's concern and his due diligence, as well as Mr. Robison's effort on behalf of the church to address this issue. He commented that under extraordinary circumstances, the wind is capable of taking up any building; however, in reading the letter from the structural engineer, he thought Mr. Robison had done everything the Board asked.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards, and carried unanimously (Moore absent) to approve **C-2008-19: TRINITY BAPTIST CHURCH** (a conditional use permit to allow a 930 square-foot canopy for church vehicles [buses and vans] to remain as built in a Single-Family Residential [R-1C] zone on property located at 1675 Strader Drive) for the reasons listed by the staff, and subject to the two conditions listed by the staff.

2. **C-2008-29: AMANDA BOWMAN** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single-Family Residential (R-1C) zone, on property located at 321 Taylor Drive. (Council District 2)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The outdoor play area to be provided will exceed the minimum size required by the Zoning Ordinance, and several off-street parking spaces will be available in the driveway and to the rear of the garage. Increased activity at this location is not expected to be disruptive, since care will be limited to daytime hours during the week. The rear of the property is buffered by an open field adjacent to a school parking lot. The ability to access the property from either direction on Taylor Drive should be beneficial for traffic management purposes.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. Child care for up to 12 children may be provided in accordance with the submitted application and site plan, with care to be provided only during the week between the hours of 7:30 AM and 5:30 PM.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to providing child care services.
3. The outdoor play area shall be fenced in accordance with the requirements of the Division

of Building Inspection, including any necessary fence permits.

4. This conditional use permit shall become null and void should the appellant cease to either own or occupy the subject property.

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

Representation – Ms. Amanda Bowman, appellant, was present and stated that she understood, agreed with and would abide by the conditions for approval. Referring to the staff report, she noted that it mentioned there was adequate space in the (long) driveway for stacking cars. Ms. Bowman asked whether they could forego adding fencing in the back to separate the existing pavement (useable parking area) behind the garage from the grassed portion of the children's play area, and instead utilize the driveway primarily for the parents to park. Mr. Stout advised against doing that, particularly since there was no double drive and only one way in or out of the driveway. Chairman Owens noted that, in doing so, it would be necessary for parents to back out onto the street (Taylor Drive). Ms. Bowman indicated that the additional fencing would be installed as recommended by staff.

In view of the request to provide family child care for up to 12 children, Ms. Bell asked how many children Ms. Bowman currently had in her care, including any school-aged children of her own. Ms. Bowman responded that she only provides care for her niece, and she has an 11 year-old child of her own.

Opposition – Mr. Donald Graves, a former Louisiana resident now living at 317 Taylor Drive, was present. He spoke about having met with the applicant previously to discuss his concerns regarding the proposed child care facility, noting that they were unable to reach an agreement. He referenced a letter from neighbor Michael Craig and related their similar concerns, which were: the parking/traffic issue associated with Meadowthorpe Elementary School located around the corner (particularly between 7:00 and 7:30 a.m., and between 2:15 and 3:00 p.m.) in conjunction with the dropping off/picking up activity at the proposed child care facility; the potential negative impact on property values in the neighborhood; and the potential noise disturbance related to the number of children the appellant would be providing care for. Mr. Graves explained that his wife is a nurse who works a 12-hour shift at night; and that the children's activity outside probably would disturb her rest since the bedroom window faces the proposed play area. He said the appellant informed him that she did not have to be licensed to provide care for up to 6 kids in addition to relatives, which she does currently. Mr. Graves asked for the Board's help, as well as Ms. Bowman's, in finding a resolution, noting that he had a problem regardless of whether the appellant was licensed or not.

Mr. Griggs asked whether the daycare has been operating there for some time. Mr. Graves responded that it had not, noting that the Bowman family had just recently moved in. With respect to the noise issue, he said he had talked to the appellant about possibly utilizing the grassy area behind his house that formerly was used as a play area for Meadowthorpe School. He said that he was not arguing the regulation that allows the child care activity, but he was concerned at what point it could be abused.

Chairman Owens pointed out that the appellant was allowed to provide care for up to 6 children without having a conditional use permit. Mr. Marx added that according to the Zoning Ordinance, it is a total of 6 children, which includes related children.

Ms. Bell felt it would be helpful for Mr. Graves to contact the Cabinet for Health and Family Services (Division of Regulated Childcare) to get more information about the licensure regulations. She related her understanding that they are always interested in hearing about any concerns a neighborhood has, particularly when a request is received for a permit for a facility providing care for up to 12 children. On another note, Ms. Bell referred to a letter the Board received and related concern about the proximity of the elementary school, as well as another child care operation on the same street that the appellant lives on.

In response, Mr. Graves confirmed that there already is a facility operating down the block and another located on Forbes Road, which he found out when canvassing the neighborhood regarding the appellant's request. He said if there were any issues related to the operation of these two

facilities, they must have been worked out satisfactorily because none of the neighbors he spoke with had complaints about either one. Mr. Graves went on to say that he understood this (use) was lawful, but his primary concern was his wife's welfare. He said if he had been more familiar with the process, he would have asked for a continuance to allow Ms. Bowman and himself to meet with the Meadowthorpe Neighborhood Association in hopes that they had dealt with similar issues before and could offer a resolution.

Mr. Stout asked if, in the event of approval, Ms. Bowman would give some consideration to Mr. Graves' concerns. Ms. Bowman indicated that she would. She explained that she currently works at a family-operated home daycare on Taylor Drive, where the children arrive and leave on a staggered basis and a sign-in log is kept, as required. She said very few children arrive at the daycare during the time that traffic at Meadowthorpe Elementary School is at its most extreme; and that the doors are open at the school for children to be dropped off at 7:15 a.m. School begins at 7:45 a.m. and is dismissed at 2:35 p.m. Ms. Bowman further stated that one to three children arrive at the daycare between 7:30 and 8:00 a.m.; and that naps are scheduled from 1:00 to 3:00 p.m.; and the children are picked up between 4:00 and 5:30 p.m. She noted that the children are not outside all day, as is the case with larger daycare facilities where there are several different classrooms of children. Ms. Bowman was doubtful that she would ever keep the maximum allowance of 12 children, noting that she would be willing to reduce that number to no more than 10 children, as discussed with staff. As to the noise issue, she said she had spoken previously with Mr. Graves about it and was happy to adhere to a schedule where the children would not be outside playing for long periods of time. An option was to take the children for walks in a neighborhood park. Ms. Bowman said she was willing to work with Mr. Graves in any way that she could.

