

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 27, 2008

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on June 27, 2008. Members present were Chairman Mike Owens, Carolyn Edwards, Barry Stumbo, Louis Stout, James Griggs and Joanne Bell. Member Kathryn Moore was absent. Others present were Jim Hume of the Division of Building Inspection; Barry Brock of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; and Rochelle Boland of the Department of Law. Staff members in attendance were Jim Marx, Bill Sallee, Barbara Rackers and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Chairman announced that the minutes of the meetings held on August 31, 2007 and October 26, 2007 would be considered at this time.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Bell, and carried unanimously (Moore absent) to approve the minutes of the August 31, 2007 and October 26, 2007 meetings.

III. **PUBLIC HEARING ON ZONING APPEALS**

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

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
- a. **V-2008-66: WILLIAM T. BURKE** - appeals for a variance to reduce the required front yard from 30 feet to 15 feet in order to construct a duplex on property proposed for re-zoning from Single-Family Residential (R-1C) to Two-Family Residential (R-2), located at 1136 Providence Lane. (Council District 5)

The Staff Recommended: Approval of a variance reducing the required front yard from 30' to 22', for the following reasons:

1. Granting an 8' variance should not adversely affect the public health, safety or welfare, nor significantly alter the character of the general vicinity. The subject property is located midway along a block of Providence Lane that has a much different character as one progresses from Duke Road to Romany Road. An 8' reduction in the required front yard setback will allow for an even and gradual transition between the townhouse development to the west of the subject property and the single family residences to the east of the subject property.
2. The location of the subject property, bordered by R-1T zoning (with townhouses) to the west and R-1C zoning (with single family residences) to the east, is a special circumstance that contributes to justifying at least some reduction in the required front yard setback.
3. Strict application of the Zoning Ordinance would result in the property having a considerably greater front setback for either a single family or two-family dwelling (should the property be rezoned to R-2) than the adjoining townhouse to the west. If the subject property is developed in a manner that complies with a 30' setback, the abrupt transition between the townhouses and the remaining development on Providence Lane (up to Romany Road) will remain, which would not be as complementary to the character of the neighborhood.

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

1. The property shall be developed in accordance with an amended site plan, or as approved by the Planning Commission, indicating that a front yard setback of at least 22' will be provided, with any front building wall to comply with a setback of

- at least 27'.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. The action of the Board shall be noted on the Final Development Plan for the subject property.
 4. An Administrative Action Plat reflecting action of the Board shall be filed with the Division of Planning, and recorded prior to the issuance of any building permits on this property.

Representation – Attorney Richard Murphy was present representing the appellant and requested a one-month postponement of the subject appeal due to his client's recent surgery. There was no opposition to the request for postponement.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stout, and carried unanimously (Moore absent) to postpone **V-2008-66: WILLIAM T. BURKE** until the July 25 meeting.

- b. **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:

- a. 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.
- b. 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.
- c. 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:

1. 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.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. 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.
4. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
5. 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.
6. 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. Nathan Billings was present on behalf of Mr. Bruce Simpson, attorney for the applicant, to request a 30-day postponement of the subject appeal. There was no opposition to the requested postponement.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (Moore absent) to postpone **CV-2008-51: KENTUCKY EASTER SEAL SOCIETY, INC.** until the July 25 meeting.

- c. **V-2008-67: CARMAX AUTO SUPERSTORES, INC.** - appeals for a variance to reduce the required amount of interior landscaping in an automobile display lot from 4,905 square feet to 1,860 square feet; and to relocate that landscaping to a visitor and employee parking lot, in a Highway Service Business (B-3) zone, on property located at 3200 Richmond Road. (Council District 7)

The Staff Recommended: Disapproval, for the following reasons:

1. The subject property is situated at a highly visible location at the corner of Richmond Road and Man O' War Boulevard. The proposed reduction of required interior landscaping at this location, within a paved area in excess of two acres in size, will negatively impact the overall appearance of the property.
2. Special circumstances unique to this particular property have not been identified to justify a substantial reduction in the required interior landscaping. The desire to maximize available space for vehicle display, and minimize the frequency that cars have to be washed, are not unique aspects of this development. Any justification related to vehicle cleanliness and space needs would have broad applicability to other locations, and could potentially result in a widespread circumvention of the Zoning Ordinance requirements.
3. Strict application of the Zoning Ordinance will not unreasonably restrict use of the property or create an unnecessary hardship to the applicant. Cleaning vehicle inventories is a normal part of any automobile dealership. If insufficient space is available within the proposed vehicle display lot, it would be feasible to amend the Final Development Plan for the subject property (since it is undeveloped) to expand the area proposed for vehicle display, or reconfigure that area in conjunction with the visitor/employee parking lot.

