

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

May 30, 2008

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:02 p.m. in the Council Chambers, 200 East Main Street, on May 30, 2008. Members present were Chairman Mike Owens, Joanne Bell, Carolyn Edwards, Kathryn Moore, Louis Stout, and Barry Stumbo. Others present were Jim Hume, Division of Building Inspection; Barry Brock, Division of Engineering; Jeff Neal, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Jim Marx, Jimmy Emmons, and Wanda Howard.

**APPROVAL OF MINUTES** – No minutes were approved at this time.

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. **CV-2008-51: KENTUCKY EASTER SEAL SOCIETY, INC.** – appeals for a conditional use permit to construct a hospital addition in an Agricultural Urban (A-U) zone and to construct a parking garage on a separate lot in a Professional Office (P-1) zone. Variances are also requested to: 1) reduce the required side yard from 25 feet to 1.5 feet in the A-U portion of the property for construction of the hospital addition; 2) reduce the required side yard from 12 feet to 1.5 feet in the P-1 portion of the property for the hospital addition; and 3) reduce the required side yard from 12 feet to 5 feet in the P-1 portion of the property for construction of the parking garage, on properties located at 1826, 1832 and 2050 Versailles Road (Council District 11).

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

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. There are no properties in the immediate area of the new building or parking garage that might be disturbed, and the portion of the expansion located in the A-U zone represents a small part of the overall expansion. The expanded facilities will accommodate a growing need for rehabilitation and other medical services in Lexington and surrounding areas.
2. All necessary public facilities and services are available and adequate for the proposed uses.

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

1. Granting the requested variances, all pertaining to side yard reductions along an existing private access way, should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The access way and new construction on each side (hospital building and parking garage) will appear as a unified development, with no discernable property lines. Use of the access way will in no way be diminished or impaired by the proposed side yard reductions.
2. The floodplain on the eastern side of the subject property, and the configuration of the narrow access way separating the hospital properties, are special circumstances that contribute to justifying the request.
3. Strict application of the Zoning Ordinance would force the appellant to further reduce the width of the parking garage, and would possibly result in a large portion of the new building being shifted more toward Versailles Road. Such changes would not necessarily be beneficial, as a smaller parking garage would likely force the appellant to consider additional surface parking in environmentally sensitive areas, and any multi-story building expansions close to Versailles Road might negatively impact that prominent streetscape.

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

- a. The new building and parking garage shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission, with the understanding that the width of the parking garage will be reduced so that a 25' setback from the floodplain will be maintained.
- b. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- c. Construction of improvements (such as the proposed drop-off canopy) within the access way off of Versailles Road, on a separate piece of property not currently owned by the appellant, shall not take place until the appellant has obtained ownership or other sufficient legal interest to that property, as determined to be acceptable by the Department of Law. This shall not prevent the appellant from making modifications to the access way related to paving and curbing and associated landscaping.
- d. 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.
- e. The Board's action shall be denoted on an amended Final Development Plan approved by the Planning Commission, specifying the relocation of any easements impacted by new construction and other technical aspects of the hospital expansion.
- f. A consolidation plat shall be recorded to combine the lots at 1832 and 2050 into one lot prior to issuance of a building permit for the 4-story hospital addition.

Representation – Mr. Bruce Simpson, attorney, was present representing Cardinal Hill Hospital, as the appellant is more commonly known. He requested a one-month postponement to meet with an adjoining neighbor that had questions about the hospital's proposed expansion. There was no opposition to the postponement request.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to postpone **CV-2008-51: KENTUCKY EASTER SEAL SOCIETY, INC.** until the June 27, 2008 meeting.

Board Comment - Ms. Bell noted that she had some concern regarding whether there was adequate sanitary sewer capacity to support the expansion of the hospital, and asked the appellant to be prepared to address this issue, as well as stormwater concerns, on June 27<sup>th</sup>. Mr. Simpson responded that he understood that sanitary sewer capacity and stormwater would be issues related to the appellant's request. He planned to address those issues in his presentation to the Board when this case was heard. Chairman Owens stated that the EPA Consent Decree will affect many more applications to the Board in the future within Lexington-Fayette County and will need to be addressed as necessary.

- b. **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:

1. 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.
2. 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.
3. 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:

1. 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.
2. Strict application of the Zoning Ordinance would dictate a more modest expansion of this church, thereby allowing some off-street parking onsite, but would not be feasible in a way that will not affect their worship, creating an unnecessary hardship to this congregation.
3. 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 Tates Creek Road (with a crosswalk) to allow safe pedestrian movements along this 475' distance.
4. 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.
5. 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:

- a. 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.
- b. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction.
- c. The proposed driveway to remain from Melrose Avenue shall be approved by the Division of Traffic Engineering.
- d. A minimum of 28 off-street parking spaces shall be leased off-site for the use by the church during their activities.
- e. 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).
- f. 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.
- g. 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. Marshall Estep was present representing the church. Mr. Estep stated that in conjunction with the Board's recommendation to remedy the church's handicap parking and other parking problems at the Board's meeting a month ago, the church has encountered another problem. He continued on to say that the church needs to prepare an amended plat to the Planning Commission to amend the front building line along Tates Creek Road that is established for their property. He indicated that the church anticipated filing said application on September 11, 2008. Because of this delay, Mr. Estep requested a 90 day postponement to the August 22, 2008 meeting.

Mr. Marx indicated to the Board and the appellant that new mailed notice of the hearing would be required to be sent to surrounding property owners since the appellant was requesting a three month postponement. There was no opposition to the postponement request.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Griggs absent) to postpone **CV-2008-24: PANAGIA PANTOVASILISSA GREEK ORTHODOX CHURCH** until the August 22, 2008 meeting.

- c. **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 representing the appellants and requested a two-month postponement of the variance application for several reasons, including the fact that some of the utility companies were not able to visit the site until this week. In addition, the appellant had met with representatives of the Division of Building Inspection and the builder this week, but would like additional time to attempt to resolve the issues. Mr. Moloney informed the Board that a resolution may involve redesign or reconstruction, which has financial implications for the appellants. There was no opposition to the postponement request.

Mr. Stumbo asked if 60 days would provide enough time to discuss resolutions with the staff as well. Mr. Moloney responded that he hopes a resolution would not require removal of the entire addition, but it would require design work and some evaluation of the cost implications. Mr. Stout suggested that Mr. Moloney plan to discuss any proposed resolution with the staff before coming back before the Board.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to postpone **V-2008-40: REV. and MRS. GEORGE NAZE** until the July 25, 2008 meeting.

- d. **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.

Representation – Ms. Susan Van Wert was present representing the appellant and requested a withdrawal of the conditional use application.

Upon consultation from Ms. Boland, Chairman Owens stated that no action from the Board was necessary.

2. No Discussion Items - The Chairman asked if there were any agenda items where no discussion was needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) the

appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board proceeded to take action.

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

ABBREVIATED HEARINGS:

- a. **V-2008-52: WYN MORRIS and VICTORIA SWORD** – appeal for a variance to reduce the required side street side yard (along Skain Alley) from 9'11" to 7'3½" in order to construct a detached garage, in a Two Family Residential/Historic District Overlay (R-2/H-1) zone, on property located at 147 Forest Avenue (Council District 3).

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. The garage will be less than 3' closer to Skain Alley than the principal residence, and will be sited where an accessory structure existed many years ago. Decorative fencing and landscaping will help to minimize any potential for the structure to degrade the streetscape in this area. Architectural details of the proposed structure will be subject to review and approval by the Board of Architectural Review.
2. The narrow width of the lot and absence of any off-street parking at all are special circumstances that contribute to justifying a relatively minor reduction in the required side street side yard.
3. Strict application of the Zoning Ordinance would require that the proposed detached garage be moved 2'7.5" farther away from Skain Alley. While this might appear to be easily accomplished, it would result in a loss of limited open space in the back yard that has significant value.
4. The circumstances surrounding this request are not the result of actions taken by the appellants, as they just recently purchased the property and are attempting to provide at least some off-street parking, thereby eliminating a nonconforming situation.