Mr. Griggs asked whether Ms. Bowman had talked to Mr. Graves about setting aside blocks of time that could be quiet. Ms. Bowman replied not specifically, although she did mention to him that the children at the other daycare are taken out from 10:00 to 11:00 a.m. and later in the afternoon after a nap. Mr. Griggs then asked if, during a brief recess of this case, the applicant would be willing to talk to Mr. Graves about a 4-hour block of quiet time that might partially solve his problem and possibly be added as a condition. Ms. Bowman was agreeable to do so.

Chairman Owens announced that this case would be continued momentarily and proceeded to the next case on the agenda to be heard.

(Following disposition of C-2008-36: LIBERTY RIDGE SENIOR LIVING, the Board returned to the aforementioned case.)

In response to the Chairman, Ms. Bowman stated that she and Mr. Graves were unable to work out a specific schedule to accommodate his wife due to the different shift times she works as a nurse. However, Ms. Bowman said they did agree to continue to work together as neighbors on the noise concern.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Moore absent) to approve **C-2008-29: AMANDA BOWMAN** 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.

Mr. Stumbo complimented the effort of the neighbors to work together and to continue doing so, with which the Chairman concurred.

3. **C-2008-36: LIBERTY RIDGE SENIOR LIVING** - appeals for a conditional use permit to expand the existing assisted living facility in an Agricultural-Urban (A-U) zone, on property located at 2550 Liberty Road. (Council District 6)

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The expanded property will have ample space for the proposed additions and related improvements, with a setback of at least 25' to be provided along the northern property line that borders an established residential development. Technical issues pertaining to the overall design of the proposed additions have been preliminarily

addressed by the Planning Commission. Appropriate landscaping and screening for the new driveways and parking areas will be provided as required by Article 18 of the Zoning Ordinance.

- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. The expansion shall take place in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. An amended Final Development Plan, subject to approval by the Planning Commission, shall be obtained prior to the issuance of any building permits for any of the new construction.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
4. The design of all new driveways and parking areas shall be approved by the Division of Traffic Engineering.
5. The new driveways and parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
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.

Representation – Mr. Jim Black, with J. E. Black, was present representing the appellant and stated that he was in agreement with the conditions for approval.

Opposition – Mr. Phil Kuhl, 2525 Tinmouth Vale Lane, was present to express his concern about the removal of a significant amount of the tree line behind his property prior to receiving a copy of the site plan for the subject property that indicated it would remain intact. He also spoke about having to clean up the debris that had fallen in his rear yard as a result of the trees on the adjoining property being cut. Photos were furnished.

Chairman Owens requested that the site plan related to the subject property be displayed on the overhead. Mr. Kuhl was asked to indicate the location of his property in relation to the subject property, which he did. For clarification, Chairman Owens asked whether the trees were being removed or limbed up and the underbrush cut. Mr. Kuhl estimated that 40-50% of the trees had been removed and the underbrush as well. He noted a slight difference in the site plan shown and the one he received prior to today's hearing. Mr. Kuhl submitted photos that were shown to illustrate the condition of his rear yard after the work was done, as well as before, when the property was purchased two years ago.

Mr. Griggs asked Mr. Kuhl about the distance from the deck to the rear property line, to which he responded that it is about 20 to 24 feet. Mr. Griggs commented that it appeared from the photo that a lot of the (overgrown) vegetation was in Mr. Kuhl's back yard.

Mr. John Wallis, project architect, was present and spoke about the work that was being done. He said when they did the master plan and started the project, Mr. Black was hired to do the civil engineering, which they are in the process of doing right now. He stated that the brush line was cleared in order to do an accurate survey of the back property line; and to his knowledge, there were no significant trees removed from that area by the company they contracted, instead the underbrush was removed and some of the limbs were cut. Mr. Wallis went on to say that when they initially walked the site, what was found in the underbrush and under the trees were areas where people were congregating, as evidenced by the litter and debris (i.e., empty alcohol containers, small engines, etc.); and that one of the concerns of Liberty Ridge was the security of their residents, which was another reason Mr. Wallis said the brush was cleared out. He noted that it was never the intent of any part of this project to remove the entire tree line; and that one of the concepts they are trying to keep is a neighborhood feel and a greenspace or natural environment for the residents.

Mr. Stout asked if they were planning to replace the treeline. Mr. Wallis responded that they had not removed it; and as far as he knew, only the underbrush around the trees was removed. For

clarification, Mr. Stout inquired whether the concerned neighbor had indicated to the Board that the trees were removed. Mr. Kuhl responded affirmatively and referred to the submitted photo, which was shown again. Mr. Wallis maintained that, to his knowledge, only the thick underbrush was removed, which the company they contracted was instructed to do. He noted that when the original garden homes were done, the LFUCG Urban Forester walked the site and found no trees of significant size or growth that needed to remain intact during the development. He reiterated that it was not their intent to clear out the back of the site entirely; and that they wanted to keep as much of the greenspace intact as possible. In response to Mr. Kuhl's comment that 40-50% of the trees were removed, Mr. Wallis said there was no accurate tree survey done to verify what was or was not removed; however, he acknowledged that some trees may have been removed, but not those of any significance.

Mr. Griggs inquired whether there were any plans to install landscaping or some other visual barrier between the houses and the back property line. Mr. Wallis responded that some landscaping would be provided, but the extent of it had not been decided. He said this area would be better maintained than in the past, especially since the development plan proposes to construct garden homes there. Mr. Griggs then asked the staff about the landscaping requirements for the site. Mr. Marx replied that he would be able to provide an answer to that question momentarily, after consulting the Zoning Ordinance.

Chairman Owens asked if any fencing would be installed. Mr. Wallis answered that they had discussed the possibility of putting up a stockade-type fence with Liberty Ridge at its last board meeting.

In response to the question asked earlier about applicable landscaping requirements, Mr. Marx replied to the Chairman that there didn't appear to be a required buffer for an A-U zone that borders an R-1E zone; however, he said the Board did have the discretion to require a buffer along there or to re-establish a buffer of a reasonable width between the properties in question.