Representation – Attorney Rena Wiseman was present representing the appellant and requested a one-month postponement of the subject appeal. There was no opposition to the requested postponement.

Action – A motion was made by Mr. Stout, seconded by Ms. Bell, and carried unanimously (Moore absent) to postpone **V-2008-67: CARMAX AUTO SUPERSTORES, INC.** until the July 25 meeting.

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

The Staff Recommended: Postponement, for the following reasons:

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

Representation – Mr. Jihad Hallany was present on the appellant's behalf to request an indefinite postponement of the subject appeal.

Attorney Richard Murphy was present representing the Townley Park Neighborhood Association. He stated that they had previously discussed this matter with the city and were informed that the applicant's lease on the property in question had been terminated. He noted that since the applicant no longer has the owner's permission in order to apply for the conditional use permit, there was no longer a valid application pending before the Board. A copy of the letter that was sent to the applicant from the Department of Law was submitted, which indicated that MMA Management (Pull-A-Part) was no longer entitled to possession of the premises. Therefore, Mr. Murphy requested that this item be removed from the docket since there was no valid application for the Board to consider.

In response, Mr. Hallany stated that Mr. Murphy was correct; however, he said his client felt they still may be able to negotiate with the city to reacquire the lease, which was the reason for the request for an indefinite postponement of this matter. He noted that the indefinite postponement would allow them to try to resolve the case-related issues, involving the neighbors and access to the property, in order to come back to the Board at a later date; and if necessary, to request that the application be withdrawn if it was infeasible to have a lease with the city.

Mr. Stout inquired whether the Board needed to grant the requested postponement since the applicant neither owned nor had any legal right to the property at this time. Ms. Boland responded that because this is a pending application, the Board would have to take action either to postpone or hear the appeal, or there could be a motion to deny the application based strictly on a finding that the property owner has withdrawn authorization for the applicant to act on behalf of this property. A denial would prohibit the applicant from returning to the Board with an application for the same property for one year. However, she explained that if the grounds for denial are the fact that the lease is no longer in effect and the applicant has no legal right to the property, they could come back to the Board and ask for an early rehearing subsequent to renegotiating the lease and having the owner's authorization. The Board then would determine whether there has been a sufficient change in circumstances to allow an early rehearing.

Mr. Griggs and counsel briefly discussed the downside of an indefinite postponement, while the applicant tries to resolve the issues of concern with the city and the neighboring residents.

Chairman Owens inquired whether a withdrawal by the applicant would be appropriate at this time. Ms. Boland stated that with a withdrawal, there would be a 6-month delay period, which was shorter than an actual denial; and that the applicant would be able to apply again within 6 months, if they withdraw.

In response, Mr. Hallany stated that he felt his client would support a request for withdrawal, if it would make the Board more comfortable.

Mr. Murphy related his understanding that there were no negotiations going on with the city at this point; and that they were in agreement with a withdrawal since an active application was not pending. He noted that 2nd District Councilmember Tom Blues was present and could respond to any questions the Board may have regarding this matter. In response to the Chairman's request for comment, Councilmember Blues confirmed that the lease had been terminated, noting that the applicant had 30 days from the date of the termination letter (which has passed) to cure the default. He stated that the administration and the Commissioner of Environmental Quality had no interest in reopening the discussions about putting this operation on the old landfill, which is a very vulnerable piece of land; and that this is not an open question anymore.

Chairman Owens asked if Mr. Hallany was still leaning toward a withdrawal of this request, to which he responded affirmatively.

Action – A motion was made by Mr. Stout, seconded by Ms. Edwards, and carried unanimously (Moore absent) to accept the applicant's withdrawal of **C-2008-33: PULL-A-PART**.