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

- a. The detached garage shall be constructed in accordance with the submitted application and site plan, or as amended to comply with requirements of the Board of Architectural Review.
- b. All necessary building permits shall be obtained from the Division of Building Inspection prior to construction.
- c. All construction shall comply with a Certificate of Appropriateness issued by the Board of Architectural Review.

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

Representation – Mr. Tim Dobson, with Pohl Rosa Pohl architecture firm, 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. Stout, seconded by Ms. Bell, and carried unanimously (Griggs absent) to approve **V-2008-52: WYN MORRIS and VICTORIA SWORD** (a variance to reduce the required side street side yard [along Skain Alley] from 9'11" to 7'3½" in order to construct a detached garage, in a Two Family Residential/Historic District Overlay [R-2/H-1] zone, on property located at 147 Forest Avenue) for the reasons provided 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-2008-56: DAVID COLVIN** – appeals for a variance to reduce the required side yard from 3 feet to 0 feet in order to allow a fence to remain where located, in a Planned Neighborhood Residential (R-3) zone, on property located at 609 Skyview Lane (Council District 2).

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. Only a short section of fence (approximately 16') is in question, and that limited length will mirror the fence on the adjoining property.
2. The offset between the rear walls of the subject residence and adjoining residence is a special circumstance that contributes to justifying the requested variance.
3. Strict application of the Zoning Ordinance would require that all of the fence not entirely to the rear of the existing residence be removed. Given the location of the adjoining residence, this would create a potentially awkward arrangement and would diminish the visual appeal of the fence.

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

- a. The fence may be retained in accordance with the submitted application and site plan.
- b. A fence permit shall be obtained from the Division of Building Inspection within 30 days of Board action.
- c. The granted variance is only for the purpose of allowing that portion of the fence to the side of the residence to remain as constructed.

Chairman Owens asked whether or not there were objectors present to the subject appeal. There was no response; however, photographs of the subject property and the appellant's site plan were presented at the request of the Board.

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

Board Questions – Chairman Owens asked for clarification about the location of the fence on the subject property. Mr. Marx displayed the appellant's site plan and explained the allowances of the Zoning Ordinance for fencing in the rear yard, but not the side yard, in a residential zone. The staff recommended approval of the appellant's variance application.

Ms. Bell questioned the appellant about the circumstances of the construction of the fence and whether a building permit was obtained from the Division of Building Inspection. Mr. Colvin indicated that the fence was constructed by a contractor about one year ago and said the contractor handled the details of securing a permit. Mr. Colvin said that he had not seen the fence permit, although he assumed that the contractor had obtained or at least applied for one. In addition, the contractor did inform the appellant that there might be some issue with the location of the fence; however, he presumed the location would be acceptable, based upon previous fence construction in similar circumstances and given the location of the neighboring home.

Mr. Stout stated that he did not understand why the appellant's appeal was before the Board for consideration, and indicated that the Ordinance seems to treat the appellant unfairly. Mr. Jim Hume, Division of Building Inspection, responded that fence permits, as with all permits, are reviewed on a case-by-case basis.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously (Griggs absent) to approve **V-2008-56: DAVID COLVIN** (a variance to reduce the required side yard from 3 feet to 0 feet in order to allow a fence to remain where located, in a Planned Neighborhood Residential [R-3] zone, on property located at 609 Skyview Lane) for the reasons listed by the staff, subject to the three conditions provided by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- c. **CV-2008-44: C & G CONSTRUCTION COMPANY, LLC** – appeals for a conditional use permit to construct a church addition (family life center) and additional off-street parking; and a variance to reduce the required side street side yard (along Gaidry Road) from 30 feet to 24 feet to allow the building expansion, in a Two-Family Residential (R-2) zone and a Single Family Residential (R-1C) zone, on properties located at 1705 Jennifer Road and 1504 Green Hills Road (Council District 6).

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

1. The proposed church expansion should not adversely affect the subject or surrounding properties. Adequate off-street parking will be provided, and the expanded parking lot will be landscaped in accordance with the requirements of Article 18 of the Zoning Ordinance. Adequate buffers and screening will be provided by existing and proposed landscaping, fencing on bordering residential properties, and open space that is to be retained.
2. All necessary public facilities and services are available and adequate for the proposed use.

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

1. Reducing the required side street side yard along Gaidry Road from 30' to 24' should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. A setback of only about 14' is provided by the existing parking lot, with approximately 10' of that pavement along Gaidry Road to be removed and replaced with landscaping. The curve of Gaidry Road, and the fact that the immediately adjoining property to the east along Gaidry Road is currently vacant and owned by the church, should help to minimize any potential adverse impact of the yard reduction.
2. The arrangement of the existing church facilities on the property is a special circumstance that contributes to justifying the requested variance, given that those improvements were constructed by previous property owners.
3. Strict application of the Zoning Ordinance would require that the building addition be moved 6' farther away from Gaidry Road. While this is possible, it would result in a less desirable design that does not appear to be warranted, given the church's ownership of the adjoining lot and the 10' wide area of pavement that will be eliminated along a 95' to 100' stretch of Gaidry Road.

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

- a. The proposed church expansion shall take place in accordance with the submitted application and site plan.
- b. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- c. Landscaping for the expanded parking lot shall be provided, as reflected on the submitted site plan, in accordance with the requirements of Article 18 of the Zoning Ordinance. Along Green Hills Road, a continuous vehicular use area landscape buffer shall be provided for the full length of the parking lot.
- d. The expanded parking lot shall be paved, with spaces delineated, in accordance with the requirements of Article 16 of the Zoning Ordinance.
- e. 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.
- f. An Administrative Action & Consolidation Plat for 1705 Jennifer Road and 1504 Green Hills Road shall be filed with the Division of Planning and recorded prior to the issuance of any building permits for this construction.

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

Representation – Mr. Wayne Cowen, C & G Construction, was present representing the appellant and stated that he understood, agreed with, and would abide by the conditions for approval.

Ms. Bell questioned whether sanitary sewer capacity and stormwater management should be discussed for the proposed expansion of the church. Mr. Stout stated that he believed that was a good question for the engineers. Chairman Owens agreed that the Board should question these issues and stated that sanitary sewer capacity and stormwater management has really come into focus over the past year for the community. Chairman Owens asked Ms. Boland, legal counsel, and Mr. Brock, Division of Engineering, for any recommendation to assist the Board. Ms. Boland advised the Board that she and Mr. Brock would work to create a possible condition of approval that the Board could adopt.

Chairman Owens stated that two letters of opposition had been submitted for the record; one from Ms. Naylor and a second from Mr. Danny Norton. Mr. Cowen indicated that he was aware of Ms. Lois Naylor's opposition and that he had spoken to Ms. Naylor regarding the construction process and dust. He believed that they had resolved her concerns. Mr. Cowen stated that he was not able to speak or meet with Mr. Danny Norton regarding the church's plans.

Mr. Stout asked if the church had given any consideration to sanitary sewer or stormwater management during the planning process. Mr. Cowen responded that they had analyzed the stormwater drainage. He stated that the proposed building would be replacing a surface parking lot; therefore, the stormwater runoff would be dispersed in a manner similar to that of the existing parking lot. Mr. Stout asked if the church is located within a floodplain area. Mr. Cowen indicated that he was not aware of a floodplain area on the site.

Chairman Owens asked Mr. Cowen to address Ms. Bell's earlier question regarding sanitary sewer capacity. Mr. Cowen stated that the church is only adding one toilet fixture, and they plan for it to be located with a nursery. He assured the Board that the nursery is not a childcare facility, and is only for use during church services or other activities. The additional bathroom facility is for convenience only, and the occupancy of the church would remain at 250 persons.

Ms. Boland presented a possible condition of approval for the Board to consider. She read the condition for the Board's consideration, as follows:

"Prior to issuance of any grading permit, the applicant shall comply with any request for information or studies on sewer capacity if applicable Divisions determine such is needed."