Chairman Owens asked whether a continuance of this case would be agreeable to Mr. Wallis, to allow the applicant to get with the neighbors and try to come to some sort of an agreement regarding a buffer (e.g., landscaping, fencing, etc.) and bring it back to the Board next month. Mr. Wallis noted that there is a 10-foot utility easement along the rear property line; and that their intent with this project was to meet all the requirements of the Zoning Ordinance. He said his desire was to get approval today in order to continue with the project; however, he was agreeable to work out the issues of concern with the neighbors.

Ms. Bell thought it would be extremely helpful to take some additional time to work out some of the details, feeling that it didn't seem settled enough for the Board to make a decision today. Mr. Kuhl concurred.

Responding to the Chairman, Mr. Wallis said they would be more than happy to work with the neighborhood to reach some kind of resolution, because they didn't want to force something on the neighbors that was unacceptable. Therefore, he was agreeable to the continuance.

Action – A motion was made by Mr. Stout, seconded by Ms. Bell, and carried unanimously (Moore absent) for a one-month continuance of **C-2008-36: LIBERTY RIDGE SENIOR LIVING**.

(Following disposition of the aforementioned case, the Board returned to **C-2008-29: AMANDA BOWMAN**.)

4. **CV-2008-24: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** - appeals for a conditional use permit to modify and expand an existing church, involving demolition of one building, in a Single-Family Residential (R-1D) zone, on property located at 920 Bates Creek Road; and a variance to increase the allowable distance between the church and required parking (provided at Cassidy Elementary School) from 300 feet to 475 feet, in a Single-Family Residential (R-1C) zone, on property located at 1125 Bates 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 Bates

Creek Road. Since many of the residential structures between the church property and the intersection of Sunset Avenue and Bates 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. Except for a loop drive aisle now proposed off of Melrose Avenue, the church expansion has been designed appropriately from an architectural standpoint, and from a site design perspective, includes provision for a significant landscape buffer between the church and nearby residential properties to the north and west.
- 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 variance, for the following reasons:

- a. Although a dimensional variance is not needed to continue use of the school parking lot 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 dictate a more modest expansion of this church, thereby allowing some off-street parking on site, but 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 door of the church, served by a signalized intersection at Hart Road and Bates 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.

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 (dated April 25, 2008) except that the 13' wide circular drive proposed off of Melrose Avenue is to be removed from the plan prior to the issuance of any building permits for this property. Revised site plans shall be submitted to the Divisions of Planning and Building Inspection indicating compliance with this requirement.
- 2. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction.
- 3. The proposed driveway to remain from Melrose Avenue shall be approved by the Division of Traffic Engineering.
- 4. A minimum of 28 off-street parking spaces shall be leased off site for the use by the church during their activities.
- 5. The subject property shall be fenced, landscaped and screened from adjoining residential properties to the north and west as indicated on the submitted site plan (dated April 25, 2008).
- 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. No new outdoor lighting associated with the proposed additions shall be directed at any neighboring property to the north, east or west of this site.

Representation – Mr. Hank Graddy, attorney, was present representing the appellant. He stated that they are requesting the Board's approval of a conditional use and a variance for a proposal that will provide a necessary expansion of the Greek Orthodox Church, which they believed would be an improvement to the community and the neighborhood. This proposal has, among its features, a design that retains the existing structure. He said they were in agreement with the conditions for approval, with the exception of removing the circular drive off Melrose Avenue. Mr. Graddy stated

that they are attempting to maximize the use of an existing, favorable site in an existing neighborhood that the Greek Orthodox Church very much wants to continue being a part of, as well as to continue being a good neighbor. He introduced the first speaker who was a representative from the church.

Dr. Dennis Karounos, Vice President at the Panagia Pantovasilissa Greek Orthodox Church and Building Committee Chair, was present. He stated that the Greek Orthodox Church was established in 1948, and the congregation has slowly grown over the past 60 years. He explained the need for the proposed church expansion, noting that many of the older parishioners can no longer attend services due to accessibility issues (i.e., the restrooms are located in the basement and are not handicap accessible), and the facility cannot accommodate the extra capacity needed for special services and weddings. He said the church is centrally located for all the parishioners to attend; and that moving to a larger site in a remote location would create a hardship to their community. He went on to say that they have been a good neighbor for many years and were involved in a number of outreach projects in the community, where they wished to remain. Dr. Karounos said they have been working on the design of the new church facility for the past 8 years, with the assistance of professor and architect Alex Christoforidis (Synthesis Architecture & Planning, Cincinnati, OH), who was instrumental in the initial design of the only other Greek Orthodox Church located in Louisville, KY.

Mr. Sam Mashni, a member of the Parish Council, was present and briefly spoke about the dire need to have handicap accessible facilities to accommodate his son who is wheelchair-bound, as well as more space to handle special occasions. He related to the Board about having to relocate his daughter's wedding to another facility in the community because of the lack of space at the existing church.

Mr. Griggs commented about the cost related to the church's monumental construction project in order to address the two primary issues of inaccessibility and a more spacious facility for special occasions. He said for the amount of money that will be spent on this project, there were other ways to address these issues, such as a minor church expansion to increase the number of seats.

Mr. Alex Christoforidis, project architect and certified planner, was present and spoke about having worked with the church for about 8 years on several different options that would best accommodate the needs of the parish. With respect to designing the new church facility, he said they wanted to: 1) meet functional and religious ceremonial needs; 2) create a design that is sensitive to the scale of the existing neighboring structures; 3) reduce water runoff; 4) create an adequate buffer between the church property and the neighboring residential properties; and 5) retain the existing church. A rendering was shown of both the existing church and the proposed church facility. He explained the functionality issues related to the existing church in terms of handicap accessibility and the need to provide adequate space for worship and religious ceremonial needs such as weddings, baptisms, etc. He said the (existing) church currently faces west; and it is the only Greek Orthodox Church in its diocese that faces that direction, which they wanted to correct. Orthodox churches typically face east, as they did when originally built in the 3rd and 4th centuries. He said the nice ceremonial front on the existing church will be kept for the entire community; and the proposed church will face east. He also spoke about the lack of a dome on the existing church, noting that it is the church's ceremonial or symbolic center and a long-held tradition in the Orthodox Christian Church. He reiterated that the two things they wanted to correct were the lack of a dome and the enlargement of the ceremonial space.