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

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

ABBREVIATED HEARINGS:

- a. **V-2008-65: LUCAS HILL and FRANCES ANN THOMAS** - appeal for a variance to reduce the required side yard from 10 feet to 5 feet in order to expand a residence in a Single-Family Residential (R-1B) zone, on property located at 573 Wilderness Road. (Council District 6)

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 addition will be relatively small in size, with a one-story room of just 468 square feet to be added to the existing residence. The addition will be confined to an area where a portion of a previous residence was once located.
2. The location of the original foundation, built over fifty years ago, is a special circumstance that contributes to justifying a 5' reduction in the required side yard.
3. Strict application of the Zoning Ordinance would force the appellants to add on to the rear of the home, which would require the relocation of water and sewer lines and a more expensive roof design.

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

1. The addition shall be completed in accordance with the submitted application and site plan, with the expanded residence to be used only for single family residential purposes.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

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

Representation – Ms. Frances Ann Thomas, appellant, 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 (Moore absent) to approve **V-2008-65: LUCAS HILL and FRANCES ANN THOMAS** (a variance to reduce the required side yard from 10 feet to 5 feet in order to expand a residence in a Single-Family Residential [R-1B] zone on property located at 573 Wilderness Road) for the reasons listed 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.

- b. **C-2008-57: WORLDWIDE CHURCH OF GOD** - appeals for a conditional use permit to establish a church, increasing the number of sanctuary seats from what was originally approved for the property, in a High Density Apartment (R-4) zone, located at 2060 Regency Road. (Council District 10)

The Staff Recommended: Postponement, for the following reasons:

1. The requested off-street parking areas are not located within 300' (walking distance) of the church's sanctuary building, and do not comply with the distance provisions specified by Article 16-7(c) of the Zoning Ordinance. Absent a variance, which has not been requested by the appellant, those parking areas cannot be used to satisfy the minimum requirement of 35 off-street parking spaces associated with the church's requested increase in sanctuary seating. Should a variance be requested, any proposed shared parking agreement must specify the number of spaces to be shared.
2. Each of the proposed off-site parking areas is located on the opposite side of Regency Road, which is a designated collector street. Since there are not any signaled intersections to facilitate pedestrian movement from the church to these parking lots, consideration should be given to finding alternative parking areas on the same side of Regency Road, or at least seeking approval for a signed pedestrian crosswalk, in the alternative.
3. The requested sanctuary seating for up to 175 persons represents nearly a three-fold increase over that authorized by the Board for a prior church use. Given the relatively small size of the sanctuary building (which is not proposed for expansion), written verification that such a high occupancy load has been or can be permitted by the Fire Marshall is needed before the Board can make an informed decision.

Representation – Neither the applicant nor representation was present.

Responding to the Chair, Mr. Marx stated that he had been in touch with the applicant this past week; and that they understood the reasons for the staff's recommendation for postponement and were working to address the case-related issues. For clarification, Chairman Owens asked if the postponement would be for 30 days. Mr. Marx responded affirmatively.

Action – A motion was made by Ms. Edwards, seconded by Mr. Griggs, and carried unanimously (Moore absent) to postpone **C-2008-57: WORLDWIDE CHURCH OF GOD** until the July 25 meeting.

- c. **C-2008-58: RONALD F. ADAMS** - appeals for a conditional use permit to establish a home occupation (gunsmith) in a Single-Family Residential (R-1C) zone, on property located at 429 Severn Way. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

1. The activity of repairing and cleaning firearms is not inherently noisy or otherwise

disturbing, and can be undertaken without adversely affecting the surrounding properties. Firearms will not be discharged on the property for testing purposes, and any increase in traffic due to the activity is expected to be very minimal, as customers will not be coming to the appellant's home to drop off or pick up firearms.

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

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

1. The home occupation shall be undertaken in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning the home occupation.
3. Evidence of approval from the Bureau of Alcohol, Tobacco and Firearms shall be provided to the Division of Building Inspection prior to the issuance of an occupancy permit for this conditional use.
4. All of the conditions pertaining to home occupations, as outlined in Article 1-11 of the Zoning Ordinance, shall be complied with at all times.
5. Business shall be generated by word of mouth only, with no advertising.
6. Testing of firearms shall not take place on the subject property.
7. Sale of firearms shall not take place on the subject property.
8. All firearms shall be locked in a secure location when not being repaired/cleaned.
9. All ammunition shall be locked in a secure location separate from the firearms.
10. No more than ten firearms may be stored at the property at any given time.
11. Pick-up and delivery of firearms being repaired/cleaned shall be done only by the appellant.
12. The conditional use shall become null and void should the appellant cease to own or occupy the subject property.