Ms. Boland explained that the Division of Engineering and the Division of Water and Air Quality have shared responsibilities with regard to sanitary sewers, and the note would only require more detailed study if either of these divisions deems it to be necessary. Ms. Boland confirmed that if it were determined that sanitary sewer capacity was insufficient, then the appellant would either need to take corrective action, or LFUCG would not issue a grading or building permit for the church expansion.

Mr. Cowen agreed to abide by the proposed seventh condition as read by Ms. Boland.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to approve **CV-2008-44: C & G CONSTRUCTION COMPANY, LLC** (a conditional use permit to construct a church addition [family life center] and additional off-street parking; and a variance to reduce the required side street side yard [along Gaidry Road] from 30 feet to 24 feet to allow the building expansion, in a Two-Family Residential [R-2] zone and a Single Family Residential [R-1C] zone, on properties located at 1705 Jennifer Road and 1504 Green Hills Road) for the reasons provided by the staff, subject to the six conditions listed by the staff and the additional condition as noted above, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- d. **CV-2008-45: C & G CONSTRUCTION COMPANY, LLC** – appeals for a conditional use permit to construct an 888 square-foot addition to a church fellowship hall and to rebuild a detached garage; and a variance to reduce the required rear yard from 25 feet to 4 feet in order to allow construction of the garage, in the Agricultural Rural (A-R) zone, on property located at 6295 Athens-Boonesboro Road (Council District 12).

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

1. A minor expansion of the fellowship hall, and replacement of the detached garage with a larger structure, should not adversely affect the subject or surrounding properties. The fellowship hall additions are within the building footprint approved by the Board over ten years ago, and the new detached garage will be in the same general location as the existing garage. Both construction sites are away from Athens-Boonesboro Road, in an area at the rear of the property that borders a cemetery. No increase in sanctuary seating will result from the building additions, and adequate off-street parking is available in the existing church parking lot.

2. All necessary public facilities and services are available and adequate for the proposed uses.

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

1. Although 2' closer to the rear property line than the existing detached garage, the new garage will comply with the 1.5' setback that normally applies to accessory structures. As such, no adverse impact to the public health, safety or welfare is anticipated. The character of the general vicinity will not be altered, as the new garage will be largely hidden from view, and will be of a size (660 square feet) customary for a use of this type.
2. The location of the existing garage and nearby buildings, and its orientation relative to the circle drive that wraps around the sanctuary building, are special circumstances that contribute to justifying the request.
3. Strict application of a 25' setback requirement, when the Zoning Ordinance provides for accessory structures to be located as close as 1.5' from a rear property line, would be unreasonable and is not warranted in this instance, especially since a dimensional variance to 8' was approved for this rear yard in 1997.

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

- a. The fellowship hall additions and garage replacement shall take place in accordance with the submitted application and site plan.
- b. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- c. The variance is granted only for the purpose of allowing the new garage to be located within 4' of the rear property line.

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

Representation – Mr. Wayne Cowen, C & G Construction, was present representing the appellant and stated that he understood, agreed with, and would abide by the conditions for approval. Additionally, he agreed to place a fourth condition of approval on the conditional use permit to read as follows:

“Prior to issuance of any grading permit, the applicant shall comply with any request for information or studies on sewer capacity if applicable divisions determine such is needed.”

Mr. Cowen noted to the Board that the church operates on private sanitary sewer and stormwater systems.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to approve **CV-2008-45: C & G CONSTRUCTION COMPANY, LLC** (a conditional use permit to construct an 888 square-foot addition to a church fellowship hall and to rebuild a detached garage; and a variance to reduce the required rear yard from 25 feet to 4 feet in order to allow construction of the garage, in the Agricultural Rural [A-R] zone, on property located at 6295 Athens-Boonesboro Road) for the reasons provided by the staff, subject to the three conditions listed by the staff, as well as the additional condition noted above, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- e. **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: Approval, for the following reasons:

1. Provided that the vehicle storage yard is paved, granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The site is surrounded by other similar facilities. The entire storage area will be fenced, which will help to maintain a safe and secure environment. Storm water management will be provided as required by the adopted Engineering Manuals.
2. 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:

- a. The vehicle storage yard shall be established in accordance with the revised site plan dated April 28, 2008, or as amended by the Planning Commission, with the one exception that the storage lot be paved rather than graveled.
- b. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and prior to placement of the office trailer on the site.
- c. The storage lot shall be paved, with spaces delineated, in accordance with the requirements of Article 16 of the Zoning Ordinance and subject to review and approval by the Division of Traffic Engineering.
- d. 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.
- e. Development of the property shall be done as reflected on a Final Development Plan approved by the Planning Commission, with action by the Board noted on that plan.
- f. The storage lot shall function at all times as a vehicle storage yard, as defined in Article 1-11 of the Zoning Ordinance. To ensure that the subject property is not used as a junk yard, no wrecked or inoperable vehicles may be brought to this site.

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

Representation – Mr. Johnny Winchester, applicant, was present and stated that he believed it would be difficult to abide by condition number three, which would require the entire storage lot to be paved, because the cost of asphalt is very expensive. Mr. Winchester pointed out that all other vehicle storage lots (impound lots) in this community are at least partially gravel. Mr. Winchester displayed an aerial photograph of the site, as well as several site photos depicting the site entrance and driveway. He also had photos of the adjoining property, which is owned by LFUCG and used by Fleet Services, and by the Division of Police for impounded vehicles.

Mr. Winchester reiterated that we would not be able to afford to expand his business if he was required to pave the entire storage lot. He said that he understood that paving the storage lot would be ideal, but that it was not economically feasible. Chairman Owens stated that while he appreciated the appellant's keen interest in the financial assessment, the Board must look to the future and not strictly at what has been permitted in the past. Chairman Owens followed his statement with a question to Mr. Hume as to whether there was any means by which Mr. Winchester could proceed without paving the entire lot. Mr. Hume stated that the Division of Building Inspection supported the lot being paved, and that such pavement would be required prior to a certificate of occupancy being issued for the proposed use.

Chairman Owens proposed a seventh condition of approval, to read as follows: "This vehicle storage lot shall be fenced, paved and spaces delineated prior to issuance of a certificate of occupancy by Building Inspection." Mr. Winchester agreed to the seventh condition, with the exception of paving the lot.

Mr. Stout asked Mr. Hume if the storage lot needed to be paved with asphalt or concrete or if road rock would suffice. Mr. Hume reiterated that the surface must be solid, and road rock itself did not qualify as a solid surface. Mr. Stout proposed a phased paving plan, with a specified completion date to be determined by the Division of Building Inspection and the appellant. Mr. Hume agreed that a phased paving plan could be accommodated, as long as the portion of the storage lot not yet paved was barricaded so that it could not be used. He suggested that one-half of the lot be paved now – including striping and landscaping to meet the Ordinance – and the second half be completed within 12 months. If the appellant did not comply with the stipulations of the Division of Building Inspection, then Mr. Hume would bring the appellant back before the Board for a revocation hearing. Mr. Winchester agreed to the stipulations outlined by Mr. Hume.

Mr. Stout suggested that a written and signed agreement be executed so that no agreements made today regarding responsibilities could be reversed. Mr. Winchester asked if it would be possible to agree to a three-phase paving plan, implemented one-third at a time. Mr. Stout and Mr. Hume agreed that a two-phase plan was appropriate. Mr. Marx suggested that Mr. Winchester could consider revising the submitted site plan to adjust or reduce the total size of the

storage lot by one-third. That could meet the Board's desire of a two-phase paving plan, for two-thirds of the area, and then Mr. Winchester would be required to make a future application to the Board in order to pave the last third of the storage lot when his business plan allows for it.

Mr. Hume suggested a 30-day continuance of the application to allow Mr. Winchester to revise the site plan, while Building Inspection drafts a written agreement, for both parties to sign.