Referring to a rendering showing the street level of the church, Mr. Christoforidis talked about how the new church addition was designed to be compatible and complementary to existing structures in the neighborhood. He said the front of the existing church will remain as a ceremonial and functional entry for the whole parish. There is also handicap accessibility from the back of the site for a handicap van, to allow people to enter at ground level. With regard to the aesthetics of the street, they felt it was important to keep the existing entrance because it has been part of the identity of the neighborhood and of the parish for 60 years. He reiterated that the church building itself was designed to be in keeping with the scale of the neighborhood by keeping a cornice line that is congruent with the front porches of houses on adjoining properties. The apse will be built at the same level as the roof line of the house next door; and the defining part of the church, the

dome, will be 35 feet off the ground level to stay within the height limitation requirements.

In response to Mr. Stumbo's question about the height of the dome, Mr. Christoforidis said it is 17'6" tall. For clarification, Mr. Stumbo asked if that would be 35 feet plus an additional 17 feet. Mr. Christoforidis responded affirmatively. He said the dome is classified the same way as a steeple on other churches, and it is a symbolic part of the church as well.

Continuing, Mr. Christoforidis stated that an underground cistern will be utilized to collect the rainwater from the roof of the new building in order to minimize the amount of water runoff; and that it would have the capacity to hold at least a 6" rain, with a maximum of 10". The overflow (if more than 10" of rain) will be piped back to the storm water system. Any water that is in the cistern will be piped back into the building to be used for gray water purposes (e.g., flushing toilets, watering plants outside, etc.). He said all the new paving would be permeable pavers, with the exception of the walkways used for direct access into the church. He noted that the second curb cut shown on the site plan, which was pointed out, will be eliminated, in concurrence with the staff's conditions for approval. He said the existing church, which is approximately 2,700 square feet, will remain. The community (parish) house next door, which is 1,219 square feet, will be demolished and replaced by the new church building. He emphasized that the building footprint would be doubled, but the amount of water runoff would be reduced.

Mr. Christoforidis then spoke about the original drawing that proposed the removal of existing church structure. He said they initially discussed a design that would utilize both properties for construction of the new church; however, it was determined to be cost prohibitive after further discussion and looking at the expense. They then decided that it was best to retain the existing church structure and add on to it. Referring to the site plan, he noted that it was a pretty tight fit to get the new church in there; but they were able to do it and still comply with the setback and height requirements.

Mr. Marshall Estep, a member of the Greek Orthodox Church, was present. He spoke about the positive attributes of the proposed project, which included: 1) closure of the only entrance off Bates Creek Road; 2) all traffic to the church will be to the south, off Melrose, which will have a new entrance; 3) one of the two proposed curb cuts off Melrose will be eliminated, as recommended by staff; and 4) improved storm water management. The concern about the character of the church in relation to the neighborhood was addressed. He said there are two other churches on Bates Creek Road within two blocks of the Greek Orthodox Church, as well as two schools (Cassidy Middle and Morton Elementary), several small businesses and a number of single- family and multi-family homes. He noted that this is a mixed use corridor, and what is being proposed would not significantly change that.

Ms. Yvette Harrigan, an 8-year resident at 901 Bates Creek Road, was present to express her strong support of the Greek Orthodox Church, which she felt was a lovely part of the neighborhood. She told the Board that, by comparison, there was less disturbance from this church than from the dance school and the restaurant on the corner opposite her property. She said the church property and grounds are well maintained; and the associated traffic really is not an imposition to the community. In closing, Ms. Harrigan noted being a proponent of the proposed church expansion.

Mr. Graddy read a letter of support for the proposed expansion of the Greek Orthodox Church from Mr. Louis Rom, who lives at 705 Sunset Drive. It was his feeling that this project would enhance the appearance and architectural character of the Hollywood neighborhood. He noted that the church property has always been maintained in an exemplary manner.

Dr. Karounos commented that, as recommended by Mr. Graddy when he was retained by the church, they made contact with the neighborhood to gauge support for the proposed church expansion. After hearing that there was some opposition to the plan, and as recommended by the staff, it was modified. The revised plan was presented for discussion at a neighborhood meeting held at the church two weeks ago; however, the turnout was very low.

Mr. Graddy presented photos that were shown on the overhead. He said the first series of the photos depicted the Faith Lutheran Church, also located at the corner of Bates Creek and Melrose, which came before the Board to request an expansion that doubled its size in the 1990s and was

approved. Other photos depicted the Greek Orthodox Church property, as well as the parish house on the adjoining lot, which will be demolished in order to construct the new church addition. Mr. Graddy said they have a smaller footprint than Faith Lutheran Church and are seeking to double the size of their church as well, with less space, which he felt was a more efficient use of the property and good for the neighborhood. He spoke about the agreement with Cassidy School to utilize 40 spaces in its parking lot to accommodate the increase in required parking (28 spaces) associated with the proposed increase in sanctuary seating, and the requested variance to increase the allowable distance between the church and the off-site parking from 300 feet to 475 feet. With respect to this proposal, Mr. Graddy said they believed the property will be used in a way that is compatible with the neighborhood and meets the church's spiritual and physical needs, giving it room to grow. He asked for the Board's favorable consideration of the proposed church expansion, subject to the conditions recommended by the staff, which they agreed with.

Mr. Stumbo asked to see the photo shown previously of the site layout of the Faith Lutheran Church located across the street, particularly the on-site parking. There was discussion regarding the membership at the Greek Orthodox Church (85 families) in relation to the availability of on-street and off-site parking; the size of the Greek Orthodox Church property (approx. 1/3 acre) in comparison with the Faith Lutheran Church property (approx. 1 acre); the purpose of the small parking area behind the parish house (limited parking for parishioners); and the lack of an area on site for delivery vehicles, which are made on the Melrose side of the property.