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

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

At this time, the letters that were received in support of and in opposition to the proposed conditional use/home occupation were reviewed by the Board.

Mr. Hume inquired, with regard to Condition #10, whether the restriction of 10 firearms to be stored at the property at any given time included any firearms that the applicant personally owns. Mr. Marx replied that this condition was consistent with a prior gunsmith application that got a lot of attention; and it was his understanding in this case that 10 firearms would be the total. However, he said, for the purpose of clarification, the applicant may need to be asked whether the total of 10 firearms was acceptable or not.

Responding to Chairman Owens' question about the number of guns to be kept on the property at any one time, Mr. Adams stated that he owns more than 10 firearms himself. He estimated that he has 11 handguns and 14 long guns. In response to Chairman Owens' further inquiry, Mr. Adams said he wanted to be able to clean and repair firearms at his residence; and that there would be no sale or testing of firearms on the premises.

Ms. Bell asked how the firearms would be secured. Mr. Adams responded that he has a large safe where all the firearms will be kept. Ms. Bell then inquired about the types of firearms that will be cleaned/repaired. Mr. Adams answered that it would be both handguns and long guns. He stated that he is a retired law enforcement officer, having spent 35 years on the police force; and that he has a number of friends in law enforcement that he does work for, as well as sportsmen. Ms. Bell noted her interest in the security of the firearms that will be kept on the premises in this residential

neighborhood. Mr. Adams described the large safe where the weapons are to be stored.

Mr. Stout commented that he has four safes similar in description to the applicant's, which are hard to get into and even harder to haul away. He said the safe is very, very heavy; and in many cases, it is bolted to the floor.

Mr. Hume commented, with respect to similar cases approved by the Board involving gunsmithing as a home occupation, that there had been no problems related to this activity over the years.

Mr. Adams related to the Board that there will be no outside signage for the purpose of advertisement; the firearms will be picked up and delivered to his customers; and testing of the firearms will be done off site.

Mr. Hume asked to revisit Condition #10 regarding the (total) number of weapons that may be stored on the premises. Following a brief discussion between the Board and Mr. Adams, Ms. Boland suggested modifying this condition to read: "No more than 10 firearms not owned by the applicant may be stored at the property at any given time." Mr. Adams indicated being in agreement with the revised condition.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Moore absent) to approve **C-2008-58: RONALD F. ADAMS** (a conditional use permit to establish a home occupation [gunsmith] in a Single-Family Residential [R-1C] zone on property located at 429 Severn Way) for the reasons listed by the staff; subject to the 12 conditions listed by the staff, including the revision of Condition #10 as stated herein; and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- d. **C-2008-60: AMERICAN AVENUE BAPTIST CHURCH** - appeals for a conditional use permit to expand the church parking lot in the Agricultural-Rural (A-R) zone, on property located at 4137 Todds Road. (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, as the additional parking area to be constructed is adjacent to an open field where no disturbances are anticipated. Sufficient space is available to provide any necessary storm water management facilities resulting from this property improvement.
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:

1. The new parking area shall be constructed in accordance with the submitted application and site plan, or as revised in order to comply with requirements of the Division of Traffic Engineering or the Division of Engineering.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The layout of the parking area shall be subject to review and approval by the Division of Traffic Engineering.
4. Any pole lighting for the new parking area shall be of a shoebox (or similar) design, with light shielded and directed downward to avoid disturbing adjoining residential or agricultural properties.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

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

Representation – Mr. Kevin Warner, with Carman Landscape Architecture/Land Planning/Site Engineering, was present on the appellant's behalf and stated that they understood, agreed with, and would abide by the conditions for approval.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards, and carried unanimously (Moore absent) to approve **C-2008-60: AMERICAN AVENUE BAPTIST CHURCH** (a conditional use permit to expand the church parking lot in the Agricultural-Rural [A-R] zone on property located at 4137 Todds Road) for the reasons listed by the staff, subject to the five conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- e. **C-2008-61: BRIAN YAUN** - appeals for a conditional use permit to construct a 36' x 60' open-sided pavilion, accessory to an existing church in the Agricultural-Rural (A-R) zone, on property located at 3500 Versailles Road. (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 proposed pavilion will be situated near other recreational facilities on the subject property, over 60' away from each side property line. There are no uses on adjoining or nearby properties that are anticipated to be disturbed by activities taking place at the pavilion.
2. Fire and police protection are available and adequate for the proposed use, with garbage and sewage treatment services to be privately provided.