Chairman Owens clarified that Mr. Winchester wanted a "vehicle storage yard" as defined in the Zoning Ordinance, and not a place for wrecked or junked vehicles. Mr. Winchester stated that he wants to bring wrecked vehicles for a limited amount of time to the proposed vehicle storage lot, but only until an insurance company can tow a vehicle away permanently. He understood that there are two definitions in the Zoning Ordinance, one for vehicle storage yard and one for "junk yard." He stated that he did not intend to junk, dismantle, or salvage any vehicle. Chairman Owens asked that Building Inspection clarify whether Mr. Winchester's intended use was a "vehicle storage yard" or a "junk yard." Mr. Hume and Ms. Boland conferred, and suggested that the Board put this item on hold and continue with the remainder of the Board's agenda until they could definitively answer that question. Chairman Owens suggested that the Board accept Mr. Winchester's offer to continue this item for 30 days. Mr. Winchester stated that he would prefer a 60-day continuance. Chairman Owens states that the primary reason for a continuance was for Mr. Winchester to work with the Division of Building Inspection and the staff on a phased paving plan, and a 60-day continuance would allow more time for the staff to research as well. Mr. Winchester agreed.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Griggs absent) to continue **C-2008-32: JOHNNY WINCHESTER** (a conditional use permit to establish a vehicle storage yard in a Light Industrial [I-1] zone, on property located at 2245 Frankfort Court) for 60 days, until the July 25, 2008 meeting of the Board.

Citizen Comment – Paul Rose, neighboring property owner, was present to express his concern about a possible junk yard on the property. Mr. Rose stated that he felt condition number six addressed this concern and would ensure that a junk yard did not result at this location.

- f. **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:

1. 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.
2. 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:

- a. The expansion shall take place in accordance with the submitted application and site plan, or as amended by the Planning Commission.
- b. 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.
- c. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
- d. The design of all new driveways and parking areas shall be approved by the Division of Traffic Engineering.
- e. 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.

- f. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Chairman Owens stated that this was a continuation of a hearing from April 25, 2008 and asked Mr. Marx to provide a brief review of last month's hearing. Mr. Marx stated that this case was continued by the Board in order to allow the appellant an opportunity to meet with adjoining property owners to address concerns about plans to re-vegetate a common property line or to alter the proposed site plan. Mr. Marx indicated that Mr. Black, the appellant's representative, would need to explain the revised site plan as shown, because the staff was just seeing it for the first time at this meeting, and had not had an opportunity to review it. Mr. Stout asked staff if the neighborhood had agreed to the revised site plan. Mr. Marx referred the question to Mr. Black.

Representation – Mr. Jim Black, J.E. Black Engineering, was present representing the appellant and stated that the neighborhood agreed to the revised site plan. He also stated that the appellant had conducted two neighborhood meetings with the adjoining property owners. He stated that his client, Liberty Ridge, wants to be a "good neighbor." In order to address the neighbor's concerns, Mr. Black explained that the appellant made some slight revisions to the site plan as reviewed by the Board and the Planning Commission. The changes included: a walking path removed along one property line; a walking path relocated at least 12 feet from the property line along a second property line; maintaining an established tree line; moving the proposed residential units further from the property line; and altering the roadway alignment accordingly to make the site plan function properly.

Chairman Owens commended the appellant for working with the neighborhood. Mr. Marx advised the Board that condition number one should be revised to reflect the submitted site plan, dated May 30, 2008.

Ms. Bell asked the rest of the Board if a seventh condition requiring the appellant to address sanitary sewer capacity should be included. The Board agreed that a seventh condition would be appropriate. Mr. Black stated that the appellant already has a preliminary assessment from the Division of Water Quality that the sanitary sewer line they will need to connect to has the necessary available capacity; thus he agreed to a condition of approval on the conditional use permit, to read as follows:

"Prior to issuance of any grading permit, the applicant shall comply with any request for information or studies on sewer capacity if applicable Divisions determine such is needed."

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously (Griggs absent) to approve **C-2008-36: LIBERTY RIDGE SENIOR LIVING** (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), for the reasons provided by the staff, subject to the six conditions listed by the staff and the additional condition as noted above, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- g. **C-2008-46: LEXINGTON DOLPHINS** – appeals for a conditional use permit to enclose a community swimming pool on a seasonal basis, in a Single Family Residential (R-1E) zone, on property located at 621 Southpoint Drive (Council District 12).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The pool facilities on the subject property are supported by a large parking lot and clubhouse, and are adequately buffered from the nearby residential neighborhood.
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:

- a. The pool enclosure may be erected on a seasonal basis in accordance with the submitted

application and site plan, with the pool to remain open and unenclosed from Memorial Day weekend through Labor Day weekend.

- b. The tent structure shall be installed in accordance with any applicable standards required by the Division of Building Inspection.
- c. The enclosure shall at all times be maintained in a safe and presentable manner, as prescribed by the Board of Health.

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

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

Action – A motion was made by Ms. Moore, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to approve **C-2008-46: LEXINGTON DOLPHINS** (a conditional use permit to enclose a community swimming pool on a seasonal basis, in a Single Family Residential [R-1E] zone, on property located at 621 Southpoint Drive) for the reasons provided 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.

- h. **C-2008-47: FOUNDATION FOR ADVANCED ARCHITECTURE** – appeals for a conditional use permit to establish an Historic House Museum, in an Expansion Area Residential 1 (EAR-1) zone, on property located at 832 Lochmere Place (Council District 7).

The Staff Recommended: Approval, for the following reasons:

- 1. Establishing an Historic House Museum at this location should not adversely affect the subject or surrounding properties. The residence to be preserved as a museum is nationally recognized as a prominent example of Modernist architecture, and has been featured in numerous publications and books. The museum site has been carefully integrated into the design of the subdivision, with several acres of open space surrounding the residence.
- 2. 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:

- a. The museum shall be established in accordance with the submitted application and site plan.
- b. A certificate of occupancy shall be obtained from the Division of Building Inspection prior to opening the museum.
- c. Scheduling of events at the museum shall be coordinated with the Lochmere Estates Homeowners' Association (once established) to reduce the potential for conflicts and disturbances within the neighborhood.
- d. Meetings and social events at the subject property shall remain clearly incidental and subordinate in all aspects to the Historic House Museum use, as defined in Article 1-11 of the Zoning Ordinance.

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

Representation – Mr. Gene Alexander, Eagle Engineering, was present representing the appellant and stated that the applicant understood, agreed with, and would abide by the conditions for approval.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Griggs absent) to approve **C-2008-47: FOUNDATION FOR ADVANCED ARCHITECTURE** (a conditional use permit to establish an Historic House Museum, in an Expansion Area Residential 1 [EAR-1] zone, on property located at 832 Lochmere Place) for the reasons provided 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.

- i. **C-2008-48: CROSSFIT LEXINGTON, LLC** – appeals for a conditional use permit to establish an indoor athletic club in a Light Industrial (I-1) zone, on property located at 1850 Bryant Road (Council District 6).

The Staff Recommended: Approval, for the following reasons:

1. Granting the requested conditional use permit should not adversely affect any of the surrounding properties, which are not likely to be impacted by mild levels of activity and traffic. Establishing the facility will not require any additions to the existing building, and adequate off-street parking is available on site for participants and employees.
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:

- a. The facility shall be established in accordance with the submitted application and site plan, or as amended by the Planning Commission.
- b. All necessary permits shall be obtained from the Division of Building Inspection prior to opening the facility, including an occupancy permit.
- c. The athletic club shall be used by no more than 50 participants at any given time.

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

Representation – Ms. Susan Van Wert was present representing the appellant and stated that she understood, agreed with, and would abide by the conditions for approval.

Board Questions – Ms. Bell questioned the appellant about the number of customers that would be visiting the facility daily. Ms. Van Wert said that a maximum of 50 persons at any given time would be using the facility, and that number is based on a class size limit and equipment limitations. Mr. Hume suggested that the Board give the appellant some leeway and use a number based on the occupancy load of the building rather than a self-imposed limit; of 50 persons, as the facility may be a greater success than anticipated. Ms. Van Wert was agreeable to an increased limit; however, Mr. Marx pointed out that the appellant gave the staff the original count of 50 persons, and their parking is based upon this count.