Opposition – Ms. Kate Savage, a resident at 619 Columbia Avenue, was present and stated that although she is president of the Columbia Heights Neighborhood Association, she would be speaking on her own behalf and was not representing the membership at this time. Reference was made to several letters (including e-mail) of opposition submitted from concerned neighbors who were unable to attend today's hearing. Ms. Savage initially said she liked the aesthetics of the existing church; but as a preservationist, she felt the new church addition as proposed was incongruent with the surrounding neighborhood. Photos were shown to illustrate the typical one-story bungalow homes in the Hollywood neighborhood; the Greek Orthodox Church and parish house on the adjoining property; the single-story Faith Lutheran Church with ample on-site parking located across the street; the parking lot at Cassidy School; a view of Melrose Avenue, where church attendees normally park; a view of the small parking area behind the parish house that will be removed for the proposed construction; and a view of the residence located next door to the parish house.

Ms. Savage expressed concern that the parish house, a sound structure that would have been placed on the National Historic Register in the next month, will be demolished to make way for the new Byzantine church structure. Regarding the off-site parking for the church attendees, she noted having observed that the parking lot at Cassidy School was empty during service on Thursday; and that it is necessary to cross Tates Creek Road to get to the church from where the off-site parking is provided. Other noted concerns were the loss of greenspace due to the proposed church construction; the future use of the existing church structure; and sewer capacity. Ms. Savage related her feeling that the building, as proposed, which has a very distinctive Byzantine character to it, was not in keeping with the neighborhood.

Mr. Stout asked about the historic significance of the parish house. Ms. Savage responded that she was not familiar with the criteria for determining the historic significance of a structure or a particular neighborhood; however, she said it was a lengthy process of about three years. She noted that the Hollywood neighborhood was under consideration for Historic Register classification.

A brief discussion ensued between the Chairman and Ms. Savage.

Ms. Bell directed her comments to the differences in the design and appearance of the Catholic Cathedral (Christ the King), Faith Lutheran Church and the Greek Orthodox Church located in this area. A discussion along those lines with Ms. Savage followed.

Ms. Mary Margaret Lowe, who lives at 855 Tremont Avenue (Hollywood Terrace), was present to express her objection to the proposed church expansion and the demolition of the historic parish house as well. She initially spoke about the zoning of the parish house property, which is R-1D (single-family residential), noting that the existing church is already in variance with the zoning regulations. Ms. Lowe was sympathetic to the church's need for expansion; however, she said the

proposed replacement church would be three times the size of the existing structure and would exacerbate the nonconforming use. She stated that the size, scale and height of the proposed church building, including the large dome, would overshadow nearby single-story homes.

Ms. Lowe then spoke about the Faith Lutheran Church, located on the opposite corner, which has ample on-site parking, in contrast to the lack of such parking at the Greek Orthodox Church and the 500-foot distance to the off-site parking provided at Cassidy School. She noted having observed that church attendees do not utilize the off-site parking; but instead, they continue to use available on-street parking along Melrose Avenue and Tates Creek Road, sometimes blocking access to driveways and bike lanes. Other noted concerns were the lack of handicap parking on site that complies with ADA requirements; pending acceptance of the Hollywood neighborhood on the National Register of Historic Places; the possible use of the (historic) property at 912 Tates Creek, which the church also owns, for future parking purposes; increased water runoff/flooding and sewage issues; and the loss of sunlight due to the height and scale of the proposed church. Ms. Lowe suggested the possible option of the church selling the properties it currently owns and purchasing a larger piece of property elsewhere that would be able to accommodate on-site parking for its parishioners. She asked the Board to protect the architecturally significant fabric of the historic Hollywood neighborhood and deny the applicant's request.

Mr. Eugene Lacefield, 855 Tremont Avenue, was present and spoke in concurrence with the previous speakers who had objections to the church expansion. He felt that the proposed expansion would be detrimental to the neighborhood.

Mr. Stout reiterated his earlier question about the historic significance of the parish house, as well as the property the church owns at 912 Tates Creek Road. Mr. Estep responded that the board of the Hollywood Neighborhood Association applied for historic status for the entire neighborhood; and that the 40 to 60 residents who didn't want to have their properties included for consideration could write a letter and opt out. He said they had submitted such a letter regarding the church and the parish house next door.

Mr. Stuart Conley was present representing his mother who lives at 914-916 Tates Creek Road, next door to the parish house. He said his mother's main concern was related to the proposed construction, noting the problem she experienced with flooding in her basement when the parking area behind the parish house was constructed, which the church subsequently addressed. Another concern was the height of the proposed building, which Mr. Conley said would block the sun on the south side of his mother's house where she has a flower garden that probably will have to be replanted elsewhere on the property.

For clarification, Mr. Christoforidis stated that because of the position of the proposed building, the sun would be from the south; therefore, the shade would be mostly on the church property. He said the dome would not affect neighboring properties since the sun will be coming from the opposite side. He further stated that the new church building was designed to be compatible with the scale of the bungalow homes in the neighborhood; and that the dome was an important part of the character of the church.

Referring to the site plan, Chairman Owens asked Mr. Gallimore to comment about the area proposed for pick-ups/deliveries behind the existing church. Mr. Gallimore responded that the area in question was a concern, considering the photo of the current parking situation along Melrose on Sunday, and the further impact of a potential increase in the church's membership. Another noted concern was the elimination of the only on-site parking the church currently has, which can accommodate 8 to 10 cars. He felt that the neighbors' deepening frustration with the on-street parking situation would result in requests to Traffic Engineering to have the curbing painted and/or possibly go to residential parking. Mr. Gallimore said he was not happy with the church layout because of the lack of a designated pick-up/drop-off area on site, which usually is part of most church designs; and the proposed driveway (off Melrose) that will remain is probably not ADA compliant. It was his opinion that the off-site parking provided at Cassidy School would not be utilized by churchgoers due to the walking distance to/from the church and the convenience of on-street parking along Tates Creek and Melrose.

Mr. Stumbo commented that he didn't think a comparison could be made between the Greek

Orthodox Church and the Faith Lutheran Church, which is three times its size and has room for expansion. He said he was not opposed to the Greek Orthodox Church expanding; however, he did express concern about the scope and size of the project, particularly the 52-foot-high dome, which he felt was out of character with the neighborhood. Mr. Stumbo noted having some difficulty in looking at the dome on this church and the steeples on other churches as one and the same.