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

1. The pavilion shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

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

Representation – Mr. Brian Yaun, appellant, was present on behalf of the Church of God and stated that they understood, agreed with, and would abide by the conditions for approval.

Chairman Owens and Mr. Marx briefly discussed the square footage of the proposed pavilion in relation to the applicable maximum allowance of 10,000 square feet for churches as a conditional use in the A-R zone, as well as the additional 10,000 square feet allowed under certain conditions.

Action – A motion was made by Ms. Edwards, seconded by Mr. Stout, and carried unanimously (Moore absent) to approve **C-2008-61: BRIAN YAUN** (a conditional use permit to construct a 36' x 60' open-sided pavilion, accessory to an existing church in the Agricultural-Rural [A-R] zone on property located at 3500 Versailles Road) for the reasons listed by the staff, subject to the three conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- f. **C-2008-62: FIRST FEDERAL BANK** - appeals for a conditional use permit to construct a drive-through facility accessory to the bank in a Professional Office (P-1) zone, on property located at 101 Leestown Center Way. (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, which include a public school and future office

use. A development plan for the facility has been conditionally approved by the Planning Commission, and the final design of the drive-through will be subject to review and approval by the Division of Traffic Engineering.

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

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

1. The drive-through facility shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the drive-through facility, including vehicle stacking provisions, shall be subject to review and approval by the Division of Traffic Engineering.
4. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

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

Representation – Mr. Jason Banks, with Eagle Engineering, was present on the appellant's behalf and stated that they understood, agreed with, and would abide by the conditions for approval.

Chairman Owens acknowledged having received one letter of support.

There was a brief discussion between Mr. Stumbo and Mr. Banks regarding when construction of the bank facility on the corner lot would commence.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Edwards, and carried unanimously (Moore absent) to approve **C-2008-62: FIRST FEDERAL BANK** (a conditional use permit to construct a drive-through facility accessory to the bank in a Professional Office [P-1] zone on property located at 101 Leestown Center Way) for the reasons listed by the staff, subject to the four conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- g. **C-2008-63: PALUMBO PROPERTIES, INC.** - appeals for a conditional use permit to construct a self-service car wash in a Neighborhood Business (B-1) zone, on property located at 820 Lane Allen Road. (Council District 10)

The Staff Recommended: Approval, for the following reasons:

1. A car wash at this location should not adversely affect the subject or surrounding properties. There will not be any increase in the extent of impervious surface, and the facility will be designed to ensure that there is no increase in the amount of water that drains from the site. A continuous landscape buffer will be provided, and a storm water management plan will be implemented to ensure that no water drains onto adjoining properties.
2. All necessary public facilities and services are available and adequate for the proposed use, provided that all of the water used to wash cars is recycled.

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

1. The facility shall be constructed and operated in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The facility shall be designed, subject to review and approval by the Division of Building Inspection, to ensure that 100% of the water used to wash cars is recycled at this location.
4. The landscape buffer along the southerly property line, for a distance of

approximately 140' from the southwest property corner, shall be refurbished with evergreen trees so that it is comparable in appearance and function to the existing buffer provided along Garden Springs Drive.

5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering. This plan shall ensure that no water from this facility drains onto adjoining properties.
6. The flow of vehicles exiting the eastern wing of the car wash shall be managed to ensure that pedestrians traveling to the shopping center from the adjoining apartment building are not interfered with, or otherwise impeded. Management efforts shall include, but are not limited to, caution signage and the marking of exit lanes, as determined to be necessary by the Division of Traffic Engineering.