Ms. Bell suggested that a fourth condition of approval be added to ensure adequate sanitary sewer capacity for the facility. Mr. Brock stated that he did not believe that condition was necessary because the building existed, which indicates that the building permits have been issued and the sanitary sewer capacity would have been considered at that time.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Stout, and carried unanimously (Griggs absent) to approve **C-2008-48: CROSSFIT LEXINGTON, LLC** (a conditional use permit to establish an indoor athletic club in a Light Industrial [I-1] zone, on property located at 1850 Bryant Road) for the reasons provided by the staff, subject to the three conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board was entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn. There was no response.
- 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-2008-53: SHEILA FLYNN** – appeals for a variance to reduce each required side yard from 6 feet to 2 feet in order to construct a single family residence, in a Two Family Residential (R-2) zone, on property located at 771 Florence Avenue (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The dwelling to be constructed will have to comply with special building code requirements, several of which pertain to fire safety. There are a number of lots in the immediate area that are also very narrow, many with homes that have limited side yards.
- b. The extremely narrow width of the subject property is a special circumstance that provides compelling justification for a reduction in each required side yard.
- c. Strict application of the Zoning Ordinance would effectively prevent the construction of a dwelling on the subject property, which would deprive the appellant reasonable use of the land and would create an unnecessary hardship.

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

1. The dwelling shall be constructed in accordance with the submitted application and site plan, with a side yard setback of 2' or more to be provided.
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, photographs of the subject property were not presented.

Representation – Ms. Sheila Flynn, applicant, was present and stated that she understood, agreed with, and would abide by the conditions for approval. She also stated that she had met with the individual that indicated they were in opposition to this request. Ms. Flynn said that she had resolved that concern with her neighbor prior to the hearing.

Board Questions – Chairman Owens asked Mr. Hume if the appellant would be required to address fire safety; that is, use fire-rated construction materials, and if that requirement was typically covered when an applicant secures a building permit. Mr. Hume responded in the affirmative. Ms. Flynn stated that she was aware that the walls and windows would need to be fire-rated along the side property lines.

Chairman Owens asked Ms. Flynn if she had considered a property consolidation. Ms. Flynn responded that a consolidation was not possible because she did not own the adjoining property at 769 Florence Avenue, but does own the next lot, located at 767 Florence Avenue.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stout, and carried unanimously (Griggs absent) to approve **V-2008-53: SHEILA FLYNN** (a variance to reduce each required side yard from 6 feet to 2 feet in order to construct a single family residence, in a Two Family Residential [R-2] zone, on property located at 771 Florence Avenue) for the reasons provided by the staff, subject to the two conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

2. **V-2008-54: SHEILA FLYNN** – appeals for a variance to reduce each required side yard from 6 feet to 2 feet in order to construct a single family residence, in a Two Family Residential (R-2) zone, on property located at 767 Florence Avenue (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The dwelling to be constructed will have to comply

with special building code requirements, several of which pertain to fire safety. There are a number of lots in the immediate area that are also very narrow, many with homes that also have limited side yards.

- b. The extremely narrow width of the subject property is a special circumstance that provides compelling justification for a reduction in each required side yard.
- c. Strict application of the Zoning Ordinance would effectively prevent the construction of a dwelling on the subject property, which would deprive the appellant reasonable use of the land and would create an unnecessary hardship.

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

- 1. The dwelling shall be constructed in accordance with the submitted application and site plan, with a side yard setback of 2' or more to be provided.
- 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, photographs of the subject property were not presented.

Representation – Ms. Sheila Flynn, applicant, was present and stated that she understood, agreed with, and would abide by the conditions for approval.

Action – A motion was made by Ms. Bell, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to approve **V-2008-54: SHEILA FLYNN** (a variance to reduce each required side yard from 6 feet to 2 feet in order to construct a single family residence, in a Two Family Residential [R-2] zone, on property located at 767 Florence Avenue) for the reasons provided by the staff, subject to the two conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- 3. **V-2008-55: DOUGLAS and DOROTHY JOHNSON** – appeal for a variance to reduce the required side street side yard (along Magnolia Gardens Place) from 30 feet to 0 feet in order to construct an in-ground swimming pool, in a Single Family Residential (R-1C) zone, on property located at 3025 Ashley Oaks Drive (Council District 12).

The Staff Recommended: Disapproval, for the following reasons:

- a. Granting the requested variance will alter the character of the general vicinity, by allowing sizeable accessory structures up to the property line along Magnolia Gardens Place.
- b. Special circumstances unique to this particular property have not been identified to justify the requested reduction in the required side street side yard. The fact that the property is a corner lot is not sufficiently unique to justify a 30' reduction in the required setback; such a justification would have broad applicability to virtually all other corner lots in residential areas.
- c. Strict application of the Zoning Ordinance will not deprive the appellants reasonable use of their property or create an unnecessary hardship, as other alternatives are readily available that will not require a variance.

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

Representation – Mr. Rory Kahly, landscape architect, was present representing the appellant and stated that Mr. Johnson was also in attendance. Mr. Kahly explained that the subject application was made in order to permit an in-ground pool to be constructed within the side street side yard, which is currently 30 feet. After filing the application for the appellant, Mr. Kahly said that he became aware of the requirement that a pool be located no closer than 10 feet to a sidewalk. For this reason, Mr. Kahly asked to amend the application to request a variance from 30 feet to 10 feet. Mr. Kahly presented photographs of the site as follows: (1) privacy fence and driveway in the front and side street side yard; (2) rear of house and privacy fence in the side yard; (3) rear of house, including the stairs from the rear door; and (4) rear and side yard location of the proposed pool, taken from the stairs.

Board Question – Mr. Stout asked Mr. Kahly to clarify how close the pool would be to the sidewalk. Mr. Kahly said that it would be at least 10 feet from the sidewalk, with the existing 6-foot privacy fence

located between the sidewalk and the in-ground pool.

Mr. Kahly stated that the staff had suggested that the pool be relocated to the opposite side of the rear yard, the area furthest away from Magnolia Gardens Place. However, the back yard slopes down along that side of the property, and the stairs to the basement are located near that area, which would create a conflict point; additionally, driveway access is convenient to the proposed location. Mr. Kahly stated that an above-ground pool does not require a building permit, but an in-ground pool does and is considered an accessory use. According to Mr. Kahly, the Division of Building Inspection says that a child's swing set or fort, trampoline or vehicle parking could all occur within the side street side yard without a permit. The appellant was asking to reduce the building line behind the house only so that the pool could be installed in a location that fits with the family's needs.

Board Questions – Mr. Stout asked for the Division of Building Inspection's opinion about the requested variance. Mr. Hume responded that he felt the request should be disapproved because it was his opinion that there was adequate space behind the house to install an in-ground pool. The Kentucky Building Code regulates in-ground pools as a structure and the LFUCG requires a building permit and an inspection for such a structure.

Mr. Stumbo asked Mr. Hume if Building Inspection would be opposed to the appellant moving the pool to the middle of the rear yard. Mr. Hume responded that Building Inspection would have no objection to the pool as long as it was located behind the building line; and they are even all right with a patio (concrete pool deck) being placed in the side yard, noting that the edge of the pool itself would still need to be located behind the 30-foot building line.

Mr. Kahly stated that there were several constraints that prevented that location from being acceptable to the appellant, including the fact that the property narrows as the distance increases from Magnolia Gardens Place, the breakfast nook projects into the rear yard, and the existence of a 10-foot wide utility and drainage easement along the rear property line. He noted that an in-ground pool cannot be located in a drainage easement either. He reiterated that the privacy fence would prevent seeing the pool from the roadways; thus, the pool would not change the character of the area, which was a concern of the staff.