Mr. Graddy clarified that the church would be doubling, rather than tripling, its size. He explained that the building footprint, which is 4,000+ square feet, would be expanded to 8,000+ square feet; and that the existing church structure, which is 2,700+ square feet, would be retained. He said the proposed expansion consists of a new worship center that is sized to meet the needs of the congregation; and that they are asking the Board to consider the dome, which is a symbol for the Greek Orthodox Church, like a steeple on other denominational churches. He also said they are asking the Board to consider the value to the neighborhood of a design that retains the existing church structure, which was complimented by some of the opponents who spoke earlier.

Mr. Stumbo said he appreciated that the beautiful church building would be retained. However, he still had lingering concerns about the size and scope of the expansion project, traffic-related issues and not having a drop-off/pick-up area for the elderly church members. It was his feeling that the overall project would adversely impact the neighborhood.

Mr. Graddy responded that the Greek Orthodox Church was built in 1948 and has been at its current location for 60 years, long before there were parking requirements; and that parking needs for the church have been satisfied by the availability of on-street parking along Bates Creek Road and Melrose Avenue. He said they are adding handicap accessibility and parking, the design of which Mr. Christoforidis believes is ADA compliant; and that this is an improvement on the current situation by having the handicap parking at the rear of the church for convenient access. He said the church, which currently has seating for 110 persons, wants to increase the sanctuary seating to accommodate 140 persons, although it was noted that the church population has grown slowly over the past 60 years. It was reiterated that additional space was desired to be able to accommodate special services and weddings.

Chairman Owens stated that he didn't have a problem with the provision of off-site parking for the church at Cassidy School to help alleviate the parking situation in the neighborhood. He said he appreciated that an effort was made to address the issue of (handicap) parking and access on site; however, it was his feeling that the proposed layout would not provide a noticeable improvement because of the difficulty involved in accessing the handicap parking spaces if the drive is blocked by a delivery van/truck in the service area. Chairman Owens went on to say that although he didn't have a problem with the expansion, he thought there needed to be some on-site parking and accessibility for vehicles (including delivery van/trucks) to be able to come onto the property and safely exit without having to back out onto the street. Lastly, he spoke about the elimination of not only some needed parking spaces, but the drive next to the parish house that leads to the parking area behind it where a vehicle would be able to turn around and exit the property without having to back out onto the street.

Mr. Graddy said it sounded as though the Board was saying that the only way the Greek Orthodox Church can stay at its current location is to tear down the existing structure and convert that into parking. Chairman Owens responded that he thought the proposed expansion could be modified to allow for some on-site parking.

Mr. Griggs directed his comments toward the church having a more modest expansion proposal, or coming to the realization that they have outgrown this site. Mr. Graddy responded that their architect and apparently the staff believed that the church expansion was appropriately designed and was compliant with the zoning requirements, which was the reason for the staff's recommendation of approval, and the reason for his asking the Board to follow the staff's recommendation.

Mr. Stout acknowledged that the church should be able to expand and do certain things under the regulations; however, he also related concern about the size and scale of the proposed church expansion in relation to the amount of land that was available to build on. He then commented regarding the on-street parking situation in the vicinity of the church and traffic congestion,

particularly along Bates Creek Road.

In response, Mr. Graddy said he had suggested it was better for the neighborhood not to demolish houses for parking, but to use an existing parking lot instead. He said Mr. Stout's suggestion seems to be that the church should try to acquire more lots in order to have a parking area as large as Faith Lutheran, which he didn't think was good from the neighborhood's perspective. He said the point he was trying to make was that they didn't believe the current church population has imposed much of a burden on the neighborhood; and it was unlikely that an increase in seating capacity (from 110 to 140 persons) would further exacerbate traffic congestion.

Mr. Karounos addressed the parking issue from the perspective of being a member of the Greek Orthodox Church since 1973, as well as a participant in the neighborhood. He said the parking has been along Melrose for many years; and that Ms. Savage was correct in her observation that the parking lot at Cassidy School wasn't used on that particular occasion. He explained that there were only 30 parishioners present; and that 15 percent of the parishioners either carpooled, walked or rode their bicycles to church, like he did. On another note, he said they only get one or two deliveries a month at the church; and that the growth in church membership has been slow over the years. He felt that the parking, particularly along Melrose, was not much of a problem since the church services, which start at 10:00 a.m., usually are over in two hours. He said that the parishioners are strongly encouraged not to park illegally along Bates Creek and other places.

Ms. Bell initially commented about the persistent parking and congestion problems throughout this area, which she noted being familiar with. She said one of the considerations for her, with respect to the church expansion, was to what extent this plan would add to the existing parking problem; and that it was difficult for her to think that it was going to make a substantial difference. She also spoke about the appropriateness of the design with respect to whether a church with a Byzantine dome fits into the community; and whether the Board has the authority to say the design is inappropriate in the neighborhood -- which she suggested they do not. Ms. Bell said she could find no reason to deny the church's appeal; however, she noted wanting to see a different arrangement for handicap parking, which is a necessity. Therefore, she asked that the case be continued to allow some modification of the handicap parking. On another note, Ms. Bell said she was really impressed with the church's effort to control and reduce the amount of storm water, as well as the use of permeable paving material.

Ms. Edwards spoke in concurrence with Ms. Bell. She felt the style and character of the church adds a touch of diversity that is very attractive. She also noted concern about the handicap parking layout, for which clarification was requested.

Mr. Gallimore responded that the submitted design for the handicap parking spaces was not acceptable under the Traffic Engineering guidelines, which was part of the reason some were eliminated. With respect to the traffic, he stated that the new building would be doubling in square footage, which made him think there would be uses other than just a sanctuary for this facility, such as a daycare, for instance.

Mr. Christoforidis responded that the church was not anticipating the operation of a child care facility. He reiterated about the church's need for additional worship space and seating, noting there would not be a noticeable increase in traffic. He also spoke about trying to address the on-site parking issue as best they could by utilizing tandem parking spaces (with a curb cut), which admittedly was not the best solution. There was a brief discussion between Mr. Owens and Mr. Christoforidis regarding accessibility to on-site parking for handicapped persons and delivery vehicles.

Mr. Stumbo noted the Board's recurring concern regarding the on-site parking. He asked whether a modified plan that can accommodate adequate on-site parking could be brought back to the Board, since that was a huge concern. Mr. Christoforidis questioned the number of parking spaces that should be shown.