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

Representation – Attorney Richard Murphy was present representing the appellant, along with Mr. Danny Harp. He stated that they were in agreement with the conditions for approval, including the modification of Condition #3 and the addition of a 7th condition by staff (a copy of which was submitted to the Board by Mr. Marx). With respect to Condition #3, Mr. Murphy said they had discussed the design and operation of the proposed car wash facility with the staff, the Division of Water Quality and the Division of Engineering; and that a sanitary sewer study will be done in conjunction with this project, subject to acceptance by the Division of Engineering and/or the Division of Water Quality. It was noted that a similar condition was placed on a case by the Board last month when the issue was raised regarding the Consent Decree. Mr. Murphy reiterated that they would do a study to assure that there is adequate capacity for the water the proposed car wash facility will put off.

Chairman Owens referred to a neighbor's letter of opposition that was received that expressed concern about the generation of additional traffic in the vicinity of the car wash. Mr. Murphy responded that the shopping center where the car wash will be located has not maximized the space it has to build on; and that if a building were to be constructed in this location, it would generate additional traffic as well. He said hopefully, the car wash will be serving some of the people who are already there.

Mr. Stumbo said he assumed that market studies, etc. were done by the applicant in connection with this project. He noted the demise of a very nice car wash at the corner of Alexandria Drive and Versailles Road, not far from the proposed site of this car wash facility. Mr. Harp responded that the car wash referenced by Mr. Stumbo didn't make it because of the land cost, which he wouldn't be incurring since he owns the property. He noted that land cost was a significant expense in this type of project.

Chairman Owens related another concern that was raised in the letter of objection regarding the residents coming from the adjacent apartment tower into the shopping center area via an outside stairway. Mr. Harp responded that they provided a picture to demonstrate that the car wash would not impede access to/from the apartment complex on the adjacent property. Referring to the photo showing a panoramic view, Mr. Murphy pointed out the location of the landscaping along the property line and the outside stairway from the apartment complex in relation to the proposed car wash site. He noted that the entrance is in a driving lane that goes behind the shopping center, which probably would serve to slow down traffic there.

Ms. Bell noted that only cars are referenced in Condition #3. She asked whether other vehicles, such as vans and trucks, would be served at the car wash facility. Mr. Harp responded that with the exception of normal pickup trucks, there would be no commercial vehicles allowed at the facility. Ms. Bell said she would be more comfortable if the wording "no commercial vehicles" was added to Condition #3. Mr. Harp had no objection.

Ms. Bell asked the Engineering staff within what percentage of the water used would it be reasonable for the applicant not to recycle. Mr. Brock responded that he was unable to answer that question, noting there are various types of systems that can be used which recycle various amounts of water. He said it has been their experience over the last several years that any car wash coming in will recycle the most water they possibly can, simply because of the business applications.

Mr. Harp commented that 90 percent of all the chemicals used at car washes have gone green, and the water that goes through the system will not be harmful to any person or animal.

Ms. Bell then asked where the water from the car wash will go. Mr. Murphy responded that most of the water coming off the cars will enter the storm sewer system that serves the existing shopping center. He noted that since a paved surface already exists where the proposed car wash will be located, the water is already going into the storm sewer system. Mr. Murphy related his understanding that the sanitary sewer goes into the same line that Turfand Mall eventually goes into over toward Harrodsburg Road. He said he didn't think they were entering the ground water system here; and it would not be an issue of the chemicals impacting that. He went on to say that they are in the process of getting the final development plan through the Planning Commission, and these same issues will be dealt with as part of their review.

Chairman Owens asked how commercial vehicles would be prohibited from accessing the car wash. Mr. Harp responded that a bar installed at the entrance would be used to limit the height of the vehicles, which mostly all car washes utilize, except those that accommodate large commercial trucks.

Mr. Griggs asked where the water goes that is not recycled. Mr. Murphy said he believed most of it would go into the sanitary sewer system. Mr. Griggs related his understanding that the unrecycled water goes into the sanitary sewer system.

Mr. Brock noted that storm water runoff from the area surrounding the building would go into the storm sewer; and that any water used inside the facility to wash vehicles would drain into the sanitary sewer system. He said typically, that is the way these facilities are designed.