Mr. Marx stated that there were issues other than a change in character that were expressed in the findings for disapproval. In terms of an in-ground pool, Mr. Marx stated that it was a permanent structure, which is probably one reason why Building Inspection issues a building permit. Also, as unforeseen issues arise, a temporary structure such as a swing set could easily be relocated, whereas a pool could not.

Ms. Edwards asked the appellant if there was any way they could relocate the pool, as she would hate to prohibit someone from constructing a pool. Mr. Hume suggested rotating the pool 90 degrees from the proposed layout and moving it back from the property line 20 to 25 feet, resulting in a need for only a 5 or 10-foot variance. Mr. Kahly responded that moving the pool in such a way would divide the backyard, leaving two small open spaces, which was undesirable. He stated that the proposed location was the most suitable location for the pool.

Action – A motion was made by Mr. Stout, seconded by Ms. Moore, and carried unanimously (Griggs absent) to disapprove **V-2008-55: DOUGLAS and DOROTHY JOHNSON** (a variance to reduce the required side street side yard [along Magnolia Gardens Place] from 30 feet to 10 feet in order to construct an in-ground swimming pool, in a Single Family Residential [R-1C] zone, on property located at 3025 Ashley Oaks Drive) for the reasons provided by the staff.

#### D. Conditional Use Appeals

1. **C-2008-42: KRISTA MEADOWS** – 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 3518 Willowood Road (Council District 8).

The Staff Recommended: Disapproval, for the following reasons:

- a. The minimum required off-street parking will not be provided for this proposed use. Two are required by the Ordinance, and none (behind the required 30' front yard) are available on this

property. Pursuant to Article 7-6(b) of the Zoning Ordinance, the Board is not authorized to vary the minimum number of parking spaces required for a residential use with family child care for 12 children.

- b. Authorizing an additional use without required parking would increase a nonconforming situation, contrary to the provisions of Article 4-3(a) of the Zoning Ordinance.

Representation – Chairman Owens asked if the appellant was present. There was no response.

Citizen Opposition – Ms. Diana Rust, was present representing the Gainesway Neighborhood Association. She said the neighborhood was in opposition to the request, and was prepared to submit a letter with neighbors' signatures to oppose the conditional use permit.

Board Discussion – Mr. Stout stated that he was uncomfortable hearing the opposition's case if the appellant was not present. Mr. Stumbo agreed and was prepared to make a motion. Ms. Bell stated that she did not see how the Board could make a decision without the appellant present, but appreciated that the neighborhood had taken the time and made the effort to attend the meeting. She said she thought the most appropriate action for the Board was postponement of the request. Ms. Boland stated that the appellant had requested the hearing and was aware of the date and time of the hearing. She instructed the Board that they could proceed on the case if they chose to do so.

Citizen Opposition – Mr. Brian Schilifky advised the Board that the Gainesway Neighborhood Association had held two neighborhood meetings to discuss the application and met with a representative of Ms. Meadows. The neighborhood association voted to oppose the application for a child care center for up to 12 children, but they approved of a family child care operation for 6 or fewer children. Mr. Schilifky submitted the petition for the Board's consideration.

Board Questions – Ms. Moore clarified that if the Board disapproves the application, then the applicant would not be able to re-file for one year. Ms. Boland confirmed that was true. Chairman Owens asked whether the staff had spoken to Ms. Meadows. Mr. Marx stated that they had not spoken recently to her, and he could only speculate as to why she was absent.

Action – A motion was made by Mr. Stout, seconded by Stumbo, and carried unanimously (Griggs absent) to disapprove **C-2008-42: KRISTA MEADOWS** (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 3518 Willowood Road) for the reasons provided by the staff.

2. **C-2008-43: CARLA JACKSON-STOVAL** – appeals for a conditional use permit to provide family child care for up to 12 children, in a Townhouse Residential (R-1T) zone, on property located at 2483 Woodhill Drive (Council District 7).

The Staff Recommended: Disapproval, for the following reasons:

- a. Although the minimum required off-street parking for this proposed use can be provided in the existing driveway, on-street parking conditions are not sufficient to support a 100% increase (6 to 12) in the number of children to be cared for at this location. On-street parking is not available on that portion of Larkwood Drive adjoining the subject property, which is likely to result in vehicles parking in front of other properties to drop off or pick up children. On-street parking on Woodhill Drive is not advisable due to the collector street designation for that roadway.
- b. Additional off-street parking that is proposed does not comply with design standards recommended by the Division of Traffic Engineering. The proposed parking area off of Woodhill Drive would require that vehicles maneuver onto that busy collector street to exit the property. There is insufficient space between the residence and Larkwood Drive for two additional parking spaces that are proposed, and even one space there would be of questionable utility.
- c. The extended hours (6:30 AM to 11:00 PM) and days (Monday through Saturday) that this proposed child care is proposed to operate will increase the potential for disturbing residents in the area. The potential for disturbances will be heightened due to the marginal off-street and on-street parking conditions that exist on the property and adjacent roadways.

Representation – Ms. Carla Jackson-Stovall was present and stated that she wished to defend her application to the Board. Ms. Jackson-Stovall addressed the first two reasons for the staff's recommendation for disapproval, which both involved off-street parking issues. She explained that she

had proposed off-street parking at the urging of Mr. Marx, only to be told later in the application process that such parking would not be required by the Zoning Ordinance. She also stated that she made arrangements with most of her clients to pick up and drop off their children, thus eliminating the need for off-street parking. At the advice of the President of the Woodhill Neighborhood Association, Ms. Jackson-Stovall had contacted all of the adjoining neighbors to seek permission for her clients to park on the street in front of their properties for 5-10 minutes, twice a day to allow parents to drop off and pick up their children. She stated that she was given such permission from Betty Chambers (304 Larkwood Drive), Victoria Lewis (Larkwood Drive), and Christi Thompson (2493 Woodhill Drive).

Board Question – Mr. Stout asked that the staff make a brief presentation about the application to the Board.

Staff Presentation – Mr. Marx discussed the original site plan submitted with the application, which displayed two new off-street parking areas, as well as the existing single-lane driveway for the residence. The staff stated that they had measured the driveway and found that it would be wide enough to allow two cars to park side-by-side, thus meeting the minimum off-street parking requirement of the Zoning Ordinance. Mr. Marx stated that he advised Ms. Jackson-Stovall about parking in general because parking is typically an issue for day care center applications to the Board. Mr. Marx went on to say why the staff was concerned about the proposed parking areas, which included the higher volume of traffic and higher speed limits along Woodhill Drive, a collector street, and the fact that the other parking area would be blocked if one vehicle parked in the existing driveway. Mr. Marx stated that the appellant is now willing to revise the site plan to remove the two off-street parking areas; however, the staff remains concerned with the appellant's proposal regarding on-street parking since on-street parking is prohibited on Larkwood Drive, and could be unsafe along Woodhill Drive since it is a collector street. Mr. Marx stated that the staff was unaware of the pick-up service Ms. Jackson-Stovall provides, and that could be a mitigating factor in the Board's decision. Mr. Stout said he would be concerned about the on-street parking, but also the ability of Building Inspection to police the pick-up service. Mr. Marx added that the situation would be complicated further by the appellant's desire for extended hours of operation (6:30 AM to 11:00 PM, Monday – Saturday).

Board Questions – Chairman Owens asked Mr. Hume for his opinion about the proposed day care center and relying on a pick-up service offered by the appellant. Mr. Hume responded that he felt, if the Board approved the conditional use permit under such circumstances or with a condition requiring the service, the Board would be creating an "unenforceable situation."

Mr. Stout expressed his concern about the safety of the intersection, and the inability of the appellant to guarantee to the Board and the LFUCG that she would pick up and drop off every child, every day, for now and in the future. Ms. Jackson-Stovall stated that she currently must provide transportation because some of the parents do have transportation. She also stated that she worked very closely with the Kentucky Refuge Ministries, a facility that helps families with housing and childcare, and they are the majority of her clients. The organization had asked Ms. Jackson-Stovall to get licensed to help take care of more children.