Mr. Gallimore responded that, according to ADA standards, there needs to be at least two parking spaces for the total number of parking spaces provided; and although exempt, most churches typically provide more handicap parking due to the number of elderly parishioners. With respect to

the submitted site plan, Mr. Gallimore pointed out that the parking spaces are shown, but not the way vehicles will be able to maneuver in and out.

In response to Chairman Owens' question, Mr. Gallimore said the ADA requirement is one handicap parking space for every 25 regular spaces. He went on to say that according to the zoning regulations, the church needs to have two handicap parking spaces, one of which should be van accessible. A brief discussion followed regarding access management guidelines for parking lots.

Mr. Marx noted his concern about the Board's expectations regarding the on-site parking, considering that staff looked at this with great scrutiny. He spoke about the difficulty of getting even a handful of parking spaces and an adequate turn-around for maneuverability without reducing the size of the church expansion to free up space.

Mr. Griggs expressed his support for a modest church expansion in order to have necessary parking on site, because he didn't want to see the neighborhood adversely impacted. He felt they were trying to put too much on the lot at the expense of the things that are absolutely necessary. Mr. Graddy responded that from his perspective, they were improving on the current situation. Mr. Griggs did not concur.

Mr. Stout commented that he would like for the applicant to consider taking another look at the project they are proposing and creating something that would make the parishioners happy and satisfy the neighbors as well. He said he was not against the proposal, but felt the expansion was too extensive. Mr. Graddy noted that some of the neighbors were proponents of the church expansion. He related his understanding of the Board's comments that if two dedicated handicap spaces are provided (one where currently shown and another one), they will have complied with the ADA requirements. However, Mr. Stout reiterated about the lack of an area on site for truck deliveries where backing out onto the street would be avoided. As to delivery vehicles currently being parked on the street, he said this was something they were trying to get rid of, if possible.

Mr. Graddy sought clarification of the issue, noting that he thought they had met the requirements after having received the staff's recommendation of approval. He related that, to his understanding, the issue is being able to provide enough pavement for delivery trucks to turn around and to have two handicap parking spaces.

Following a brief discussion with Mr. Graddy about what was needed to satisfy the Board and gain their approval, Mr. Stout suggested a continuance until the May meeting to allow the applicant to meet with Traffic Engineering in order to address the issues of concern that were raised.

Mr. Karounos directed his comment to the one or two deliveries per month to the church. He said they are trying to respect the neighborhood and not tear down the house at 912 Bates Creek because it doesn't make sense to take away more greenspace for one to two deliveries a month. Mr. Griggs clarified that they were not talking about greenspace, but satisfying Traffic Engineering's requirements.

Chairman Owens said one of the problems he was seeing was that Traffic Engineering wasn't buying into this plan. The other problem, from his personal standpoint, was seeing that the parking area behind the parish house, which could probably handle 8 to 10 cars and could provide a turnaround for delivery vehicles to exit onto Bates Creek, will be eliminated and no longer an option with this proposal.

Ms. Lowe reiterated that the neighbors were concerned with traffic, as well as the size and scale of the proposed facility in a residential neighborhood. Mr. Stout commented that there are larger church facilities in the vicinity than the one currently being proposed. He reiterated his traffic and safety-related concerns with respect to the parking issue.

Mr. Graddy said, after conferring with his client, that they were agreeable to a continuance, as recommended, and would work directly with Traffic Engineering to satisfy the necessary requirements. He also said they would try to come up with a modification that the Board could support. Mr. Stumbo said that would probably satisfy the Board, noting that sometimes they don't

always agree with the Planning staff despite the terrific job that they do.

At this point, Mr. Brock made a suggestion. He said that storm water was already discussed to some extent today; and if the Board was going to have the applicant redesign the site plan to comply with the parking regulations, it may not necessarily comply with the storm water regulations. He suggested having both of these issues addressed.

Chairman Owens commented that he appreciated what the applicant proposed with regard to the water runoff collection/reuse area. He suggested that this should also be looked at to make sure everything is in compliance. Chairman Owens then asked whether a 30 or 60-day continuance was preferable to the applicant.

Mr. Graddy responded that he was hopeful that they would be able to satisfy the necessary requirements and complete the task at hand within 30 days; and if they recognized that additional time was needed, they would contact the staff and the Board. Mr. Graddy requested a 30-day continuance, until the May 30 meeting.

Chairman Owens extended the Board's appreciation and thanks to the interested parties and neighbors for taking the time to be present at today's hearing.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Moore absent) for a continuance of **CV-2008-24: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** until the May 30 meeting.

E. Administrative Review

1. **A-2008-37: LAURA SCOTT ADKINS / CUMMINGS SIGNS, INC.** - appeal for an administrative review to allow a 176 square-foot freestanding sign, and a logo on a non-continuous parapet, for a Saturn dealership in a Highway Service Business (B-3) zone, on properties located at 1440 and 1460 East New Circle Road. (Council District 5)

The Staff Recommended: Disapproval, and that the decision of the Division of Building Inspection be upheld, for the following reasons:

- a. The proposed freestanding sign is 176 square feet in size, more than twice the 75 square feet allowable for a freestanding business sign in the Highway Service Business (B-3) zone. In this instance, pole covers are counted toward the sign area total, based on Article 17-3(e)(2)(a)(3), which states that the area of the sign shall include such covers when they extend more than six (6) inches, at any point, from the structural member of the sign.
- b. No justification of any kind has been offered by the appellant to support that the space between the poles should not be counted toward the sign area, or could not be modified to allow a more compliant sign.
- c. The proposed logo sign is to be placed on a non-continuous parapet of a decorative nature above the roof line of the existing building. Roof signs are prohibited in all zones of Lexington-Fayette County, pursuant to Article 17-5(c) of the Zoning Ordinance.
- d. No arguments or assessments of any kind have been presented by the appellant to support that the proposed sign should not be considered as a prohibited roof sign.
- e. There appear to be a number of reasonable options that the appellant could pursue that would allow the proposed signs with some limited modification.