Action – A motion was made by Mr. Stout, seconded by Mr. Stumbo, and carried unanimously (Moore absent) to approve **C-2008-63: PALUMBO PROPERTIES, INC.** (a conditional use permit to construct a self-service car wash in a Neighborhood Business [B-1] zone on property located at 820 Lane Allen Road) for the reasons listed by the staff; subject to the six conditions listed by the staff, including the revision of Condition #3, as follows: "The facility shall be designed, subject to review and approval by the Division of Engineering and/or the Division of Water Quality to ensure that water used to wash cars is recycled at this location"; and the addition of Condition #7: "A building permit shall not be issued until a sanitary sewer study is conducted and accepted by the Division of Engineering and/or the Division of Water Quality"; and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- g. **C-2008-64: KEENELAND ASSOCIATION, INC.** - appeals for a conditional use permit to amend a previously approved plan for parking and related improvements for a private club, in the Agricultural-Rural (A-R) zone, on property located at 3555 Rice Road. (Council District 12)

The Staff Recommended: Approval, for the following reasons:

1. An expansion of the Thoroughbred Club facilities will not adversely affect the subject or surrounding properties and will not cause a hazard or nuisance to the public. There are no uses on adjoining or nearby properties that might be adversely impacted, and the proposed improvements will enable Keeneland to provide better service to its patrons and clientele.

2. Trash pickup/disposal and sewer treatment (septic system) are privately provided; there is adequate space for any storm water management treatment that might be required; and public services such as police and fire protection are available and adequate for the proposed uses.

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

1. The proposed improvements shall be completed according to the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The parking lot shall be paved, with spaces delineated, and landscaped/screened in accordance with the requirements of Articles 16 and 18 of the Zoning Ordinance.
4. The final design of the parking lot shall be subject to review and approval by the Division of Traffic Engineering.
5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.

Chairman Owens asked whether or not there were objectors present to the subject appeal. There was no response; therefore, slides of the subject property were not presented. At this point, the Chairman disqualified himself from this case and turned the proceedings over to Vice-Chairman Stout. Ms. Edwards announced that she also would have to disqualify herself.

Representation – Ms. Rena Wiseman, attorney, was present representing the appellant and stated that they understood, agreed with, and would abide by the conditions for approval.

Mr. Stumbo and Ms. Wiseman briefly discussed the location of the proposed private club, as well as other improvements such as the kitchen that is currently under construction.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Bell, and carried unanimously (Moore absent; Edwards and Owens recused) to approve **C-2008-64: KEENELAND ASSOCIATION, INC.** (a conditional use permit to amend a previously approved plan for parking and related improvements for a private club in the Agricultural-Rural [A-R] zone on property located at 3555 Rice Road) for the reasons listed by the staff, subject to the five conditions listed by the staff, and based on the Certificate of Land Use Restriction attached as an appendix to these minutes.

- B. **Transcript or Witnesses** - The Chairman announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the

adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

None Remaining

D. **Conditional Use Appeals**

None Remaining

E. **Administrative Review**

None Remaining

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

Mr. Stout commented on the very informative APA audio conference entitled "Planning Law Review 2008" that he attended in the Division of Planning. He said the presentation provided a lot of good, useful information, particularly regarding billboards and digital signs.

Mr. Stumbo inquired about the next continuing education session for the Board members. Ms. Rackers responded that the next APA audio conference would not be until October; and that she didn't know if there were any other opportunities. However, she said the staff could probably set up something if the Board members were in need of credit hours. Mr. Stumbo requested an update on the credit status and training hours still needed by the Board members.

Ms. Edwards noted having read on Mr. David Pike's web site that he would be offering a seminar in Lexington in October also. She asked if attendance would be applicable to the training credit hours the Board members needed. Ms. Rackers responded that generally, any of the seminars offered by Mr. Pike, the KY Association of Counties or the KY League of Cities, for example, will count toward the Board members' training credit hours.

At this time, Chairman Owens recognized and thanked Ms. Bell for having dutifully served on the Board of Adjustment for the past eight years. He noted that an official presentation would be made at the August meeting. Ms. Bell thanked the Chairman and commended the staff. She said that serving on the Board has been a wonderful learning experience.

V. **STAFF ITEMS** - The Chairman announced that any items a Staff member wished to present would be heard at this time. There was no response.

VI. **NEXT MEETING DATE** - The Chairman announced that the next meeting date would be July 25, 2008.

VII. **ADJOURNMENT** - There being no further business, the Chairman declared the meeting adjourned at 1:58 p.m.

Mike Owens, Chairman

James Griggs, Secretary