Citizen Opposition – James Mason, 2484 Woodhill Drive, stated that the only opposition he had was the parking located along Woodhill Drive, which she has already agreed to remove. Mr. Mason also stated that he takes his son to another caregiver on Larkwood Drive; and from his experience, on-street parking is never a problem.

Board Comments – Chairman Owens stated that he thought that pick-up and drop-off for the child care facility was too problematic in this situation.

Ms. Jackson-Stovall asked if there were any suggestions to help her alleviate the situation or mitigate the problem to the Board's satisfaction. Mr. Stout stated that he did not believe there was anything Ms. Jackson-Stovall could do at this particular location. If there had been a resolution available, he felt that the staff would have assisted the appellant in getting to that resolution. He said that he found this application difficult to approve, given its location and safety concerns.

Action – A motion was made by Mr. Stout, seconded by Ms. Bell, and carried unanimously (Griggs absent) to disapprove **C-2008-43: CARLA JACKSON-STOVALL** (a conditional use permit to provide family child care for up to 12 children, in a Townhouse Residential (R-1T) zone, on property located at 2483 Woodhill Drive) for the reasons provided by the staff.

3. **C-2008-49: TWIN PINES CHRISTIAN CHURCH** – appeals for a conditional use permit to expand the church (vestibule/office addition), in a Planned Neighborhood Residential (R-3) zone, on property located at 1139 Tanbark Road (Council District 12).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The church is surrounded by large areas of open space on the subject property, with the proposed addition to be more than 120' away from the adjoining residential property to the east. The new building will not include any additional sanctuary seating, and adequate off-street parking is available for the existing church sanctuary.
- 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.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Representation – Wayne Hayden, Hayden Company of Nicholasville, Kentucky; and Steve Carroll, Building Committee Chairman for Twin Pines Christian Church, were present representing the appellant, and stated that they understood, agreed with, and would abide by the conditions for approval. Mr. Hayden apologized for being absent earlier during the meeting when their application was ready to be heard by the Board. Mr. Hayden stated that the church had received the Board's approval in 1998 for a conditional use permit that allowed for a driveway access, additional parking and a 5,000 square-foot narthex to be constructed. The narthex was never constructed, and the church would now like to increase its size to 8,500 square feet. Stormwater improvements and the appropriate parking were constructed following the 1998 approval by the Board. Mr. Hayden stated that the addition would include a greeting and meeting area, a nursery area and restrooms, but would not increase the number of seats in the sanctuary.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Griggs absent) to approve **C-2008-49: TWIN PINES CHRISTIAN CHURCH** (a conditional use permit to expand the church [vestibule/office addition], in a Planned Neighborhood Residential [R-3] zone, on property located at 1139 Tanbark Road) for the reasons provided 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.

4. **C-2008-50: CMW, INC. / COPPER HILL KINGDOM HALL** – appeal for a conditional use permit to amend a previously approved site plan for construction of a church, for the purpose of revising proposed storm water management basins and associated parking, in a Single Family Residential (R-1A) zone, on property located at 1324 Viley Road (Council District 11).

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

- a. Granting the requested amendment should not adversely affect the subject or surrounding properties. Adequate off-street parking will still be available, with at least thirty more spaces to be provided than the minimum required (82 spaces). Storm water management will be undertaken in accordance with the adopted Engineering Manuals.
- b. All necessary public facilities and services are or will be available and adequate for the proposed use.

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

1. The church shall be established in accordance with a revised site plan indicating the following: (a) compliance with a 15' setback for all parking spaces at the front of the property near Viley Road; (b) the deletion of at least three parking spaces at the southern end of the 16-space parking row along Viley Road, with clear demonstration that no more than 50% of the required front yard area will be covered by parking and driveways; and (c) tree preservation along the northern property line meeting or exceeding that approved by the Board in 2006.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction and occupancy of the church.
3. The final design dimensions for the parking areas and access to both Viley Road and Seine Road shall be subject to review and approval by the Division of Traffic Engineering.
4. The final design of the access to Viley Road and Seine Road shall be subject to review and approval by the Planning Commission via any final Subdivision Plat submitted for this property.
5. All parking areas shall be paved, with spaces delineated, and landscaped/screened in accordance with Articles 16 and 18 of the Zoning Ordinance.
6. Access to Seine Road from the church parking lot shall be gated, with the gate design subject to review and approval by the Division of Fire and Emergency Services. The gate shall remain closed unless access is needed for emergency response.
7. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
8. Any pole lighting installed for the parking areas shall be of a shoebox (or similar) design, with light shielded and directed downward to prevent disturbances to adjoining and nearby residential properties, and at a height not to exceed 15'.
9. The extension of Seine Road onto the subject property shall be completed prior to occupancy of the church.
10. The wooded natural area at the northeast corner of the subject property shall be maintained and preserved, with only minimal alterations allowed as needed to accommodate the construction of the hammerhead turnabout and the nearby detention basin.

Representation – Mr. Doug Martin, attorney, was present representing the Clays Mill Congregation of the Jehovah's Witnesses. He stated that the congregation understood, agreed with, and would abide by the recommended conditions for approval. Mr. Martin also introduced other professionals who were present representing various aspects of the project: Brian Hill, CMW; Leo Caverlis, developer; and Rob McMann, Bennett & Rosser. Mr. Martin stated that the congregation was asking the Board to amend their previously approved site plan; specifically, the size, location and configuration of the storm water management basins and the location of parking spaces.

Mr. Hill discussed the Board's decision in 2006 to approve the congregation's conditional use permit for this property. Since that time, the project team has gained more detailed information about an environmentally sensitive area, and that information has forced a revision to the site plan, which requires re-approval by the Board. Mr. Hill stated that he understood that the neighborhood was still concerned about storm water runoff. He stated that the revised plan addressed both water quality and water quantity. He also asked that the Board and neighbors not revisit issues that are not a part of the application in front of the Board today, as those issues are already decided and not relevant to the case at hand. Chairman Owens asked for legal counsel's opinion regarding Mr. Hill's statement. Ms. Boland

agreed with Mr. Hill that the Board should just consider the proposed revisions, unless the Board heard new evidence that a change in circumstances occurred since the original conditional use permit was approved in 2006 that would make this use a detriment to the area; then they could consider disapproving the conditional use permit.

Board Questions – Chairman Owens asked if the Division of Engineering had an opinion about the proposed storm water management. Mr. Brock stated that the Division of Engineering did not perform a detailed review of the appellant's computations since their plans did not comply with the Board's 2006 decision. Chairman Owens asked if a 30-day continuance would allow enough time for that review to occur. Mr. Brock agreed that it would, as long as the computations and plans are submitted in a timely manner. Mr. Hill informed the Board that the computations and plans are available for review. It was his understanding that the Division of Engineering was waiting for the Board to approve the site plan changes before proceeding.

Citizen Opposition – Chairman Owens asked that all citizen comments be directed toward storm water, parking and vegetation, which are the aspects of the site plan that are proposed for change.

Mr. Logan Weiler, III, Friends of Wolf Run, stated that he was concerned about storm water and its possible effects on Wolf Run Creek. He stated that 50,000 square feet of additional impervious surface would result in an additional 13,000 gallons of water per ½ inch of rainfall running off of the subject property. Nearby residences already experience flooding regularly as a result of storm water runoff. He stated that, in his opinion, adding more runoff will exacerbate the problem; and if the LFUCG continues permitting development that taxes the system, it could be used against the Government in the lawsuit filed by the US EPA. Mr. Weiler presented a letter from the Board of the Friends of Wolf Run for the Board's further consideration. The letter was entered into the record and is attached as an appendix to these minutes.