Representation – Mr. James Golden was present on the appellant's behalf and stated that they are the national supplier for Saturn auto dealership signage. He spoke about the proposed signage package that they want to install as part of Saturn's new image, particularly the new freestanding (pylon) sign with a solid pole cover, which Building Inspection has denied a permit for.

In response to Chairman Owens' inquiry, Mr. Marx explained that the problem with the proposed freestanding sign was due to its design, noting the solid structural feature that extends from the top to the bottom of the sign. A rendering was shown to illustrate the difference between the existing permitted freestanding sign, which has an opening between the structural poles, and the one

proposed for installation by the applicant, which has the structural poles and the space between entirely covered. Mr. Marx stated that covering the space between the two structural members increases the size of the proposed sign, in addition to which the face of the sign is proposed to extend more than 6 inches from the poles of the sign. Therefore, the proposed freestanding sign exceeds the maximum allowable size of 75 square feet in the B-3 zone by 101 square feet. Mr. Marx briefly explained how sign area is calculated and what parts are counted toward the total sign area allowed for the property. He noted that the Board has previously allowed the transfer of square footage from one freestanding business sign to another when an applicant proposes to combine two freestanding signs into one, which may be an option in this instance.

For clarification, Chairman Owens asked whether he understood correctly that the applicant would be willing to forego the parapet sign if the freestanding sign were to be approved by the Board. Mr. Golden responded affirmatively.

There was a brief discussion between Mr. Stout and Mr. Marx regarding the difference in appearance between the existing and proposed signs as it relates to how Building Inspection calculates sign area.

Mr. Golden commented that all automobile manufacturers update or change their image every 10 to 12 years or so; and that Saturn wanted to stick with the new design for the sign package they came up with, which was the reason for his requesting the administrative appeal. Mr. Stout offered suggestions as to how to modify the proposed freestanding sign in order to be in compliance with the Sign Ordinance. A brief discussion between Mr. Stout and counsel followed.

Ms. Edwards asked counsel whether the existing freestanding sign shown in the photo was considered one structure. Ms. Boland related the interpretation that since the two sides of the existing sign are the support structure, it does not count towards the sign size. However, she said the problem with the proposed sign has to do with the provision of being able to cover the supports to make them attractive; and if covering the support extends beyond 6 inches, a larger, additional sign area is created, or a visible mass that attracts attention which, in essence, becomes a sign.

Mr. Griggs asked if there is a limit on the number of vertical supports a sign can have. Ms. Boland replied that she didn't believe so. Mr. Griggs suggested possibly adding more vertical support and covering them with 6 inches of material on either side in order to fill the whole area. Ms. Boland thought that if it becomes solid, Building Inspection would determine that they are trying to circumvent the Zoning Ordinance and would refer them to the Board of Adjustment.

Mr. Marx noted that one possible option that wasn't part of the application would be to transfer unused square footage. He said the applicant was allowed to have two freestanding signs since this is a corner property; and if there is no sign on the other corner at Young Drive and none is proposed, it would give the applicant an additional 75 square feet that can be transferred toward the desired 176 square-foot sign. However, the total would only be 150 square feet.

Chairman Owens asked whether Mr. Golden was open to the staff's suggestion. Mr. Golden responded that they would accept the recommendation that there be only one freestanding sign of 150 square feet. Mr. Stout commented that he thought this was a workable compromise. In response to Chairman Owens' question about the motion that was needed, Ms. Boland said since this is an administrative appeal, she thought a motion could be made acknowledging that the applicant has the right to combine two allowable freestanding signs; and since the applicant was only going to have one freestanding sign, the Board would allow them to combine the two signs for one 150 square-foot sign. She said this would allow the applicant to work within those parameters.

Action – A motion was made by Ms. Bell, seconded by Ms. Edwards, and carried unanimously (Moore absent) to approve **A-2008-37: LAURA SCOTT ADKINS / CUMMINS SIGNS, INC.** and to allow one 150 square-foot freestanding sign in lieu of two separate 75 square-foot freestanding signs.

In response to Mr. Marx's question concerning the parapet sign, Chairman Owens noted that Mr. Golden had agreed earlier to withdraw his request for the parapet sign in the event that the

freestanding sign was approved by the Board. Ms. Boland pointed out that either one of the following options was needed: 1) a withdrawal of the portion of the administrative appeal pertaining to the request for a parapet sign or 2) a motion to disapprove that portion of the appeal. Mr. Golden reiterated his willingness to withdraw the portion of the administrative appeal for a parapet sign.

(The meeting was recessed at 3:05 p.m. and reconvened at 3:10 p.m., prior to hearing CV-2008-24: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH.)

- IV. **BOARD ITEMS** - The Chairman announced that any items a Board member wished to present would be heard at this time.

Ms. Bell asked about the status of the traffic review at Mary Queen of the Holy Rosary School on Clays Mill Road. She said she recalled an imposed condition that if traffic increased on Clays Mill by 10% or more as the result of increased enrollment, a turn lane would be installed to address the congestion problem. Ms. Bell said the last time this matter was discussed at a review, Traffic Engineering made the point that traffic in the vicinity had increased more than 10%.

In response, Mr. Gallimore related his recollection of the traffic counts that were conducted by the school (in conjunction with Traffic Engineering) and the financial incentives offered by the school to parents for carpooling. He said although the goal for carpooling was not met at that time, it was determined that the traffic was not proportionately increased by the increase in student enrollment; and that an honest effort had been made toward meeting the stated goal. The matter of enforcement of the imposed condition was questioned by Ms. Bell.

Ms. Boland suggested reviewing the minutes of that particular hearing, including the wording of the condition in question, and having staff report back to the Board on the matter at next month's meeting. She felt this would help to determine whether anything further is needed to fulfill the condition in question, with which Chairman Owens concurred.

- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time.
- A. **House Bill 55 Training Opportunity** - Chairman Owens reminded the Board members about the APA audio-conference scheduled on Wednesday, May 21, 2008 at 4:00 p.m. in the Division of Planning conference room. The title of the conference is "Community-Based Brownfields Development" and will count toward 1.5 hours of House Bill training credits for Board of Adjustment and Planning Commission members, as well as staff.
- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be May 30, 2008.
- VII. **ADJOURNMENT** - There being no further business, the Chairman declared the meeting adjourned at 5:23 p.m.

Mike Owens, Chairman

James Griggs, Secretary