Mr. Bill Smith, 1274 Bordeaux Drive, stated that he was the President of the Holiday Hills and Viley Heights Neighborhood Association. He proceeded to display photographs of a residence inundated with flood water on La Rochelle Road during a flood event on April 4, 2008. Mr. Smith also displayed a video dated June 18, 1992 of street flooding along La Rochelle Road, Cherbourg Road, Bordeaux Drive and Devonport Drive. Mr. Smith said that the neighborhood had conducted some research themselves and questioned the appellant's assertion that the property currently has 9,900 square feet of impervious surface. Their measurements indicate a much lower number, less than 4,000 square feet. The neighborhood is most concerned about the starting point by which the appellant is gauging change to the amount of storm water that would run off, and thus the amount that would need to be detained or handled on site. Mr. Smith submitted a petition in opposition to the congregation's request into the record of the meeting.

Mr. William Anglin, 1132 Kilrush Drive, stated that he was in opposition and wanted to clarify Mr. Smith's earlier remarks about the neighborhood's concerns. He was concerned that the developer would use inappropriate calculations, which could cause the detention basin to be sized too small.

Ms. Carrie Manley, 2437 Seine Road, said she was the Vice President of the Holiday Hills and Viley Heights Neighborhood Association, and was concerned about the traffic that would exit the church on Seine Road. Seine Road is a narrow local street with on-street parking that stubs into the rear of the church's property. She also expressed concerns about minimal sight distance along Viley Road.

Mr. Mark Whaley, 1316 Viley Road, stated that he was concerned about the storm water quality and the possible miscalculations of the appellant. He explained to the Board that the current situation allows for more than 90 percent of the runoff to be absorbed on site and to be dispersed into three sub-watersheds; however, the proposed plan would discharge water at a rate of 70 gallons per second, which could cause erosion. Mr. Whaley also wanted to make sure that the appellant is adhering to local laws that require special care near an environmentally sensitive area. He stated that a natural spring is located on his property. Mr. Whaley understood that the church wanted to maximize the use of their property, but not at his expense.

Board Question – Mr. Stout asked how the property sat topographically in relation to the neighborhood. Mr. Whaley and Ms. Manley both stated that the property is about the same topographic elevation as Seine Road, but higher than the rest of the neighborhood.

Appellant's Rebuttal – Mr. Cavelleris pointed out that the video shown by the opposition was from 1992, and he informed the Board that another subdivision, Chestnut Run, had been constructed since that time across the street without an impact to the Holiday Hills or Viley Heights neighborhoods. He also informed the Board that the appellant had been in continuous contact with the neighbors and had adjusted their plan in response to the neighbors' concerns. He asked the Board to approve the church's application.

Mr. Hill, in response to the neighbors' concerns, stated that the 1992 video was taken at a time when half of the City of Lexington was flooded, thus the images shown should not be construed as the typical flood event impacting this area of the community. Mr. Hill also agreed to review the stormwater calculations, specifically relative to the gravel coefficient and soil type. In terms of the traffic concerns and sight distance along Viley Road, Mr. Hill reminded the Board that their earlier decision addressed these issues, and the appellant has already moved their entrance location in response to these concerns. Mr. Hill stated that the neighbors expressed concern two years ago about the location and discharge point of the third basin. In response to those concerns, the appellant removed the third basin and enlarged the second basin. The capacity of the third basin was completely transferred to the second basin; therefore, no capacity is lost. Also, the appellant has designed a safeguard into the stormwater drainage system for this property. Mr. Hill went on to describe in detail how the stormwater system would function, including the basins, stabilization channel and vegetation, and stated that the proposed system far exceeded the LFUCG's requirements. Lastly, Mr. Hill stated that the drainage system was revised to drain into Mr. Whaley's pond, at his request.

Board Comments – Mr. Stumbo said that although he was not a member of the Board of Adjustment in 2006, he had read the minutes of the previous decision of the Board and felt that the appellant had addressed the concerns of the neighborhood. He was comfortable that the conditions of approval would require City oversight of the improvements, and felt that the application should be approved. Chairman Owens agreed.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Moore, and carried by a vote of 5-1 (Bell opposed, Griggs absent) to approve C-2008-50: CMW, INC. / COPPER HILL KINGDOM HALL (a conditional use permit to amend a previously approved site plan for construction of a church, for the purpose of revising proposed storm water management basins and associated parking, in a Single Family Residential [R-1A] zone, on property located at 1324 Viley Road) for the reasons provided by the staff, subject to the ten conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

E. Administrative Review

None

IV. BOARD ITEMS - The Chair will announce that any items a Board member wishes to present will be heard at this time.

- A. House Bill 55 Training Opportunity - Mr. Marx reminded the Board of the upcoming training opportunity on Wednesday, June 25, 2008 at 4:00 p.m. in the Division of Planning conference room. The title of this conference is "Planning Law Review" and would count toward 1.5 hours of House Bill 55 training credits for Board of Adjustment and Planning Commission members, as well as staff. Chairman Owens also reminded the Board of a Kentucky Association of Counties event scheduled for June 19, 2008, which would also count toward House Bill 55 training requirements.
- B. Discussion Regarding Follow-up on Conditions of Approval – Ms. Bell asked whether former appellant, Mary Queen of the Holy Rosary, had dedicated right-of-way as they agreed to do in September, 2007. Ms. Bell referred to the minutes of the September 28, 2007 meeting; which stated that Mary Queen of the Holy Rosary was required to dedicate right-of-way prior to the Board's October, 2007 meeting date. Ms. Bell asked for a report about whether the church/school had followed through on their commitment to the Board. Dedication of right-of-way was part of the motion of approval at that time, according to the September, 2007 minutes.

Mr. Marx responded that dedication of roadway right-of-way often has a timing issue and should be accomplished in a particular sequence with other construction activities. Ms. Boland stated that dedication of

right-of-way involves more than a decision to give property and/or improvements to the government; the LFUCG must be prepared to accept the right-of-way as well. It is a two-way street, so to speak. Ms. Boland indicated that she was unsure if the government was prepared at this time to accept such right-of-way, given the fact that more detailed plans for that section of Clays Mill Road were not yet known.

Ms. Bell stated that her primary concern was about the Board receiving appropriate feedback after decisions are made. She felt that the Board may need to review, or at least be informed about, subsequent decisions or changes that occur outside of the Board's proceedings. Ms. Bell stated that she believes it is important for the Board to discuss how administrative level decisions affect the decisions of the Board, especially in the circumstances where an applicant does not follow through with a condition of approval or if circumstances have changed such that the Board's decisions cannot be implemented.

Ms. Boland pointed out that it is Mr. Hume's responsibility to review conditional use permits annually, and report to the Board if the applicant is in violation of the Board's prior decision. With regard to the church being required to dedicate right-of-way, she said she did not believe that the staff would find an applicant to be in violation of that condition if the LFUCG was not prepared to accept dedication of the right-of-way. On the other hand, if the LFUCG approached the church and requested the dedication and they refused, the church could be brought back before the Board for a revocation hearing.

Ms. Bell stated that she felt that any condition not met by an agreed upon date or as required by the Board should be presented to the Board and made a part of the minutes of the meeting at which the Board is notified.

Chairman Owens stated that he appreciated Ms. Bell's concerns and was aware that Mr. Griggs had expressed similar concerns in the past. But, he continued, at some point the Board has to release their responsibility and trust that the professional staff of the LFUCG will follow through to make sure conditions of the Board are met. He also affirmed that if a condition is not being met, there is an obligation to make the Board aware of the situation and rectify any issues. Chairman Owens stated that he felt a workshop for the Board might be useful to allow the staff to report on any such issues. Ms. Bell agreed that a workshop would be helpful if it were designed to address the Board's needs. Chairman Owens stated that being reminded of the processes would be helpful for Board members; and he stated that while there is accountability built into the process, he understood that the Board wanted to be reassured that its decisions are being carried out and adhered to.

- V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wishes to present will be heard at this time. There was no response.
- VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be June 27, 2008.
- VII. **ADJOURNMENT** - There being no further business, the Chairman declared the meeting adjourned at 3:30 p.m.

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Mike Owens, Chairman

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James Griggs, Secretary